

45 CFR Part 1620**Priorities in Allocation of Resources****AGENCY:** Legal Services Corporation.**ACTION:** Final rule; amendment.

SUMMARY: On July 2, 1985, the Legal Services Corporation published proposed amendments to Part 1620 of its regulations for public comment. No comments were received. On September 6, 1985, the Board unanimously adopted the amendments to Part 1620 as published. Sixteen amendments are adopted. Of these amendments eight make major, substantive changes. One of these major amendments is a complete revision of the access provision. It clarifies that recipients, while attempting to ensure that all eligible clients have reasonably equal access to legal services, may consider special legal requirements and that they need not establish quota systems or follow arbitrary standards in determining how to allocate their resources. The seven other major amendments provide that, in setting priorities, the governing bodies of recipients should contact eligible clients; that the governing bodies should consider the relative importance of the particular legal problems of the individual clients of the recipient; that the governing bodies should consider whether legal efforts will result in efficient and economic delivery of legal services; that the requirement of an initial written report is eliminated; that priorities shall be set periodically; that annual reports summarizing the review of priorities shall be made available to the public; and that recipients should include in their annual report a copy of the case acceptance policies and proceedings established under § 1620.4. The other eight amendments are of a technical nature.

EFFECTIVE DATE: December 26, 1985.

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SUPPLEMENTARY INFORMATION: On July 2, 1985, the Legal Services Corporation published proposed amendments to Part 1620 of its regulations for public comment (50 FR 27326). No comments were submitted. On September 6, 1985, the Corporation's Board of Directors, acting upon recommendations of its Operations and Regulations Committee, adopted the amendments to that Part as published. The specific proposed amendments are discussed on a section-by-section basis below.

Section 1620.1 Purpose.

The letter "s" has been added to the word "view" in recognition that eligible clients, staff, the private bar and other interested persons may not have identical opinions about the policies and plans of a recipient. Recipients should consider the opinions of all of these groups. The last half of the section, beginning with the words "it is further" has been deleted. The Board viewed this language as simply a confusing and unnecessary attempt to summarize the rest of the regulation.

Section 1620.2 Procedure.

The first sentence of § 1620.2(a)(1) has been split in half by inserting a period (.) after the word "population", removing the words ", as well as" and inserting in their place the words "The appraisal shall also include". The words "to the extent feasible should include outreach to eligible clients which may include the use of such techniques as questionnaires and surveys." have been inserted after the words "interested persons". This change reflects the conviction of the Board that communicating with the client community is of vital importance in aiding recipients to establish priorities. To the extent feasible and cost-effective, programs should include outreach to eligible clients who might not otherwise be contacted, such as clients in nursing homes or other institutions, or who reside in locations that are isolated, difficult to reach or otherwise inaccessible. Programs may use a variety of techniques to conduct feasible outreach including, where practical, questionnaires and surveys.

In § 1620.2(a)(2), the words "in the development of the report required by § 1620.4(b)" have been removed. This change recognizes that former § 1620.4(b) has been deleted.

In paragraph 1620.2(b)(8) the word "individual" has been inserted in front of the word "clients" to encourage recipients to look at their clients not simply as a class subject to the uniform

application of standard remedies but as people with diverse legal problems each of which is worthy of careful and particular attention.

The word "and" at the end of paragraph (b)(7) of § 1620.2 has been removed and the punctuation mark and word "; and" have been added to the end of paragraph (b)(8) of § 1620.2 to accommodate the addition of a new paragraph (b)(9).

Finally, a new paragraph 1620.2(b)(9) has been added which is similar in language to section 1007(a)(3) of the Legal Services Corporation Act. The new paragraph would require recipients, in establishing their priorities, to consider whether "legal efforts will result in efficient and economic delivery of legal services." Programs should adopt priorities that enhance the efficient and economic delivery of legal services.

Section 1620.3 Access.

This section has been substantially revised to emphasize that recipients may take a flexible approach in dealing with the issue of client access to legal services. It must, however, be read in the context of the entire regulation. Programs may set priorities that favor certain types of services or cases, but they must make a reasonable effort to provide similar types of services to all clients who are in essentially similar legal and factual circumstances. In the first sentence the words "and shall make a reasonable effort to" have replaced the words "so as to substantially". This change recognizes that a recipient's goal is the economic and effective delivery of legal services, not the elimination of every possible disparity in client access. In promoting that goal, recipients may sometimes reasonably choose an option that does not produce substantially equal access. The words "similar types" have replaced the words "the same type" because legal needs may differ from place to place within a recipient's service area. In some cases a recipient may be providing more effective service to all of its clients if it offers different types of services in different areas. The words "and level of representation to the maximum extent economically practical" have been removed because they were vague and misleading. When an attorney undertakes to represent a client, he or she gives that client the representation that best meets the client's needs.

At the beginning of the second sentence a new phrase, "if the governing body of the recipient so desires", has been added to emphasize that recipients

have the option to be flexible. The word "the" has been added and the capital "T" in the word "Types" changed to a lower case "t" to conform to accepted standards of English usage and punctuation. The words "so as to take into account" replace the words "as required to meet", and the words "a higher incidents of particular kind of legal problem, the considerably higher costs of providing services, or," replaces the words "and level of representation may vary based on". This change as well reflects the Board's concern for recipient flexibility and its concern that recipients focus on the actual legal needs of clients and the most effective and economic way of delivering services to them. Some areas may have unusual legal needs that do not exist elsewhere. Accordingly, the governing body may provide different types of services to take into account different priorities in different parts of the recipient's service area (e.g. rural issues or special legal problems of particular client groups such as black lung cases among miners); a higher incidence of a particular kind of legal problem (e.g., in more urban areas or in institutional settings); the considerably higher costs of providing services (e.g., in remote or isolated areas); or differences in individual client financial resources. Under the regulation, recipients will be free to weigh the type and incidence of legal problems in their service areas against the relative costs of providing particular services in different geographical areas. As in § 1620.2(b)(6), the word "individual" is inserted before the word "client" to emphasize that, in establishing priorities, recipients should focus on people and not classes.

The last two sentences of § 1620.3 are removed and replaced with a new sentence: "Consistent with the methods of delivery that are most effective and economical and the factors of § 1620.2(b), allocation of resources shall be reasonably proportional to the distribution of eligible clients within the recipient's service area, but this part shall not be interpreted to require any rigid standard for dollar expenditures or number of clients served". This new sentence clarifies the Board's decision that recipients be held to a reasonableness standard in resolving the issue of client access. Recipients do not have to set up quotas or use other arbitrary devices in determining how to apply their resources. The priorities regulation should not be read to require offices in every country, equal staff, or any rigid standard for dollar expenditures or number of clients served. It is the availability of services,

not the physical location of resources, which is pivotal.

Section 1620.4 Implementation.

Paragraph (b) of § 1620.4 is removed because the date June 30, 1984 has already passed and because, in the light of the requirement in § 1620.5 that there be an annual written report, the Board determined that it was unnecessary to require an initial written report. Because paragraph (b) has been eliminated and only one paragraph remains in the section, the characters "(a)" are removed from the beginning of § 1620.4.

Section 1620.5 Annual Review.

The words "be set periodically and shall" are inserted before the words "be reviewed" to indicate that, although recipients are not required to set priorities each year, they are required to do so periodically. The words "After the initial report described in § 1620.4(b)" are removed because an initial report is no longer required. The lower case "e" in the word "each" is changed to a capital "E" since "Each" now constitutes the first word of the second sentence. The words "and make available to the public" are inserted before the words "an annual report" to encourage accountability to the public. The word "and" before the word "mechanisms" is deleted as unnecessary. The words "policies and procedures established under § 1620.4 of these regulations as a result of the priority review and assessment" are substituted for the words "schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review". The Board deleted the term "case acceptance schedule" because it was unclear. It determined that the Corporation's need to have information about the procedures recipients use in accepting cases should be met by requiring recipients to include in their annual reports copies of the case acceptance policies and procedures established under § 1620.4 of the regulation.

List of Subjects in 45 CFR Part 1620

Legal Services.

PART 1620—[AMENDED]

For the reasons set out in the preamble, Part 1620 of Title 45, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 1620 reads as follows:

Authority: Sec. 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2906(a)(2)).

§ 1620.1 (Amended)

2. Section 1620.1 is amended by adding the letter "s" to the word "view".

3. Section 1620.1 is further amended by inserting a period (.) after the words "other provisions of Federal law" and removing the semicolon (;) and all that follows it.

§ 1620.2 (Amended)

4. Paragraph (a)(1) of § 1620.2 is amended by removing the words ", as well as" and inserting in their place a period (.) followed by the words "The appraisal shall also include".

5. Paragraph (a)(1) is further amended by removing the period following the word "persons" and inserting in its place the words ", and to the extent feasible should include outreach to eligible clients which may include the use of such techniques as questionnaires and surveys."

6. Paragraph (a)(2) of § 1620.2 is amended by removing the words "in the development of the report required by § 1620.4(b)," after the words "setting of priorities."

7. Paragraph (b)(6) of § 1620.2 is amended by inserting the word "individual" before the word "clients".

8. Paragraph (b)(7) of § 1620.2 is amended by removing the word "and" at the end of the paragraph.

9. Paragraph (b)(8) of § 1620.2 is amended by removing the period (.) and inserting in its place the punctuation mark and word "; and".

10. Paragraph (b) of § 1620.2 is amended by adding at the end the following new paragraph:

"(9) Whether legal efforts will result in efficient and economic delivery of legal services."

11. Section 1620.3 is revised to read as follows:

§ 1620.3 Access.

A recipient shall allocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, and shall make a reasonable effort to provide that all potentially eligible clients in the recipient's service area have reasonably equal access to similar types of services. If the governing body of the recipient so desires, the types of services may vary so as to take into account different priorities in different parts of the recipient's service area, a higher incidence of a particular kind of legal problem, the considerably higher costs of providing services, or differences in

individual client financial resources. Consistent with the methods of delivery that are most effective and economical and the factors of § 1620.2(b), allocation of resources shall be reasonably proportional to the distribution of eligible clients within the recipient's service area, but this part shall not be interpreted to require any rigid standard for dollar expenditures or number of clients served.

§ 1620.4 (Amended)

12. Section 1620.4 is amended by removing the "(a)" designation at the beginning of the first paragraph and by removing the second paragraph in its entirety.

§ 1620.5 (Amended)

13. Section 1620.5 introductory text is amended by inserting the words "be set periodically and shall" after the word "shall" in the first sentence.

14. Section 1620.5 introductory text is further amended by removing the words "After the initial report described in § 1620.4(b)" and by removing the lower case "e" in the word "each" and inserting in its place a capital "E".

15. Section 1620.5 introductory text is further amended by inserting the words "and make available to the public" before the words "an annual report".

16. Section 1620.5 introductory text is further amended by removing the word "and" before the word "mechanisms".

17. Section 1620.5 introductory text is further amended by removing the words "schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review" and inserting in their place the words "policies and procedures established under § 1620.4 of these regulations as a result of the priority review and assessment".

Dated: November 21, 1985.

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General Counsel.

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