

Special Pay is effective on December 19, 2009, the enactment date of the 2010 Department of Defense Appropriations Act.

**FOR FURTHER INFORMATION CONTACT:** LTC Brigitte Williams, (703) 614-3973.

**SUPPLEMENTARY INFORMATION:**

**Need for Correction**

The words of issuance that were set out within the final rule must be corrected to allow for the proper codification of the rule's regulatory text.

**Correction**

In rule FR Doc. 2010-8739, published on April 16, 2010 (75 FR 19878) make the following correction. On page 19879, in the first column, in the words of issuance, correct the word "added" to read "revised".

Dated: April 20, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010-9541 Filed 4-23-10; 8:45 am]

**BILLING CODE 5001-06-P**

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**DEPARTMENT OF EDUCATION**

**34 CFR Part 280**

RIN 1855-AA07

[Docket ID ED-2010-OII-0003]

**Magnet Schools Assistance Program**



fundamental, the restriction results in clients of grantees being treated differently and less advantageously than all other private litigants, which LSC believes is unwarranted and fundamentally at odds with the Corporation's Equal Justice mission.

This action makes permanent the Interim Final Rule's lifting of the regulatory prohibition on claiming, or collecting and retaining attorneys' fees available under Federal or State law permitting or requiring the awarding of such fees. Accordingly as of March 15, 2010, recipients were and remain permitted make claims for attorneys' fees in any case in which they are otherwise legally permitted to make such a claim. Recipients are also permitted to collect and retain attorneys' fees whenever such fees are awarded to them.

With the repeal of the restriction, recipients are permitted to claim and collect and retain attorneys' fees with respect to any work they have performed for which fees are available to them, without regard to when the legal work for which fees are claimed or awarded was performed. LSC considered whether recipients should be limited seek or obtain attorneys fees related to "new" work; that is, work done only as of the date of the statutory change or the effective date of the Interim Final Rule. LSC rejected that position because the attorneys' fees prohibition applies to the particular activity of seeking and receiving attorneys' fees, but is irrelevant to the permissibility of the underlying legal work. Limiting the ability of recipients to seek and receive attorneys' fees on only future case work would create a distinction between some work and other work performed by a recipient, all of which was permissible when performed. LSC continues to find such a distinction to be artificial and not necessary to effectuate Congress' intention.

LSC also believes that not limiting the work for which recipients may now seek or obtain attorneys' fees will best afford recipients the benefits of the lifting of the restriction. There may well be a number of ongoing cases where the newly available option of the potentiality of attorneys' fees will still be effective to level the playing field and afford recipients additional leverage with respect to opposing counsel in those cases. Likewise, being able to obtain attorneys' fees in cases in which prior work has been performed would likely help relieve more financial

pressure on recipients than a "new work only" implementation choice would because it would increase sources and amount of work for which fees might potentially be awarded.

#### Amendment of Part 1609 and Part 1610

As noted above, Part 1642 contains two provisions not directly related to the restriction on claiming and collecting attorneys' fees. These provisions address the accounting for and use of attorneys' fees and the acceptance of reimbursement from a client. 45 CFR 1642.5 and 1642.6. These provisions used to be incorporated into LSC's regulation on fee-generating cases at 45 CFR Part 1609, but were separated out and included in the new Part 1642 regulation when it was adopted. Amending these provisions was not necessary to effectuate the lifting of the attorneys' fees restriction and they provide useful guidance to recipients. In fact, with recipients likely collecting and retaining fees more often than they have since 1996, the provision on accounting for and use of attorneys' fees will be of greater importance than it has been. Retaining these provisions would continue to provide clear guidance to the benefit of both recipients and LSC. Accordingly, LSC is adopting as permanent the changes which moved these provisions back into Part 1609 as §§ 1609.4 and 1609.5, with only technical amendment to the regulatory text to remove references to Part 1642 and which redesignated § 1609.4 as § 1609.6.<sup>3</sup>

LSC is also adopting as permanent technical conforming amendments to delete references to Part 1642 and the attorneys' fees statutory prohibition that are now obsolete. Having obsolete and meaningless regulatory provisions is not good regulatory practice and can at the very least lead to unnecessary confusion. Accordingly, LSC adopts permanently the deletion of paragraph (c) of § 1609.3, General requirements, to eliminate that paragraph's reference to the attorneys' fees restriction in Part 1642. Similarly, LSC adopts permanently a technical conforming amendment to its regulation at Part 1610. Part 1610 sets forth in regulation the application of the appropriations law restrictions to a recipient's non-LSC funds. Section 1610.2 sets forth the list of the restrictions as contained in section 504 of the FY 1996 appropriations act, and the implementing LSC regulations which

are applicable to a recipient's non-LSC funds. Subsection (b)(9) was the provision that references the attorneys' fees restriction (504(a)(13) and Part 1642) and which became obsolete.

#### List of Subjects in 45 CFR Parts 1609, 1610, and 1642

Grant programs—Law, Legal services.

■ Accordingly, for reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC hereby adopts the interim rule published February 11, 2010 (75 FR 6816) as final without change.

**Mattie Cohan,**

*Senior Assistant General Counsel.*

[FR Doc. 2010-9397 Filed 4-23-10; 8:45 am]

BILLING CODE 7050-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 48 CFR Chapter 3

#### Health and Human Services Acquisition Regulation; Corrections

**AGENCY:** Department of Health and Human Services.

**ACTION:** Correcting amendments.

**SUMMARY:** This action corrects minor errors, inconsistencies and omissions in the final rule, which revised the Health and Human Services Acquisition Regulation (HHSAR) to implement statutes and government-wide mandates enacted or issued since December 2006.

**DATES:** These corrections are effective on April 26, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Howe, Procurement Analyst, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, 202-690-5552 (voice); [cheryl.howe@hhs.gov](mailto:cheryl.howe@hhs.gov) (e-mail); 202-690-8772 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

HHS published a revision of the entire HHSAR (48 CFR parts 301 through 370) in the **Federal Register** on November 27, 2009 to reflect changes since the last revision was published in the **Federal Register** in December 2006. No adverse comments were received.

The revisions included, but were not limited to, the following:

A. Revising Subpart 301.6 regarding training and certification of acquisition officials to implement federal acquisition certification programs.

<sup>3</sup> For additional information about the provision on the accounting for attorneys' fees, see the preamble to the 1997 Attorneys' Fees Final Rule: 62 FR 25862 (May 12, 1997) at 25864.