



Program Letter 12-1

TO: All LSC Grantee Executive Directors

FROM: Victor M. Fortuno *VMF*
Vice President & General Counsel

DATE: March 21, 2012

SUBJ: Restrictions on Lobbying Activities

LSC recipients should be aware of their rights and responsibilities under the LSC Act and regulations regarding lobbying activities. This memo is intended as a reminder of the restrictions applicable to your program as an LSC grantee. The restrictions discussed herein apply to activities of your program's employees and board members in their official capacities on behalf of your program. Activities undertaken by employees or board members in their personal capacity, or in a non-program related professional capacity (i.e., a board member acting on behalf of his/her employer in the scope of his/her employment), are not covered by the restrictions discussed herein.

The restrictions on lobbying are set forth at 45 C.F.R. Part 1612. All language in quotation marks below is from Part 1612, which implements statutory restrictions on lobbying found in the LSC Act and in LSC's FY 1996 appropriations act as carried forward in each subsequent appropriations act. The lobbying restrictions are summarized for your reference below, although we encourage you to review the complete regulation and statutory provisions. The full text of Part 1612 can be found at: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title45-vol4/pdf/CFR-2011-title45-vol4-part1612.pdf>. The LSC Act can be found at: <http://www.lsc.gov/about/lsc-act-other-laws/lsc-act>, and the FY 1996 appropriations act for LSC can be found at: <http://www.lsc.gov/laws-regulations/lsc-act-other-laws/lsc-appropriations-acts-committee-reports#FY1996>. In addition, 45 C.F.R. Part 1610 specifically prohibits the use of non-LSC funds for restricted lobbying activities, except as otherwise expressly permitted.

Under the appropriations act, the LSC Act, 45 C.F.R. Part 1612 and Part 1610, your program ***may not:***

- engage in grassroots lobbying, which includes:
 - making "any oral, written, or electronically transmitted communication or any advertisement, telegrams, 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 opposition to pending or proposed legislation,

regulations, executive decisions or any decision by the electorate on a measure submitted to it for a vote”

- “the provision of financial contributions by recipients to, or participation by recipients in, any demonstration, march, rally fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of [any proposed] legislation, rulemaking, decisions by executive bodies, or any decision by the electorate on a measure submitted to it for a vote”
- engage in, except as specifically permitted by law and set forth herein, prohibited legislative and administrative lobbying activity, which is the:
 - “attempt to influence the passage or defeat of any legislation or constitutional amendment”
 - “attempt to influence any initiative, referendum, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity”
 - “attempt to influence any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient of the Corporation”
 - “attempt to influence the conduct of oversight proceedings concerning the recipient or the Corporation”
 - “participat[ion] in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order”
 - “use [of] any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense associate with a activity prohibited [by the law or regulations]”

There are some exceptions to the prohibitions set forth above. Your program may undertake the following activities, *provided that you have non-LSC funds available for such purpose*:

- respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to [your program] to:
 - “testify orally or in writing”
 - “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”
 - “participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561 *et seq.*, of comparable State or local laws”

- “provide oral or written comments to an agency and its staff in a public rulemaking proceeding”
- “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 [your program], including a pending or proposed legislative or agency proposal to fund [your program]”

It is important to remember that your program may not “solicit or arrange for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking” and may distribute communications made in response to a request “only to the party or parties that made the request and to other persons or entities only to the extent necessary to comply with the request.” In addition, you are required to maintain copies of all requests for testimony or other information.

Your program *may* also undertake the following activities using any funds:

- “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”
- “initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations”
- “apply[] for a governmental grant or contract”
- “communicat[e] with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency’s rules, regulations, practices, or policies”
- “inform[] clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations”
- “communicat[e] directly or indirectly with the Corporation for any purpose including commenting upon existing or proposed LSC rules, regulations, guidelines, instructions and policies”
- “permit[] your employees to participate in bar association activities, provided that your resources are not used to support, and your program is not identified with, activities of bar associations that are devoted to activities prohibited [by 45 C.F.R. Part 1612]”
- “advise a client of the client’s right to communicate directly with an elected official”
- “participat[e] in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules”

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Thank you and I hope this information is helpful. If you have any specific questions related to particular activities, please feel free communicate them to us.