

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

an interim rule to implement the new restriction on redistricting activities. The Committee held 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 rule is effective upon publication.

However, the Corporation also solicits public comment on the rule for review and consideration by the Committee and Board. The Committee intends to hold public hearings to discuss written comments received by the Corporation and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

A section by section discussion of the interim rule is provided below.

Section 1632.1 Purpose

The purpose section has been revised to reflect an intent to implement the new statutory restrictions on involvement of LSC recipients in redistricting activities. The prior rule was not based on any express statutory restriction, but on policies adopted by a former board of directors.

Section 1632.2 Definitions

Section 1632.2 is amended by revising the definition of "redistricting" and adding paragraph designations to the definitions. The change to the definition is not substantive and the revisions are only intended to track more closely the statutory restriction contained in the Corporation's FY 1996 appropriations act.

Section 1632.3 Prohibition

The prohibition in paragraph (a) has been revised to track the statutory restriction in the Corporation's appropriations act. Also, some language which simply restates the definition of redistricting has been deleted since its repetition is confusing and unnecessary. Paragraph (b) clarifies that not all litigation brought under the Voting Rights Act of 1965 is prohibited. Only litigation which involves redistricting

activities as defined by this rule is prohibited. This provision was set out in § 1632.4(a) of the prior rule.

Section 1632.4 Recipient Policies

Section 1632.4 requires recipients to adopt written policies to implement the requirements of this part.

Miscellaneous Changes

All provisions of the prior § 1632.4 on permissible activity have been deleted. Paragraph (a) of the prior rule, on litigation brought under the Voting Rights Act, has been moved and is now included in § 1632.3. Paragraph (b) of the prior rule was deleted because it was contrary to current law and it would have allowed a recipient to use some non-LSC funds for redistricting activities. Such use of non-LSC funds is now prohibited by this interim rule as required by LSC's appropriations act. Finally, paragraphs (c) and (d) in the prior rule were deleted because they simply restate law that is already reflected in other regulations.

List of Subjects in 45 CFR Part 1632

Grant programs-law, Legal services.
For reasons set forth in the preamble, 45 CFR part 1632 is revised to read as follows.

PART 1632—REDISTRICTING

Sec.

- 1632.1 Purpose.
- 1632.2 Definitions.
- 1632.3 Prohibition.
- 1632.4 Recipient policies.

Authority: 42 U.S.C. 2996e(b)(1)(A); 2996f(a)(2)(C); 2996f(a)(3); 2996(g)(e); 110 Stat. 1321(1996).

§ 1632.1 Purpose.

This part is intended to ensure that recipients do not engage in redistricting activities.

§ 1632.2 Definitions.

(a) *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.

(b) *Recipient* means any grantee or contractor receiving funds made available by the Corporation under section 1006(a)(1) or 1006(a)(3) of the LSC Act. For the purposes of this part, "recipient" includes subrecipient and employees of recipients and subrecipients.

(c) *Redistricting* means any effort, directly or indirectly, that is intended to or would have 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.

§ 1632.3 Prohibition.

(a) Neither the Corporation nor any recipient shall make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or represent any party or participate in any other way in litigation, related to redistricting.

(b) This part does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting.

§ 1632.4 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

Dated: August 6, 1996.

Victor M. Fortuno,

General Counsel.

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45 CFR Part 1633

Restriction on Representation in Certain Eviction Proceedings

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises the Legal Services Corporation's ("LSC" or "Corporation") regulation that prohibits recipients from using LSC funds to provide representation in public housing eviction proceedings of persons engaged in certain illegal drug activity. The revisions are intended to extend the prohibition to a recipient's non-LSC funds. Although this rule is effective upon publication, the Corporation also solicits public comment 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. Fortuno, General Counsel, at (202) 336-8910.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation's ("LSC" or "Corporation") regulation, 45 CFR Part 1633, which is revised by this interim rule, prohibited involvement by