

representation to the recipient's clients or while using resources provided by the Corporation or by private entities, no employee of a recipient shall—

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(b) No employee of a recipient shall at any time engage in or encourage others to engage in any:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Corporation regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

(c) Nothing in this section shall prohibit an attorney from—

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.8 Training.

(a) A recipient may not support or conduct training programs that—

(1) Advocate particular public policies; or

(2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking; or

(3) Disseminate information about such policies or activities.

(b) Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them—

(1) To provide adequate legal assistance to eligible clients; or

(2) To provide advice to any eligible client as to the legal rights of the client.

(c) No funds of a recipient shall be used to train participants to engage in activities prohibited by the Act, other applicable Federal law, or Corporation regulations, guidelines or instructions.

§ 1612.9 Organizing.

(a) No funds made available by the Corporation or by private entities may

be used to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.

(b) This section shall not be construed to apply to:

(1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or

(2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

(c) Recipients and their employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

§ 1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.

(a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.

(b) Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

(c) Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6 of these regulations, together with such supporting documentation as specified by the Corporation.

§ 1612.11 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,
Senior Counsel for Operations and Regulations.

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BILLING CODE 7050-01-P

45 CFR Part 1620

Priorities in Use of Resources

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule completely revises the current Legal Services Corporation's ("Corporation" or "LSC") regulation concerning priorities. The revisions are intended to implement a

restriction contained in the Corporation's FY 1996 appropriations act, which prohibits LSC recipients from expending resources on activities that are outside their specific priorities.

Although this rule is effective upon publication, the Corporation solicits public comment 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 Street 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)(9), a restriction in the Corporation's FY 1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), which prohibits LSC recipients from expending resources on activities that are outside their specific priorities. 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 interim rule for review and consideration by the Committee. After receipt of written 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 is revised to prohibit any recipient from expending time or resources on cases or matters that are not within its written priorities. The current regulation, which has not

been revised since 1985, dealt generally with the process for establishing priorities for the use of resources. This new rule explains the obligation of the recipients to set specific written priorities and to assure that their staff will, except for limited emergency situations, engage in work within the priorities.

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

Section 1620.1 Purpose

This rule is intended to clarify a recipient board's obligation to set written priorities that will delineate the parameters of the work in which the recipient's staff may engage. It is also intended to permit recipients to take emergency cases outside of its priorities within the limits set out in this rule.

Section 1620.2 Definitions

The definitions of "cases" and "matters" are appropriately the same as those contained in the timekeeping regulation in 45 C.F.R. Part 1635 because the two rules complement each other. Adopting priorities and using its resources only for those cases and matters that come within its priorities require a recipient to be accountable for and to use its resources wisely and effectively. The timekeeping rule, which requires recipients to keep track of time spent on cases and matters, is also intended to ensure recipient accountability for the use of funds. See 61 FR 14262 (April 1, 1996).

Section 1620.3 Establishing Priorities

Paragraph (a) requires recipients to adopt procedures for establishing priorities and to adopt priorities for the use of all of its resources. It also requires recipients to undertake only those cases and matters that are within its priorities.

Paragraph (b) is based on the current rule and specifies that a recipient's procedures include an appraisal of the needs of the client community in the services area by consultation with the client community, the recipient's governing body members and employees, the private bar, and other interested persons in order to assess the needs of the eligible clients in the recipient's service area. This rule continues the use of the term "appraisal." However, since adoption of this interim rule by the Board, it has been suggested that "evaluation" may be a better word to use because "to evaluate" is to determine value by careful appraisal or study and it is an evaluation made pursuant to a study of the relevant factors that should determine a recipient's priorities. Because the Board would need to act on

a change of words in this instance, the rule remains as adopted by the Board. However, comments are requested as to whether "evaluation" would be a better term.

Paragraph (c) is largely taken from the current rule and sets out the factors a recipient should consider when setting priorities. New factors include consideration of the suggested priorities that were promulgated by the Corporation on May 29, 1996, 61 FR 26934, as well as consideration of whether there is a need to vary priorities for unique parts of the service area. A recipient may serve a diverse community each part of which has distinctive characteristics. The uniqueness may arise because of geographic differences, such as rural or urban areas or because of the characteristics of the clients, such as a concentration of the elderly or immigrants. Program-wide priorities may not be suitable for all recipients, and it may be necessary to set different priorities for a particular segment of the service area.

The Corporation expects recipients to have interim priorities which comply with the requirements of this rule in place 30 days from the interim rule's effective date (publication date). In order to meet this deadline, recipients will not be expected to conduct a new appraisal of needs as set forth in part 1620.3(b).

Section 1620.4 Establishing a Procedure for Emergencies

This section requires a recipient's governing body to develop procedures that the staff must follow when determining whether a particular circumstance is an emergency that falls outside of the recipient's priorities. Since the recipient is prohibited from expending its resources and time on any activities outside its priorities other than emergencies, each recipient must clearly define those emergencies to give its staff clear guidance regarding their identification and acceptance.

Emergency situations would include circumstances where action must be taken in a short period of time. They would also encompass unusual and infrequent circumstances where no action needs to be initiated quickly but would cause inordinate harm to the client or client's family members if not addressed. Emergency situations also may include unusual circumstances such as a natural disaster or an unanticipated change in the law, where issues which severely affect a large segment of the client community were not anticipated at the time priorities were set. Because engaging in a

comprehensive priority-setting process can be time consuming and expensive, recipients need to have the flexibility to deal with significant changes in the law on an emergency basis. The recipient's board should, however, at the earliest opportunity, determine whether it is appropriate to revise priorities to reflect those changes.

Paragraph (b) requires a recipient's executive director to decide when an emergency occurs and to authorize taking the case. Paragraph (b) also suggests factors that a recipient may consider in determining what constitutes an emergency. The suggested factors address only some of the possibilities that may be considered for situations where immediate action is needed. Local conditions may require consideration of other factors as well.

Section 1620.5 Annual Review

This section states the obligation of the recipient's governing body to review its priorities annually, or more frequently when a significant number of cases falling under a category or type of case have been accepted under the recipient's emergency procedures. The type of situation where this is most likely to happen is when there is a change in law that adversely affects a large number of eligible clients. For the program to continue to accept such emergency cases, the governing body should affirmatively include a priority that would encompass those cases. This section also sets out factors that should be considered by the governing body in determining whether to change the recipient's priorities.

Section 1620.6 Signed Written Agreement

This section implements § 504(a)(9) of the Corporation's appropriation's act. It clarifies that no recipient staff who work on cases or matters may engage in work outside the recipient's adopted priorities. Each such staff person must sign a written agreement not to undertake non-priority cases or matters except for those that are emergencies. Clerical staff need not sign such an agreement. A staff member who is part of the intake system, however, who helps determine whether the recipient will take or refer a case, must sign the agreement.

Section 1620.7 Reporting

Paragraph (a) reflects the requirement in § 504(9)(B) of the Corporation's FY 1996 appropriations act that a recipient must report on a quarterly basis to its governing body about the emergency work performed outside of the recipient's priorities.

Paragraph (b) reflects the requirement in § 504(9)(B) that a recipient report annually to the Corporation, on a form the Corporation provides, the non-priority emergency work in which it has engaged.

Paragraph (c) contains language from the current rule instructing the recipient to report annually to the Corporation on its priorities.

List of Subjects in 45 CFR Part 1620

Legal services.

For reasons set forth in the preamble, 45 CFR Part 1620 is revised to read as follows:

PART 1620—PRIORITIES IN USE OF RESOURCES

Sec.

- 1620.1 Purpose.
- 1620.2 Definitions.
- 1620.3 Establishing priorities.
- 1620.4 Establishing a procedure for emergencies.
- 1620.5 Annual review.
- 1620.6 Signed written agreement.
- 1620.7 Reporting.

Authority: Pub. L. 104-134, 110 Stat. 1321, 42 U.S.C. 2996f(a)(2).

§ 1620.1 Purpose.

This part is designed to provide guidance to recipients for setting priorities and to ensure that a recipient's governing body adopts written priorities for the types of cases and matters, including emergencies, to which the staff will limit its commitment of time and resources.

§ 1620.2 Definitions.

(a) A case is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual Private Attorney Involvement (PAI) cases.

(b) A matter is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services,

preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

§ 1620.3 Establishing priorities.

(a) The governing body of a recipient must adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which are to be undertaken by the recipient.

(b) The procedures adopted must include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient's employees, governing body members, the private bar, and other interested persons. The appraisal should address the need for outreach, training of the recipient's employees, and support services.

(c) The following factors should be among those considered by the recipient in establishing priorities:

- (1) Suggested priorities promulgated by the Legal Services Corporation;
- (2) The appraisal described in paragraph (b) of this section;
- (3) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;
- (4) The resources of the recipient;
- (5) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;
- (6) The availability of other sources of training, support, and outreach services;
- (7) The relative importance of particular legal problems of the individual clients of the recipient;
- (8) The susceptibility of particular problems to solution through legal processes;
- (9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served;
- (10) Whether legal efforts will result in efficient and economic delivery of legal services; and
- (11) Whether there is a need to establish different priorities in different parts of the recipient's service area.

§ 1620.4 Establishing a procedure for emergencies.

(a) The governing body of a recipient must adopt procedures for undertaking emergency cases or matters that are not within the recipient's established priorities. An emergency may include a case or matter requiring immediate legal action, circumstances involving the necessities of life, a significant risk to the health or safety of the client or immediate family members, or issues that arise because of new and unforeseen circumstances, such as natural disasters or unanticipated changes in the law.

(b) Pursuant to procedures adopted by the governing body, the recipient's Executive Director or designee shall determine whether a particular case or matter not within the recipient's established priorities constitutes an emergency that may be undertaken by the recipient. The following factors may be among those considered by the Executive Director or designee:

- (1) The time period in which action must be taken to protect the client's interest;
- (2) The severity of the consequences to the client if no action is taken;
- (3) The likelihood of success if urgent legal action is taken;
- (4) The capacity of another source of free or low-cost legal assistance to undertake the particular case;
- (5) The effect the problem presented by the emergency case or matter will have on the client community; and
- (6) The consequences of diverting resources from existing priority cases or matters.

§ 1620.5 Annual review.

(a) Priorities shall be set periodically and shall be reviewed by the governing body of the recipient annually or more frequently if the recipient has accepted a significant number of emergency cases.

(b) The following factors should be among those considered in determining whether the recipient's priorities should be changed:

- (1) The extent to which the objectives of the recipient's priorities have been accomplished;
- (2) Changes in the resources of the recipient;
- (3) Changes in the size, distribution, or needs of the eligible client population; and
- (4) The volume of emergency cases or matters in a particular legal area since priorities were last reviewed.

§ 1620.6 Signed written agreement.

All staff who handle cases or matters, or are authorized to make decisions

about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

- (a) Has read and is familiar with the priorities of the recipient;
- (b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- (c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

§ 1620.7 Reporting.

(a) The recipient shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) The recipient shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that were not within the recipient's priorities.

(c) The recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities.

Dated: August 20, 1996.

Suzanne B. Glasow,
Senior Counsel for Operations and
Regulations.

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45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

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 the provision of legal assistance to aliens. The revisions are intended to implement a new restriction contained in the Corporation's FY 1996 appropriations act prohibiting LSC-funded recipients from providing legal assistance to ineligible aliens, regardless of the source of funds used to finance the legal assistance. 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 date.

DATES: The 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 Street, NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, at (202) 336-8910.

SUPPLEMENTARY INFORMATION: Section 504(a)(11) of the Legal Services Corporation's ("LSC" or "Corporation") appropriations act for Fiscal Year 1996, Pub. L. 104-134, 110 Stat. 1321 (1996), prohibits the Corporation from providing funds to any person or entity ("recipient") that provides legal assistance to ineligible aliens. The current rule, which expressly allows recipients to use their non-LSC funds to provide legal assistance to ineligible aliens, is inconsistent with § 504(a)(11), which effectively restricts a recipient's non-LSC funds to the same degree it restricts LSC funds.

On May 19, 1996, the Operations and Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement the new restriction. The Committee held public 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 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 solicits public comment on the interim rule for review and consideration by the Corporation. After receipt of written 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 that will supersede this interim rule.

This rule completely revises the prior rule. In general, the revisions implement section 504(a)(11) of the Corporation's FY 1996 appropriations act, which prohibits LSC-funded recipients from providing legal assistance to ineligible aliens.

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

Section 1626.1 Purpose

This section is revised to ensure that recipients refrain from providing legal assistance to ineligible aliens. In addition, language has been deleted from the prior rule that limited the requirements of the rule to LSC funds. It continues to be a purpose of this rule to assist recipients in determining the eligibility of persons seeking legal assistance. This rule deletes reference to the confidentiality of client records. Confidentiality issues will be dealt with separately when the Corporation issues regulations generally dealing with access to client records.

Section 1626.2 Definitions

The definitions of "eligible alien" and "ineligible alien" have been changed but the changes do not alter the substantive meaning of the terms. They are intended to simplify the definitions and to delete references to outdated statutory authority.

Section 1626.3 Prohibition

This section sets out the rule's general prohibition against the provision of legal assistance to ineligible aliens. All references that limit the prohibition to LSC funds have been deleted. In addition, since the prior rule's language was confusing, the prohibition has been restated more directly and simply. Aside from expanding the prohibition to non-LSC funds, there is no substantive change of meaning intended. Accordingly, the definition of "prohibited legal assistance 'for' an ineligible alien" has been deleted, because it simply means legal assistance to an ineligible alien and that is now clear in the prohibition.

The definition of "prohibited legal assistance 'on behalf of' an ineligible alien" has not been deleted or revised. This definition clarifies that recipients may not become involved in the provision of legal services that would benefit an ineligible alien by naming as the client an eligible alien whose distinct legal rights or interest are not affected by the representation.

Finally, the title of the section has been shortened.