

technical support demonstrating compliance within the stack height regulations for the remaining sources; or

(2) Submittal, within the public comment period associated with this notice, of revised emission limitations as necessary to comply with the stack height regulations along with modelling analyses and other technical support; or

(3) Submittal, within the public comment period associated with this notice, of a schedule for final submittal of either (1) or (2) above.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 46 CFR Part 52

Air pollution control,
Intergovernmental relations.

Authority: 42 U.S.C. 7491-7642.

Dated: March 3, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 89-5887 Filed 3-13-89; 8:45 am]

BILLING CODE 6960-60-M

LEGAL SERVICES CORPORATION

45 CFR Part 1632

Redistricting

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: The Legal Services Corporation ("LSC" or "Corporation") has as its principal national goal the provision of basic day-to-day legal services to eligible poor individuals. As part of the implementation of this goal, LSC proposes to prohibit any recipient involvement in redistricting activities, as defined in the rule, because redistricting activities are not related to the delivery of basic day-to-day legal services to the poor and are intertwined with impermissible political activity. The proposed rule is intended to ensure that recipients refrain from becoming involved in any redistricting activity, since such activity is not consistent with the Corporation's principal national goal for the provision of legal assistance.

DATE: Comments must be submitted on or before April 13, 1989.

ADDRESS: Send comments to Timothy B. Shea, General Counsel, Legal Services

Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, (202) 863-1839.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2)(C) of the LSC Act requires the Corporation to establish goals for the provision of legal assistance. 42 U.S.C. 2996f(a)(2)(C). This section mandates that the Corporation ensure that recipients, "consistent with goals established by the Corporation," adopt procedures and implement local priorities for the provision of legal assistance, taking into account the relative needs of the eligible clients in the relevant service area. For the reasons set out here, redistricting activities are not consistent with the Corporation's goal that scarce resources be focused on meeting the basic day-to-day legal needs of eligible poor individuals.

Section 1007(a)(2)(C) of the Act requires that the Corporation ensure that its recipients, consistent with goals established by the Corporation, establish priorities for the provision of legal assistance. In setting such goals, the Congress specifically noted that the Corporation's establishment of national goals was "not intended to detract from the appropriate role of local programs" to consult local client communities. See H. Rep. No. 310, 95th Cong., 1st Sess. 11 (1977); see also S. Rep. No. 172, 95th Cong., 1st Sess. 13 (1977).

In the past, the Corporation has asserted this authority to establish national goals. See, e.g., LSC Final Decision to Terminate Funding to San Juan Legal Services, Inc. (Apr. 26, 1979) at 3 (citing Recommended Decision of Hearing Examiner, wherein the basis for the termination of funding was in part due to a failure to undertake litigation having a significant impact on eligible clients, in contravention of LSC's then established goals). The purpose of national goals is to provide perimeters to individual recipients, who in turn can set local priorities within those perimeters. Historically, recipients have been accorded substantial discretion in determining the areas to which they will devote resources. See 45 CFR Part 1620.

For the following reasons, the Corporation has determined that redistricting activities are not in accord with the Corporation's goal of focusing scarce resources on the basic day-to-day legal needs of eligible poor individuals. First, redistricting cases are not peculiar to the interests of the poor, since the relief sought would affect entire communities, which are composed of poor and non-poor individuals. Second, redistricting cases have not been

identified as a priority by LSC recipients. Third, recipient funds can be better used elsewhere, since alternative organizations are available to handle redistricting matters. Fourth, recipients would likely be competing with members of the private bar who handle matters such as these, since redistricting cases usually generate attorneys' fees. Finally, involvement in an activity that risks entanglement with political activities should be assiduously avoided by LSC recipients. The prohibition in this part is similar to that contained in section 6 of S. 2409 (1986), a bill introduced by Senators Hatch and Rudman to reauthorize the Legal Services Corporation. See 132 Cong. Rec. S5418 (1986).

Allocation of Resources. Redistricting is not peculiar to the interests of the poor because redistricting disputes usually involve entire communities, which include both poor and non-poor citizens. As the legislative history of the Act points out, the Corporation, in the establishment of national goals, is to ensure that the provision of legal assistance is made in the most effective manner and so as to have the greatest effect on the problems of the poor. Since the poor represent a minority, approximately 10 to 15 percent of the United States population, the group of eligible poor in most communities is relatively small. Since most redistricting cases are class actions, the putative plaintiff class often may consist of a majority of non-eligible individuals. Similarly, the relief sought in redistricting cases often would go to the non-poor. Even in redistricting cases involving discrimination issues, the relief sought would not always go primarily to eligible poor individuals, as only part of the protected minority may be eligible. Consequently, the expenditure of recipients' funds on redistricting activities would result in an allocation of resources for the benefit of non-eligible persons.

This rule is consistent with current priorities and practice requirements, since redistricting has not been identified as a priority by any LSC recipient. A compilation of the types of cases handled by LSC recipients in 1987 reveals that approximately 27 percent of the cases involved family matters, 21 percent involved housing matters, 18 percent involved income maintenance issues, and 12 percent were consumer related cases. See Legal Services Corporation 1987/1988 Fact Book at 46. However, the need for this rule is supported by the fact that, at other times, LSC recipients have committed substantial resources to redistricting

sues. As noted below, the Corporation estimates that more than 28,000 hours were devoted to handling redistricting cases from 1978 to 1984, years surrounding the 1980 census.

Alternative Resources. Redistricting activities are undertaken by numerous organizations, including the Mexican American Legal Defense Fund, the Southwest Voters Registration Project, Common Cause, the American Civil Liberties Union, the Native American Rights Fund, the NAACP, the Lawyers Committee for Civil Rights, the League of Women Voters, the Democratic National Committee, and the Republican National Committee. Consequently, there are other entities available to help aggrieved parties, poor and non-poor alike, who want to seek redress of any preceived malapportionment. Redistricting cases usually offer incentives to members of the private bar, since under the Voting Rights Act, 42 U.S.C. 1973, and the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. 1981 and 1988, the right to recover attorneys' fees is specifically provided to prevailing parties.

Subject to Abuse. In the past, involvement in redistricting activities by legal services recipients has been subject to abuse because legal services recipients have linked redistricting activities to obtaining favorable Congressional support for their objectives. One LSC recipient's grant proposal addressed the need to become involved in State and local redistricting matters in order to develop powerful allies for their clients in what the recipient viewed as a battle over the direction of legal services programs. Influencing redistricting in State and local legislative bodies clearly affects the political character of those legislative bodies.

In response to the requests made on April 11 and May 10, 1984, by the Senate Committee on Labor and Human Resources, LSC conducted a study of its grantees to determine their involvement in legislative redistricting activities arising out of the 1980 census. As a result of two separate monitorings and 34 responses to an LSC questionnaire that was mailed to all LSC programs, LSC estimates that at least 28,182 hours were spent handling legislative redistricting cases. Specifically, the LSC study found that LSC recipients, in spite of one recipient's assertion that clients rarely come to the office contending they have been "malapportioned", had sought resources for specialized computer equipment and a computer specialist to draw new election district boundaries to the recipients'

satisfaction. In addition, recipients hired lobbyists to work on reapportionment issues, yet had no documented request from an eligible client or elected official to undertake this activity. Further, recipients also orchestrated a State-wide effort of legal services programs to ensure elections of specific persons, who would in turn be used as powerful allies in anticipated battles over funding for legal services programs.

The LSC study also revealed that certain LSC recipients requested and received Federal funds from the Corporation to establish a Voting Rights Project center in connection with the 1980 census for the purpose of strengthening Mexican-American political power, yet had no request from an eligible client to do so. In addition, these recipients prepared a voting rights litigation manual that outlined how to select the "right" client for a redistricting battle and how to locate such a client. Since these redistricting activities were obviously conducted by legal services attorneys in pursuit of general policy goals (or even in their own self-interest), rather than in the vindication of individual clients' rights, it is clear that involvement in redistricting activity is subject to abuse and not consistent with the Corporation's principal national goal of providing basic day-to-day legal services to eligible poor individuals.

Risk of Undue Political Entanglement. The Legal Services Corporation Act declares that "to preserve its strength, the legal services program must be kept from the influence of or use by it of political pressures." 42 U.S.C. 2996. The LSC Act also specifically prohibits involvement in "any political activity." 42 U.S.C. 2996f(a)(6)(A). Involvement on the part of LSC recipients in redistricting activities is inherently political. The Supreme Court of the United States has held that "[p]olitics and political considerations are inseparable from redistricting and apportionment." *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973).

In separate instances, LSC recipients were involved in reapportionment cases with counsel for the Democratic and Republican parties, respectively. *Upham v. Seamon*, 456 U.S. 37 (1982); *Thornburg v. Gingles*, 478 U.S. 30 (1986). The Corporation makes no finding as to whether LSC recipients have aligned themselves with a particular political party, but believes that any such alignment is impermissible under the Act, since it constitutes political activity.

Competing Political Theories or Philosophies. Redistricting activities

seek political outcomes that are normally the product of the legislative process. Indeed, the Supreme Court has stated that courts "must defer to legislative judgments on reapportionment as much as possible." *Upham v. Seamon*, 456 U.S. 37, 39, *reh'g denied* 456 U.S. 938 (1982). LSC recipient involvement in such redistricting activities generally will cause program funds to be expended in support of one political philosophy, rather than another. In *Baker v. Carr*, 369 U.S. 186 (1962), Justice Frankfurter, in his dissent, stated "What is actually asked of the Court in this case is to choose among competing bases of representation—ultimately, really among competing theories of political philosophy—in order to establish an appropriate frame of government." *Id.* at 254.

Consequently, the Corporation finds that redistricting activities, as defined in this rule, are so unrelated to basic day-to-day needs of the eligible poor and so intertwined with impermissible political activity that the Corporation should not permit its recipients to be involved in such activities.

List of Subjects in 45 CFR Part 1632

Legal services.

For the reasons set out above, 45 CFR Chapter XVI is proposed to be amended by adding Part 1632 to read as follows:

PART 1632—REDISTRICTING

Sec.

- 1632.1 Purpose.
- 1632.2 Definitions.
- 1632.3 Prohibition.

Authority: 42 U.S.C. 2996f(a)(2)(C); 42 U.S.C. 2996f(a)(3); 42 U.S.C. 2996g(e) of the Legal Services Corporation Act.

§ 1632.1 Purpose.

This part is intended to ensure that funds available to recipients will be utilized to the maximum extent for the delivery of basic day-to-day legal services to eligible poor individuals. Involvement in redistricting activities does not constitute the provision of basic day-to-day legal services and is prohibited by this part.

§ 1632.2 Definitions.

(a) As used in this Part, "redistricting" means any effort, directly or indirectly, to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

(b) As used in this part, "advocating or opposing any plan" means any effort, whether by request or otherwise, even if

of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(c) As used in this part, "recipient" means any grantee or contractor receiving funds made available by the Corporation under sections 1006(a)(1) or 1006(a)(3) of the act. The term "recipient" includes subrecipient and

employees of recipients and subrecipients.

§ 1632.3 Prohibition.

Neither the Corporation nor any recipient shall be involved in or contribute or make available any funds, personnel, or equipment for use in advocating or opposing any plan,

proposal, or litigation intended to or having the effect of altering any redistricting at any level of government.

Date: March 9, 1989.

Timothy B. Shea,

General Counsel.

[FR Doc. 89-5827 Filed 3-13-89; 8:45 am]

BILLING CODE 7050-01-M