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GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-40

[FPMR Amdt. G-79]

Transportation and Traffic Management

Correction

In FR Doc. 86-15005 beginning on page 24329 in the issue of Thursday, July 3, 1986, make the following corrections:

1. On page 24329, in the third column in the **SUPPLEMENTARY INFORMATION,** eighth line from the bottom, the first word should read "Administrative";

§ 101-40.101-1 [Corrected]

2. On page 24331, in the second column, in § 101-40.101-1(a), sixth line, the first word should read "contacting";

3. On the same page in the same section, in the table, in the second column, Region 5, "NM" should read "MN";

§ 101-40.103-2 [Corrected]

4. On the same page, in the third column, in § 101-40.103-2(b), seventh line, "Pub. L. 96-623" should read "Pub. L. 93-623";

§ 101-40.103-3 [Corrected]

5. On page 24332, in the first column, in § 101-40.103-3, fifteenth line, "807" should read "608";

§ 101-40.206 [Corrected]

6. On page 24334, in the third column, in § 101-40.206 introductory text, fifteenth line, insert "how" after "about";

§ 101-40.301 [Corrected]

7. On page 24335, in the third column, in § 101-40.301(a), in the "Note" following the table, third line, "as" should read "so";

8. On page 24336, in the first column, in § 101-40.301(b)(1), last line, "conterminous" was misspelled;

§ 101-40.404-1 [Corrected]

9. On page 24338, in the second column, in § 101-40.404-1(b), third line, the first word should read "officer";

§ 101-40.404-3 [Corrected]

10. On the same page, third column, amendatory instruction 55 should read "Section 101-40.404-3 is removed and the section is reserved.";

§ 101-40.408-3 [Corrected]

11. On page 24339, in the third column, in § 101-40.408-3(c)(2)(iii), fourth line, "proposed" was misspelled;

§ 101-40.409-1 [Corrected]

12. On page 24340, in the second column, in § 101-40.409-1(c), fourth line, "for" should read "or";

§ 101-40.702-3 [Corrected]

13. On page 24341, in the second column, in § 101-40.702-3(a), sixth line, the first word should read "lading";

14. On the same page, in the third column, in § 101-40.702-3(d), eleventh line, the first word should read "addressees"; and

§ 101-40.703-2 [Corrected]

15. On page 24342, in the first column (§ 101-40.703-2(a)), sixth line, the section number should read "§ 101-40.702-1(b)";

§ 101-40.703-3 [Corrected]

16. On the same page, in the first column, in § 101-40.703-3(a), 37th line, the section number should read "§ 101-40.703-2(c)";

17. On the same page and column, in § 101-40.703-3(b), third line, "as" should read "at"; and

§ 101-40.710 [Corrected]

18. On page 24343, in the first column, in § 101-40.710(a), fourteenth line, the section number should read "§ 101-40.711".

BILLING CODE 1505-02-M

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: On February 21, 1986, LSC's Board of Directors approved a new version of Part 1612 of its regulations for final publication. In revising Part 1612, it has been the purpose of the Board, consistent with Congressional intent, to remove restrictions on what programs can do in *bona fide* representation of eligible clients. The Board also believed that more stringent regulations were necessary in areas peripheral to the responsibilities of legal services programs, such as publications, training, grassroots lobbying, dues paying, and organizing. Finally, the Board sought to streamline Part 1612 by a threefold approach: Expanding the definition section; dividing old § 1612.5; and treating all LSC-derived funds consistently. Congress has been given the fifteen-day notice required by Section 606 of Public Law 99-180. This version of Part 1612 will go into effect thirty days after publication in the Federal Register.

EFFECTIVE DATE: September 2, 1986.

FOR FURTHER INFORMATION CONTACT: John H. Bayly, Jr., General Counsel, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1820.

SUPPLEMENTARY INFORMATION: On February 24, 1984, LSC 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 was received and considered. Of these comments, 144 were received within the comment period; the remainder were received 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.

Part 1612 was originally adopted by LSC's Board of Directors on April 28, 1984, and published in final form in the Federal Register on May 31, 1984 (49 FR 22651). That version of the regulation is currently in effect. On January 4, 1985, the Legal Services Corporation republished Part 1612 of its regulations for comment (50 FR 501). Numerous comments were received and considered. On February 20, 1986, the Operations and Regulations Committee of the Board of Directors approved a new Part 1612, and the Board approved a modified version the next day. Congress has been given fifteen days' notice, as required by Section 606 of Public Law 99-180. Part 1612 will go into effect thirty days after publication in the Federal Register.

The principle that guided creation of this new verison is whether changes would affect a *bona fide* attorney/client relationship. It has been the purpose of

the Board, consistent with Congressional intent, to remove restrictions on what programs can do in *bona fide* representation of eligible clients. At the same time, greater stringency was appropriate to areas that are peripheral to the responsibilities of legal services programs, such as publications, training, grassroots lobbying, dues paying, and organizing.

Three changes in approach have allowed the Board to streamline Part 1612: expanding the definition section; splitting up old § 1612.5; and treating all LSC-derived funds in the same fashion. The first and perhaps the most significant change in the new version is the expansion of the definition section. Where before only two terms, "legal assistance activities" and "legislation" were defined, definitions are now supplied for all the major terms used in Part 1612. Defining these terms at the outset avoids much of the confusing repetition of statutory language that made the old version difficult to follow.

In the old version of the regulation, § 1612.5 was a catchall section that lumped together all the major provisions concerning lobbying. Section 1612.5 dealt not only with prohibitions on legislative, administrative, and grassroots lobbying, but also with permissible activities (representing clients and appearing before elected officials upon request) and with various liaison activities. All of these activities are now treated in separate sections of Part 1612.

Besides lumping most of the provisions concerning lobbying into one section, the other feature that made the old version confusing was the necessity of distinguishing among different kinds of funds. Some funds were controlled by the provisions of the Act and others by the provisions of various appropriation riders. Differing treatment of "red," "blue," and "green" dollars is no longer necessary, however, after passage last year of section 112 of Pub. L. 99-180, 99 Stat. 1185, which makes the provisions of the current appropriation rider applicable to all funds derived from LSC.

Finally, the sections of the regulation have been placed in what, it is hoped, is a more logical order. In the old regulation, the restrictions on "certain other activities" (public demonstrations and activities, organizing, and training) were placed before the restrictions on lobbying. Then came the catchall section, § 1612.5, followed by two sections dealing with lobbying under Public Law 98-166 and, finally, the enforcement provision and a provision requiring posting of notices. The new version starts with lobbying and then treats other activities. It moves from the general prohibition on lobbying to various exceptions to the prohibition. Thus, after a definition section, and a section on legal assistance activities (§ 1612.2), § 1612.3 deals with legislative activities in general and § 1612.4 sets forth the general prohibition against legislative and administrative lobbying. Sections 1612.5 and 1612.6 then set forth the two major exceptions to the prohibition of lobbying: activities on behalf of eligible clients and activities undertaken pursuant to the request of public officials. Section 1612.7 sets forth the prohibition on grassroots lobbying and §§ 1612.8, 1612.9, and 1612.10 deal, respectively, with public demonstrations and activities, training, and organizing. Finally, § 1612.11 deals with accounting and timekeeping, § 1612.12 with enforcement, and § 1612.13 with certain uses of private funds. The old provision requiring posting of notices has been dropped. The significant changes effected by the regulation are summarized below.

Section 1612.1 Definitions.

The term "adjudicatory proceeding" is defined in paragraph (a) as a "proceeding . . . which makes a determination that is of particular rather than general applicability." It is used in § 1612.5(a); in § 1612.9(c); and in § 1612.11. This definition is derived from a number of sources. The definition of the term "adjudication" in its broadest sense is "an agency determination of particular rather than general applicability that affects private rights or interests." *See* 4 Mezines, Stein, & Gruff, *Administrative Law* § 31.01 (1985.) The Administrative Procedure Act defines "adjudication" as an "agency process for the formulation of an order" (5 U.S.C. 551(7)) and defines "order" as the "whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, in a matter other than rulemaking but including licensing" (5 U.S.C. 551(6)). The list of organizations used in this definition—"Federal, State, or local agency, commission, authority or government corporation"—is from old § 1612.6, which was entitled "Administrative Representation under Pub. L. 98-166." In employing this definition, the Board does not ignore that an individual adjudication may have precedential value and thus, in some sense, general applicability. The definition is intended only to distinguish adjudication from rulemaking. An individual adjudication may turn out to be a test case and may have broad ramifications, but it still focuses on a particular matter. The words "federal, state, or local" as used throughout Part 1612 are intended to modify each of the words "agency, commission, authority, or government corporation." Thus the regulation refers to federal, state, or local government commissions, and federal, state, or local government authorities. The words "agency, commission, authority, or government corporation" are used to clarify that the regulation applies to any entity exercising governmental authority, whatever its name. "Government corporations," although not specifically mentioned in the statute, are treated as agencies.

The term "administrative lobbying" is defined in paragraph (b) and is used in § 1612.1 (c), (g), (j), and (k); in § 1612.4(b); and in § 1612.12. The definition tracks the language of the second paragraph of Pub. L. 99-180, the appropriation rider. The first clause of that paragraph provides that none of the funds appropriated in the Act for the Legal Services Corporation may be used "[t]o 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." For the sake of clarifying the scope of the word "agency", several additions were made to the language of the rider, including insertion of the word "official" before the word "agency" and insertion of the words "commission, authority, or government corporation" after the word "agency."

The term "administrative representation" is defined in paragraph (c) and is used in § 1612.3 (c) and (f) and in § 1612.5 (a) and (d). In the past some have incorrectly used the word "representation" as a euphemism for "lobbying" and have spoken as if all of Part 1612 dealt with various forms of representation. Representation, however, includes only activities conducted on behalf of particular clients. It does not include such activities as those conducted pursuant to the request of a legislator. The new definitions of "administrative representation" and of "legislative lobbying", accordingly, recognize that the word "representation" can accurately describe only activities conducted on behalf of particular clients.

The term "grassroots lobbying" is defined in paragraph (d) and is used in § 1612.1 (g) (j), and (k) and in § 1612.7(a). The definition tracks the language of the first paragraph of Pub. L. 99-180, the appropriation rider. That paragraph provides that none of the funds

appropriated in the Act for the Legal Services Corporation may be used "[t]o pay for any publicity or propaganda intended or designed to support or defeat legislation pending before Congress or State or local legislative bodies or intended or designed to influence any decision by a Federal, State, or local agency." For the sake of clarity the words "county, or municipal legislative bodies, including any commission, authority, or government corporation with rulemaking authority," have been substituted for the words "local legislative bodies." For the same reason the words "county, or municipal administrative body" have been substituted for the words "local agency." The words "or intended or designed to influence any decision by the electorate on a measure submitted to it for a vote" are added to enforce the provisions of the Act prohibiting the use of Corporate funds to influence the passage or defeat of State proposals by initiative petition (section 1007(a)(5) of the Act) and the provisions of Pub. L. 97-377 prohibiting the use of Corporate funds to influence elected officials to favor or oppose "any referendum, initiative, [or] constitutional amendment."

The term "legal assistance activities" is defined in paragraph (e) and is used in § 1612.2 and in § 1612.6 (a) and (b). The term "legal assistance" is used in § 1612.5(b); in § 1612.6(a); in § 1612.9 (b) and (b)(1); and in § 1612.10(b). Under the new definition three types of activities qualify as legal assistance activities: first, activities carried out during working hours or while on official travel; second, activities using resources provided by the Corporation or a recipient, directly or through a subrecipient; and third, activities that, in fact, provide legal advice or representation to an eligible client. The Corporation has the responsibility to track and regulate the use of the federal dollars that have been allocated to it. Clearly this responsibility included the duty to regulate how LSC money is used for travel. Accordingly, this definition has been written so that any activities engaged in by an employee on official travel fall within the scope of regulated "legal assistance activities." The Board believes, for instance, that, if provider personnel come to Washington, D.C., using Corporate funds and spend three-fourths of their time lobbying, they should not be able to escape the strictures of Part 1612 by claiming that they lobbied on their own time or during "off hours." It is important to note that this paragraph does not prevent provider personnel—or anyone else—from coming to Washington at their own expense and then doing whatever they please. It regulates only activities that are supported in whole or in part by regulated funds. Also, this section does not prohibit a staff member on an official trip from staying over, say, to visit friends. The problem addressed is the use of public funds to facilitate political activity, not time spent on activities that are personal in nature.

The term "legislation" is defined in paragraph (f) and is used in § 1612.1 (d), (h)(1), (j), (m), and (n); in § 1612.5(c); in § 1612.6 (a), (b), (b)(2), (b)(5), and (c); in § 1612.7 (b), (b)(2), and (b)(5); and in § 1612.9(a)(2). The definition expands upon the definition that appeared in old § 1612.1(b). The older definition was circular: "legislation" was "any action of . . . [a] body . . . acting in a legislative capacity." The words "acting in a legislative capacity" have been eliminated and materials from two other sources have been used to make the definition clearer. First, language has been taken from Webster's *Third New International Dictionary* (1971), where "legislation" is defined as "the exercise of the power and function of making rules (as laws, ordinances . . . edicts) having force and authority by virtue of their promulgation by an official organ of a state or other organization." Second, language has been borrowed from the Administrative Procedure Act which defines "rule" as "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." Administrative rulemaking is included within the category of legislation because legislation and rulemaking are essentially the same in character. In recognition of the fact that the appropriation rider treats rulemaking differently from other forms of legislation, however, a separate provision dealing with rulemaking has been included later in § 1612.5(b). As in prior versions of Part 1612, the definition of legislation specifically lists the following as examples of legislation: Action on constitutional amendments, treaties and intergovernmental agreements, approval of appointments or of budgets proposed by an executive branch official, simple resolutions not having the force of law, and approval or disapproval of execution action. This list is not exhaustive. Indian Tribal Councils are not to be considered as legislatures for the purpose of Part 1612.

The term "legislative activities" is defined in paragraph (g) and is used in § 1612.3 (a), (b), (d), (f), and (g); in § 1612.9(c); and in § 1612.11 (a) and (b). It is a broad term and encompasses administrative, legislative, and grassroots lobbying as well as liaison activities.

The term "legislative lobbying" is defined in paragraph (h) and is used in § 1612.1 (g), (i), (j), and (k); in § 1612.4 (a) and (b); and in § 1612.13. The definition tracks language contained in Pub. L. 99-180, the appropriation rider. Paragraph (h)(1) of the definition is derived verbatim from the rider as are paragraphs (h) (2), (3), and (4). Paragraph (h)(2) of the definiiton carries forward the language of former § 1612.7(a)(1) and defines the term "similar procedure" as legislative consideration of matters relating to the structure of government itself, such as reapportionment.

The term "legislative representation" is defined in paragraph (i) as "legislative lobbying carried out on behalf of an eligible client." It is used in § 1612.3 (c) and (f) and in § 1612.5(d).

The term "liaison activities" is defined in paragraph (j) and is used in § 1612.1(g). It means activities designed to facilitate administrative, legislative, or grassroots lobbing. The Coporation has deliberately chosen to use the more narrow words "designed to" instead of simply the word "which" in order to establish an intent standard for determining what activities constitute regulated liaison activities. The Corporation will generally characterize activities such as attending legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation as liaison activities.

The team "political activities" is defined in paragraph (k). The terms "political activities" or "political activity" are used in § 1612.3 (a), (b), (d), (f), and (g); in § 1612.8(b)(4) (in the singular); and in § 1612.9 (a)(2) and (c). The term "political activities" is defined as those activities intended either to influence the making, as distinguished from the administration, of public policy or to influence the electoral process. Political activities include favoring or opposing current or proposed public policy and also include administrative, legislative, and grassroots lobbying.

This definition reflects the generally accepted meaning of the word "political," as anything relating to governmental activities or, more narrowly "relating to . . . the making as distinguished from the administration of governmental policy" (*Webster's Ninth New Collegiate Dictionary* (1985)). It is consistent with the usage of the terms

"political activity" or "political activities" in sections 1006(b)(5), 1006(e)(1), 1007(a)(6), 1007(b)(4), 1007(b)(6) of the Legal Services Corporation Act. The argument has been made that the term as used in the Act at section 1007(a)(6)(A) should be construed narrowly as meaning involvement with elections. Under the common understanding of the term "political," however, legislative and administrative activities are political. Clearly, Congress appreciated the difference between political activity and electoral activity and would have signalled its indication for the Corporation to adopt a narrower interpretation. The legislative history of the Act, moreover, supports a broad construction of the adjective "political." Referring to the Act, the House Committee on Education and Labor declared:

> the Committee expects that no grantee—under the guise of fulfilling program training functions—will advocate any *political* action including, but not limited to, boycotts, demonstrations, strikes or picketing.

(H. Rep. 93-247, 93rd Cong., 1st Sess. 11). The 1974 Conference Report on the Act accepted broad House language that required all attorneys while engaging in activities supported in whole or in part by the Corporation to "refrain from any political activity" and rejected a Senate amendment that prohibited only "activity associated with a political party or association, or campaign for public or party office" (H. Rep. 1039, 93rd Cong. 2d Sess. 23 (Conference Report)). In speaking of political activities, Senator Taft referred to abuses "where they [program personnel] would go out and solicit individuals for a political cause" 120 *Cong. Rec.* S. 918 (daily ed. January 31, 1974). It is strained indeed to view the words "political cause" as referring simply to the electoral process. A political cause is commonly a movement that seeks to effect some change in a government or its policies. The election of a President constitutes a political cause; so too does the campaign to change abortion laws or the naturalization and immigration statutes.

Far from being a narrow or tangential prohibition, the restriction on "political activities" lies at the core of the Act and thus, of necessity, at the heart of Part 1612. Congress sought in the Act to differentiate between recognized legal services (which include an attorney's advice and assistance to enable a client to enforce his rights under existing law) and, on the other hand, activities designed to alter government policies. Senator Hathaway was addressing this fundamental distinction when he declared that "[t]he only advice [a legal services attorney] can give is legal advice. He cannot advise [a client] to join a political party or to do something to enhance political activities" (120 Cong. Rec. S 920 (daily ed. January 31, 1974)).

The term "public policy" is defined in paragraph (l) and is used in § 1612.1 (f) and (k) and in § 1612.9(a)(1). The definition incorporates language from Webster's *Ninth New Collegiate Dictionary* (1985) which defines "policy" as "a high-level overall plan embracing the general goals and acceptable procedures esp[ecially] of a governmental body." The basic substantive application of this definition comes in § 1612.9 on training. The definition of public policy is not intended to prohibit informing eligible clients of their rights under existing laws. Indeed, § 1612,9(b)(3) expressly permits training clients on what the law is. Favoring or opposing current laws, however, is prohibited just as is favoring or opposing proposed laws. Training sessions may not advocate either existing or proposed laws. Thus, for example, programs may train people about the meaning of the Baby Doe cases but training is not to include espousing a position on what the law should be in those cases. At no time, of course, may programs or trainers counsel disregard or nonobservance of the law.

The term "publicity and propaganda" is defined in paragraph (m) and is used in § 1612.1(d); in § 1612.5(c); and in § 162.7(b)(1). The Board does not intend the language "or when taken as whole, an indirect suggestion" to prohibit neutral reporting activities or to forbid stating after-the-fact information on legislative history. It intends, rather, to prohibit favoring or opposing particular policy positions. The Corporation will use an intent or *scienter* standard to differentiate between neutral reporting and prohibited publicity and propaganda. If the intent of putting certain information in a publication is, directly or indirectly, to stir up people for or against legislation, the information is a prohibited communication. The Board found it necessary to use the word "indirectly" in this definition for the same reasons that Congress found it necessary to use the word "indirectly" in section 1007(a)(5) of the Act. It is impossible to address specifically all the ways that clever people might devise to engage in grassroots lobbying. Indirect grassroots lobbying certainly includes such practices as publishing the telephone number of a legislator along with information about current legislation or printing a letter from a Congressman attacking pending legislation. Public funds should not be used to stimulate public pressure on the legislative process. Accordingly, the Board has added new language to the definition to ensure that the exception for communications to clients does not swallow the general prohibition against publicity and propaganda. The exception for clients will apply only to those clients who are "currently represented by a recipient with regard to a matter directly related to the legislation." At the same time the Board has made clear that attorneys may communicate with other staff in their own programs or with co-counsel.

The term "rulemaking" is defined in paragraph (n) as "an agency process for formulating, amending, or repealing legislation." It is used in § 1612.1 (a), (d), and (f); in § 1612.5(b); and in § 1612.9(a)(2). This definition is basically that of the Administrative Procedure Act (5 U.S.C. 551(5)) which defines rulemakings as "an agency process for formulating, amending or repealing a rule." Since rules are one form of legislation, as defined in § 1612.1(f), the word "legislation" has been substituted for the word "rule" as used in the Administrative Procedure Act.

Section 1612.2 Legal assistance activities.

Section 1612.2 sets forth the scope of Part 1612. Unless expressly provided, the regulation applies to all legal assistance activities carried out with funds made available by the Legal Services Corporation or private entities. The purpose of this provision is to ensure that, in most instances, private funds are restricted to the same extent as LSC funds. Section 1612.13 sets forth the express exceptions applying to private funds.

Section 1612.3 Legislative activities in general.

Legislative activities are to be exceptional, rather than routine, functions of legal services programs. Section 1612.3(a), accordingly, prohibits the operation of full-time legislative offices with Corporate funds. This paragraph prohibits maintaining a separate office to deal with nothing but legislative and administrative representation.

Section 1612.3(b) restricts the payment of dues with LSC funds to $100 per recipient per annum to any organization (other than a bar association), a purpose

or function of which is to engage in political or legislative activities. Old § 1612.5(c)(2) restricted dues payments to organizations a "substantial purpose" of which was to influence legislation. Numerous comments criticized this provision as vague. In response, the Board has deleted the words "substantial purpose." Some comments suggested that the Board should allow dues payments to organizations that engage in political or legislative activities as long as the organization segregates LSC funds and ensures they are not used for prohibited activities. The Board, however, is unpersuaded as to the effect and value of a segregtion requirement and explicitly declined to include such a provision. If LSC dues are used to help pay a light bill, they free other funds for use in political or legislative activities. Other comments suggested that the Corporation should contact all organizations that might be paid dues with LSC funds and publish every year a list of which are approved and which are not. The Corporation, however, is fully occupied monitoring recipients for which Congress has given it primary responsibility and the administrative burden of further monitoring and review would be too great. Accordingly, the Board decided to create only two exceptions to the general prohibition on dues payments to organizations that engage in political or legislative activities: A *de minimis* exception and a bar association exception. Under the *de minimis* exception, each recipient may choose to pay a total of $100 per year in dues with LSC funds regardless of the number of organizations, not counting bar associations. Under the bar association exception, the Board intends to permit dues payments to organizations constituting bar associations so long as they are open for membership to all practitioners in the geographical area.

Paragraph (c) clarifies that LSC grant funds may not be used to pay for transporting persons to legislative or administrative proceedings unless they fall into one of three categories: Attorneys or other employees engaged in permitted representational activities, witnesses entering formal appearances on behalf of the recipient's client, and where necessary and appropriate, the client who is being represented at the proceeding.

Paragraph (d) prevents using LSC grant funds to help conduct, or transport people to, events if the primary effect of the expenditure is to facilitate political or legislative activities or any activity that would be prohibited if conducted with funds made available by the Corporation.

Paragraph (e) pervents expenditure of LSC grant funds for administrative or related costs associated with prohibited activities. This provision is simply an elaboration of the basic rule that only those costs that further the purpose of legal assistance to eligible clients within the provisions 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.

Paragraph (f) provides that no funds made available by the Corporation shall be used knowingly to assist others to engage in legislative or political activities. It contains a proviso, however, to the effect that the paragraph shall not be construed to prohibit the administrative or legislative representation permitted by § 1612.5. Comments suggested that former versions of this paragraph had contradicted § 1612.5. By adding the proviso, however, the Boad does not intend to remove any of the prohibitions on training. The language of paragraph (f) has been revised to clarify that assisting others to influence legislation is the prohibited activity. By adding the word "knowingly" at the beginning before the word "assist," a *scienter* requirement has been included in Section 1612.3(f).

Section 1612.3(g) prohibits using program funds to attend meetings of coalitions formed to engage in legislative or political activities. The General Accounting Office has strongly criticized the practice of using LSC funds to attend coalition meetings. The Board determined that the only way to stop abuse in this area was by creating an outright prohibition on attending such meetings.

Section 1612.4 Legislative and administrative lobbying.

The general rule of section 1007(a)(5) of the Act is that the use of Legal Services funds for legislative and administrative lobbying is prohibited unless it falls within one of several carefully defined exceptions. Since 1977 Congress has repeatedly indicated, through oversight hearings and appropriation riders, that it believes legal services programs have interpreted the Act as authorizing more lobbying activity than was intended. This section sets forth the general prohibition against legislative and administrative lobbying as established in the Act and in Pub. L. 99-180, the appropriation rider.

Paragraph (a), by referring to the definition of legislative lobbying at § 1612.1(h), follows Pub. L. 99-180 in absolutely prohibiting legislative lobbying in three cases: in connection with: (1) Any referendum, initiative, constitutional amendment or similar procedure of a legislative body; (2) authorizations or appropriations for the Corporation or a recipient; or (3) oversight proceedings concerning the Corporation or any recipient. Section 1612.1(h) defines "similar procedure" to mean legislative consideration of matters requiring subsequent ratification by the electorate or matters relating to the structure of government itself. There are no exceptions for communications in this area.

Paragraph (b) prohibits administrative lobbying or other kinds of legislative lobbying unless they fall within one of two categories: certain permissible activities on behalf of eligible clients as provided in § 1612.5 and certain permissible activities undertaken pursuant to the request of public officials as provided in § 1612.6.

Section 1612.5 Permissible activities on behalf of eligible clients.

Paragraph (a) provides for administrative representation of an eligible client in an adjudicatory proceeding or in informal negotiations directly involving that client's legal rights or responsibilities with respect to a particular application, claim, or case.

Paragraph (b) provides for representation in rulemaking proceedings under some circumstances. This paragraph requires that the project director consider whether the program should be involved in a particular rulemaking proceeding and that he ensure that recipients do not conduct publicity or propaganda campaigns with respect to rulemaking. If a recipient is representing a *bona fide* client on a particular application, claim, or case, and it becomes necessary in the course of that representation to participate in a rulemaking proceeding, the recipient may take part in such proceeding and do whatever is appropriate for it to do according to the practices of the administrative body, other than engage in grassroots lobbying. If, for example, the administrative body permits cross-examination of witnesses in rulemaking proceedings, then a program attorney may engage in such cross-examination.

Paragraph (c) permits representation in legislative proceedings for the sole purpose of bringing a specific and distinct legal problem to the attention of elected officials. It is not intended to provide blanket permission for full-scale

lobbying in all rulemaking or legislative proceedings. Neither is it intended to afford program attorneys the opportunity to testify about any matters they please: It authorizes only written or oral communications concerning the client's problems and the legal obstacles to the client's obtaining judicial or administrative relief; testimony before the pertinent legislative committee upon the specific legal problem of the client; or the provision of a legal analysis of the client's problems to an official. Like paragraph (b) it does not authorize publicity or propaganda or any efforts to persuade other elected officials or members of the public to support or oppose the proposed legislation.

An employee may make communications under paragraph (c) only if the project director or chief executive of the recipient has determined that the client is in need of relief that can be provided by the official or the body with which the official is associated and that appropriate judicial and administrative avenues to relief have been exhausted. The Board emphasizes that representation under § 1612.5(c) is representation relating to specific problems of specific clients and not to those of a general class of poor people who are not actual eligible clients.

Paragraph (d) prohibits employees from soliciting clients for the purpose of making legislative or administrative representation possible. Section 1007(a)(5)(A) of the Act forbids solicitation that is "in violation of professional responsibilities." Congress adopted this language before the Supreme Court decided *In re Primus*, 436 U.S. 412 (1978). Accordingly, the Board has determined that, to clarify and effect the original intent of Congress, it should place a flat bar upon solicitation in legislative and administrative cases. In making an exception to the general rule against lobbying for activities necessary to the representation of a client, Congress did not intend to authorize recipients to go out and "find" clients.

Paragraph (e) sets out the documentation requirements for communications authorized under paragraph (c). Project directors must document the content of each communication and the basis for the two determinations specified in paragraph (c). They must give written approval setting forth the basis of their determination that the communication is authorized under the policies of the recipient's governing board.

Paragraph (e)(4) requires that the documentation include a retainer in the form specified in § 1611.8, setting forth the specific legal interest of each client at whose request the communication was undertaken and a statement by the client in the client's own words, insofar as not precluded by the client's inability to communicate, of the problem for which the client sought representation.

The two statements required in paragraph (4) are not redundant since a statement from a lawyer analyzing the legal interests of a client is not the same as a statement showing what brought a client into a legal services office. The purposes of requiring a retainer are to insure that the work done conforms to the desires of the client and to aid the Corporation in auditing grantee compliance with the terms of section 1007(a)(5)(A). The retainer will be more useful for these purposes if, at the commencement of representation, there is a clear record of the client's description of the legal problem for which the attorney finds it necessary to seek relief from a legislature or administrative agency. A statement from the client will help the Corporation to ensure that there is some nexus between the matter that causes the client to seek legal assistance and the program attorney's decision to engage in legislative or administrative representation. A lawyer should not completely take over a case, refashion its objective or transform its intent, and use it to address issues or problems which are incidental or foreign to the client, or which the client did not raise. The legal relief sought should be in direct and proximate response to the client's request. The requirement of a retainer does not suggest a more sophisticated knowledge of the law than could reasonably be expected of eligible clients who, after all, may be presumed able to express in their own words "the matter on which relief is sought." The Board recognizes that there are a number of clients, such as those who have grown up totally dependent upon American sign language, who would have trouble giving statements that most laymen and lawyers would find comprehensible. In response to these concerns, the Board has created an exception for clients who are unable to communicate. In such cases the program should itself supply a statement summarizing the problems that brought the client to seek representation.

Paragraph (e)(5) requires that the documentation also include the director's certification that the communication is not the result of participation in a coordinated effort to communicate with elected officials. Prior versions of this paragraph required that the director 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." In response to comments the Board deleted this requirement.

Paragraph (f) requires that the recipient's governing body adopt policies to guide the director in approving communications that bring legal problems to the attention of officials. The regulation directs that such policies shall require periodic reports to the governing body, shall ensure that staff neither solicits requests to undertake communications with elected officials nor participates in a coordinated effort to provide communications on a particular subject, and takes into account the recipient's priorities in resource allocation. The reports must be consistent with restrictions on disclosure of confidential information imposed by applicable law.

Paragraph (g) permits requests to introduce private relief bills.

Paragraph (h) recognizes that program employees may communicate with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies. Program employees may inform a current client about a new or proposed statute, executive order, or administrative regulation consistent with the provisions of § 1612.7. They may advise a client with respect to the client's own communications to officials. All such communications, however, are subject to the provisions of § 1612.5(c). Program employees may communicate directly or indirectly with the Corporation for any purpose.

Section 1612.6 Permissible activities undertaken pursuant to request of public officials.

Paragraph 1612.6(a) sets forth the conditions under which legal services personnel may respond to request from public officials. In drafting this provision the Board kept one basic principle in mind: the primary purpose of LSC grants is to help respond to client requests for representation. Some comments had requested that the Board allow recipients to disseminate information to anyone an official or his agent might direct as long as there was not "widespread" dissemination of such communications. In considering paragraph (a), the Board explicitly declined to add this expansive language. Not only should the Corporation not be in the position of having to decide what kind of communication is too widespread, but also programs should not adopt [illegible] of the functions and responsibilities of governmental

offices and staff in circulating communications. The Board is persuaded that when Congress provided that legal services personnel could respond to requests from public officials, Congress meant requests for information, not requests to perform office tasks. Public officials themselves can reproduce information and disseminate it instead of requesting legal services personnel to do so. The authority to respond to official requests is limited to requests concerning "a specific matter." Program employees may not communicate with persons other than the requesting party, or agents or employees of such party. Moreover, of course, responses to requests should be made only to an extent compatible with the program's priorities and with the demands of clients on the program's time.

Section 1612.6(b) prohibits soliciting requests from public officials or governmental agencies. This provision does not prohibit sending out otherwise permissible publications such as programs' annual reports.

Formerly § 1612.6(b)(1) required that requests from legislators or agency officials had to be in writing and that legal services attorneys, before responding to a specific request, had to obtain the explicit written approval of their project directors. In response to various comments, the Corporation has removed this requirement. Paragraph (c) now requires simply that the recipient adopt procedures and forms to document its compliance with this section. The documentation must include contemporaneous documentation that states the type of representation or assistance requested by the official and that identifies the regulation, legislation, or executive order to be addressed.

Section 1612.7 Grassroots lobbying.

In its original form this section of the regulation was added in March of 1983 in response to an earlier recommendation from the Comptroller General. 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 a recipient's employees to engage in indirect or grassroots lobbying activity such as organizing coalitions or engendering communications from the public favoring or opposing changes in public policy. These activities are not necessary to the provision of legal advice or of representation in respect of a client's legal rights and responsibilities.

Accordingly, paragraph (a) forbids using Corporation funds or funds from private entities for grassroots lobbying. The word "entities," as used here and throughout Part 1612, is broadly inclusive and extends to natural persons and to all other bodies, such as corporations, whether or not they possess legally recognized status. For further analysis of what constitutes grassroots lobbying, please see the discussion of the definition of grassroots lobbying, *supra*, at § 1612.1(d) and the definition of publicity and propaganda, *supra*, at § 1612.1(m).

Paragraph (b) prohibits the distribution of publications that contains any reference to proposed or pending legislation unless the publication meets five criteria. First, the publication must not contain any publicity or propaganda. Second, it must not contain directions on how to lobby generally or in respect of particular legislation. Third, prior to its dissemination, the publication must have been reviewed by the recipient's project director, or by his or her designee, for conformity to LSC regulations. Fourth, a copy of the publication must have been provided to the Corporation within 30 days after publication. Fifth, LSC funds must have been used only for costs incident to the publication's preparation, production, or dissemination. It must have been disseminated only to recipients, recipient staff and board members, private attorneys representing eligible clients, eligible clients currently represented by a recipient with regard to a matter directly related to the legislation, and the Corporation, as opposed to the public at large, or to eligible clients generally. The Corporation wishes to emphasize in this connection that limited Corporate resources are to be used for representing eligible clients on specific matters and not for distributing publications to every prospective or potential client within a service area. Consequently, this provision does not permit mailing publications to eligible clients generally or other forms of mass communication. It does not, however, prevent sending letters to specific eligible clients.

Section 1612.8 Public demonstrations and activities.

This section prohibits anyone that is engaging in legal assistance activities and that is using resources provided by the Corporation, by private entities, or by a recipient, directly or through a subrecipient, from participating in, or encouraging public demonstrations and illegal activities. Paragraph (a) prohibits participation in, or encouragement of, demonstrations, picketing, boycotts, and strikes. The only exception to the prohibition of paragraph (a) is that a program employee may participate in these activities in connection with his own employment.

Paragraph (b) prohibits people, while carrying out legal assistance activities and while using resources provided by the Corporation, by private entities, or by a recipient, directly or through a subrecipient, from engaging in, or encouraging others to engage in illegal activities. Illegal activities include, but are not limited to, rioting and civil disturbances, activities in violation of court injunctions, and intentional identification of the Corporation with any political activity. There are no exceptions to the prohibition of paragraph (b).

Paragraph (c) makes clear that the prohibition on participation in demonstrations, strikes, and other such activities does not prohibit an attorney from fulfilling his professional responsibilities to a client.

Section 1612.9 Training.

This section implements section 1007(b)(5) of the Act and the related prohibitory provision of Pub. L. 99-180. It is important to note at the outset that this section does not purport to control relations between attorneys and clients. It places no restrictions on the advice attorneys can give their clients. It does control and restrict the nature of the training that can be conducted with LSC funds.

Paragraph (a) prohibits funding of training programs that advocate particular public policies; that encourage certain types of enumerated activities, including political activities or labor activities; or that disseminate information about these policies or activities.

Paragraph (a)(2) includes a provision that prohibits training people to develop strategies to influence legislation or rulemaking. Program involvement with legislative activities and rulemaking should be peripheral, and recipients should not need to conduct training programs in these areas.

Paragraph (a)(3) prohibits the dissemination of information about public policies or certain enumerated activities. This prohibition, as shown by paragraph (b)(3), which expressly permits informing eligible clients about their rights under existing law or about the meaning or significance of particular bills, is not intended to keep recipients from informing people about their rights under current law.

Paragraph (b) excepts from the general prohibition on training any training that is necessary for preparing attorneys or paralegals to provide

adequate legal assistance to eligible clients, to advise eligible clients as to the nature of the legislative process in general, to inform them of their rights under a statute or regulation already enacted or about the meaning or significance of particular bills, or to understand what activities are permitted under relevant laws and regulations. Programs, however, may engage in permitted training activities only to the extent compatible with meeting the demand for client service and the priorities established pursuant to Part 1620 or, in the case of support centers, to the extent compatible with the provision of support services to recipients. Recipients may conduct training that includes information about the meaning or significance of particular bills and training on what activities are permitted or prohibited under relevant laws and regulations.

Paragraph (b)(2) contains a distinction which prohibits training on lobbying strategies for particular bills. Such training does not constitute "advice as to the nature of the legislative process in general."

The Board found it significant that the GAO specifically focused on past abuse of training programs for lobbying purposes. Accordingly, paragraph (c) provides that a recipient cannot use funds for training in respect of political or legislative activities or with regard to areas in which program involvement is prohibited. Thus, although participation in legislative and political activities is not completely prohibited, training in these areas is. The Board explicitly declined to create an exception that would have allowed training in rulemaking and legislative lobbying. For years the Board has been assured by recipients that lobbying and legislative activity amount to a very small portion of program activity. In light of these representations, it makes little sense to devote money to training in lobbying techniques even though the regulations permit some lobbying. Lobbying activities should be so peripheral to what recipients are doing that training programs on lobbying techniques should not be necessary. In response to comments, the prohibition on training in substantive areas where only limited or incidental activities are allowed has been removed. Programs may offer training in areas where the law and regulations permit activity. They may also train managers and other staff on what activities are permitted or prohibited under the Act and regulations. Such training of recipients is not a political or legislative activity unless, for example, the program conducts it for the purpose of advocating some position with respect to these regulations, such as changing them or retaining them as they are. Learning about the law is entirely different from undertaking to influence officials or instructing people how to influence public officials.

Paragraph (c) specifically provides that funds may be used for training with regard to adjudicatory proceedings. The Board created this exception because adjudicatory proceedings, unlike rulemaking proceedings and legislative lobbying, are a form of judicial proceedings in which a client asserts a right under existing law.

Section 1612.10 Organizing.

Section 1612.10 implements provisions of section 1007(b)(7) of the Act which contains an exception to enumerated prohibited activities. Thus, for instance, if a client should so request, a recipient may draft the articles of incorporation for an organization. At the same time, however, section 1007(b)(7) prohibits recipients from initiating the formation, or acting as an organizer of, any association, federation, labor union, coalition, network, alliance, or similar entity. Put simply, legal services attorneys are not to initiate or originate the formation of organizations and then propel them into being as organizers, promoters, or facilitators.

In accordance with the Act § 1612.10 makes clear that recipients may provide advice or assistance to eligible clients concerning the laws applicable to formation or operation of an organization. According to the legislative history of the Act, it is permissible "to encourage poor people aggrieved by particular problems to consider organizing to foster joint solutions to common problems." In observance of this Congressional concern, the last sentence of § 1612.10(a) specifically provides that the restriction on "communication" does not include advice given an individual client during the course of legal consultation. Indeed, nothing in paragraph (a) purports to restrict recipients from advising clients of the advantages of belonging to an organization. The old section on organizing (§ 1612.30) provided that legal advice or assistance could not be given in the formation of an organization, a substantial purpose of which was to influence legislation, elections, or ballot propositions. In response to comments criticizing the vagueness of the term "substantial purpose", this sentence has been deleted. Paragraph (b) provides that legal services programs may, at the request of an eligible client, give legal advice on matters of incorporation, bylaws, tax problems and other matters essential to the planning of an organization, regardless of its purpose. The restriction is simply that the service provided must be legal in nature and must be provided in response to a *bona fide* client inquiry rather than at the initiative of the recipient's employees. Programs may engage in permitted legal assistance to organizers, however, only to the extent compatible with meeting the demands for client services and the priorities established pursuant to Part 1612 or, in the case of support centers, to the extent compatible with the provision of support services to recipients.

Although § 1612.10 does not restrict the sort of legal advice that recipients can give eligible clients, it prohibits recipients from using funds to advocate that anyone other than a client start or join an organization. Such communications do not constitute the legal assistance activities that are the real concern of recipients. Paragraph (a) forbids recipients to develop networks of advocates. Significantly, section 1007(b)(7) of the Act places no limit on the types of organizations that are subject to this prohibition on organizing. The Act makes clear that an organization need not be a legal person to fall within the restrictions. In setting forth its prohibition on organizing, the Act uses as examples the words "federation" and "association." Neither necessarily connotes organizations that are "legal persons" or which have some recognized legal status. Many associations, for instance, do not have bylaws, charters, or even legal standing. The words "similar entity," moreover, are plainly a catchall provision meant to include groups such as task forces or networks. Congress clearly intended to prohibit recipients from initiating the formation of any group of people. Accordingly, under paragraph (a), no matter what language it may employ in describing an organization, whether "coalition," "network," or some other term, a recipient may not, under this part, initiate or promote the meeting of a group of people, regardless of its purpose. At the same time, the Board recognizes that such networks may be useful. Therefore, if reasonable, recipients may work with such organizations and advise their clients to work with such organizations.

The second sentence of § 1612.10(a) would likewise prohibit programs from advocating that their employees join an organization. Programs may not make employment conditional upon membership in an organization, whether it be the American Bar Association or the American Library Association.

Under paragraph (a), however, programs may tell their employees that organizations exists; it is advocacy that is prohibited.

Paragraph (a) also prohibits such practices as allowing other organizations to leave promotional literature on the recipients' premises for inspection by clients. The Board has no problem with a recipient's furnishing a client with a package of information from groups such as local tenants' organizations as long as the information is clearly related to the problem for which the client came to the recipient. Leaving information lying around a legal services office, however, for inspection by anyone who might walk in, whether or not a client, amounts to encouraging the process or organizing generally, without regard to its relevance to a particular legal problem. This provision would not, however, prohibit programs from sending out notices to other programs advising them to join groups to learn about the use of computers or about other clerical or office skills.

Section 1612.11 Accounting and timekeeping

Section 1612.11 deals with accounting and timekeeping. The Board is concerned that no one knows how much lobbying and legislative and administrative representation occurs. It has decided, therefore, to require recipients to maintain records of the time and the direct and indirect expenses associated with all legislative activities as defined in § 1612.1(j), regardless of the sources of the funds supporting such activities. Because of the definition of legislative activities, this will require recipients to account for time and resources spent on all legislative and administrative lobbying and all legislative and administrative representation. As representatives of field programs repeatedly conceded to the Board, lobbying does not occur solely in legislatures—administrative rulemaking proceedings account for some of the most important lobbying that takes place. It makes little practical difference in which forum a recipient is lobbying. Recipients must keep records of time spent formulating positions and strategy as well as time spent in direct communication with officials. They must also specify the sources of funds supporting regulated activities.

In addition to keeping general records relating to regulated activities, recipients must account for all the working hours of those employee who are registered lobbyists or who engage in legislative activities. These time logs are necessary to ensure the completeness of the records furnished pursuant to the terms of Pub. L. 99–180 and to enable the Corporation to enforce section 1010(c) of the Act which prohibits the use of private non-Corporation funds for prohibited purposes. The Board was concerned that if it did not require recipients to document all of their lobbyists' time, it would learn very little about the amount of time spent upon such things as liaison activities. No matter what the time of day, if an employee engages in legislative activities on behalf of a client, the employee must, pursuant to this section, account for such time. Thus, an employee must record all time in cases where he lobbies at the legislature on behalf of a client from 9:00 in the morning until 4:00 in the afternoon, even though the employee then returns to the recipient's offices and continues working late into the night because the legislature is in session.

Anybody who engages in legislative or administrative rulemaking must furnish the Corporation with a time log of all working hours. However, if all an employee engages in are administrative adjudicatory proceedings the employee will not have to furnish a complete time log: participation in adjudicatory proceedings does not trigger the timekeeping requirement for employees.

Paragraph (b) requires recipients to submit quarterly reports describing their legislative activities. In furnishing these reports recipients must comply with restrictions on disclosure of confidential or privileged information imposed by the applicable law of any state or other jurisdiction.

Both paragraphs of § 1612.11 provide that the Corporation may, at its option, specify the manner in which records of legislative activities are to be maintained. After ascertaining that the Corporation has never specified a manner in which recipients are to keep records on lobbying, the Board deleted prior language that required records to be kept in the manner specified by the Corporation. Until the Corporation specifies how records of legislative activities are to be maintained, recipients may keep records of regulated activities in the best way that they can. They need not, however, keep duplicate records of acitivities. Once the Corporation amends the Case Service Reports (CSR's) to include legislative activity, recipients will have to report these activities in the form required by the CSR's. The Board intends, however, to conform the CSR's to the lobbying regulation and to insure that all of the information required by § 1612.11 will also be required by the CSR's.

Section 1612.12 Enforcement

Section 1612.12 details a number of the enforcement options available to the Corporation in cases where Part 1612 has been violated. Paragraph (a) provides that the Corporation may suspend or terminate the employment of any employee of the Corporation who violates Part 1612. The Corporation may also impose appropriate sanctions against recipients which fail to ensure that their employees refrain from violating Part 1612.

Paragraph (b) explicitly sets forth a number of the enforcement options available against recipients which fail to ensure that their employees refrain from violating either Part 1612 or the provisions of the Act relating to lobbying, including those relating to the use of private funds. In accordance with Parts 1606, 1618, 1623 and 1625, the Corporation may suspend or terminate financial assistance or deny refunding to such recipients. It may also recover costs incurred by recipients as a result of activities proscribed by Part 1612.

Paragraph (c) describes some of the steps that recipients are to take in order to publicize and enforce Part 1612. First, they are to advise their employees about their responsibilities under Part 1612. Second, recipients must establish procedures for determining whether employees have violated Part 1612 and must also establish policies for determining the appropriate sanctions to be imposed for violations. Each recipient must then transmit a copy of its policy to the Corporation. Each policy is to include use of administrative reprimand (in cases of minor or unintentional violations, or where there are mitigating circumstances); suspension and termination of employment; and other sanctions appropriate to the enforcement of Part 1612.

Third, recipients must inform the Office of Monitoring, Audit, and Compliance within 30 days of imposing sanctions for violating Part 1612. Prior to 1984 Part 1612 required recipients to consult with the General Counsel of the Corporation before they determined what sanctions to impose. The present provision, however, recognizes that the Corporation is not directly involved in personnel decisions of programs, but is only concerned with assuring that programs comply with the Act and regulations.

Fourth, whether or not sanctions are imposed, recipients are to make available to the Corporation the records of their investigation of alleged violations. Recipients should submit these records on a quarterly basis to the

Office of Monitoring, Audit, and Compliance. Because the Board believes it to be important to recognize ethical restrictions explicitly, the Board has provided that recipients comply with the requirement of § 1612(c)(4) in a manner that is consistent with restrictions on disclosure of confidential or privileged information imposed by the applicable law of any state or other jurisdiction.

Section 1612.13 Private funds.

Section 1612.13 provides that recipients may use private funds to lobby, if a government agency, elected official, legislative body, committee, or committee member is considering a measure directly affecting the activities of the recipient or the Corporation under the Act. After deliberating, the Board decided to permit private funds to be used in such cases because, for the past year, it has been urging recipients to explore other funding sources. Clearly, if recipients are to go to state legislatures and local bodies to obtain funds replacing those that Congress can no longer make available, they must have the right to lobby legislatures and local bodies.

The Board was not persuaded of the wisdom or the practical necessity for other exceptions to the prohibition on using private funds for lobbying. Accordingly, it has determined that in all other cases private funds and LSC funds should be subject to the same restrictions. The Board believes, for at least two reasons, that it has the power to make this decision. First, when Congress adopted section 1010(c) of the Act, it provided in effect that private funds and federal funds were to be treated identically: If a recipient could not engage in an activity using federal funds, it should not be able to do so using private funds. Since amendment of the Legal Services Corporation Act in 1977, however, a complication has arisen. For various reasons and because no clear consensus exists to modify the substantive legislation granting authority to the Corporation, Congress has not subsequently revised the Legal Sevices Corporation Act. Instead, it has amended the substantive legislation in a oblique way by placing restrictions on the use of annual appropriations. Since funding riders restrict only federal funding and not private funding, Congressional language has never directly enjoined recipients from using private funds for purposes prohibited in the appropriation riders. Nonetheless, no Congressional statement or legislative enactment has, over the past nine years, indicated that Congress ever intended to depart or retreat from its plainly expressed determination that federal funds and private funds ought to be treated alike. Accordingly, the Board has concluded that to effectuate the intent of Congress restrictions contained in the riders should extend to private funds.

The second reason for inclusive treatment is that the Corporation has broad inherent authority to regulate the manner in which its recipients use private funds. Section 1010(c) of the Act contains no prohibition against the Corporation's imposing restrictions by regulation on private funds. The Act plainly contemplates, moreover, that private funds "shall not be expended by recipients for *any* purpose prohibited by [its terms]" 42 U.S.C. 2996i(c) (emphasis supplied). Congress, furthermore, has pointedly made the Legal Services Corporation a District of Columbia corporation, and a District of Columbia corporation plainly has the power to contract and thereby to impose restrictions on parties with which it transacts business. No First Amendment consideration, as has been suggested, prevents the Corporation from imposing contractual obligations on its recipients.

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 revised as follows:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.

Authority: Secs. 1006(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. 416; Pub. L. 96-536, 94 Stat. 3166; Pub. L. 97-161, 96 Stat. 22; Pub. L. 97-377, 96 Stat. 1874; Pub. L. 98-166, 97 Stat. 1071; Pub. L. 99-180, 99 Stat. 1185.

§ 1612.1 Definitions.

(a) "Adjudicatory proceeding," as used in this part, means a proceeding by a Federal, State, or local agency, commission, authority, or government corporation which makes a determination that is of particular rather than general applicability, that affects private rights or interests, and that results in a final disposition, whether affirmative, negative injunctive, or declaratory in form. The term does not include rulemaking but does include licensing.

(b) "Administrative lobbying," as used in this part, means 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 official, agency, commission, authority or government corporation.

(c) "Administrative representation," as used in this part, means administrative lobbying carried out on behalf of an eligible client.

(d) "Grassroots lobbying," as used in this part, means publicity or propaganda intended or designed to support or defeat legislation pending before Congress or before State, county, or municipal legislative bodies, including any commission, authority, or government corporation with rulemaking authority, or intended or designed to influence any decision by a Federal, State, county, or municipal administrative body or intended or designed to influence any decision by the electorate on a measure submitted to it for a vote.

(e) "Legal assistance activities," as used in this part, means any activity—

(1) Carried out during 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.

(f) "Legislation", as used in this part, means any action or proposal for action by Congress, by a State legislature, or by any other body of governmental, municipal, or local officials, whether elected or appointed, (including any commission, authority, or government corporation with rulemaking authority) formulating a rule for the future or formulating a statement of general or particular applicability and future effect which is designed to implement, interpret, or prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, rules, regulations, 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. 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.

(g) "Legislative activities," as used in this part, means administrative, legislative, and grassroots lobbying and liaison activities.

(h) "Legislative lobbying", as used in this part, means 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 Act, bill, resolution or similar legislation;

(2) 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 determined by a vote of the electorate or matters relating to the structure of government itself, such as reapportionment;

(3) 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

(4) In connection with the conduct of oversight proceedings concerning the recipient or the Corporation.

(i) "Legislative representation," as used in this part, means legislative lobbying carried out on behalf of an eligible client.

(j) "Liaison activities", as used in this part, means activities designed to facilitate administrative, legislative, or grassroots lobbying, and includes, but is not limited to, such activities as attending legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation.

(k) "Political activities", as used in this part, means those activities intended either to influence the making, as distinguished from the administration, of public policy or to influence the electoral process. Political activities include favoring or opposing current or proposed public policy and also include administrative, legislative, and grassroots lobbying.

(l) "Public policy", as used in this part, means an overall plan embracing the general goals and acceptable procedures of any governmental body. Public policy includes but is not limited to, statutes, rules, and regulations already enacted by a governmental body.

(m) "Publicity or propaganda", as used in this part, 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 persons outside of the recipient program (other than a client or group of clients currently represented by a recipient with regard to a matter directly related to legislation, or their counsel or co-counsel) to contact public officials in support of or in opposition to legislation, or to contribute to or participate in any demonstration, march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign for the purpose of influencing the course of such legislation.

(n) "Rulemaking", as used in this part, means an agency process for formulating, amending, or repealing legislation.

§ 1612.2 Legal assistance activities.

Except as hereinafter provided, the provisions of this part shall apply to all legal assistance activities carried out with funds made available by the Legal Services Corporation or private entities.

§ 1612.3 Legislative activity in general.

No funds made available by the Corporation shall be used to—

(a) Maintain separate offices for the sole purpose of engaging in political or legislative activities;

(b) Pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in political or legislative activities;

(c) 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 paragraph does not authorize payment of transportation expenses for employees not actually engaged in permitted legislative or administrative representation;

(d) 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 political or legislative activities or any activity which would be prohibited if conducted with funds made available by the Corporation;

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

(f) Knowingly assist others to engage in legislative or political activities; provided, however, that this paragraph shall not be construed to prohibit the administrative or legislative representation permitted by § 1612.5; or

(g) Attend meetings of coalitions formed to engage in legislative or political activities.

§ 1612.4 Legislative and administrative lobbying.

(a) None of the funds made available by the Legal Services Corporation may be used to pay for legislative lobbying as defined in § 1612.1(h)(2), (3), and (4).

(b) None of the funds made available by the Legal Services Corporation may be used to pay for legislative lobbying as defined in § 1612.1(h)(1) or for administrative lobbying as defined in § 1612.1(b), except as provided in § 1612.5 and 1612.6.

§ 1612.5 Permissible activities on behalf of eligible clients.

(a) An employee of a recipient may provide administrative representation for an eligible client in an adjudicatory proceeding or in informal negotiations directly involving that client's legal rights or responsibilities with respect to a particular application, claim or case.

(b) Notwithstanding anything in this part to the contrary, an employee of a recipient may provide legal assistance to a current eligible client in a rulemaking proceeding, consistent with the practices of the particular administrative official or body, on a particular application, claim or case directly involving the client's legal rights or responsibilities. Such assistance may be provided only if the program director or chief executive of such recipient has determined prior to such representation that the client or each such client is in need of relief that can be provided by such administrative official or body.

(c) An employee of a recipient may, upon the request of a current client or clients, communicate directly with Federal, State or local elected officials for the sole purpose of bringing specific and distinct legal problems to the attention of such officials. This provision authorizes written or oral communications notifying public officials or legislative committees of the client's problems and of the legal

obstacles to the client's obtaining judicial or administrative relief; testimony before pertinent legislative committees upon the specific legal problems of the client; or the provision of a legal analysis of the client's problems to officials. It does not authorize publicity or propaganda or any efforts to persuade members of the public to support or oppose the proposed legislation. Such communications may be made only if the project director or chief executive of such recipient has determined, prior to such communications—

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

(2) That appropriate judicial and administrative relief has been exhausted.

(d) No employee shall solicit a client for the purpose of making legislative or administrative representation possible.

(e) In connection with each communication authorized by paragraph (c) 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 (e) of this section;

(4) A retainer in the form specified in § 1611.8, setting forth the specific legal interest of each client at whose request the communication was undertaken and a statement by the client, insofar as not precluded by the client's inability to communicate, in the client's own words of the problem for which the client sought representation;

(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.

(f) The governing body of a recipient shall adopt a policy to guide the director of the recipient in determining when to approve a communications to a Federal, State or local official under paragraph (e) of this section. The policy adopted shall—

(1) Consistent with restrictions on disclosure of confidential information imposed by applicable law, require periodic reports to the governing body on the communications approved, which report shall include a statement on the exhaustion of appropriate 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; and

(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.

(g) Notwithstanding the prohibition in paragraph (c) 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 communications to elected officials requesting introduction of specific "private relief bills," which for purposes of this part mean bills allowing a specifically named persons or groups to make claims against a government for which there is no other remedy. The documentation required under paragraph (e) of this section shall be maintained in connection with such communications.

(h) Nothing in this or any other 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 current client about a new or proposed statute, executive order, or administrative regulation consistent with the provisions of § 1612.7; or

(3) Communicating directly or indirectly with the Corporation for any purpose.

§ 1612.6 Permissible activities undertaken pursuant to request of public officials.

(a) 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, an employee may respond to a request from a governmental agency, elected official, legislative body, committee, or member made to the employee or to a recipient to testify, draft or review legislation or to make representations to such agency, official, body, committee or members on a specific matter. This exception for responses to officials does not authorize communication with anyone other than the requesting party or an agent or employee of such party.

(b) 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.

(c) Recipients shall adopt procedures and forms to document compliance with this section. Such documentation shall include contemporaneous documentation by the recipient which states the type of representation or assistance requested by the public official and identifies the regulation, legislation, or executive or administrative order to be addressed.

§ 1612.7 Grassroots lobbying.

(a) No funds made available by the Corporation or by private entities shall be used for grassroots lobbying.

(b) No funds made available by the Corporation or by private entities shall be used to support the preparation, production, or dissemination of any article, newsletter, or other publication or written matter 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;

(2) The publication does not contain directions on how to lobby generally or on particular legislation;

(3) The recipient's project director, or his or her designee, has reviewed each publication produced by the recipient prior to its dissemination for conformity to these regulations;

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

(5) Such funds are used only for costs incident to the preparation, production, or dissemination of such publications to the Corporation, recipients, recipient staff and board members, private attorneys representing eligible clients, and eligible clients currently represented by a recipient with regard to a matter directly related to the legislation, as opposed to the public at large, or eligible clients generally.

§ 1612.8 Public demonstrations and activities.

(a) While carrying out legal assistance activities and while using resources provided by the Corporation, by private entities, or by a recipient, directly or through a subrecipient, no person shall—

(1) 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) Encourage, 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 carrying out legal assistance activities and while using resources provided by the Corporation, by private entities, or by a recipient, directly or through a subrecipient, no person shall at any time engage in or encourage others to engage in—

(1) Any rioting or civil disturbance;

(2) Any activity in violation of an outstanding injunction of any court of competent jurisdiction;

(3) Any other illegal activity;

(4) any intentional identification of the Corporation or any recipient with any political activity.

(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) Taking such action on behalf of his client as may be required by his professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.9 Training.

(a) No funds made available by the Corporation or by private entities may be used for the purpose of supporting or conducting training programs that—

(1) Advocate particular public policies; or

(2) Encourage or facilitate political activities, labor or antilabor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking; or

(3) Disseminate information about such policies or activities.

(b) 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, nothing in this section shall be construed to prohibit any training of attorneys or paralegal personnel necessary for preparing them—

(1) To provide adequate legal assistance to eligible clients;

(2) To advise any eligible client as to the nature of the legislative process in general as opposed to discussing a lobbying strategy for a particular bill;

(3) To inform any eligible client of his rights under any statute, order or regulation already enacted, or about the meaning or significance of particular bills; or

(4) To understand what activities are permitted or prohibited under relevant laws and regulations.

(c) No funds made available by the Corporation or by private entities may be used to pay for participation by any person or organization in training with regard to political or legislative activities, except for adjudicatory proceedings, or with regard to areas in which program involvement is prohibited pursuant to the provisions of the Act, of other applicable Federal law, or of Corporation regulations, guidelines, or instructions.

§ 1612.10 Organizing.

(a) No funds made available by the Corporation or by private entities may be used to initiate the formation, or to act as an organizer of any association, federation, labor union, coalition, network alliance, or any similar entity. No funds may be employed for any communication or any meeting to advocate that anyone organize or join any organization. The term "communication" does not include advice given an individual client during the course of legal consultation.

(b) 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, 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 of incorporation and bylaws.

§ 1621.11 Accounting and timekeeping.

(a) Recipients shall maintain separate records of the activities regulated in this part. These records shall document the direct and indirect expenses, time spent on, and the sources of the funds supporting, all legislative activities, regardless of the sources of the funds employed. In addition, recipients shall require all employees who are registered lobbyists or who devote any of their time to legislative activities, except for adjudicatory proceedings, to maintain a time log accounting for all working hours. The Corporation may at any time specify the manner in which these records are to be maintained.

(b) Recipients shall submit quarterly reports describing their legislative activities conducted pursuant to these regulations, together with such supporting documentation as required by the Corporation, consistent with restrictions on disclosure of confidential or privileged information imposed by applicable law of any state or other jurisdiction. The Corporation may at any time specify the form in which these reports are to be submitted.

§ 1612.12 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, 1618, 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. It shall also have authority to recover costs incurred by recipients as a result of activities proscribed by this part.

(c) A recipient shall—

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

(2) Establish procedures for determining whether an employee has violated a provision of this part; and shall establish a policy, a copy of which shall be transmitted to the Corporation, 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 of termination of employment;

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

(3) Inform the Office of Monitoring, Audit, and Compliance within 30 days of imposing any sanction on any person for violation of this part; and

(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 Monitoring, Audit, and Compliance.

§ 1612.13 Private Funds.

A recipient may use funds provided by private sources to engage in legislative or administrative lobbying if a government agency, elected official, or

legislative body, committee or member thereof is considering a measure directly affecting activities under the Act of the recipient or the Corporation.

Dated: July 25, 1986.

John H. Bayly, Jr.,

General Counsel.

[FR Doc. 86-17124 Filed 7-31-86; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-370; RM-4954, RM-5046]

Radio Broadcasting Services; Thief River Falls and Warroad, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 274C1 to Thief River Falls, MN, substitutes Channel 262C1 for 257A at Thief River Falls and modifies the license of Station KSNR to specify Channel 262C1 instead of 257A at Thief River Falls, MN, as the first and second wide area FM channels. This action is taken in response to requests filed by Theodore S. Storck and Olmstead Broadcasting, Inc. A site restriction 19.5 kilometers east is required for the allocation of Channel 274C1 at Thief River Falls, MN. In addition, Channel 223C1 is allocated to Warroad, MN as its first FM channel in response to a request filed by Daniel DeMolee. Canadian concurrence has been obtained for the allocation of the above channels. With this action, this proceeding is terminated.

DATES: Effective September 2, 1986, the window period for filing applications for Channel 274C1 at Thief River Falls, MN and Channel 223C1 at Warroad, MN, will open on September 3, 1986, and close on October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-370, adopted July 14, 1986, and released July 24, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: 47 C.S.C. 154, 303.

2. Section 73.202(b) is amended by revising the entry for Thief River Falls, MN, and adding a new entry for Warroad, MN to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

Community	Channel No.
Thief River Falls, MN	262C1, 274C1
Warroad, MN	223C1

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-17225 Filed 7-31-86; 8:45 am]

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