

substantive change from current practice.

Although a question might be raised as to whether amending the regulation as proposed could be seen to be encouraging recipients to seek out fee-generating cases, LSC notes that the current understanding and practice is generally that the restriction does not apply to public non-LSC funds, and LSC is not aware that recipients are using such funds in any significant measure to undertake fee-generating cases that would otherwise be taken by the private bar. Thus, it seems unlikely that a clarification of the regulation, which would bring it into accord with the LSC Act, prior regulatory language and the current practice, would appear to encourage or increase the incidence of recipients' taking fee-generating cases. Moreover, recipients are subject to the priorities rule (45 CFR part 1620) which requires recipients to provide legal assistance (regardless of the source of funds used for such legal assistance) only in accordance with adopted priorities and the types of cases that the fee-generating case restriction would prohibit are generally not within any recipient's priorities.

It has been suggested that the proposed amendment may result in a regulation that is more complex in administration, in that if the restriction is applied only to LSC and private non-LSC funds, and a recipient takes fee-generating cases with available public non-LSC funds (without otherwise meeting the criteria and procedural requirements of the regulation) the recipient will have to keep sufficient records to demonstrate the segregated and proper use of the funds. However, this is true for all of the LSC Act-only restrictions and tracking and documentation of proper uses of various sources of funds has not, to date, proven to be an insurmountable barrier to effective administration or oversight. Moreover, the flexibility afforded to recipients may be argued to outweigh any complexity in recordkeeping occasioned by the application of the restriction to the source of funds rather than as an entity restriction. Finally, to the extent that current practice has been to enforce the regulation as an (clarificatn) ct, prior regulatory dentity triction,l.ds has not, toT*(undectslanaTjT*jT*(recipien5l.procedura