



OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION  
AO-2014-001

**SUBJECT:** Collection of Attorneys' Fees in Social Security Disability Cases

**DATE:** January 8, 2014

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QUESTION PRESENTED

Whether an LSC recipient may collect attorneys' fees from statutory benefits awards in Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) cases.

BRIEF ANSWER

Yes. LSC does not prohibit collecting attorneys' fees from statutory benefits awards in SSI/SSDI cases handled by LSC recipients with LSC funds or with non-LSC funds. This was not always the case. Prior to 1996, LSC policy prohibited collecting SSI/SSDI fees in LSC-funded cases and some non-LSC funded cases. LSC suspended that policy in 1996. From 1996 through 2010, Congress and LSC prohibited LSC recipients from collecting statutory attorneys' fees in all cases, including SSI/SSDI cases. Congress and LSC lifted that prohibition in 2010. Thereafter, LSC has had no prohibition on collecting fees from benefits awards in SSI/SSDI cases.

ANALYSIS

Current Policy

LSC does not prohibit LSC recipients from collecting attorneys' fees from benefits awards in SSI/SSDI cases.<sup>1</sup> The only LSC regulation regarding fee-generating cases is 45 C.F.R. Part 1609, which does not prohibit recipients from claiming or collecting attorneys' fees. Rather, Part 1609 provides that "a recipient may not use [LSC] funds to provide legal assistance in a fee-generating case unless" the recipient has first taken steps to determine that private attorneys are not available to accept the case. 45 C.F.R. § 1609.3. This restriction also applies to recipients' provision of legal assistance using private funds and some public and tribal funds. *See* 45 C.F.R. §§ 1610.2–4 (discussing when different LSC restrictions apply to the use of different categories of non-LSC funds). Part 1609 does not apply to public or tribal funds that were provided for fee-generating cases. *Id.*

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<sup>1</sup> Sections 206(b) and 1631(d)(2) of the Social Security Act authorize a Federal court to award an attorney a reasonable fee for services

However, the procedural requirements in Part 1609 do not apply to SSI/SSDI cases, which are explicitly exempted from the Part 1609 requirements by 45 C.F.R. § 1609.3(b)(1):

(b) A recipient may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (a) of this section only when:

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

#### LSC Policy Prior to 1997

Prior to 1997, LSC had a longstanding policy, memorialized in numerous opinion letters from LSC's Office of General Counsel, that prohibited the collection of statutory attorneys' fees from benefits awards in SSI/SSDI cases that were LSC funded.<sup>2</sup> LSC suspended that policy in 1996. *See December 14, 1996, Transcript of the LSC Board of Directors Operations and Regulations Committee*, at 191. To be clear, there is currently no LSC regulation prohibiting attorneys' fees in SSI/SSDI cases, nor any LSC "policy" creating such a prohibition. All prior statements of that policy are hereby superseded.<sup>3</sup>

#### Statutory and Regulatory Attorneys' Fees Restrictions 1996–2009

From 1996 to 2009, Congress prohibited LSC recipients from claiming, collecting, or retaining statutory attorneys' fees. *Omnibus Consolidated Rescissions and Appropriations Act of 1996*, Pub. L. 104-134, Title V, § 504(a)(13), 110 Stat. 1321, 1321-55 (1996).<sup>4</sup> LSC implemented that restriction through adoption of 45 C.F.R. Part 1642 and conforming changes to 45 C.F.R. Part 1609. 62 Fed. Reg. 19398 (April 21, 1997) (Part 1609—Final Rule) and 62 Fed.

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Reg. 25862 (May 12, 1997) (Part 1642—Final Rule). Part 1642 prohibited recipients from claiming or collecting