

elsewhere in today's **Federal Register** for a detailed description of the State Plan.

DATES: Comments on this proposed rule must be postmarked by September 29, 1997. If no adverse comments are received, then the direct final rule is effective on October 28, 1997.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State's plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Louisiana Department of Environmental Quality, Air Quality Program, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana 70810.

Anyone wishing to review this plan at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD-L), EPA Region 6, telephone (214) 665-7219.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final notice which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements, Sulfuric acid plants, Sulfuric oxides.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 11, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97-21816 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-P

LEGAL SERVICES CORPORATION

45 CFR Part 1630

Cost standards and procedures

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This rule proposes substantial revisions to the Legal Services Corporation's rule concerning the Corporation's cost standards and

procedures. The proposed revisions are intended to conform the rule to applicable provisions of the Inspector General Act, the Corporation's appropriation's act and relevant OMB Circulars.

DATES: Comments should be received on or before October 29, 1997.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336-8817.

SUPPLEMENTARY INFORMATION: This rule proposes substantial revisions to the Legal Services Corporation's ("LSC" or "Corporation") rule on cost standards and procedures to conform the rule to applicable provisions of Sec. 509 of Public Law 104-134; the Inspector General ("IG") Act, 5 U.S.C. App. 3, as amended; the Audit Guide for LSC Recipients and Auditors ("Audit Guide"); OMB Circular A-50, Audit Followup (September 29, 1982); and OMB Circular A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions (June 24, 1997) (this circular is applicable to LSC recipients through Section I-2 of the Audit Guide). In addition, the rule borrows from other relevant OMB circulars as appropriate; see OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations (November 19, 1993); OMB Circular A-122, Cost Principles for Nonprofit Organizations (May 8, 1997). The Corporation's Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") held public hearings on a draft proposed rule in Los Angeles, California, on July 13, 1997 and, after making revisions to the draft, adopted a proposed rule for publication in the **Federal Register** for public notice and comment.

Generally, this rule sets out proposed uniform standards for determining the allowability of costs and provides a proposed process for resolving questioned costs. A section-by-section analysis is provided below.

Section 1630.1 Purpose

The purpose of this proposed rule is to provide uniform standards for determining the allowability of costs and to provide a process for the resolution of questioned costs. This rule proposes deleting language in the current rule which explains that the

Corporation has considered the standardized policies developed under Federal experience and has adopted or adapted many Federal policies as appropriate for the legal services system. Such language is better placed in the rule's preamble.

Section 1630.2 Definitions

Paragraph (a) defines allowed cost as a cost that is determined in a management decision to be eligible for payment with LSC funds.

Paragraph (b) defines corrective action as action taken by a recipient that corrects deficiencies or makes improvements. It also includes a demonstration by the recipient that the audit or other findings do not warrant corrective action.

Paragraph (c) defines derivative income. This definition replaces the current § 1630.4(e) which defines program income, a term used within the Federal government for derivative income. Derivative income is used in this rule instead of program income because it is more familiar to the legal services community. Even though the current rule defines program income, the term is not used anywhere in the rule. This proposed rule devotes a section to derivative income, see § 1630.12.

Derivative income is defined as income earned from LSC-funded activities during the term of an LSC grant or contract. It would include interest earned on an LSC grant, fees for services or income for sales or rentals of real or personal property.

Paragraph (d) defines disallowed cost as a cost that should not be charged to LSC funds. It does not include reference to derivative income as does the current definition in § 1630.2(c). Instead, the rule addresses the recovery of derivative income in §§ 1630.7(b) and 1630.8.

Paragraph (e) defines final action as the completion of all corrective actions called for in a management decision. When no corrective action is required by Corporation management, the management decision is the final action. This term is not found in the current rule.

Paragraph (f) defines management decision as a written response by management to findings and recommendations in an audit or other report and a recipient's response to such findings and recommendations. A management decision includes any corrective actions necessary to address any findings and recommendations. This term is not found in the current rule.

Paragraph (g) defines questioned cost as a cost charged to LSC funds that is

questioned in an audit or other finding because (1) there may have been a violation of applicable law, (2) the costs are unsupported by adequate documentation, or (3) the costs appear to be unnecessary or unreasonable. The proposed definition expands the current definition to incorporate current law, which contemplates that, in addition to Corporation management, the Office of Inspector General ("OIG"), the General Accounting Office ("GAO"), or a duly authorized independent auditor or audit organization may question a cost.

Paragraph (h) defines recipient for the purposes of this part. No change has been made from the current definition.

Section 1630.3 Burden of Proof

This section provides that the burden of proof is on the recipient. A statement in the current rule that the recipient has the burden of showing that funds expended are not subject to a restriction is deleted in this rule as redundant and unnecessary.

Section 1630.4 Standards Governing Allowability of Costs Under Corporation Grants or Contracts

Paragraph (a) of this section sets out the nine standards that determine whether an expenditure will be allowed under a recipient's grant or contract. The standards are generally the same as those in the current rule. However, several changes are proposed. First, the proposed rule modifies subparagraph (a)(1) of the current rule to permit, in limited circumstances, costs incurred immediately prior to or immediately after the term of the grant, provided the costs are necessary to the performance of the grant and the Corporation has approved them pursuant to § 1630.5(b)(1) of the proposed rule. These costs are not allowed under the current rule. Allowing such costs is consistent with Federal practice and the Corporation's new competitive grant process and will enable new recipients to incur necessary start-up costs immediately prior to the onset of the grant term and will permit current recipients who are terminating their relationship with LSC to incur necessary close-out costs that occur immediately after the conclusion of the grant. Second, subparagraph (a)(2) of the current rule has been modified and is based on OMB Circular A-122. Third, reference to the Audit Guide has been deleted in subparagraph (a)(4), because the latter does not set forth any rules or guidelines governing the allowability of costs. Fourth, subparagraph (a)(6) has added the words "over time" to the current language to clarify that it addresses consistency over time, as

opposed to subparagraph (a)(5), which addresses consistency among funding sources. Finally, subparagraph (a)(9) has added language to require recipients to provide access to business records to the OIG, the GAO, and other federally funded auditors as required by section 509(h) of Pub. L. 104-134.

One of the standards in paragraph (a) is that the cost be reasonable and necessary for the performance of the grant or contract. Paragraph (b) sets out the factors that determine whether a cost is reasonable. Generally, a prudent person standard is established. This paragraph clarifies that if a cost is disallowed solely because it is excessive, only the amount above that which is reasonable will be disallowed. Although this paragraph is generally the same as the current rule, hortatory language in the current rule that urges careful scrutiny of costs has been deleted because it has no practical effect and provides no additional clarity about what constitutes a reasonable cost.

Another standard in paragraph (a) is whether a cost may be allocated to the grant or contract. Paragraph (c) clarifies when a cost may be allocated to a grant or contract and includes new language that provides that costs may be charged to an LSC grant or contract directly or indirectly. The new language is adapted from OMB Circular A-122. The Committee has deleted language in the current rule that prohibits recipients from shifting costs from non-LSC to LSC grants or from one LSC grant to another LSC grant, to overcome funding deficiencies, or to avoid restrictions on the use of funds. It is already clear in other LSC regulations that certain recipient funds may not be allocated to prohibited or restricted activities, and the Committee proposes to delete the provision as redundant and unnecessary. However, the Committee seeks comment on the deletion of the current § 1630.4(c)(2), which provides:

Any cost allocable to a particular grant or contract or other cost objective under these principles may not be shifted to other Corporation grants or contracts to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms or conditions of the grant or contract.

Paragraphs (d), (e) and (f) define direct and indirect costs and specify methods for allocating costs. Some indirect costs will carry specific allocation requirements. For example, section 509(c) of Pub. L. 104-134 requires a pro rata distribution of audit costs among a recipient's funding sources.

Paragraph (g) adapts language from the Corporation's Accounting Guide for LSC Recipients and governs situations

where another funding source will not allow the charging of indirect costs to that funding source. In such a situation, paragraph (g) provides an exception to allow recipients to use a cost allocation method that charges the LSC grant with a proportional share of the other funding source's share of indirect costs.

Paragraph (h), which is unchanged from the current rule, defines and explains how to allocate applicable credits. Applicable credits are defined as receipts or reductions of expenditures which operate to offset or reduce expenses.

Paragraph (i) provides that OMB Circulars shall provide guidance for allowable costs unless the guidance is inconsistent with other law applicable to the Corporation.

Section 1630.5 Costs Requiring Corporation Prior Approval

Paragraph (a) explains that recipients may seek advance understandings from the Corporation on the reasonableness and allocability of a particular cost before it is incurred.

Paragraph (b) requires prior approval from the Corporation before certain costs may be charged to Corporation funds. Several changes have been made from the current rule. The requirement for prior approval of consultant contracts has been deleted to be consistent with OMB Circulars A-122 and A-110. In addition, provisions requiring prior approval for pre-award and post-award costs and capital expenditures exceeding \$10,000 to improve real property have been added. The reference to "combined purchase price" has been deleted as confusing and unnecessary. It is only the purchase price of individual items that is considered for the purposes of prior approval. The combined purchase requirement in the current rule penalized programs that made independent purchases of equipment over a period of time and then belatedly discovered that they had exceeded the current rule's \$10,000 threshold. The elimination of the combined purchase provision does not alter the accounting rules which determine when to treat property purchases as capital expenditures. For example, the Accounting Guide for LSC Recipients requires that purchases of property items costing in excess of \$1,000 be treated as capital expenditures.

Paragraph (c) clarifies that the Corporation's approval or advance understanding is valid for one year only or for a greater time if specified by the Corporation in its approval or understanding. This provision is highlighted in a single paragraph in this

proposed rule. Its placement in the current rule has often caused it to be missed by recipients. Situations where approval may be given for a period greater than a year usually involve multiple-year leases for equipment such as photocopiers.

Section 1630.6 Effect of Absence of Prior Approval

This section sets out the procedures for granting or denying prior approval and the effects of the absence of prior approval. The proposed rule modifies the structure of the current section to provide greater clarity, but does not substantively change the content of the section.

Paragraph (a) explains that approval will be granted for a cost if the recipient has provided sufficient information to show that the cost is consistent with this part. When the Corporation denies a request, this paragraph requires that the recipient be provided a written explanation of the grounds for denial.

Paragraph (b) provides a time limit of sixty days for the Corporation to respond to a request for prior approval. If the Corporation fails to meet the deadline, the Corporation may not assert the absence of prior approval as grounds to disallow the cost.

Paragraph (c) allows the Corporation to seek additional information from the recipient to make its determination on the request for prior approval. Paragraph (d) sets out the Corporation's deadline for responding to a request for prior approval when the Corporation has requested additional information from the recipient.

Section 1630.7 Review and Appeal of Questioned Costs

This section sets out the process for reviewing and appealing questioned costs. The proposed rule retains the overall process contained in the current rule, but makes several changes to be consistent with the IG Act, Section 504 of Public Law 104-134, and OMB Circular A-133.

Paragraph (a) expands the current rule to include additional parties who are authorized by current law to question costs. The current rule recognizes only the authority of Corporation management to question costs. This proposed rule also recognizes the authority of the Inspector General, the GAO, and authorized independent auditors or audit organizations to question costs. This paragraph provides that the Corporation shall follow up on any referred or identified questioned costs to determine whether there is a legal or factual basis for taking any additional action.

If the Corporation determines there is a basis for taking additional action, paragraph (b) requires the Corporation to provide the recipient with a notice of its intent to disallow a cost. This paragraph describes what information must be in the notice and also authorizes the Corporation to recover any derivative funds resulting from the activity to which the questioned cost is attributable. Finally, this paragraph states that the Corporation must take action within three years of the time the cost was incurred by the recipient. The current rule allows the Corporation to take action up to six years after a cost has been incurred. The Committee decided that six years is too long, even considering the time needed for the development of an audit or other report and implementation of the Corporation's questioned cost procedures. The Committee especially seeks comments on the proposed change to three years.

The rest of this section describes the due process rights of recipients, which include a right to appeal a management decision to the President for questioned costs that exceed \$2,500. The \$2,500 threshold is new. This section also clarifies when management decisions on questioned costs are final and makes it clear that final decisions shall include whatever action the recipient is required to take to repay the questioned costs and to prevent any recurrence of the circumstances causing the disallowed costs.

Section 1630.8 Recovery of Disallowed Costs and Other Corrective Action

This section sets out the requirements for and process by which the Corporation collects disallowed costs and ensures that a recipient take applicable corrective action. It also clarifies that final action occurs when the recipient has repaid all disallowed costs and has taken all required corrective action.

Section 1630.9 Other Remedies; Effect on Other Parts

Paragraph (a) has been updated and it clarifies the relationship of this part to parts 1606, 1623, 1625, and 1640 of the Corporation's regulations. Paragraph (b) clarifies that a recovery of disallowed costs under this part does not constitute a termination (part 1606), suspension of funding (part 1623) or a denial of refunding (part 1625).

Section 1630.10 Applicability to Subgrants

This section clarifies that this part applies to expenditures under subgrants.

Section 1630.11 Applicability to Non-LSC Funds

Paragraph (a) has been updated and it clarifies that costs for certain activities may not be charged to various types of a recipient's non-LSC funds. This paragraph uses the terms found in 45 CFR part 1610 which, sets out the various prohibitions applicable to recipients on their use of non-LSC funds for certain activities.

Paragraph (b) allows the Corporation to recover from a recipient's LSC funds any disallowed costs charged to a recipient's non-LSC funds.

Section 1630.12 Applicability to Derivative Income

This is a new section intended to clarify the applicability of this part to derivative income. Paragraph (a) sets out the allocation requirements for derivative income. Paragraph (b) clarifies that expenditures of LSC derivative income are subject to the same requirements that govern expenditures of LSC grant funds, including the cost allowability requirements of this part.

Section 1630.13 Time

This section describes how time will be computed for the purposes of this part and provides for an extension of time requirements for good cause.

List of Subjects in 45 CFR Part 1630

Accounting; Government contracts; Grant programs; Legal services; Questioned costs.

For reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1630 to read as follows:

PART 1630—COST STANDARDS AND PROCEDURES

- Sec.
- 1630.1 Purpose.
 - 1630.2 Definitions.
 - 1630.3 Burden of proof.
 - 1630.4 Standards governing allowability of costs under Corporation grants or contracts.
 - 1630.5 Costs requiring Corporation prior approval.
 - 1630.6 Effect of absence of prior approval.
 - 1630.7 Review and appeal of questioned costs.
 - 1630.8 Recovery of disallowed costs and other corrective action.
 - 1630.9 Other remedies; effect on other parts.
 - 1630.10 Applicability to subgrants.
 - 1630.11 Applicability to non-LSC funds.
 - 1630.12 Applicability to derivative income.
 - 1630.13 Time.

Authority: 42 U.S.C. 2996e, 2996f, 2996g, 2996h(c)(1), and 2996i(c).

§ 1630.1 Purpose.

This part is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs.

§ 1630.2 Definitions.

(a) *Allowed cost* means a cost that the Corporation, in a management decision, has determined to be eligible for payment from a recipient's Corporation funds.

(b) *Corrective action* means action taken by a recipient that:

- (1) corrects identified deficiencies
- (2) produces recommended

improvements; or

(3) demonstrates that audit or other findings are either invalid or do not warrant recipient action.

(c) *Derivative income* means income earned by a recipient from Corporation-supported activities during the term of a Corporation grant or contract, and includes, but is not limited to, income from fees for services (including attorney fee awards and reimbursed costs), sales and rentals of real or personal property, and interest earned on Corporation grant or contract advances.

(d) *Disallowed cost* means a questioned cost that the Corporation, in a management decision, has determined should not be charged to a recipient's Corporation funds.

(e) *Final action* means the completion of all actions that Corporation management, in a management decision, has concluded are necessary with respect to the findings and recommendations in an audit or other report. In the event that Corporation management concludes no corrective action is necessary, final action occurs when a management decision has been made.

(f) *Management decision* means the evaluation by Corporation management of findings and recommendations in an audit or other report and the recipient's response to the report, and the issuance of a final, written decision by management concerning its response to such findings and recommendations, including any corrective actions which Corporation management has concluded are necessary to address the findings and recommendations.

(g) *Questioned cost* means a cost that a recipient has charged to Corporation funds which Corporation management, the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has questioned because of an audit or other finding that:

(1) There may have been a violation of a provision of a law, regulation, contract, grant, or other agreement or document governing the use of Corporation funds;

(2) The costs are not supported by adequate documentation; or

(3) The costs incurred appear unnecessary or unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(h) *Recipient* as used in this part means any grantee or contractor receiving funds from the Corporation under sections 1006(a)(1) or 1006(a)(3) of the Act.

§ 1630.3 Burden of proof.

The recipient shall have the burden of proof under this part.

§ 1630.4 Standards governing allowability of costs under Corporation grants or contracts.

(a) *General criteria.* Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was:

(1) Actually incurred in the performance of the grant or contract and the recipient was liable for payment;

(2) Reasonable and necessary for the performance of the grant or contract as approved by the Corporation;

(3) Allocable to the grant or contract;

(4) In compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law;

(5) Consistent with accounting policies and procedures that apply uniformly to both Corporation-financed and other activities of the recipient;

(6) Accorded consistent treatment over time;

(7) Determined in accordance with generally accepted accounting principles;

(8) Not included as a cost or used to meet cost sharing or matching requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that Corporation funds may be used for federal matching purposes; and

(9) Adequately and contemporaneously documented in business records accessible during normal business hours to Corporation management, the Office of Inspector General, the General Accounting Office, and independent auditors or other audit organizations authorized to conduct audits of recipients.

(b) *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. If a cost is disallowed solely on the ground that it is excessive, only the amount that is larger than reasonable shall be disallowed. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, Federal and State laws and regulations, and the terms and conditions of the grant or contract;

(3) Whether the individuals concerned acted with prudence under the circumstances, considering their responsibilities to the recipient, its clients and employees, the public at large, the Corporation, and the Federal government; and

(4) Significant deviations from the established practices of the recipient which may unjustifiably increase the grant or contract costs.

(c) *Allocable costs.* A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. Costs may be allocated to Corporation funds either as direct or indirect costs according to the provisions of this section. A cost is allocable to a Corporation grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the grant or contract;

(2) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the recipient, although a direct relationship to any particular cost objective cannot be shown.

(d) *Direct costs.* Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular grant award, project, service, or other direct activity of an organization. Costs identified specifically with grant awards are direct costs of the awards and are to be assigned directly thereto. Direct costs include, but are not limited to, the salaries and wages of recipient staff who are working on cases or matters that are

identified with specific grants or contracts. Salary and wages charged directly to Corporation grants and contracts must be supported by time records.

(e) *Indirect costs.* Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives. Indirect costs include, but are not limited to, the costs of operating and maintaining facilities, and the costs of general program administration, such as the salaries and wages of program staff whose time is directly attributable to a particular grant or contract. Such staff may include, but are not limited to, executive officers and personnel, accounting, secretarial and clerical staff.

(f) *Allocation of indirect costs.* Where a recipient has only one major function, i.e., the delivery of legal services to low-income clients, allocation of indirect costs may be by a simplified allocation method, whereby total allowable indirect costs (net of applicable credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly. 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.

(g) *Exception for certain indirect costs.* 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 Corporation funds, provided that the activity associated with the indirect cost is permissible under the LSC Act and regulations.

(h) *Applicable credits.* Applicable credits are those receipts or reductions of expenditures which operate to offset or reduce expense items that are allocable to grant awards as direct or indirect costs. Applicable credits include, but are not limited to, purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits relate to allowable costs, they shall be credited as a cost reduction or cash refund in the same fund to which the related costs are charged.

(i) *Guidance.* The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations law, this part, the Accounting Guide for LSC Recipients, Corporation rules, regulations, guidelines, instructions, and other applicable law.

§ 1630.5 Costs requiring Corporation prior approval.

(a) *Advance understandings.* Under any given grant award, the reasonableness and allocability of certain cost items may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, recipients may seek a written understanding from the Corporation in advance of incurring special or unusual costs. If a recipient elects not to seek an advance understanding from the Corporation, the absence of an advance understanding on any element of a cost does not affect the reasonableness or allocability of the cost.

(b) *Prior approvals.* Without prior written approval of the Corporation, no cost attributable to any of the following may be charged to Corporation funds:

(1) Costs incurred prior to or after the completion of the term of the grant or contract;

(2) Purchases and leases of equipment, furniture, or other personal, non-expendable property, if the current purchase price of any individual item of property exceeds \$10,000;

(3) Purchases of real property; and

(4) Capital expenditures exceeding \$10,000 to improve real property.

(c) *Duration.* The Corporation's approval or advance understanding shall be valid for one year, or for a greater period of time which the Corporation may specify in its approval or understanding.

§ 1630.6 Effect of absence of prior approval.

(a) The Corporation shall grant prior approval of a cost if the recipient has provided sufficient written information to demonstrate that the cost would be consistent with the standards and policies of this part. If the Corporation denies a request for approval, it shall provide to the recipient a written explanation of the grounds for denying the request.

(b) Except as provided in paragraphs (c) and (d) of this section, the Corporation may not assert the absence of prior approval as a basis for disallowing a cost, if the Corporation

has not responded to a written request for approval within sixty (60) days of receiving the request.

(c) If additional information is necessary to enable the Corporation to respond to a request for prior approval, the Corporation may make a written request for additional information within forty-five (45) days of receiving the request for approval.

(d) If the Corporation has made a written request for additional information about a cost as provided by paragraph (c) of this section, and if the Corporation has not responded within thirty (30) days of receiving in writing all additional, requested information, the Corporation may not assert the absence of prior approval as a basis for disallowing the cost.

§ 1630.7 Review and appeal of questioned costs.

(a) When the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has identified and referred a questioned cost to the Corporation, Corporation management shall review the findings of the Office of Inspector General, General Accounting Office, or independent auditor or other authorized audit organization, as well as the recipient's written response to the findings, in order to determine accurately the amount of the questioned cost, the factual circumstances giving rise to the cost, and the legal basis for disallowing the cost. Corporation management may also identify questioned costs in the course of its oversight of recipients.

(b) If Corporation management determines that there is a basis for disallowing a questioned cost, and if not more than three years have elapsed since the recipient incurred the cost, Corporation management shall provide to the recipient written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it. If the activity to which the cost is attributable directly resulted in derivative income earned by the recipient, the written notice shall also state the amount of derivative income and the factual and legal basis for seeking to recover it.

(c) Within thirty (30) days of receiving written notice of the Corporation's intent to disallow the questioned cost, the recipient may respond with written evidence and argument to show that the cost was allowable, or that the Corporation, for equitable, practical, or other reasons, should not recover all or part of the amount, or that the recovery

should be made in installments. If the recipient does not respond to the Corporation's written notice, Corporation management shall issue a management decision on the basis of information available to it.

(d) Within sixty (60) days of receiving the recipient's written response to the notice of intent to disallow the questioned cost, Corporation management shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal as provided in this section. If Corporation management has determined that the cost should be disallowed, the management decision shall also describe the expected recipient action to repay the cost, including the method and schedule for collection of the amount of the cost. The management decision may also require the recipient to make financial adjustments or take other corrective action to prevent a recurrence of the circumstances giving rise to the disallowed cost.

(e) If the amount of a disallowed cost exceeds \$2,500, the recipient may appeal in writing to the Corporation President within thirty (30) days of receiving the Corporation's management decision to disallow the cost. The written appeal should state in detail the reasons why the Corporation should not disallow part or all of the questioned cost. If the amount of a disallowed cost does not exceed \$2,500, or if the recipient elects not to appeal the disallowance of a cost in excess of \$2,500, the Corporation's management decision shall be final.

(f) Within thirty (30) days of receipt of the recipient's appeal of a disallowed cost in excess of \$2,500, the President shall either adopt, modify, or reverse the Corporation's management decision to disallow the cost. If the President has had prior involvement in the consideration of the disallowed cost, the President shall designate another senior Corporation employee who has not had prior involvement to review the recipient's appeal. The President shall also have discretion, in circumstances where the President has not had prior involvement in the disallowed cost, to designate another senior Corporation employee to review the recipient's appeal, provided that the senior Corporation employee has not had prior involvement in the disallowed cost.

(g) The decision of the President or designee shall be final and shall be based on the written record, consisting of the Corporation's notice of intent to disallow the questioned cost, the recipient's response, the management decision, the recipient's written appeal,

any additional response or analysis provided to the President or designee by Corporation staff, and the relevant findings, if any, of the Office of Inspector General, General Accounting Office, or other authorized auditor or audit organization. Upon request, the Corporation shall provide a copy of the written record to the recipient.

§ 1630.8 Recovery of disallowed costs and other corrective action.

(a) The Corporation shall recover from the recipient, within the time limits and conditions set forth in the Corporation's management decision, any disallowed costs, plus any derivative income which the recipient may have earned directly as a result of activity attributable to the disallowed cost. Recovery of the disallowed cost and derivative income, if any, may be in the form of a reduction in the amount of future grant checks or in the form of direct payment from the recipient to the Corporation.

(b) The Corporation shall ensure that a recipient which has incurred a disallowed cost takes any additional, necessary corrective action within the time limits and conditions set forth in the Corporation's management decision. The recipient shall have taken final action when the recipient has repaid all disallowed costs and has taken all corrective action which the Corporation has stated in its management decision is necessary to prevent the recurrence of circumstances giving rise to a questioned cost.

§ 1630.9 Other remedies; effect on other parts.

(a) In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation may refer the matter to the Office of Inspector General, and may take appropriate action pursuant to 45 CFR parts 1606, 1623, 1625, and 1640.

(b) The recovery of a disallowed cost according to the procedures of this part does not constitute a permanent reduction in the annualized funding level of the recipient, nor does it constitute a termination of financial assistance under 45 CFR part 1606, a suspension of funding under 45 CFR part 1623, or a denial of refunding under 45 CFR part 1625.

§ 1630.10 Applicability to subgrants.

When disallowed costs arise from expenditures incurred under a subgrant of Corporation funds, the recipient and the subrecipient will be jointly and severally responsible for the actions of the subrecipient, as provided by 45 CFR part 1627, and will be subject to all remedies available under this part. Both

the recipient and the subrecipient shall have access to the review and appeal procedures of this part.

§ 1630.11 Applicability to non-LSC funds.

(a) No cost attributable to a purpose prohibited by the LSC Act, as defined by 45 CFR 1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided. No cost attributable to an activity prohibited by or inconsistent with Section 504, as defined by 45 CFR 1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes for which they were provided.

(b) According to the review and appeal procedures of 45 CFR 1630.7, the Corporation may recover from a recipient's Corporation funds an amount not to exceed the amount improperly charged to non-LSC funds, plus any income which the recipient may have derived as a result of the activity in question.

§ 1630.12 Applicability to derivative income.

(a) Derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the activity.

(b) Derivative income which is attributable to activities supported in whole or in part by Corporation funds is subject to the requirements of this part, including the requirement of 45 CFR 1630.4(a)(4) that expenditures of such funds be in compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law.

§ 1630.13 Time.

(a) *Computation.* Time limits specified in this part shall be computed in accordance with Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure.

(b) *Extensions.* The Corporation may, on a recipient's written request for good cause, grant an extension of time and shall so notify the recipient in writing.

Dated: August 25, 1997.

Victor M. Fortunio,
General Counsel.

[FR Doc. 97-23039 Filed 8-28-97; 8:45 am]

BILLING CODE 7050-01-P