

**NEIGHBORHOOD LEGAL SERVICES, INC.**  
**PROGRAM POLICY**  
**SUBGRANTS**  
**45 C.F.R. Part 1627**  
**July 2017**

I. Subgrants policies, procedures and recordkeeping.

As per 45 CFR §1627.7, NLS has adopted the within policies and procedures regarding subgrants to guide its staff in complying with this 45 CFR Part 1627 and shall maintain records sufficient to document NLS's compliance with this Policy.

II. Definitions.

- (a) *Private attorney* has the meaning given that term in 45 CFR 1614.3(i).
- (b) *Procurement contract* means an agreement between NLS and a third party under which NLS purchases property or services that does not qualify as a subgrant as defined in paragraph (e)(1) of this section.
- (c) *Property* means real estate or personal property.
- (d) *Recipient* as used in this Policy means any recipient as defined in section 1002(6) of the Act *and* any grantee or contractor receiving funds from LSC under section 1006(a)(1)(B) of the Act.
- (e) *Subgrant*.
  - (1) Subgrant means an award of LSC funds or property or services purchased in whole or in part with LSC funds from NLS to a subrecipient for the subrecipient to carry out part of NLS's legal assistance activities. In determining whether an agreement between NLS and another entity shall be considered a subgrant or a procurement contract, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed in paragraph (b) of this section may not be present in all cases, and NLS shall use judgment in classifying each agreement as a subgrant or a procurement contract. NLS shall make case-by-case determinations whether each agreement that it makes with another entity constitutes a subgrant or a procurement contract.

Characteristics that support the classification of the agreement as a subgrant include when the other entity:

- (1) Determines who is eligible to receive legal assistance under NLS's LSC grant;
- (2) Has its performance measured in relation to whether objectives of the LSC grant were met;
- (3) Has responsibility for programmatic decision-making regarding the delivery of legal assistance under NLS's LSC grant;

(4) Is responsible for adherence to applicable LSC program requirements specified in the LSC grant award; and

(5) In accordance with its agreement, uses the LSC funds or property or services acquired in whole or in part with LSC funds, to carry out a program for a public purpose specified in LSC's governing statutes and regulations, as opposed to providing goods or services for the benefit of NLS.

(2) *Subgrant* includes fee-for-service arrangements, such as those provided by a private law firm or attorney representing NLS's clients on a contract or *judicare* basis, only when the cost of such arrangements exceed \$60,000.

(f) *Subrecipient* means any entity receiving a subgrant. A single entity may be a subrecipient with respect to some activities it conducts for NLS while not being a subrecipient with respect to other activities it conducts for NLS.

### III. Requirements for all subgrants.

#### (a) *Threshold.*

(1) NLS shall obtain LSC's written approval prior to making a subgrant when the cost of the subgrant is \$20,000 of LSC funds or greater.

#### (2) *Valuation of in-kind subgrants.*

(i) If either the actual cost to NLS of the subgranted property or service or the fair market value of the subgranted property or service exceeds \$20,000 of LSC funds, NLS shall seek written approval from LSC prior to making a subgrant.

(ii) The valuation of the subgrant, either by fair market value or actual cost to NLS of property or services, shall be documented and to the extent feasible supported by the same methods used internally by NLS.

(b) *LSC approval of subgrants.* NLS shall submit all applications for subgrants exceeding the \$20,000 threshold to LSC in writing for prior written approval. LSC will publish notice of the requirements concerning the format and contents of the application annually in the Federal Register and on LSC's Web site.

#### (1) *Basic Field Grants.*

(i) NLS shall submit applications for subgrants of Basic Field Grant funds along with NLS's proposal for funding, including applications for renewal of funding.

(ii) LSC will notify NLS of its decision to approve, disapprove, or suggest modifications to an application for subgrant approval prior to, or at the same time as LSC provides notice of its decision with respect to the applicant's proposal for Basic Field Grant funding.

(2) *Special grants.* (i) If NLS receives a special grants (*e.g.*, Technology Initiative Grants, Pro Bono Innovation Fund grants, emergency relief grants), it shall submit its subgrant applications following notification of approval of special grant funds.

(ii) A subgrant application shall be submitted at least 45 days in advance of its proposed effective date. Within 45 days of the date of receipt, LSC will notify NLS in writing of its decision to approve, disapprove, or suggest modifications to the subgrant; or, if LSC has not made a decision, the date by which LSC expects to make a decision. A subgrant that is disapproved or to which LSC has suggested modifications may be resubmitted for approval.

(3) *Mid-year subgrant requests.* NLS may apply for prior approval of a subgrant outside of the periods prescribed in paragraphs (a)(1) and (2) of this section as needed. LSC will follow the time periods prescribed in paragraph (a)(2)(ii) of this section to consider and notify NLS of its decision to approve, disapprove, or suggest modifications to the subgrant.

(4) *Failure to comply.* Any subgrant not approved according to paragraphs (a)(1) through (3) of this section will be subject to disallowance and recovery of all funds expended under the subgrant.

(5) *Changes to subgrants requiring prior approval.* (i) If NLS needs to make substantial changes to the scope or objectives, or increase or decrease the amount of funding of more than 10%, of a subgrant approved under paragraph (b) of this section, NLS shall obtain LSC's prior written approval. Minor changes in the scope or objectives or changes in support of less than 10% do not require prior approval, but NLS shall notify LSC of such changes in writing.

(ii) If a subgrant did not require prior approval, and NLS proposes a change that will cause the total value of the subgrant to exceed the threshold for prior approval, NLS shall obtain LSC's prior written approval before making the change.

(c) *Duration of subgrant.*

(1) For Basic Field grants, a subgrant may not be for a period longer than one year. All funds unexpended at the end of the subgrant period will be considered part of NLS's available LSC funds.

(2) For special grants (e.g., Pro Bono Innovation Fund grants, Technology Initiative Grants, emergency relief grants), a subgrant may not be for a period longer than the term of the grant. Absent written approval from LSC, all unexpended funds shall be returned to LSC at the end of the subgrant period.

(d) *Provisions for termination and suspension of subgrants.* All subgrants shall contain provisions for their orderly termination in the event that NLS is no longer an LSC recipient, and for suspension of activities if NLS's funding is suspended.

(e) *NLS responsibilities.*

(1) NLS shall ensure that subrecipients comply with LSC's financial and audit provisions to the extent required by this Policy.

(2) NLS shall ensure that the subrecipient properly spends, accounts for, and audits funds or property or services acquired in whole or in part with LSC funds received through the subgrant.

(3) NLS shall repay LSC for any disallowed expenditures by a subrecipient. Repayment is required

regardless of whether NLS is able to recover such expenditures from the subrecipient.

(f) *Accounting and auditing requirements—*

(1) *Subgrants of funds.*

(i) Any LSC funds paid by NLS to a subrecipient through a subgrant are subject to the audit and financial requirements of the Audit Guide for NLS and Auditors and the Accounting Guide for LSC NLS. The relationship between NLS and subrecipient will determine the proper method of financial reporting following generally accepted accounting principles.

(ii) Subgranted funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of NLS; or such funds may be included in a separate audit report of the subrecipient. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where an organization receives a small subgrant. Any request to use an alternative means of assuring propriety of subrecipient funds shall be submitted to LSC for consideration as part of the subgrant approval process. If LSC approves a request to use an alternative means, the information provided thereby shall satisfy NLS's annual audit requirement with regard to the subgrant funds.

(2) *In-kind subgrants.*

(i) The value of property or services funded in whole or in part with LSC funds provided by NLS to a subrecipient through a subgrant is subject to the audit and financial requirements of the Audit Guide for NLS and Auditors and the Accounting Guide for LSC NLS. The relationship between NLS and subrecipient will determine the proper method of financial reporting following generally accepted accounting principles.

(ii) Subgrants involving in-kind exchanges of property or services may be separately disclosed and accounted for, and reported upon in the audited financial statements of NLS. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures and use of property or services acquired in whole or in part with LSC funds, especially in instances where an organization receives a small subgrant. Any request to use an alternative means of assuring propriety of subrecipient funds shall be submitted to LSC for consideration as part of the subgrant approval process. If LSC approves a request to use an alternative means, the information provided thereby shall satisfy NLS's annual audit requirement with regard to the subgrant funds.

(iii) If accounting for in-kind subgrants is not practicable, NLS may convert the subgrant to a cash payment and follow the accounting procedures in paragraph (f)(1) of this section.

(iv) Subrecipients described in §1627.5(d)(2) are not subject to the audit and financial requirements of the Audit Guide for NLS and Auditors and the Accounting Guide for LSC NLS. Such subrecipients shall have financial management systems in place that would allow NLS and LSC to determine that any resources the subrecipient receives or uses under the subgrant are used consistent with 45 CFR part 1610.

(g) *Oversight.* To ensure subrecipient compliance with the LSC Act, LSC's appropriations statutes, Congressional restrictions having the force of law, and LSC's regulations, guidelines, and

instructions, agreements between NLS and a subrecipient shall provide the same oversight rights for LSC with respect to subgrants as apply to NLS.

IV. Applicability of restrictions, recordkeeping, and recipient priorities; private attorney involvement subgrants pursuant to 45 CFR 1627.5.

(a) *Applicability of restrictions.* The prohibitions and requirements set forth in 45 CFR part 1610 apply both to the subgrant and to the subrecipient's non-LSC funds, except as modified by paragraphs (b), (c), and (d) of this section.

(b) *Priorities.* Subrecipients shall either:

(1) Use the subgrant consistent with NLS's priorities; or

(2) Establish their own priorities for the use of the subgrant consistent with 45 CFR part 1620.

(c) *Recordkeeping.* NLS shall be able to account for how its subrecipient spend LSC funds or use property or services funded in whole or in part with LSC funds. A subrecipient shall provide to NLS records as described in paragraphs (c)(1) and (2) of this section.

(1) A subrecipient that handles matters as defined at 45 CFR 1635.2(b) shall maintain adequate records to demonstrate that its attorneys and paralegals used the LSC funds or property or services funded in whole or in part with LSC funds:

(i) To carry out the activities described in the subgrant agreement; and

(ii) Consistent with the restrictions set forth at 45 CFR part 1610.

(2) A subrecipient that handles cases as defined at 45 CFR 1635.2(a):

(i) Shall require its attorneys and paralegals to maintain records for each case that show the amount of time spent on the case and the activity conducted by date, and a unique client name or case number; and

(ii) Either the subrecipient or NLS shall maintain records for each case that show the problem type and the closing code for the case.

(iii) This requirement does not apply to subrecipient described in paragraph (d)(2)(ii) of this section.

(3) A subrecipient who handles both cases and matters shall maintain the types of records described in paragraphs (c)(1) and (2).

(d) *Subgrants for engaging private attorneys—(1) Subgrants of funds.* The prohibitions and requirements set forth in 45 CFR part 1610 apply *only* to the subgranted funds when the subrecipient is a bar association, *pro bono* program, private attorney or law firm, or other entity that receives a subgrant for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614.

(2) *In-kind subgrants.* The prohibitions and requirements set forth in 45 CFR part 1610 apply *only* to the subgranted property or services acquired in whole or in part with LSC funds when the subrecipient is a bar association, *pro bono* program, private attorney or law firm, or other entity that receives a subgrant for the sole purpose of:

(i) Conducting private attorney involvement activities (PAI) pursuant to 45 CFR part 1614; or

(ii) Providing legal information or legal assistance on a *pro bono* or reduced fee basis to individuals who have been screened and found eligible to receive legal assistance from an LSC recipient.

(3) *Treatment of non-LSC funds.* Any funds or property or services acquired in whole or in part with LSC funds and used by NLS as payment for a PAI subgrant are deemed LSC funds for purposes of this paragraph (d).

(4) *Recordkeeping exception.* The recordkeeping requirement in paragraph (c) of this section does not apply to private attorneys providing legal assistance on a *pro bono* or reduced fee basis.

V. Transfers to other LSC Recipients pursuant to 45 CFR 1627.6.

(a) These policies apply to all subgrants from one LSC recipient to another LSC recipient.

(b) The subrecipient shall audit any funds or property or services acquired in whole or in part with LSC funds provided by NLS under a subgrant in its annual audit and supply a copy of this audit to NLS. NLS shall either submit the relevant part of this audit with its next annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of §1627.4(c)(3), LSC may hold NLS responsible for any disallowed expenditures of subgrant funds. Thus, LSC may recover all of the disallowed costs from either NLS or the subrecipient or may divide the recovery between the two. LSC's total recovery may not exceed the amount of expenditures disallowed.

Adopted by resolution of the NLS Board of Directors on August 16, 2017



Thomas F. Knab  
NLS Board President

August 16, 2017  
Date