

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
*	*	*	*	*
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
*	*	*	*	*
Part 102 (20.11.102 NMAC)	Oxygenated Fuels .....	12/11/2005	2/11/2010 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-2792 Filed 2-10-10; 8:45 am]  
BILLING CODE 6560-50-P

**LEGAL SERVICES CORPORATION**

45 CFR Parts 1609, 1610, and 1642

Attorneys' Fees; Fee-Generating Cases; Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity

: Legal Services Corporation.

**ACTION:** Interim final rule and request for comments.

**SUMMARY:** LSC is repealing its regulatory prohibition on the claiming of, and the collection and retention of attorneys' fees pursuant to Federal and State law permitting or requiring the awarding of such fees. This action is taken in accordance with the elimination on the statutory prohibition on attorneys' fees in LSC's FY 2010 appropriation legislation. LSC is also moving provisions on accounting for and use of attorneys' fees and acceptance of reimbursements from clients from Part 1642 (which is being eliminated) to Part 1609 of LSC's regulations. LSC is also making technical changes to Part 1609 and Part 1610 of its regulations to remove cross references to the obsolete statutory and regulatory citations.

**DATES:** This Interim Final Rule is effective March 15, 2010. Comments on this Interim Final Rule are due on March 15, 2010.

**ADDRESSES:** Written comments may be submitted by mail, fax or e-mail to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202-295-1624 (ph); 202-337-6519 (fax); mcohan@lsc.gov.

**FOR FURTHER INFORMATION CONTACT:** Mattie Cohan, Senior Assistant General Counsel, 202-295-1624 (ph); mcohan@lsc.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

LSC's FY 1996 appropriation legislation provided that none of the funds appropriated in that Act could be used to provide financial assistance to any person or entity (which may be referred to in this section as a recipient) that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees. Section 504(a)(13), Public Law 104-134, 110 Stat. 1321 (April 26, 1996). Since appropriations legislation expires with the end of the Fiscal Year to which it applies, for the statutory restriction on attorneys' fees to remain in place by statute, it needed to be, and was, carried forth in each subsequent appropriation law by reference. See, e.g., Consolidated Appropriations Act, 2009, Public Law 111-8, 123 Stat. 524 (March 11, 2009).

LSC adopted regulations found in 1996 and 1997 which implemented the statutory attorneys' fees restriction. 45 CFR part 1642; 61 FR 45762 (August 29, 1996); 62 FR 25862 (May 12, 1997). The attorneys' fees regulation restates the basic prohibition on claiming or collecting and retaining attorneys' fees, providing that except as permitted by § 1642.4 (providing exceptions cases filed prior to the prohibition and for cases undertaken by private attorneys providing pro bono services in connection with a recipient's private attorney involvement program), no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. 46 CFR 1642.3. The regulation provides further

guidance to recipients by, among other things, providing a regulatory definition of attorneys' fees; setting forth rules for the applicability of the restriction to private attorneys providing legal assistance to a recipient's private attorney involvement program; and providing express authority to recipients to accept reimbursements of costs from a client. The regulation also sets forth rules for the accounting for and use of those attorneys' fees which recipients are not prohibited from claiming, collecting or retaining.

On December 16, 2009 President Obama signed the Consolidated Appropriations Act of 2010 into law. Public Law 111-117. This act provides LSC's appropriation for FY 2010. Like its predecessors, this law incorporates the various restrictions first imposed by the FY 1996 legislation by reference. However, section 533 of that same law also provides that Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Pub. L. 104-134) is amended by striking paragraph (13). Taken together, these provisions serve to incorporate by reference all of the restrictions in section 504 of the FY 1996 law, except for paragraph (a)(13), which contained the restriction on attorneys' fees. As such, there is no current statutory restriction on LSC providing the money FY 2010 appropriated to it to any recipient which claims, or collects and retains attorneys' fees.

The current law lifts the statutory restriction, but does not affirmatively provide recipients the right to claim or collect and retain attorneys' fees, nor does it prohibit LSC from restricting a recipient's ability to claim or collect and retain attorneys' fees. As such, in accordance with LSC inherent regulatory authority, the regulation

generating cases) are not affected by the lifting of the statutory ban on the claiming and collecting and retention of attorneys' fees and would not be affected by any regulatory amendment to part 1642. Accordingly, amendment of part 1642 would not have an adverse impact on the private bar nor

---

<sup>1</sup> It should be noted that the LSC Act's restriction on recipients taking fee-generating cases (and the implementing regulatory restriction on fee-

appropriations act, and the implementing LSC regulations which are applicable to a recipient's non-LSC funds. Subsection (b)(9) is the provision that references the attorneys' fees restriction (504(a)(13) and part 1642) and is now obsolete.

#### Request for Comments

LSC is implementing these changes as an Interim Final Rule with a Request for Comments. LSC believes this action is authorized and appropriate because LSC is removing (and not imposing any additional) prohibitions or requirements on recipients and is doing so in response to a specific statutory change removing a similar prohibition. LSC believes that this course of action will provide necessary clarity to recipients and will permit recipients and their clients to benefit from the statutory and regulatory changes at the earliest possible date. However, LSC is seeking comment on the changes being made herein and anticipates issuing a Final Rule discussing any comments. Interested parties may submit comments as provided herein. Comments are due to LSC no later than March 15, 2010.

#### List of Subjects

45 CFR Parts 1609 and 1610

Grant programs—Law, Legal services.

45 CFR Part 1642

Grant programs—Law, Lawyers, Legal services.

■ For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC hereby amends 45 CFR chapter XVI as follows:

#### PART 1609—FEE-GENERATING CASES

■ 1. The authority citation for part 1609 continues to read as follows:

Authority: 42 U.S.C. 2996(b)(1) and 2996e(c)(6).

§ 1609.3 [Amended]

■ 2. Paragraph (c) of § 1609.3, is removed.

§ 1609.4 [Redesignated as § 1609.6]

■ 3. Section 1609.4 is redesignated as § 1609.6.

■ 4. A new § 1609.4 is added to read as follows:

§ 1609.4 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient for representation 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 representation.

(b) Attorneys' fees received shall be recorded during the accounting period if aushayes received by the recipieny and expended for y puCorsdue any trmo wre applicablthat thtisamd the