

with the specific purposes for which the tribal funds were provided.

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with section 504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with section 504.

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of this chapter, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with section 504.

§ 1610.5 Notification.

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides written notification to the source of the funds that the funds may not be expended for any purpose or activity prohibited under this part.

(b) A recipient is not required to provide such notification for contributions of less than \$250.

§ 1610.6 Applicability.

(a) The prohibitions referred to in §§ 1610.2(a)(3) (Criminal proceedings), (a)(4) (Actions challenging criminal convictions) or (b)(11) (Prisoner litigation) of this part will not apply to the non-LSC funds of the attorney, law firm, entity of attorneys, or the public defender program or project and will not apply to funds received to support criminal or related cases accepted pursuant to a court appointment, if the Corporation or a recipient makes a contract or other arrangement for the provision of civil legal assistance with:

(1) A private attorney, law firm or state or local entity of attorneys that represents clients in criminal cases or matters,

(2) A legal aid organization that provides criminal and related legal assistance through a separately funded public defender program or project; or

(3) A legal aid organization that accepts criminal or related cases pursuant to a court appointment.

(b) If a recipient uses non-LSC funds to enter into a contract or other arrangement with another person or

entity for the provision of civil legal assistance, the restrictions referred to in this part will apply to the funds transferred, but will not apply to the other non-LSC funds of the person or entity.

(c) Except as provided in paragraph (a) of this section, this part does not apply to a transfer of LSC funds. Transfer of LSC funds is governed by 45 CFR part 1627.

§ 1610.7 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.

Dated: August 6, 1996.
Victor M. Fortuno,
General Counsel.
[FR Doc. 96-20414 Filed 8-12-96; 8:45 am]
BILLING CODE 7050-01-P

45 CFR Part 1617

Class Actions

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 concerning class actions. The revisions are intended to implement a restriction contained in the Corporation's FY 1996 appropriations act which prohibits the involvement of LSC recipients in class actions. Although this 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: The interim rule is effective on August 13, 1996. Comments must be submitted on or before September 12, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St, 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 Section 504(a)(7), a restriction in the Corporation's FY 1996 appropriations act, Public Law 104-134, 110 Stat. 1321 (1996), which prohibits involvement of

LSC recipients in class actions. The Committee held public 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 interim 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.

Part 1617 is completely revised by this interim rule. Generally, this interim rule prohibits any recipient involvement in class actions. The prior regulation, which had not been revised since 1976, had allowed recipients to provide assistance in class actions as long as certain procedural requirements were met. No such involvement is allowed under this new rule.

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

Section 1617.1 Purpose

The purpose of this rule is to prohibit involvement by LSC recipients in class actions.

Section 1617.2 Definitions

The definition of "class action" is revised to include only the nature of a class action. The prior definition also reached the issue of types of involvement in a class action, including involvement in various stages of a class action. Those issues are now included in the definition of "initiating or participating in a class action."

The definition of "class action" defers to widely accepted Federal and local court rules and statutory definitions. Thus, a class action for the purposes of this part is a "class action" pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure

governing the action in the court where it is filed.

"Initiating or participating in any class action" is defined to clarify that all types of involvement are prohibited at various stages of a class action prior to an order granting relief. Recipients may not initiate a class action or participate in one initiated by others, either at the trial or appellate level. Nor may recipients continue involvement in a case already begun that is later certified or otherwise determined by the court, *sua sponte* or on a motion by a party, to be a class action. In addition, recipients may not act as *amicus curiae* or co-counsel in a class action or intervene in a class action on behalf of individual clients who seek to withdraw from, intervene in, opt out of, modify, or challenge the adequacy of the representation of a class. Finally, recipients may not represent defendants in a class action.

Certain situations are not within the definition and are thus not prohibited by this rule. For example, recipients may advise clients about the pendency of a class action or its effect on the client and what the client would need to do to benefit from the case. Other actions related to a class action are also not included, but only because they involve actions taken after liability, if any, has been determined and an order of relief has been entered. Accordingly, recipients may be involved in non-adversarial monitoring of an order granting relief or representation of an individual client seeking the benefit of the order, provided that any such involvement is only on behalf of an individual client and does not involve representation of an entire class. In addition, if the class action resumes its adversarial nature for any reason, recipients would need to attempt withdrawal in order to avoid participating in a class action.

Finally, a class action would not include other forms of action, even if they result in relief that benefits numbers of clients or resolves issues that affect others in addition to the client, provided that the case is not also a class action as defined by this rule. For example, this rule does not apply to mandamus or to injunctive or declaratory relief actions, unless such actions are filed or certified as class actions.

The Committee especially seeks comments from recipients factually describing other situations which recipients consider to be outside the prohibition on initiating or participating in a class action that should be described in the language of the rule itself.

Section 1617.3 Prohibition

This section prohibits LSC recipients from initiating or participating in any class action.

Section 1617.4 Recipient Policies and Procedures

This section requires recipients to adopt written policies and procedures to guide the recipient's staff in ensuring compliance with this rule.

List of Subjects in 45 CFR Part 1617

Grant Programs—law, Legal services.

For reasons set out in the preamble, LSC revises 45 CFR part 1617 to read as follows:

PART 1617—CLASS ACTIONS

Sec.

- 1617.1 Purpose.
- 1617.2 Definitions.
- 1617.3 Prohibition.
- 1617.4 Recipient policies and procedures.

Authority: 29 U.S.C. 2996e(d)(5); 110 Stat. 1321 (1996).

§ 1617.1 Purpose.

This part is intended to ensure that LSC recipients do not initiate or participate in class actions.

§ 1617.2 Definitions.

(a) *Class action* means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

(b) *Initiating or participating in any class action* means any involvement at any stage of a class action prior to an order granting relief, including acting as *amicus curiae*, co-counsel or providing legal assistance to an individual client who seeks to withdraw from, intervene in, opt out of, modify, or challenge the adequacy of the representation of a class. It does not include non-adversarial monitoring of an order granting relief or individual representation of a client seeking to obtain the benefit of relief ordered by the court.

§ 1617.3 Prohibition.

Recipients are prohibited from initiating or participating in any class action.

§ 1617.4 Recipient policies and procedures.

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

Dated: August 6, 1996.

Victor M. Fortunato,

General Counsel.

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45 CFR Part 1632

Redistricting

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule completely revises the Legal Services Corporation's ("LSC" or "Corporation") regulation on redistricting to implement a new restriction contained in the Corporation's FY 1996 appropriations act, which extends the rule's prohibition on redistricting activities to funds formerly unrestricted. Although this 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 13, 1996. Comments must be submitted on or before September 12, 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. Fortunato, General Counsel, at (202) 336-8910.

SUPPLEMENTARY INFORMATION: The LSC regulation on redistricting that is revised by this interim rule allowed recipients to use some non-LSC funds on redistricting activities. Section 504(a)(1) of the Corporation's Fiscal Year 1996 appropriations act, Public Law 104-134, 110 Stat. 1321 (1996), prohibits the Corporation from providing financial assistance to any person or entity ("recipient") that makes available any funds, personnel or equipment for use in advocating or opposing any plan, proposal or litigation that is intended to or has the effect of altering, revising or reapportioning a legislative, judicial or elective district at any level of government, including influencing the timing or manner of the taking of a census. This legislative restriction prohibits recipient involvement in redistricting activities, regardless of the source of funds used for such activities.

On May 19, 1996, the Operations and Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") requested LSC staff to prepare