



*Section 1621.1 – Purpose*

The NPRM proposed: (1) to amend this section to clarify that the grievance procedures required by this section are intended for the use and benefit of applicants for legal assistance and for clients of recipients and not for the use or benefit of third parties; and (2) to delete the reference to “an effective remedy” because the grievance process is just that, a process, and not a guarantee of any specific outcome or “remedy”

about the manner or quality of legal assistance provided. LSC received comments supporting the proposed reorganization. Management continues to believe the proposed reorganization will clarify this matter and make the regulation easier for recipients, their clients and applicants, and LSC to use.

In addition to the proposed reorganization discussed above, the NPRM proposed the following modest substantive changes to the regulation:

- (1) consistent with the proposed change in the purpose section, adding language to the title of this section and the text of the regulation to clarify that this section refers to complaints by applicants about the denial of legal assistance;
- (2) deleting the language which limits complaints about the denial of legal assistance to situations in which the denial was related to the financial ineligibility of the applicant, the fact that legal assistance sought is prohibited by the LSC Act or regulations or lies outside the recipient's priorities;
- (3) clarifying that the phrase "adequate notice" as it is used in this section is adequate notice of the complaint procedures and to add the words "as practicable" after "adequate notice;" and
- (4) adding a statement that the required procedure must be designed to foster effective communications between recipients and complaining applicants.

LSC received comments supporting each of the proposed changes, and Management recommends that these changes be made final. However, several commenters requested additional clarification of the proposed changes relating to "adequate notice." Management believes this section can be clarified and the Draft Final Rule changes the proposed language to provide that the procedure must provide "a method for the recipient to provide applicants with adequate notice of the complaint procedures and how to make a complaint, as practical . . . ." A similar conforming change of the word "practicable" to practical" is also proposed in the next clause regarding opportunity for applicants to confer with the recipient's governing body's grievance committee.

LSC also received one comment suggesting that the word "should" be substituted for "must" in the proposed statement that the required procedure be designed to foster effective communications. Management believes that a *requirement* that the procedure be designed to foster effective communications is vital and should not be made aspirational and that, as proposed, is not unduly subjective. Accordingly, Management opposed the suggestion to substitute the word "should" for "must." Management does believe a change in this paragraph, however, is warranted. Another commenter suggested the use of the word "shall" for "must" to be consistent with the use of the word "shall" throughout the remainder of the regulation (without implying any substantive change in meaning). Management agrees that "shall" is more appropriate in this context and the Draft Final Rule reflects this change.



proposed, is not unduly subjective. Management is not proposing the adoption of this suggestion.

One commenter suggested that this provision on PAI attorneys might prove difficult for recipients in private attorney recruitment efforts and urged LSC to refrain from adopting such a provision without first soliciting input from the ABA and state and local bar associations. Management believes that this rulemaking has been going on for almost one year and has been publicly noticed throughout that time. As such, Management sees no reason to delay action on this particular provision. Further, Management is not proposing to require that recipients afford the same procedure as provided to clients being provided service directly by the recipient. Rather, the NPRM explained that it was intended that existing formal and informal methods for review of complaints about PAI attorneys currently meeting recipients' obligations under Part 1614 continue to be used and would be considered to be sufficient to meet their obligations under this section. After further consideration, however, Management believes that there is a better way to state this requirement. Accordingly, Management proposes that section 1621.4(c) be revised to provide that "[c]omplaints received from clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR Part 1614 shall be processed in a manner consistent with its responsibilities under 45 CFR §1614.3(d)(3) and with applicable state or

***Management Recommendation***

Management recommends that the Operations and Regulations Committee recommend that the Board of Directors adopt the attached Draft Final Rule and approve it for publication in the Federal Register.