

of dues to a governmental body, and is not prohibited by this part.

Finally, this section expressly states that these new limitations on payment of dues apply only to the use of LSC funds.

Several provisions in the prior rule have been deleted because they are inconsistent with the new statutory prohibition. Thus, all references to the circumstances under which recipients could use LSC funds to pay for dues, and all references to procedures required of recipients before they could expend funds for certain payments of dues, are no longer applicable, because the new legislation prohibits the use of any LSC funds to pay dues. Thus, the provisions are no longer relevant.

*Section 1627.7 Tax Sheltered Annuities, Retirement Accounts and Pensions*

Section 1627.8 of the prior rule is now renumbered as § 1627.7.

*Section 1627.8 Recipient Policies, Procedures and Recordkeeping*

This new section requires recipients to establish policies and procedures and to maintain records to document compliance with the requirements of this part.

List of subjects in 45 CFR part 1627

Grant programs—law, Legal services.

For reasons set forth in the preamble, 45 CFR part 1627 is amended as follows:

**PART 1627—SUBGRANTS AND DUES**

1. The heading of part 1627 is revised to read as set forth above.

2. The authority citation for part 1627 is revised to read as follows:

Authority: Pub. L. 104–134, 110 Stat. 1321 42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e).

3. Section 1627.2(c) is revised to read as follows:

**§ 1627.2 Definitions.**

\* \* \* \* \*

(c) *Dues* as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

4. Section 1627.4 is revised to read as follows:

**§ 1627.4 Dues.**

(a) Corporation funds may not be used to pay dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of dues mandated as a requirement of practice by a governmental organization or to the payment of dues from non-LSC funds.

5. Section 1627.7 is revised to read as follows:

**§ 1627.7 Tax sheltered annuities, retirement accounts and pensions.**

No provision contained in this part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax sheltered annuity, retirement account, or pension fund.

6. Section 1627.8 is revised to read as follows:

**§ 1627.8 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. 96–21665 Filed 8–28–96; 8:45 am]  
BILLING CODE 7050–01–P

**45 CFR Part 1637**

**Representation of Prisoners**

**AGENCY:** Legal Services Corporation.

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

**SUMMARY:** This interim rule implements a restriction in the Legal Services Corporation's ("LSC" or "Corporation") FY 1996 appropriations act which prohibits recipients from participating in any litigation on behalf of prisoners. Although this interim rule is effective upon publication, the Corporation also 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 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 the LSC staff to prepare an interim rule to implement § 504(a)(15), a restriction in the Corporation's FY 1996 appropriations act, Public Law 104–134, 110 Stat. 1321 (1996), which

prohibits participation of LSC recipients in any litigation on behalf of a person incarcerated in a Federal, State or local prison. The Committee held hearings on staff proposals on July 9 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 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 prohibits any recipient involvement in litigation on behalf of persons who are incarcerated in a Federal, State or local prison.

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

*Section 1637.1 Purpose*

This rule is intended to ensure that LSC recipients do not litigate on behalf of any person who is incarcerated in a Federal, State or local prison.

*Section 1637.2 Definitions*

The statutory restriction prohibits LSC recipients from participating in any litigation on behalf of a person who is incarcerated in a Federal, State or local prison. To provide guidance regarding the reach of this restriction, the definition section defines the terms "incarcerated" and "Federal, State or local prison."

"Incarcerated" is defined as the involuntary physical restraint in a facility dedicated to such restraint of a person who has been arrested for or convicted of a crime. The term "Federal, State or local prison" refers to any facility maintained by a governmental authority for purposes of housing persons who are incarcerated.

The definition includes pre-trial detainees even though they are persons who have not been convicted of a crime.

Conversely, it does not apply to parolees and probationers, even though they are persons who have been convicted of a crime and who are still under the jurisdiction of the corrections department, because they are no longer physically held in custody in a prison. The definitions would include persons who are held involuntarily in a mental health facility if they were committed as a result of their arrest for a crime. On the other hand, a person held in a mental health facility because of a civil commitment would not be incarcerated and could be represented. The term would also not include juvenile offenders who have not been charged as adults because charges against juveniles are generally considered to be civil in nature.

Intermittent imprisonment poses close questions, which would be resolved on a case-by-case basis, determined by whether the person is predominantly incarcerated or free. For example, persons on furlough or on daytime work release should be considered to be incarcerated; however, persons serving a term of successive weekends in prison would be considered not to be incarcerated.

"Federal, State or local prison" is defined as a facility that is maintained under governmental authority for purposes of housing persons who are incarcerated. It includes private facilities under contract with State corrections departments to house convicted criminals. It also includes local jails.

#### *Section 1637.3 Prohibition*

This section states the prohibition on participation in litigation or administrative proceedings challenging the conditions of incarceration on behalf of a person who is incarcerated in a Federal, State or local prison.

#### *Section 1637.4 Change in Circumstances*

This section addresses the situation where there is a change of circumstances after litigation is undertaken on behalf of an eligible client and the individual becomes incarcerated. Such a change poses a practical problem on which the regulation seeks to provide guidance. When a program learns that its client has become incarcerated in a prison, it must use its best efforts to discontinue representation of the individual. Incarceration, however, may be of short duration and, in some circumstances, by the time the recipient has succeeded in withdrawing from the matter consistent with its ethical duty to the client, the incarceration may have ended and with

it the basis for the prohibition. To address such a situation, the rule provides an exception to the general prohibition. The exception would allow the recipient's attorney to continue representation when the anticipated duration of the incarceration is likely to be brief and the litigation will outlast the period of the incarceration. As a guideline, the recipient should consider incarceration which is expected to last less than 3 months to be brief.

When incarceration has occurred after litigation has begun and its duration is uncertain, there may be circumstances where a court will not permit withdrawal in spite of the recipient's best efforts to do so, generally because withdrawal would prejudice the client and is found to be inconsistent with the recipient's professional responsibilities. Whether continued representation in such circumstances would be deemed to violate the regulation will be determined on a case-by-case basis. Recipients should, however, document their efforts to withdraw and renew the effort if it appears that the incarceration will be of longer duration than originally anticipated.

During the period in which the recipient is seeking alternate counsel or other proper ways to conclude its involvement in such litigation, it may file such motions as are necessary to preserve its client's rights in the matter under litigation. The recipient may not file any additional, related claims on behalf of that client, however, unless failure to do so would jeopardize an existing claim or right of the client.

#### *Section 1637.5 Recipient Policies, Procedures and Recordkeeping*

This section requires recipients to establish written policies and procedures to ensure compliance with this part. Recipients are also required to maintain documentation adequate to demonstrate compliance with this part.

#### List of Subjects in 45 CFR Part 1637

Grant programs-law; Legal Services; Prisoner litigation.

For reasons set forth in the preamble, 45 CFR Chapter XVI is amended by adding part 1637 as follows:

### **PART 1637—RESTRICTION ON LITIGATION ON BEHALF OF PRISONERS**

Sec.

- 1637.1 Purpose.
- 1637.2 Definitions.
- 1637.3 Prohibition.
- 1637.4 Change in circumstances.
- 1637.5 Recipient policies, procedures and recordkeeping.

Authority: Pub. L. 104-134, 110 Stat. 1321, 42 U.S.C. 2996g(e).

#### **§ 1637.1 Purpose.**

This part is intended to ensure that recipients do not participate in any litigation on behalf of persons incarcerated in Federal, State or local prisons.

#### **§ 1637.2 Definitions.**

(a) *Incarcerated* means the involuntary physical restraint, in a facility dedicated to such restraint, of a person who has been arrested for or convicted of a crime.

(b) *Federal, State or local prison* means any facility maintained under governmental authority for purposes of housing persons who are incarcerated.

#### **§ 1637.3 Prohibition.**

A recipient may not participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison, whether as a plaintiff or as a defendant, nor may a recipient participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration.

#### **§ 1637.4 Change in circumstances.**

If, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

#### **§ 1637.5 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.*  
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### **45 CFR Part 1638**

#### **Restriction on Solicitation**

**AGENCY:** Legal Services Corporation.  
**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule is intended to implement a restriction contained in the Legal Services Corporation's ("LSC" or "Corporation") FY 1996