

uncompensated and do not fall within the prohibition. In addition, it is the Corporation's judgment that the requirement of a plaintiff's statement of facts would be a substantial impediment to the recruitment of *pro bono* lawyers. Besides, the fact that *pro bono* lawyers are volunteering their time provides some protection against their bringing frivolous law suits.

*Section 1636.5 Recipient Policies, Procedures and Recordkeeping*

This section requires recipients to establish policies and procedures to ensure compliance with this part and to maintain records sufficient to document compliance with this part.

Amendment to 45 CFR Part 1610 to Reference This Part and Parts 1637, 1638, 1639, and 1642

This interim rule also amends 45 CFR Part 1610 as published as an interim rule at 61 FR 41960 on August 13, 1996, to include references to this part and parts 1637, 1638, 1639 and 1642 in the definition of "Activity prohibited by or inconsistent with Section 504."

List of Subjects

*45 CFR Part 1610*

Grant programs—law, Legal services.

*45 CFR Part 1636*

Client identity, Grant programs, Legal services.

For reasons set forth in the preamble, 45 CFR Chapter XVI is amended as follows:

**PART 1610—[AMENDED]**

1. 45 CFR Part 1610, as published in the Federal Register as an interim rule at 61 FR 41960 is amended by adding Section 1610.2(b)(4), (9), (11), (12) and (14) as follows:

**§ 1610.2 Definitions**

\* \* \* \* \*

(b) \* \* \*

(4) Section 504(a)(8) and Part 1636 of this Chapter (Statement of facts and client identification);

\* \* \* \* \*

(9) Section 504(a)(13) and Part 1642 of this Chapter (Attorneys' fees);

\* \* \* \* \*

(11) Section 504(a)(15) and Part 1637 of this Chapter (Prisoner litigation);

(12) Section 504 (a)(16), as modified by Section 504(e), and Part 1639 of this Chapter (Welfare reform);

\* \* \* \* \*

(14) Section 504(a)(18) and Part 1638 of this Chapter (In-person solicitation).

2. Part 1636 is added to read as follows:

**PART 1636—CLIENT IDENTITY AND STATEMENT OF FACTS**

Sec.

1636.1 Purpose.

1636.2 Requirements.

1636.3 Access to written statements.

1636.4 Applicability.

1636.5 Recipient policies, procedures and recordkeeping.

Authority: Pub. L. 104-134, 110 Stat. 1321.

**§ 1636.1 Purpose.**

The purpose of this rule is to ensure that, when an LSC recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant or engages in pre-complaint settlement negotiations, the recipient identifies the plaintiff it represents and assures that the plaintiff has a colorable claim.

**§ 1636.2 Requirements.**

(a) When a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before a recipient engages in pre-complaint settlement negotiations on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

(1) identify each plaintiff by name in any complaint it files and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented; and

(2) prepare a dated written statement signed by each plaintiff, enumerating the particular facts supporting the complaint, insofar as they are known to the plaintiff when the statement is signed.

(b) The statement of facts must be written in English and, if necessary, in a language other than English that the plaintiff understands.

(c) In the event of an emergency, where the recipient reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of fact, provided that the statement is signed as soon as possible thereafter.

**§ 1636.3 Access to written statements.**

(a) Written statements of fact prepared in accordance with this part are to be kept on file by the recipient and made available to the Corporation or to any

Federal department or agency auditing or monitoring the activities of the recipient of the Corporation or to any auditor or monitor receiving Federal funds to audit or monitor on behalf of a Federal department or agency or on behalf of the Corporation.

(b) This part does not give any other party any right of access to the plaintiff's written statement of facts, either in the lawsuit or through any other procedure. Access by other parties to the statement of facts is governed solely by the discovery rules of the court in which the action is brought.

**§ 1636.4 Applicability.**

This part applies to cases for which private attorneys are compensated by the recipient as well as to those cases initiated by the recipient's staff.

**§ 1636.5 Recipient policies, procedures and recordkeeping.**

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

*Senior Counsel for Operations & Regulations.*

[FR Doc. 96-21666 Filed 8-28-96; 8:45 am]

BILLING CODE 7050-01-P

**45 CFR Part 1612**

**Restrictions on Lobbying and Certain Other Activities**

**AGENCY:** Legal Services Corporation.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule completely revises the Legal Services Corporation's ("Corporation" or "LSC") regulation on lobbying, rulemaking and other restricted activities. It is intended to implement provisions in the Corporation's FY 1996 appropriations act which prohibit recipients from engaging in any agency rulemaking, in legislative or lobbying activity or in advocacy training. The interim rule also implements statutory exceptions to the prohibitions on rulemaking and lobbying, which permit recipients to comment in public rulemaking, respond to requests from legislative and administrative bodies, and engage in State and local fund raising activities when using non-LSC funds. Finally, the interim rule continues the pre-existing prohibitions on participation in public

demonstrations and organizing activities. Although this interim rule is effective upon publication, the Corporation solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

**DATES:** This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel (202) 336-8910.

**SUPPLEMENTARY INFORMATION:** On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested LSC staff to prepare an interim rule to implement §§ 504 (a)(2), (3), (4), (5), (6) and (12) and 504 (b) and (e) of the Corporation's FY 1996 appropriations act, 110 Stat. 1321(1996), prohibiting recipients from engaging in rulemaking, lobbying and advocacy training activities. The Committee held hearings on staff proposals on July 10 and 19, and the Board adopted this interim rule on July 20 for publication in the Federal Register.

The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and which carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the rule for review and consideration by the Committee. After receipt of written public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

A section-by-section discussion of this interim rule is provided below.

#### *Section 1612.1 Purpose*

The purpose of this rule is to ensure that LSC recipients and their employees do not engage in certain activities

banned by the Corporation's FY 1996 appropriations act, 110 Stat. 1321, including rulemaking, lobbying, grassroots lobbying, and advocacy training. The rule also continues existing provisions of the LSC Act that prohibit participation in public demonstrations, strikes, boycotts and organizing activities. Finally, the rule also provides guidance on when recipients may participate in public rulemaking, respond to requests from legislative and administrative bodies, and seek funds from State and local legislative bodies and administrative agencies using non-LSC funds.

#### *Section 1612.2 Definitions*

The rule significantly revises the definitions that were used in prior rules in order to reflect the new statutory restrictions and thus ensure that recipients do not engage in prohibited activity and to provide greater clarity about the scope of the restrictions. In addition, definitions have been revised or eliminated because they are no longer necessary or the prior definition defied the common sense usage of terms (such as the term "legislation," which was defined to include administrative rulemaking).

"Grassroots lobbying" is defined to prohibit all communications and participation in activities which are designed to influence the public to contact public officials to support or oppose pending or proposed legislation. The new definition does not use the term "publicity or propaganda" which was used in prior regulations, because the FY 1996 appropriations act, 110 Stat. 1321, does not use these terms. However, the new definition of grassroots lobbying incorporates the definition of "publicity or propaganda" that was previously used. The definition also provides that "grassroots lobbying" does not include communications which are limited solely to reporting the content or status of pending or proposed legislation or regulations, or the effect which such legislation or regulations may have on eligible clients or on their legal representation.

"Legislation" means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. 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). The Corporation also retained the long-standing interpretation that "legislative bodies" do not include Indian Tribal Councils.

"Public policy" was defined to include an overall plan embracing the general goals and procedures of any governmental body as well as pending or proposed statutes, rules, and regulations. This term is found in this rule's section on training and is also found in the definition of "legislation." As used in § 1612.8 in regard to training, the modification of the definition from the prior regulation ensures that, consistent with current law, information on existing laws and regulations may be disseminated during training programs.

The definition of "political activity" is eliminated from this regulation, because the provision in which it was used in the prior rule has been deleted. The provision was deleted because it deals with electoral and partisan political activities, not lobbying activities, and is already in another LSC regulation, 45 CFR part 1608.

"Rulemaking" is defined to include the customary procedures that are used by an agency to develop and adopt proposals for the issuance, amendment or revocation of regulations, or other statements of general applicability and future effect, such as notice and comment rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies as well as negotiated rulemaking. Also "rulemaking" includes adjudicatory proceedings that are formal adversarial proceedings intended to formulate or modify an agency policy of general applicability and future effect.

To clarify that recipients can participate in administrative proceedings adjudicating the rights of individuals, "rulemaking" does not include administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as social security hearings, welfare fair hearings or granting or withholding of licenses.

In addition, "rulemaking" does not include litigation or any other judicial proceedings challenging agency rules, regulations, guidelines, policies or practices. The Committee Reports accompanying H.R. 2076, the predecessor legislation to 110 Stat. 1321, the debate on the Senate consideration of the Domenici Amendment [141 *Cong. Rec.* 14586 et seq. (Sept. 24, 1995)] and the provisions of the McCollum-Stenholm bill, H.R. 1806, from which the restrictions on lobbying and rulemaking were taken, distinguish "lobbying" and "rulemaking" from litigation and did not contemplate prohibiting litigation

under §§ 504(a) (2)–(6) of 110 Stat. 1321. Finally, the prohibition on rulemaking was not intended to prohibit recipients from communicating with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

The term "public rulemaking," which is used in § 504(e) of 110 Stat. 1231, is defined as any rulemaking proceeding that is open to the public. The term would include proceedings that are the subject of (1) notices of proposed rulemaking published in the Federal Register or similar State or local journals, (2) announcements of public hearings on proposed rules or notices of proposed rulemaking, including those that are routinely sent to interested members of the public or (3) other similar notifications to members of the public.

The term "similar procedure," which is used in the prohibition on legislative lobbying in § 504(a)(4) of 110 Stat. 1321, is defined to mean a legislative process for the consideration of matters which by law must be determined by a vote of the electorate.

#### *Section 1612.3 Prohibited Legislative and Administrative Activities*

This section sets out the broad prohibitions on lobbying and rulemaking of §§ 504(a) (2)–(6) of 110 Stat. 1321. These prohibitions are far more extensive than those included in prior appropriations' provisions or in the LSC Act, which permitted rulemaking activity and direct contact with legislators on behalf of clients or when engaged in self-help lobbying. The prohibitions of 110 Stat. 1321 prohibit any lobbying or rulemaking activity.

Paragraph (b) sets out the prohibitions on rulemaking and efforts to influence executive orders. Under the prohibition, recipients cannot participate in agency rulemaking proceedings such as is done through notice and comment rulemaking, and adjudications intended to formulate or modify agency policy.

Paragraph (c) tracks § 504(a)(6) of 110 Stat. 1321, and provides that recipients may not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device associated with an activity prohibited in paragraphs (a) and (b) in this section.

#### *Section 1612.4 Grassroots Lobbying*

This section sets out the absolute prohibition on grassroots lobbying by a recipient and its employees. There is no exception to the prohibition on

grassroots lobbying. For example, none of the activities permitted under § 1612.6 may include grassroots lobbying.

#### *Section 1612.5 Permissible Activities Using Any Funds*

Because the prohibitions on lobbying and rulemaking are extensive and differ from past restrictions, the interim regulation seeks to clarify the activities that are not included within the prohibition. Previous LSC regulations on lobbying and rulemaking also listed activities that were not prohibited. Paragraph (a) provides that recipients may represent eligible clients in administrative agency proceedings that are intended to adjudicate the rights of an individual client, such as welfare and food stamp fair hearings, Social Security or SSI hearings, public housing hearings, veterans benefits hearings, unemployment insurance hearings and similar administrative adjudicatory hearings or negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

Paragraph (b) provides that an employee of a recipient may initiate or participate in any litigation challenging agency rules, regulations, guidelines or policies, unless, of course, such litigation is otherwise prohibited by law or other Corporation regulations, such as part 1639 on welfare reform or part 1617 on class actions. The legislative history of the lobbying restrictions does not suggest that they were intended to include litigation challenging agency regulations or legislation.

Paragraph (c) includes a list of some of the other activities that are not prescribed by the prohibitions on lobbying or rulemaking. The listing includes many permissible activities that have been included in prior regulations and others about which the Corporation has received inquiries. First, recipients and employees of recipients can communicate with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies.

Second, recipients and their employees can inform clients, other recipients or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations. Thus recipients can advise clients about the effect of agency rules and policies, analyze and explain proposed changes and their effect, and advise their clients about their right to participate on their

own behalf in agency rulemaking proceedings.

Third, recipients and their employees may communicate directly or indirectly with the Corporation for any purpose, including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies. Because the restriction applies to contacts with government agencies, recipients can contact LSC about any matter and comment on LSC rules, regulations or policies, since the Corporation is not a department, agency or instrumentality of the Federal Government. 42 U.S.C. 2996d(e)(1).

Fourth, recipients and their employees can participate in meetings or serve on committees of bar associations provided that no recipient resources are used to support prohibited legislative or rulemaking activities and the recipient is not identified with activities of bar associations that include such prohibited activities. This is a change from the current provisions on participation in bar association activities, which permit a recipient's employees to use recipient funds to participate in bar activities involving otherwise prohibited advocacy, provided the employee does not engage in grassroots lobbying. This change was made because the statutory prohibitions on lobbying and rulemaking in 110 Stat. 1321 are far more extensive and restrictive than in past legislation. This rule allows recipient attorneys to participate in bar association activities, including holding an official position in a bar association, because they participate as members of the legal profession rather than as staff attorneys. Nevertheless, the Corporation recognizes that there will be some situations where bar association activities will require the staff of a recipient to decline participation or to participate on the employee's own time.

Fifth, recipients and their employees may advise a client of the client's right to communicate directly with an elected official. For example, recipient staff may advise specific clients whom they are representing of the identity of their elected representatives are, about how legislation is enacted, and about the procedures for testifying. However, providing advice does not authorize recipient staff to prepare testimony for their clients or to conduct formal training sessions for clients on how to participate in lobbying or rulemaking.

Sixth, recipients and their employees may participate in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility or disciplinary rules or participating on committees appointed

by the courts to advise the courts about judicial matters. However, a recipient cannot become involved in any attempt to influence a legislative body confirming judicial nominations.

#### *Section 1612.6 Permissible Activities Using Non-LSC Funds*

This section sets out activities authorized by §§ 504 (b) and (e) of the Corporation's FY 1996 appropriation's act with non-LSC funds. Paragraphs (a) through (e) set out the parameters of § 504(e) and set out the records required to be maintained by recipients responding to requests from appropriate officials. Paragraph (a) provides that employees of recipients may use non-LSC funds from sources other than the Corporation to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient. Under no circumstances may recipients engage in any grassroots lobbying when responding to a request for information or testimony.

Paragraph (b) provides that responses to requests may be distributed only to parties that make the request or to other persons or entities to the extent that such distribution is required to comply fully with the request. For example, agencies may require that those requested to appear before an agency proceeding comply with agency or legislative rules regarding how written testimony is to be given to a legislative committee.

Paragraph (c) includes the statutory restriction that no employee of the recipient shall solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

In order to ensure compliance with § 504(e), paragraph (d) requires that recipients maintain copies of all written requests received by the recipient and any written responses provided and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

Paragraph (e) provides that recipients may provide oral or written comment to an agency and its staff in a public rulemaking proceeding when using non-LSC funds. This provision is included in § 504(e). Recipients may prepare written comments in response to a Notice of Proposed Rulemaking in the Federal Register, in response to a similar notice in a state or local publication, or in response to any notice to the general public regarding a rulemaking proceeding that is public

under State or local law. Commenting in public rulemaking, however, does not permit a recipient to engage in grassroots efforts to encourage comment by other recipients or other persons.

Paragraph (f) sets out the provision of § 504(b), 110 Stat. 1321, on contacts with State and local government agencies to seek funds for program activities when using non-LSC funds. Recipients may contact, communicate with, or respond to a request from a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient. It should be noted that writing grant proposals in response to a request for proposals is not covered by this section and is not prohibited by this part. Both LSC and non-LSC funds may be used for this activity.

#### *Section 1612.7 Public Demonstrations and Activities*

This section prohibits participation in public demonstrations and related activities. Paragraph (a) prohibits any recipient employee from participating in public demonstrations, picketing, boycotts, or strikes (except as permitted by law in connection with the employee's own employment situation) or encouraging, directing, or coercing others to engage in such activities during working hours, or while providing legal assistance or representation that is funded with LSC or private funds. This section is similar to previous regulations, but the text was rewritten to set out the prohibition more clearly.

Paragraph (b) sets out prohibitions on employee activities at any time, whether during working hours or not. These prohibitions apply to any recipient employee and apply regardless of what source of funds is used for the employee's compensation. Thus, employees of a recipient may not engage in or encourage others to engage in (1) any rioting or civil disturbance; (2) any activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or (3) any other illegal activity that is inconsistent with an employee's responsibilities under the LSC Act, appropriation law, Corporation regulation, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

Minor changes in the regulatory provisions were made from the previous rule. First, the prohibition on identification of the Corporation or any

recipient with any political activity was removed from part 1612 because an identical prohibition is included in 45 CFR § 1608.4(b). In addition, the regulatory language used in § 1612.7(b)(2) now explicitly provides that it is a court, and not LSC, that should determine whether there has been a violation of an outstanding injunction. Finally, the regulation clarifies in § 1612.7(b)(3) that the prohibition against the participation by employees in other illegal activity refers to activity that violates the LSC Act or other appropriate law or the rules of professional responsibility in the jurisdiction where the recipient is located or the employee practices law. By clarifying what activity is proscribed, § 1612.7(b)(3) gives realistic guidance to recipients about what illegal activity would result in a violation of the LSC Act and what employee activity recipients would have to police.

Consistent with the longstanding regulatory provisions, paragraph (c) provides that the restrictions on public demonstrations, strikes and boycotts do not prohibit an attorney working for or paid by a recipient 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 a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

#### *Section 1612.8 Training*

This section implements the prohibitions on public policy advocacy training in § 504(a)(12) of 110 Stat. 1321. Paragraph (a) sets out the prohibition on advocacy training.

Paragraph (b) tracks other provisions of § 504(a)(12) and provides that attorneys or paralegals may be trained to prepare them to (1) provide adequate legal assistance to eligible clients and (2) inform any eligible client of the client's rights under any statute, order or regulation already enacted, or about the meaning or significance of particular bills. In previous regulations on training, there was an explicit statement that it was permissible to train attorneys and paralegals to understand what activities are permitted or prohibited under relevant laws and regulations. This language was removed as unnecessary, since recipient staff must be trained on what they can and cannot do under LSC regulations and applicable law.

Paragraph (c) includes a final restriction to address a problem that may arise in training events sponsored or conducted by recipients or their employees. It provides that recipients or

their employees may not conduct or participate in training programs that are designed to train participants in activities prohibited by the Act, other applicable Federal law, or Corporation regulations, guidelines or instructions.

#### *Section 1612.9 Organizing*

This section implements § 1007(b)(7), 42 U.S.C. 2996f(b)(7), of the LSC Act which prohibits organizing activities. It is essentially the same as in the prior rule but has been restructured for easier reading. Paragraph (a) provides that 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. Paragraph (b) includes the two existing exceptions that were included in prior regulations. It first provides that the prohibition on organizing does not apply to informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed. Thus, recipients can establish or participate in task forces and other meetings of advocates to share information and develop more effective approaches to representation in particular subject areas. Paragraph (b) also provides that the prohibition does not apply to organizations composed exclusively of eligible clients formed for the purpose of advising a legal services programs about the delivery of legal services. Finally, paragraph (c) provides that the organizing prohibition does not 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.

#### *Section 1612.10 Recordkeeping and Accounting for Activities Funded With Non-LSC Funds*

This section implements § 504(a)(6) of 110 Stat. 1321. Thus, under paragraph (a) no LSC funds may be used to pay for administrative overhead or related costs associated with any activity permitted to be undertaken with non-LSC funds by § 1612.6.

Paragraph (b) continues existing practice that requires recipients to maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

Paragraph (c) provides that recipients shall submit semi-annual reports describing their non-LSC funded legislative and rulemaking activities

conducted pursuant to these regulations under § 1612.6, together with such supporting documentation as specified by the Corporation. The only change from existing policy is that the period for reporting such activities has been changed from quarterly to semi-annually in order to reduce the administrative burdens on recipients.

#### *Section 1612.11 Recipient Policies and Procedures*

A new section was added to require that recipients adopt written policies and procedures to guide the recipient's staff in compliance with the requirements of this part.

#### *Additional Changes*

The prior rule, which is superseded by this interim regulation, included § 1612.12, which set out enforcement procedures for Part 1612. Section 1612.12 was deleted because the Corporation will be developing a comprehensive enforcement regulation that will address enforcement of all regulations and restrictions. Section 1612.13, permitting the use of private funds for certain lobbying activities, was also deleted, because, under 110 Stat. 1321, all funds of a recipient are restricted and the statutory exceptions to the prohibitions in § 1612.6 make no distinction between private funds and non-LSC public funds.

#### List of Subjects in 45 CFR Part 1612

Civil disorders, Grant program—Law, Legal services, Lobbying.

For the reasons set forth in the preamble, LSC revises 45 CFR Part 1612 to read as follows:

### **PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES**

Sec.

- 1612.1 Purpose.
- 1612.2 Definitions.
- 1612.3 Prohibited legislative and administrative activities.
- 1612.4 Grassroots lobbying.
- 1612.5 Permissible activities using any funds.
- 1612.6 Permissible activities using non-LSC funds.
- 1612.7 Public demonstrations and activities.
- 1612.8 Training.
- 1612.9 Organizing.
- 1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.
- 1612.11 Recipient policies and procedures.

Authority: Sections 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e), Pub. L. 104-134, 110 Stat. 1321; 42 U.S.C. 2996e(b)(5); 2996f(a) (5) and (6); 2996f(b) (4), (6) and (7), and 2996g(e).

#### **§ 1612.1 Purpose.**

The purpose of this rule is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The rule also provides guidance on when recipients may participate in State or local fund raising or in public rulemaking, and when they may respond to requests of legislative and administrative officials using non-LSC funds.

#### **§ 1612.2 Definitions.**

(a)(1) Grassroots lobbying 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 to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote. It also includes the provision of financial contributions by recipients to or participation by recipients in any demonstration, march, rally, fund raising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) Grassroots lobbying does not include communications which are limited solely to reporting the content or status of pending or proposed legislation or regulations or the effect which such legislation or regulations may have on eligible clients or on their legal representation.

(b) Legislation means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, the ratification of treaties and intergovernmental agreements, approval of appointments and budgets, 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; nor does it include legislation adopted by an Indian Tribal Council.

(c) Public policy means an overall plan embracing the general goals and procedures of any governmental body

and pending or proposed statutes, rules, and regulations.

(d)(1) Rulemaking means any agency process for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

(i) The customary procedures that are used by an agency to formulate and adopt proposals for the issuance, amendment or revocation of regulations or other statements of general applicability and future effect, such as "notice and comment" rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies and negotiated rulemaking; and

(ii) adjudicatory proceedings that are formal adversarial proceedings to formulate or modify an agency policy of general applicability and future effect.

(2) Rulemaking does not include:

(i) administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as social security hearings, welfare fair hearings or granting or withholding of licenses;

(ii) communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

(e) Public rulemaking means any rulemaking proceeding or portion of such proceeding or procedure that is open to the public through notices of proposed rulemaking published in the Federal Register or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) The term similar procedure refers to a legislative process by which matters must be determined by a vote of the electorate.

#### **§ 1612.3 Prohibited legislative and administrative activities.**

(a) Except as provided in §§ 1612.5 and 1612.6, recipients shall not attempt to influence—

(1) The passage or defeat of any legislation or constitutional amendment;

(2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;

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

(b) Except as provided in §§ 1612.5 and 1612.6, recipients shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order.

(c) Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in paragraphs (a) and (b) in this section.

#### **§ 1612.4 Grassroots lobbying.**

A recipient shall not engage in any grassroots lobbying activity.

#### **§ 1612.5 Permissible activities using any funds.**

(a) A recipient may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities including pre-litigation negotiation and negotiation in the course of litigation.

(b) A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this Part is intended to prohibit a recipient 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 clients, other recipients, or attorneys representing eligible clients, about new or proposed statutes, executive orders, or administrative regulations;

(3) Communicating directly or indirectly with the Corporation for any purpose including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies;

(4) Participating in meetings or serving on committees of bar associations, provided that no recipient resources are used to support prohibited legislative or rulemaking activities and the recipient is not identified with activities of bar associations that include such prohibited activities;

(5) Advising a client of the client's right to communicate directly with an elected official; or

(6) Participating in activity related to the judiciary, including the promulgation of court rules, rules of professional responsibility and disciplinary rules.

#### **§ 1612.6 Permissible activities using non-LSC funds.**

(a) If the conditions of paragraphs (b) and (c) of this section are met, recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to—

(1) Testify orally or in writing;

(2) Provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation;

(3) Testify before or make information available to commissions, committees or advisory bodies; or

(4) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561 *et seq.*, or comparable State or local laws.

(b) Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that make the request or to other persons or entities only to the extent that such distribution is required to comply with the request.

(c) No employee of the recipient shall solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

(d) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

(e) Recipients may provide oral or written comment to an agency and its staff in a public rulemaking proceeding using non-LSC funds.

(f) Recipients may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

#### **§ 1612.7 Public demonstrations and activities.**

(a) During working hours, while providing legal assistance or

representation to the recipient's clients or while using resources provided by the Corporation or by private entities, no employee of a recipient 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.

(b) No employee of a recipient shall at any time engage in or encourage others to engage in any:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Corporation regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

(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 a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

#### **§ 1612.8 Training.**

(a) A recipient may not support or conduct training programs that—

(1) Advocate particular public policies; or

(2) Encourage or facilitate political activities, labor or anti-labor 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) Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them—

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

(2) To provide advice to any eligible client as to the legal rights of the client.

(c) No funds of a recipient shall be used to train participants to engage in activities prohibited by the Act, other applicable Federal law, or Corporation regulations, guidelines or instructions.

#### **§ 1612.9 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.

(b) This section shall not be construed to apply to:

(1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or

(2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

(c) Recipients and their employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

#### **§ 1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.**

(a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.

(b) Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

(c) Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6 of these regulations, together with such supporting documentation as specified by the Corporation.

#### **§ 1612.11 Recipient policies and procedures.**

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,  
*Senior Counsel for Operations and Regulations.*

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### **45 CFR Part 1620**

#### **Priorities in Use of Resources**

**AGENCY:** Legal Services Corporation.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule completely revises the current Legal Services Corporation's ("Corporation" or "LSC") regulation concerning priorities. The revisions are intended to implement a

restriction contained in the Corporation's FY 1996 appropriations act, which prohibits LSC recipients from expending resources on activities that are outside their specific priorities.

Although this rule is effective upon publication, the Corporation solicits public comment in anticipation of adoption of a final rule at a later time.

**DATES:** This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, (202) 336-8910.

**SUPPLEMENTARY INFORMATION:** On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 504(a)(9), a restriction in the Corporation's FY 1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), which prohibits LSC recipients from expending resources on activities that are outside their specific priorities. The Committee held hearings on staff proposals on July 8 and 19, and the Board adopted this interim rule on July 20 for publication in the Federal Register. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and which carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the interim rule for review and consideration by the Committee. After receipt of written public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

Generally, this rule is revised to prohibit any recipient from expending time or resources on cases or matters that are not within its written priorities. The current regulation, which has not