

threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action, suit or proceeding, had no reasonably cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation, except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a Director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in paragraphs (a) and (b) of this section or in the defense of any claim, issue or matter therein, he shall be indemnified

against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under paragraphs (a) and (b) of this section (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this section, respectively. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of Directors eligible to vote who were not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

(e) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board in any case upon receipt of an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this section.

(f) The indemnification provided by this section shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any By-Law, agreement or vote of disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Subpart K—Amendments

§ 1601.45 Amendments.

These By-Laws may be amended by a vote of a majority of the Directors in office, provided, that:

(a) Such amendment is not inconsistent with the Act;

(b) The notice of the meeting at which such action is taken shall have stated the substance of the proposed amendment;

(c) The notice of such meeting shall have been mailed, telegraphed or delivered to each Director at least five (5) days before the date of the meeting; and

(d) Whenever feasible, the proposed amendment shall have been published in the Federal Register at least thirty (30) days before the meeting and interested parties shall have been afforded a reasonable opportunity to comment thereon.

Dated: December 27, 1984.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-176 Filed 1-3-85; 8:45 am]

BILLING CODE 6820-35-M

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1612, concerning restrictions on lobbying and certain other activities, was previously adopted by the Board on April 28, 1984, and published in final form in the Federal Register on May 31, 1984, 49 FR 22651. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: On February 24, 1984, the Legal Services Corporation published in the Federal Register (49 FR 6943) a proposed rule revising Part 1612—Restrictions on Certain Activities. Interested parties were given 30 days, until March 26, 1984, in which to submit comments. A total of 218 comments were received and considered. Of these, 144 were received within the comment period, and the remainder thereafter. Of the comments, 56 were from programs funded by LSC; 13 from Congress; 20 from bar associations; 20 from state officials; 63 from legal and political foundations and coalitions; 12 from government agencies;

and 34 from private attorneys, firms and citizens.

This revision of Part 1612 is partially a result of reports and opinions of the General Accounting Office (GAO) with reference to the Corporation's lobbying regulations dating back to August, 1980. In response to a request from a member of Congress in February, 1981, the GAO reviewed certain memoranda obtained from the Corporation to determine whether it had violated Federal anti-lobbying laws.

In its opinion, dated May, 1, 1981, the GAO held that the memoranda indicated that the Corporation had itself engaged, and had allowed its grant recipients to engage, in lobbying activities prohibited by Federal law. It recommended for the third time that the Corporation revise its regulations to prohibit such activity. In a letter dated May 11, 1981, LSC's president at that time stated that immediate steps would be undertaken to comply with the GAO recommendation. No new regulations were considered, however, until 1982, and regulations governing grassroots lobbying were finally promulgated in March, 1983.

In 1983, Congress again asked the GAO to render an opinion as to whether the Corporation and its recipients had violated restrictions imposed by Congress on training and coalition building activities, and on advocating or opposing ballot measures, initiatives and referenda. An interim report was rendered dated September 19, 1983, indicating that such violations had in fact occurred. The finding of that report were confirmed in GAO testimony before the Senate Labor and Human Resources Committee, April 11, 1984. Significantly, that report found the violative activity reached a sufficiently high level in 1981 as to result in a reduction in the number of cases handled by some program attorneys.

The GAO in its report stated that it was recommending to the Corporation that it take appropriate action to amend its regulations governing the activities of fund recipients and corporate officials in order to prohibit expenditures on the activities which it found to violate the lobbying restrictions.

The regulation also results from certain restrictions imposed on recipients in Pub. L. 98-166 in terms of lobbying activities. These restrictions grew out of oversight hearings conducted by the Senate Committee on Labor and Human Resources. First, it adopted restrictions to bar the Corporation and its recipients from using Federal funds for publicity or propaganda intended to influence a legislative or administrative decision.

Specifically, Congress sought to prohibit grassroots campaigns.

Secondly, the restrictions were intended to bar communications or services intended to influence a decision by an administrative agency except in the provision of legal assistance with respect to a particular claim, application or case.

Third, the language was to bar any lobbying in support of or in opposition to any referendum, initiative, constitutional amendment or similar procedure. This represented a reemphasis of what the Congress has deemed to be explicitly prohibited under previous law. Similarly, all attempts to influence an authorization or appropriation of legal services funding, or oversight of the Corporation or a recipient is prohibited.

Fourth, the restrictions were designed to prohibit communications to Federal, State and local legislatures to influence legislation except (1) where the purpose of the communication was to bring a specific problem to the attention of the legislators after exhaustion of judicial and administrative relief, subject to certain conditions; (2) in response to requests from a Federal, State or local official; or (3) as a communication requesting introduction of a private relief bill.

Finally, Pub. L. 98-166 required records of time spent on lobbying and prohibited Corporation funds from being used to pay for administrative or related costs of an activity prohibited by the restriction. In other words, the prohibitions that Congress had set out could not be circumvented by a claim that all lobbying was being funded by other sources of funds, while ignoring the fact that the rent or other overhead supporting a prohibited activity were paid from LSC funds.

This rule establishes new subsections concerning prohibited organizing activity (§ 1612.3), activity prohibited in connection with training (§ 1612.4), administrative representation under Pub. L. 98-166 (§ 1612.6), legislative representation under Pub. L. 98-166 (§ 1612.7) and the posting of notices concerning these restrictions (§ 1612.9). Former § 1612.3 concerning the attorney-client relationship has been renumbered § 1612.2(c) since it solely relates to the activities proscribed by that section. The regulation on public demonstrations (§ 1612.2), legislative and administrative representation (formerly § 1612.4, renumbered § 1612.5) and enforcement (formerly § 1612.5, renumbered § 1612.8) are modified to better achieve the statutory purpose of strictly limiting the use of Legal Services Corporation funds for these activities. The significant

changes effected by the regulation are summarized below:

Title

The title of Part 1612 is changed to specifically mention lobbying so as to facilitate the reader's finding the regulations governing legislative and administrative representation.

Definitions

The definition of "legal assistance activities" is modified to clarify that the term covers the use of Corporation or recipient resources by a subrecipient. In response to comments requesting clarification, the phrase "or while on official travel" has been added to § 1612.1(a)(1).

The Term "legislation" is defined to make clear that it encompasses all potential actions (whether formally pending or not) of the Congress and any other body of elected officials acting in a legislative capacity as opposed to their actions as an adjudicatory body. Specifically mentioned is action on constitutional amendments, treaties and intergovernmental agreements, approval of appointments or budgets proposed by an executive branch official, simple resolutions not having the force of law, and approval or disapproval of executive action. In response to comments, Indian Tribal Councils are excluded from the term "legislative."

Public Demonstrations, Boycotts, Strikes, Etc.

Sections 1612.2 and 1612.3 are combined and the following statement of old § 1612.3(b) is deleted: "Nothing in this part shall prohibit an attorney from . . . attending a public demonstration, picketing, boycott or strike for the purpose of providing legal assistance to a client." Section 1612.2(c)(2) makes clear that the prohibition on participation in demonstrations, strikes, etc. does not prohibit an attorney from fulfilling his professional responsibilities to a client.

Thus, the deletion of old § 1612.3(b) does not impose an additional prohibition upon attorneys—it merely removes an express permission to attend such demonstrations, etc., when unnecessary to fulfill professional responsibilities to a client.

Organizing

A new § 1612.3 implements the restrictions of section 1007(b)(7) of the Act on the use of Corporation funds to initiate, the formation, or act as an organizer of any association, federation or similar entity. The regulation makes clear that no funds may be used for

publicizing an organization or defraying the costs of any meeting at which persons are urged to form or join any organization. The regulation does not restrict a recipient from providing advice or assistance to eligible clients concerning the laws applicable to formation or operation of an organization, as long as the organization does not have as a substantial purpose the exercise of influence with respect to legislation, elections or ballot propositions. Language has been inserted in response to comments to indicate that organizations of legal service delivery personnel or of eligible clients solely organized for the improvement of legal services delivery are not covered by the prohibition. The last provision implements the restrictions of sections 1006(e) and 1007(a)(5), (a)(6), (b)(6) and (b)(7) concerning political or lobbying activity.

Training

A new § 1612.4 is adopted to implement section 1007(b)(5) and the related provision of Pub. L. 98-166 prohibiting the conduct of training programs for the purpose of advocating particular public policies or encouraging political activities, labor activities, etc. In accordance with Pub. L. 98-166, the conduct of training programs for the purpose of disseminating information about public policies, labor or political activities, etc. is likewise prohibited. New language has been inserted in § 1612.4(a)(2)(v) to clarify that this provision applies to all funds made available by the Corporation under authority of Pub. L. 98-166. Training programs whose purpose is to encourage the formation of coalitions or organizations to advocate particular public policies or which involve the development of legislative strategy are specifically prohibited, in accordance with the Comptroller General's legal opinion of September, 1983. The limitations of § 1612.7(b)(2) on the use of Corporation grant proceeds to pay for outside training for activities which are prohibited or severely limited by law is extended to inhouse training events. The regulation incorporates the provisions of Pub. L. 98-166 making clear that it does not prohibit the training of attorneys or paralegals to prepare them to advise an eligible client of his or her rights under a statute or regulation already enacted, or to explain the nature of the legislative process to an eligible client. Subsection 1612.4(b)(2) is modified to clarify that advice concerning the nature of the legislative process does include discussion of a lobbying strategy for a particular bill.

Legislative and Administrative Representation

Two new sections are created to describe the rules peculiar to the use of 1984 appropriated funds in legislative (§ 1612.7) and administrative representation (§ 1612.8). The rules applicable otherwise are retained in § 1612.5 (formerly § 1612.4). The revisions in 1612.5 summarized below are made in recognition that the general rule of section 1007(a)(5) is that the use of Legal Services Corporation funds for legislative and administrative lobbying is prohibited unless it falls within one of three carefully defined exceptions. Congress has repeatedly indicated since 1977 through oversight hearings and appropriations riders containing reference to the language of the Kramer amendment to H.R. 3480 that it believes legal services programs have interpreted section 1007(a)(5) as authorizing more lobbying activity than intended.

First, § 1612.5 is made applicable to the introduction, amendment, enactment, defeat, repeal or signing of any legislation. Subsection 1612.5(a)(1) is amended to conform to § 1612.5(f)(2) which provides that a recipient's employee is not to solicit or arrange a request from a governmental agency or public official in order to create a right to make representations to that agency or official. Further, in conformance with § 1612.5(f), the authority to respond to official requests is limited to requests concerning "a specific matter" and does not authorize communications with persons other than the requesting party, or agents or employees of such party.

Subsection 1612.5(a)(2) is revised to make it clear that legislative or administrative representation of a client is only authorized where it is necessary to secure relief concerning a particular legal right or responsibility with respect to which the client has sought legal representation.

The documentation requirements of § 1612.5(b) are modified to conform to the language of § 1612.5(g) so as to reduce the number of different forms and procedures with which a recipient must comply. The client retainer required by § 1612(b)(2) is modified to include a statement in the client's own words of the legal problem on which he or she seeks representation. The purpose of requiring a retainer is to insure that the work done conforms to the desires of the client and to facilitate Corporation auditing of grantee compliance with the strict terms of section 1007(a)(5)(A). The retainer will be more useful for these purposes if there is a clear record at the commencement of representation of the

client's description of the legal problem for which the attorney finds it necessary to seek relief from the legislature or administrative agency.

In response to comments which indicated that the requirement as proposed would necessitate a more sophisticated knowledge of the law than could reasonably be expected of eligible clients, the Corporation has modified the subsection to limit the matter which must be expressed in the client's own words to "the matter on which relief is sought."

A new requirement is added, as required by Pub. L. 98-166, that the recipient maintain records of the time and the direct and indirect expenses associated with lobbying activity. Such activity includes time spent formulating positions and strategy as well as time spent in direct communication with officials. These records are required with respect to legislation and rulemaking matters, but not with respect to representation in adjudicatory proceedings. The records are required regardless of the source of funds involved and must specify the source. For all employees who are registered lobbyists, or who spend over ten percent of their time lobbyings full time logs will be required. These time logs are necessary to ensure the completeness of the records furnished pursuant to the terms of Pub. L. 98-166 and to enable the Corporation to enforce section 1010(c) of the Act which prohibits the use of private non-Corporation funds for purposes prohibited by the Act.

The authorization for full time legislative offices is deleted in light of the fact that lobbying activity is an exceptional, rather than a routine, function of a legal services program.

Section 1612.5(c) makes it clear that no Corporation funds are to be used to pay dues to organizations a substantial purpose of which is to take positions on pending legislative or administrative matters. To make it clear that the provision is not intended to prevent the payment of dues to bar associations, an express exception is stated. The circumstances in which advocating the support or defeat of legislative or administrative measures is authorized are strictly limited under the Act. It is not appropriate for recipients to pay dues to others to engage in lobbying outside those parameters, nor is it appropriate for a recipient to delegate to another organization its limited authority to lobby under section 1007(a)(5). It should be noted that the provision does not address the payment of dues to organizations for whom policy advocacy is a minor purpose.

The regulation also clarifies that LSC grant funds may not be used to pay for transportation to legislative or administrative proceedings of persons other than witnesses entering formal appearances on behalf of the recipient's client or attorneys or other employees engaged in permitted representational activities. In response to comments, the exception is extended to clarify that when necessary, it is appropriate to pay transportation costs for the client's attendance. Payment of administrative costs associated with a prohibited activity is an unauthorized use of LSC grant funds. The regulations also prevent expenditure of LSC grant funds for an event if a primary purpose of the expenditure is to facilitate lobbying activity that would be prohibited if conducted with LSC funds. This is simply an elaboration of the basic rule that only those costs which further the purpose of legal assistance to eligible clients within the guidelines of the Act may be charged against the LSC grant. If the primary purpose of the expenditure is furtherance of an objective that is not an authorized use of LSC funds, the expenditure is not an authorized cost of the LSC grant. The Corporation gives deference to the recipient's characterization of the purpose of all expenditures but recipients must document fully the purpose of any expenditure associated with attendance at a conference if the attending employee takes leave while out of town to engage in lobbying activities. Costs associated with an event that gives participants a block of time to engage in lobbying activities will be questioned.

Finally, § 1612.5(c) prohibits the use of LSC grant proceeds to assist others to attempt to influence legislation through providing those so engaged with the benefit of legislative liaison activities. This follows General Services Administration Contract Cost Principles and Procedures which disallow the expense of legislative liaison activities "except to the extent that such activities do not relate to lobbying or related activities . . ." It should be noted that the Defense Acquisition Regulations disallow as a cost of defense contracts "any legislative liaison activities." The language of this subsection has been revised to clarify that assisting others to influence legislation is the prohibited activity, and not legislative liaison *per se*.

Publicity or Propaganda

This section of the regulations was added in March 1983, in response to recommendations from the Comptroller General dating back to late 1980. As the Comptroller General stated clearly in his

May 1, 1981, opinion, section 1007(a)(5) of the Legal Services Corporation Act does not authorize recipient employees to engage in indirect or grassroots lobbying activity. That section authorizes direct communication with public officials in three defined circumstances, but does not authorize other lobbying activity such as organizing coalitions or engendering communications from the public favoring or opposing changes in public policy. Such activity is not . . . necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities . . ."

Section 1612.5(d) extends the prohibition against publicity or propaganda to that designed to support proposed rules or regulations under consideration by an administrative agency or legislation under consideration by a county or municipal legislative body. This change is required by Pub. L. 98-166 and would, in any case, serve to conserve scarce legal services resources for legal representation as opposed to public relations. The regulation is also modified to prohibit communications containing a suggestion that the reader participate in or contribute to a demonstration, march, rally, fundraising drive, lobbying, letter writing or telephone campaign to influence legislation or rulemaking. This, too, follows the Defense and Federal Procurement Regulations. The objective of the proscription against publicity or propaganda is to prevent the use of federal funds to stimulate grassroots lobbying. Accomplishing this objective requires that the prohibition extend beyond solicitation of letters to legislators to solicitation of other efforts to persuade a legislator such as through participation in a march, rally or fundraising to support advertising. In either case, public funds are being used artificially to stimulate public pressure on the legislative process.

Section 1612.5(e) is modified to limit the distribution of publications concerning legislative proposals to attorneys, recipient staff and eligible clients who have sought representation in a matter relating to the proposed legislation. The emphasis is on representation of eligible clients who request representation on a specific matter, rather than distribution to all eligible clients in a service area, using limited resources for other than direct representative.

Administrative Representation

Section 1612.5(f) and 1612.6, concerning administrative representation under Pub. L. 97-377 and

98-166 respectively, have been revised in response to numerous comments to allow for provision of legal assistance in limited categories of rulemaking. Administrative representation is authorized in adjudicatory proceedings affecting an eligible client's legal rights with respect to particular applications, claims and cases. A number of comments indicated that, in some cases, rulemaking and adjudicatory functions overlap in administrative proceedings. Others indicated that certain rulemaking functions were carried on in response to decisions in specific adjudications, and others pointed to the need to bring the peculiar impact of a rule on a particular client to the attention of the rulemaker. The revision was made in § 1612.5(f)(2)(c) to permit representation in a rulemaking proceeding in such circumstances, but not in instances in which the rulemaking affects the client, in a manner similar to a significant segment of the public whose interests have probably already been articulated to the rulemaker. It is not intended to provide a blanket permission for the provision of legal assistance in all rulemaking proceedings, but only to permit the assertion of the specific claim, application or case by a specific client concerning a legal right or responsibility.

Section 1612.6 was further amended in response to comments to make clear that informal negotiations to resolve a particular claim, application or case and response to requests from an official concerning a matter before an agency is authorized.

The requirement of old § 1612.4(g)(1) for a special retainer agreement in administrative cases funded under Pub. L. 97-377 is deleted in light of the new client retainer requirement of Part 1611 applicable to all forms of representation. In addition, the reference in § 1612.5(g)(2) to requests for legislative drafting is deleted since such time-consuming work for a public official, as opposed to an eligible client, is not contemplated by § 1612.5(f).

Subsection 1612.5(h)(4) concerning direct contact with elected officials is deleted in light of the substantial restrictions imposed on such contact. Subsection 1612.5(h)(3) is modified to make clear that it does not authorize unsolicited advice, advice to groups on communications with officials, the composition of communications for the client's use, or publications or training on lobbying techniques. Such restrictions are necessary to avoid the abuse of the authority to offer advice that has occurred in the past. Further, these are matters dealt with elsewhere

in the regulations depending upon which appropriations are utilized, and those provisions are not overridden by the provisions of § 1612.5(h).

Proposed § 1612.5(h)(5) has been deleted from the rule on the basis that it was confusing and unnecessary. No substantive conclusion should be drawn from the fact of its deletion. The permissibility of communication with a governmental agency to request funding depends on the terms of the applicable appropriations law.

Legislative Representation Under Pub. L. 98-166

Section 1612.7 is a new section to implement the provisions of Pub. L. 98-166 with respect to communication with elected officials. No such communications are permitted in connection with (1) authorizations or appropriations for the Corporation or a recipient; (2) oversight proceedings concerning the Corporation or any recipient; or (3) any referenda, initiative, constitutional amendment or similar procedure while under consideration by a legislative body. The regulation defines "similar procedure" to mean legislative consideration of any measure requiring subsequent ratification by the electorate or a measure concerning the structure of government itself (such as a constitutional amendment or a reapportionment measure). There are no exceptions for communications in this area.

Subsection 1612.7(b) prohibits communication concerning legislation (other than that specified in § 1612.7(a)) except for the sole purpose of bringing a specific and distinct legal problem to the official's attention after exhaustion of administrative and judicial relief. As required by Pub. L. 98-166, section 1612.7(c) requires a project director's written approval of the communication, a statement of each client's specific legal interest, and the director's determination that the communication is authorized by his or her governing board's policy and has not resulted from participation in a coordinated effort to contact officials on the subject. The regulation requires the director to certify that the communication was prepared by the attorney and client without consulting with persons "who are participating in a coordinated effort to influence legislation." The indicated language was included on the basis of comments which stated that the language of the proposed rule would have the effect of prohibiting programs in taking advantage of outside expertise. The new language makes it clear that the intent is to prohibit recipient employees from drafting

communications to elected officials in consultation with persons engaged in organized efforts to influence legislation.

Section 1612.7(d) implements the requirement of Pub. L. 98-166 that the recipient's governing body adopt policies to guide the director in his or her approval of communications bringing legal problems to the attention of officials. The regulation stipulates that such policies shall require periodic reports to the governing body, take into account the recipient's priorities determined under Part 1620 and prohibit solicitation of client requests to communicate with elected officials.

Subsection 1612.7(e) permits requests to introduce private relief bills allowing claims against a government and § 1612.7(f) permits responses to requests from officials to comment on proposed legislation subject to the requirements of § 1612.5(f). In response to comments, that section was changed from the proposed rule to delete the one percent ceiling on resources expended in response to requests from officials, and substitute language making such responses subject to the program's priorities and demands of client service on the program's time. This limitation recognizes that the primary purpose of LSC grants is to respond to client requests for representation rather than requests from elected officials. Legal services attorneys must avoid becoming staff to elected officials.

Subsection 1612.7(g) makes clear that the requirements of § 1612.5 apply to the use of funds made available under Pub. L. 98-166.

Miscellaneous

Section 1612.8 concerning enforcement is amended to make clear that a less drastic remedy than termination of funding or denial of refunding may be imposed as a sanction for violation of this part, such as recovery of questioned costs. The language of the section is reorganized to clarify that suspension or termination of employment of a Corporation employee is not subject to the requirements of section 1011 of the Act.

In response to comments the requirements of § 1612.8(c)(3) (previously § 1612.5(b)(3)) that a recipient consult with the Corporation's General Counsel before determining the appropriate sanction to be imposed for violation of this part has been changed to a requirement that the Corporation's Office of Compliance and Review be informed within 30 days of any sanction imposed for violation of this Part. This clarifies that the Corporation is not directly involved in personnel decisions of programs, but only is concerned with

assuring that programs comply with the Act and regulations. A new section, § 1612.8(c)(4), is added to require programs to submit records of the investigation of alleged violations on a quarterly basis to the Office of Compliance and Review.

Finally, a new § 1612.9 is added which would require each recipient to post a notice prepared by the Office of Compliance and Review summarizing the restrictions of this part and stating that complaints of violations may be reported to the Office of Compliance and Review.

List of Subjects in 45 CFR Part 1612

Administrative representation, Legal services, Lobbying, Publicity, Reporting and recordkeeping requirements.

For the reasons set out above, Part 1612 is set forth below in its entirety:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

- Sec.
- 1612.1 Definitions.
 - 1612.2 Public demonstrations and other activities.
 - 1612.3 Organizing.
 - 1612.4 Training.
 - 1612.5 Legislative and administrative representation.
 - 1612.6 Administrative representation under Pub. L. 98-166.
 - 1612.7 Legislative representation under Pub. L. 98-166.
 - 1612.8 Enforcement.
 - 1612.9 Posting of Notices.

Authority: Secs. 1008(b)(5), 1007(a) (5), (6) and (7), 1011, 1008(e), Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(5), 2996f(a) (5), (6) and (7), 2996j, 2996g (e)); Pub. L. 95-431, 92 Stat. 1021; Pub. L. 96-68, 93 Stat. 418; Pub. L. 98-536, 94 Stat. 3168; Pub. L. 97-181, 96 Stat. 22; Pub. L. 97-377, 96 Stat. 1874; Pub. L. 98-166, 97 Stat. 1071.

§ 1612.1 Definitions.

(a) "Legal assistance activities," as used in this part, means any activity:

(1) Carried out during an employee's working hours or while on official travel;

(2) Using resources provided by the Corporation or a recipient, directly or through a subrecipient; or

(3) That, in fact, provides legal advice or representation to an eligible client.

(b) "Legislation", as used in this part, means any potential action of the Congress, any State legislature or other body of elected official acting in a legislative capacity (including action on constitutional amendments, the ratification of treaties and intergovernmental agreements, approval of appointments and budgets, adoption

of resolutions not having the force of law, and approval or disapproval of actions of the executive). The term includes proposals for legislative action but it does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws (such as action taken by a local council sitting as a Board of Zoning Appeals). "Legislature" as used herein does not include any Indian Tribal Council.

§ 1612.2 Public demonstrations and other activities.

(a) While carrying out legal assistance activities under the Act no employee shall:

(1) Knowingly participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(b) While employed under the Act, no employee shall, at any time:

(1) Knowingly participate in any rioting or civil disturbance activity in violation of an outstanding injunction of any court of competent jurisdiction or any other illegal activity that is inconsistent with an employee's responsibilities under the Act, Corporation regulations, or the Code of Professional Responsibility; or

(2) Intentionally exhort, direct, or coerce to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(c) Nothing in this section shall prohibit an attorney from:

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Fulfilling the professional responsibilities of an attorney to a client.

§ 1612.3 Organizing.

No funds made available by the Corporation may be used to initiate the formation, or to act as an organizer, of any association, federation, coalition, network, alliance, or any similar entity. No funds may be employed for any publicity or any meeting to advocate that anyone organize or join any organization. This section shall not be interpreted to prevent recipients and their employees from providing legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles or incorporation and by-laws.

This section shall not apply to organizations composed solely of persons engaged in the delivery of legal services to the indigent organized solely for the purpose of improving the effectiveness of such legal services; nor shall it apply to organizations composed exclusively of eligible clients formed solely to advise a legal services program about the delivery of legal services. Such legal advice or assistance may not be provided, however, in the formation of an organization, a substantial purpose of which is to influence legislation, elections or ballot propositions.

§ 1612.4 Training.

(a) No funds made available by the Corporation may be used to support or conduct training programs for the purpose of:

(1) Advocating or opposing particular public policies; or

(2) Encouraging or facilitating:

(i) Political activities (including formation of organizations or coalitions, a substantial purpose of which is to advocate or oppose particular public policies);

(ii) Labor or anti-labor activities;

(iii) Boycotts, picketing, strikes or demonstrations;

(iv) Development of strategies to influence legislation or rulemaking; or

(v) With respect to funds made available by the Corporation under the authority of Pub. L. 98-166, the dissemination of information about such activities or public policies.

(b) Nothing in this section shall be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to:

(1) provide adequate legal assistance to eligible clients;

(2) Advise any eligible clients as to the nature of the legislative process, in general, as opposed to discussing a lobbying strategy for a particular bill; or

(3) Inform any eligible client of his rights under any statute, order or regulation already enacted.

(c) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or educational activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in areas wherein only limited and incidental activities are allowed (such as lobbying) under the Act, other applicable Federal law, Corporation regulations, guidelines or instructions.

§ 1612.5 Legislative and administrative representation.

(a) No funds made available by the Corporation shall be used, at any time, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive order or administrative order or regulation of a Federal, State or local agency, or to undertake to influence the introduction, amendment, enactment, defeat, repeal or signing of any legislation or State proposals by initiative petition, except that:

(1)(i) An employee may respond to a request from a governmental agency or a legislative body, committee, or member made to the employee or to a recipient to testify, draft or review measures or to make representation to such agency, body, committee or member on a specific matter;

(ii) The exception for responses to officials does not authorize communication with anyone other than the requesting party or an agent or employee of such party. No employee of the recipient shall, directly or indirectly, solicit or arrange a request from any official to testify or otherwise make representations in connection with legislation.

(2) An employee may engage in such activities at the request of an eligible client of a recipient, to the extent such activities are necessary to the provision of legal advice and representation to a client who has sought such legal advice and representation with respect to particular legal rights and responsibilities which would be affected by particular legislation or administrative measures, but no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible; or

(3) An employee may engage in such activities if a governmental agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities under the Act of the recipient or the Corporation. This exception extends only to appropriations or other measures directed to the Corporation, or the recipient or its employees. The expenditure of funds appropriated under Pub. L. 97-377 and 98-166 are subject to the further limitations set forth in paragraphs (d) and (g) of this section, and § 1612.6 and § 1612.7.

(b) Recipients shall adopt procedures and forms to document that the legislative and administrative activities in which they engage fall within the activities permitted in paragraph (a) of

this section. Such documentation shall include:

(1) With respect to activities permitted under paragraph (a)(1) of this section, a written request directed to the recipient and signed by an official of the governmental agency or a member of the legislative body or committee making the request which states the type of representation or assistance requested and identifies the executive or administrative order or regulation, or legislation, to be addressed. Such documentation shall also include the written approval of the recipient's project director (or his or her designee) authorizing the communications requested;

(2) With respect to activities permitted under paragraph (a)(2) of this section, a retainer agreement, signed by the client or clients represented, or by an official of the client group in the case of a group client, which agreement shall specify the legislative or administrative measure on which representation is sought, (appearance at a hearing, legislative drafting, etc.), and which shall include a statement of the client's direct interest in a particular legislative or administrative measure to be addressed and a statement by the client in the client's own words of the matter on which relief is sought; or

(3) With respect to activities permitted under paragraph (a)(3) of this section, a written statement signed by the recipient's project director authorizing the initiation of such activities.

(4) Recipients shall obtain the documentation required by this section prior to undertaking any of the activities permitted by paragraphs (a) or (f) of this section, except that recipients may respond to an oral request made pursuant to paragraphs (a)(1) or (g)(2) of this section in the absence of a written request provided that the fact, nature, and circumstances of the request are subsequently documented in writing signed by the requesting authority.

(5) The recipient shall maintain records, in the manner specified by the Corporation, of the direct and indirect expenses, time spent on, and the sources of the funds supporting, all lobbying or related activity, regardless of the sources of the funds employed. In addition, the recipient shall require all employees who are registered lobbyists or who devote over ten (10) percent of their time to lobbying or related activities to maintain a time log accounting for all working hours.

(6) Recipients shall submit quarterly reports, in a form prescribed by the Corporation, describing their legislative and administrative advocacy activities conducted pursuant to these regulations,

together with such supporting documentation as required by the Corporation.

(c) No funds made available by the Corporation shall be used to:

(1) Maintain separate offices for the sole purpose of engaging in legislative activity;

(2) Pay dues to any organization (other than a bar association), a substantial purpose or function of which is to take positions on matters pending before legislative or administrative bodies;

(3) Pay for transportation to legislative or administrative proceedings of persons other than employees engaged in activities permitted under this section or witnesses entering appearances in such proceedings on behalf of clients of the recipient, except that such funds may be used to transport the client where necessary and appropriate. This subsection does not authorize payment of transportation expenses for employees not actually engaged in permitted representation activities;

(4) Pay, in whole or in part, for the conduct of, or transportation to, an event if a primary purpose of the expenditure is to facilitate lobbying or any other activity which would be prohibited if conducted with funds made available by the Corporation;

(5) Pay for administrative or related costs associated with any activity prohibited by this part; or

(6) Assist others, through legislative liaison activities, to influence legislation in a manner that would be prohibited if undertaken with funds made available by the Corporation. Legislative liaison activities include but are not limited to attending legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation.

(d) Notwithstanding the provisions of paragraph (a) of this section, recipients shall not use funds made available by the Corporation for publicity or propaganda purposes designed to support or defeat proposed legislation, or rules or regulations under consideration by any Federal, State, county or municipal legislative or administrative body, including any commission, authority or government corporation with rulemaking authority. For purposes of this regulation, "publicity or propaganda" means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion, or, when taken as a whole, an indirect suggestion to the public at

large or to selected individuals to contact public officials in support of or in opposition to pending or proposed legislation, rules or regulations, or to contribute to or participate in any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing such legislation, rules or regulations.

(e) No funds made available by the Corporation shall be used to support the preparation, production, and dissemination of any article, newsletter, or other publication or written matter for general distribution or other form of mass communication which contains any reference to proposed or pending legislation unless:

(1) The publication does not contain any publicity or propaganda prohibited by paragraph (d) of this section;

(2) The recipient has adopted a policy requiring the recipient's project director, or his or her designee, to review each publication produced by the recipient prior to its dissemination for conformity to these regulations;

(3) The recipient provides a copy of any such material produced by the recipient to the Corporation within 30 days after publication; and

(4) Such funds are used only for costs incident to the preparation, production, and dissemination of such publications to recipients, recipient staff and board members, private attorneys representing eligible clients, eligible clients who have sought representation in a matter related to the legislation and the Corporation, as opposed to the public at large, or eligible clients generally.

(f)(1) Notwithstanding the provisions of paragraph (a) of this section, no funds made available to a recipient by the Corporation under the authority of Pub. L. 97-377 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State, or local agency, except where legal assistance is provided by an employee of a recipient to an eligible client on a particular application, claim, or case, which directly involves the client's legal rights and responsibilities, or to influence any Member of Congress or any other Federal, State, or local elected official in connection with any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State Legislature, any local council, or any similar governing body, except that

this subsection shall not preclude such funds from being used in connection with communications made in response to any Federal, State, or local official on a special matter.

(2) None of the funds made available by the Corporation under the authority of Pub. L. 97-377 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal State or local agency, commission, authority or government corporation, except for:

(i) The provision of legal assistance to an eligible client in an adjudicatory proceeding, or informal negotiations, directly involving that client's legal rights or responsibilities with respect to a particular application, claim or case;

(ii) A response to a request from a Federal, State or local official made directly to that official or his agent or employee; or

(iii) Such legal assistance to an eligible client in a rulemaking proceeding as is necessary to assert a specific claim, application, or case directly involving the client's legal rights.

(3) The exception for communications to officials does not authorize communication with anyone other than the requesting party or an agent or employee of such party. No employee of the recipient shall, directly or indirectly, solicit, or arrange a request from any official to testify or otherwise make representations in connection with legislation.

(g) Recipients shall adopt procedures and forms to document that the legislative and administrative activities in which they engage utilizing funds made available under the authority of Pub. L. 97-377 fall within the activities permitted under paragraph (f) of this section. With respect to activities in response to a request from a Federal, State, or local elected official, such documentation shall include a written request signed by the official making the request which states the type of communication requested (testimony, legal analysis, etc.) and identifies the legislative measure to be addressed. Such documentation shall also include the written approval of the recipient's project director (or his or her designee) authorizing the communications requested.

(h) Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or

interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation consistent with the requirements of paragraphs (d) and (e) of this section;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Act, Corporation regulations or other applicable law. This provision does not authorize publications or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the Corporation for any purpose.

§ 1612.6 Administrative representation under Pub. L. 98-166.

None of the funds made available by the Corporation under the authority of Pub. L. 98-166 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State or local agency, commission, authority or government corporation, except for:

(a) The provision of legal assistance to an eligible client in an adjudicatory proceeding, or informal negotiations, directly involving that client's legal rights or responsibilities with respect to a particular application, claim or case;

(b) A response to a request from a Federal, State or local official made directly to that official or his agent or employee; or

(c) Such legal assistance to an eligible client in a rulemaking proceeding as is necessary to assert a specific claim, application, or case directly involving the client's legal rights.

§ 1612.7 Legislative representation under Pub. L. 98-166.

(a) None of the funds made available by the Legal Services Corporation under the authority of Pub. L. 98-166 may be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device directly or indirectly intended to influence any Member of Congress or any other Federal, State or local elected nonjudicial official:

(1) In connection with any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in a legislative capacity.

The term "similar procedure" as used in this part refers to legislative consideration of matters which by law must be ratified by a vote of the electorate or matters relating to the structure of government itself, such as a plan for reapportionment;

(2) In connection with inclusion of any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or

(3) To influence the conduct of oversight proceedings concerning the recipient or the Corporation.

(b) None of the funds made available by the Legal Services Corporation under the authority of Pub. L. 98-166 shall be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device intended or designed to influence any Member of Congress or any other Federal, State or local elected official in connection with any Act, bill, resolution or similar legislation not described in paragraph (a) of this section, except that an employee of a recipient may, upon the request of a client or clients, communicate directly with a Federal, State or local elected official for the sole purpose of bringing a specific and distinct legal problem to the attention of such official if the project director or chief executive of such recipient has determined, prior to such communication:

(1) That the client or each such client is in need of relief that can be provided by the legislative body with which the official is associated; and

(2) That appropriate judicial and administrative relief have been exhausted and has documented the effort to obtain such judicial and administrative relief.

(c) In connection with each communication authorized by paragraph (b) of this section, the project director shall maintain the following documentation:

(1) The content of each such communication;

(2) The basis for the two determinations specified in paragraph (b) of this section;

(3) The director's written approval of such communication, setting forth the basis of his determination that such communication is authorized under the policies of the recipient's governing board adopted pursuant to paragraph (d) of this section;

(4) A retainer in the form specified in § 1612.5(b), setting forth the specific legal interest of each client at whose request the communication was undertaken;

(5) The director's determination that such communication is not the result of participation in a coordinated effort to communicate with elected officials on the subject matter. The determination shall include the director's certification that the communication was prepared by the attorney and client without consulting with persons who are participating in a coordinated effort to influence legislation.

(d) The governing body of a recipient shall adopt a policy by July 1, 1984, to guide the director of the recipient in determining when to approve a communication to a Federal, State or local official under paragraph (c) of this section. The policy adopted shall:

(1) Require periodic reports to the governing body on the communications approved, which shall include a report on the exhaustion of judicial and administrative relief;

(2) Ensure that staff does not solicit requests to undertake communications with elected officials nor participate in a coordinated effort to provide communications on a particular subject;

(3) Require that, in determining the amount of effort to be expended in preparing the communication, the director take into account the recipient's priorities in resource allocation.

(e) Notwithstanding the prohibition in paragraph (b) of this section of communications to elected officials that do more than bring a problem to the official's attention, a project director may approve a communication to an elected official requesting introduction of a specific "private relief bill," which for purposes of this part means a bill allowing a claim against a government for which there is no other remedy.

(f) Funds made available by the Corporation under the authority of Pub. L. 98-166 may be used to respond to request from Federal, State and local officials in accordance with the limitations of § 1612.5(f) to the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to Part 1620 of these regulations or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance.

(g) Funds made available by the Corporation under the authority of Pub. L. 98-166 are subject to the requirements of § 1612.5 (b), (c), (d), (e), (g) and (h) unless inconsistent with the provisions of this section.

§ 1612.9 Enforcement.

(a) The Corporation shall have authority:

(1) To suspend or terminate the employment of an employee of the

Corporation who violates the provisions of this part; and

(2) To impose such sanctions as are appropriate (including but not limited to recovery of questioned costs) for the enforcement of this regulation against a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(b) The Corporation shall have authority in accordance with the procedures set forth in Parts 1606, 1623 and 1625 of these regulations to suspend or terminate financial assistance or deny refunding to a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(c) A recipient shall:

(1) Advise employees about their responsibilities under this part; and

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the Act, for determining whether an employee has violated a provision of this part; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for the enforcement of this regulation; and

(3) Inform the Office of Compliance and Review within 30 days of imposing any sanction on any person for violation of this part.

(4) Make available to the Corporation the records of its investigation of any allegation of violations whether or not any sanctions were imposed. Such records shall be submitted on a quarterly basis to the Office of Compliance and Review.

§ 1612.9 Posting of notices.

By August 1, 1984 each recipient shall post conspicuously in each of its offices a notice provided by the Corporation's Office of Compliance and Review briefly summarizing the activities prohibited by these regulations. Such notice shall include a statement that apparent violations may be reported to the Office of Compliance and Review and the address and telephone number of that office.

Dated: December 27, 1984.

Richard N. Bagenstos,
Acting Deputy General Counsel.

[FR Doc. 85-177 Filed 1-3-85; 8:45 am]

BILLING CODE 6920-36-M

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1614, concerning private attorney involvement, was previously adopted by the Board on April 28, 1984, and published in final form in the Federal Register on May 21, 1984, 49 FR 21328. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 801, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published a proposed rule setting forth the policy adopted by the Board of Directors on October 2, 1981, requiring that a substantial amount of recipient funds be made available to provide opportunities for involvement of private attorneys to deliver legal assistance to eligible clients. The proposed rule appeared in the Federal Register on March 23, 1984 (49 FR 10950). Interested parties were given until April 23, 1984, to submit comments on the proposed rule. Seventy-seven comments were received and fully considered including 34 from programs, 20 from bar associations, 8 from support programs, 1 from Congress, 9 from private parties and 6 others.

Section 1614.1 adopts a previous Board resolution defining "substantial amount" as at least twelve and one-half percent (12½%) of the recipient's Legal Services Corporation annualized basic field award. This definition of substantial amount was previously incorporated in Instruction 83-8. In response to comments, a waiver provision was added to the regulation to permit a recipient to request relief from the requirement when the nature of the population served, and the available