

(2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.

(b) A recipient may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (a) of this section only when:

(1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, as amended, Supplemental Security Income for Aged, Blind, and Disabled;

(2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or

(3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

(i) Documented attempts to refer similar cases in the past generally have been futile;

(ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

(c) Recipients should refer to 45 CFR part 1642 for restrictions on claiming, or collecting and retaining attorneys' fees.

§ 1609.4 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: April 14, 1997.

Victor M. Fortuno,
General Counsel.

[FR Doc. 97-10038 Filed 4-18-97; 8:45 am]

BILLING CODE 7050-01-P

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") regulation on lobbying, rulemaking and other restricted activities. It is intended to implement provisions in the Corporation's FY 1996 appropriations act that are currently incorporated by reference in the Corporation's FY 1997 appropriations act, and which prohibit recipients from engaging in agency rulemaking, legislative lobbying activity or advocacy training. The final rule also implements statutory exceptions to the prohibitions, which permit recipients to use non-LSC funds to comment on public rulemaking, respond to requests from legislative and administrative bodies, and engage in efforts to encourage State and local governments to make funds available for recipient activities. Finally, the final rule continues the pre-existing prohibitions on participation in organizing activities, public demonstrations and certain illegal activities.

DATES: Effective May 21, 1997.

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 LSC staff to prepare an interim rule with a request for comments to implement §§ 504(a)(2), (3), (4), (5), (6) and (12) and 504 (b) and (e) of the Corporation's FY 1996 appropriations act, 110 Stat. 1321 (1996), prohibiting recipients from engaging in most rulemaking, lobbying and advocacy training activities. The Committee held hearings on staff proposals on July 10 and 19, 1996, and the Board adopted an interim rule on July 20, 1996, for publication in the **Federal Register**. Although the interim rule was effective upon publication, see 61 FR 45741 (August 29, 1996), the Corporation also solicited comments on the rule for review and consideration by the Committee and Board.

Eight written timely comments were received by the Corporation. The comments generally approved the rule, but raised technical and clarifying issues as well as substantive policy concerns, particularly about the participation of recipient attorneys in bar association activities and in certain training programs. The Committee held public hearings on the rule on December 13, 1996, and January 5, 1997, and approved revisions to the interim rule to take into account the written comments

and LSC staff recommendations. The Board adopted the Committee's recommended version on January 6, 1997, as a final rule.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104-208, 110 Stat. 3009. It incorporated by reference the § 504 conditions on LSC grants and other sections of the FY 1996 appropriations act implemented by this rule. Accordingly, the preamble and text of this rule continue to refer to the applicable section number of the FY 1996 appropriations act.

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

Section 1612.1 Purpose

The purpose of this rule is to ensure that LSC recipients and their employees do not engage in certain activities, including rulemaking, lobbying, grassroots lobbying, and advocacy training, banned by Section 504 in the Corporation's FY 1996 appropriations act, as incorporated by the Corporation's FY 1997 appropriations act. The rule continues existing provisions of the LSC Act that prohibit participation in public demonstrations, strikes, boycotts and organizing activities. It also provides guidance on when recipients may participate in public rulemaking, respond to requests from legislative and administrative bodies, and encourage State and local governments to make funds available to support recipient activities. In response to comments that the meaning of the term "fundraising" used in the interim rule was misleading, the final rule deletes the term "fundraising" in order to clarify that this part does not restrict efforts by recipients to engage in resource development activities. The activity that is restricted is what is commonly called "self-interest lobbying," which is any effort by recipients to encourage State or local governments to appropriate funds for the financial support of recipients. This final rule prohibits the use of LSC funds by recipients for self-interest lobbying, but permits recipients to use non-LSC funds for such efforts.

Section 1612.2 Definitions

The final rule significantly revises the definitions that were used in prior rules in order to reflect the new statutory restrictions and thus ensure that recipients do not engage in prohibited activity, and to provide greater clarity about the scope of the restrictions. In addition, definitions have been revised or eliminated because they are no longer necessary or the prior definition was inconsistent with the common sense usage of terms (such as the term

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

“legislation,” which was defined to include administrative rulemaking).

“Grassroots lobbying,” is defined to prohibit all communications and participation in activities which are designed to influence the public to contact public officials to support or oppose pending or proposed legislation. The definition does not use the term “publicity or propaganda,” which was used in prior regulations, because the FY 1996 appropriations act does not use the term. However, the new definition of grassroots lobbying incorporates the definition of “publicity or propaganda” that was previously used. The definition also provides that “grassroots lobbying” does not include communications which are limited solely to reporting the content or status of, or explaining, pending or proposed legislation or regulations. The interim rule would have allowed recipients to report on the effect such legislation or regulations may have on eligible clients or on their legal representation. This final rule has deleted the reference to “reporting on the effect of legislation” with language that permits recipients to explain pending and proposed legislation. This change clarifies that it is appropriate for recipients to prepare communications explaining the meaning and analyzing pending or proposed legislation when communicating about such legislation, but that it is inappropriate for recipients to prepare communications that could be used for or interpreted as grassroots lobbying. Thus, a recipient’s communication about pending or proposed legislation could explain what the legislation does, the changes it would make in existing laws, the problems which the proposed legislation addresses, and who would be affected by the proposal. However, recipients could not prepare communications which encourage the public to support or oppose proposed or pending legislation.

“Legislation” means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. It does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws (such as action taken by a local council sitting as a Board of Zoning Appeals). The Corporation has also retained the long-standing interpretation that “legislative bodies” do not include Indian Tribal Councils.

“Public policy” is defined to include an overall plan embracing the general goals and procedures of any governmental body as well as pending or proposed statutes, rules, and regulations. This term is found in this

rule’s section on training and is also found in the definition of “legislation.” As used in § 1612.8 in regard to training, the modification of the definition from the prior regulation ensures that, consistent with current law, information on existing laws and regulations may be disseminated during training programs.

The definition of “political activity” is eliminated from this regulation, because the provision in which it was used in the prior rule has been deleted. The provision was deleted because it did not deal with lobbying activity but rather with electoral and partisan political activities, which are governed by another LSC regulation, 45 CFR part 1608. The elimination of the term does not result in any substantive change in any restriction on political activity.

“Rulemaking” is defined to include the customary procedures on rulemaking used by agencies, such as negotiated rulemaking and notice and comment rulemaking procedures under the Federal Administrative Procedure Act, or similar procedures used by State or local government agencies. The term includes adjudicatory proceedings that formulate or modify agency policy of general applicability and future effect, but does not include administrative proceedings that produce determinations that are of particular, rather than general, applicability, such as Social Security hearings, welfare fair hearings or granting or withholding of licenses. The definition also does not include efforts by recipients to communicate with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency’s rules, regulations, guidelines, policies or practices.

The term “public rulemaking,” which is used in § 504(e) of 110 Stat. 1231, is defined as any rulemaking proceeding that is open to the public. The term would include proceedings that are the subject of (1) notices of proposed rulemaking published in the **Federal Register** or similar State or local journals; (2) announcements of public hearings on proposed rules or notices of proposed rulemaking, including those that are routinely sent to interested members of the public; or (3) other similar notifications to members of the public.

The term “similar procedure,” which is used in the prohibition on legislative lobbying in § 504(a)(4) of 110 Stat. 1321, is defined to mean a legislative process for the consideration of matters which by law must be determined by a vote of the electorate.

The Committee considered but did not include in this final rule new definitions for the terms “employee”

and “recipient” in order to reflect the different types of entities which may become recipients in a system of competition. Currently, these terms are defined in 45 CFR § 1600.1. Until the Corporation makes clarifying changes in these definitions, for the purposes of this rule, the term “recipient” includes all types of recipients, including law firms, and the term “employee” includes all personnel of recipients, including partners and associates in law firms.

Section 1612.3 Prohibited Legislative and Administrative Activities

This section sets out the broad prohibitions on lobbying and rulemaking of §§ 504(a) (2)–(6) of 110 Stat. 1321. These prohibitions are far more extensive than those included in prior appropriations provisions or in the LSC Act, which permitted rulemaking activity and direct contact with legislators on behalf of clients or when engaged in self-interest lobbying.

While this part sets out the Corporation’s general restrictions on lobbying and rulemaking, certain other LSC rules may also include lobbying restrictions specific to the activity restricted in the particular rule. See, e.g., 45 CFR part 1639 (welfare reform).

Paragraph (a) sets out the prohibitions on legislative lobbying. Paragraph (b) prohibits participation in rulemaking and efforts to influence executive orders, except as permitted in §§ 1612.5 and 1612.6. Paragraph (c) tracks § 504(a)(6) of 110 Stat. 1321, and provides that recipients may not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device associated with an activity prohibited in paragraphs (a) and (b) in this section.

Section 1612.4 Grassroots Lobbying

This section sets out the absolute prohibition on grassroots lobbying by a recipient and its employees. There is no exception to the prohibition on grassroots lobbying. Thus, none of the activities permitted under §§ 1612.5 or 1612.6 may include grassroots lobbying.

Section 1612.5 Permissible Activities Using Any Funds

As with prior regulations regarding lobbying and rulemaking, the final regulation seeks to clarify the activities that are not prohibited by the rule. This list is not intended to be exhaustive. Rather, it seeks to clarify those instances likely to raise close questions.

Paragraph (a) provides that recipients may represent eligible clients in administrative agency proceedings that

are intended to adjudicate the rights of an individual client, such as welfare and food stamp fair hearings, Social Security or SSI hearings, public housing hearings, veterans benefits hearings, unemployment insurance hearings and similar administrative adjudicatory hearings or negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

Paragraph (b) provides that an employee of a recipient may initiate or participate in any litigation challenging agency rules, regulations, guidelines or policies, unless, of course, such litigation is otherwise prohibited by law or other Corporation regulations, such as part 1639 on welfare reform or part 1617 on class actions.

Paragraph (c) includes a list of some of the other activities that are not proscribed by the prohibitions on lobbying or rulemaking. The listing includes many permissible activities that have been included in prior regulations and others about which the Corporation has received inquiries. In response to public comments, subparagraph (c)(1) was added to make clear that recipients may apply for a governmental grant or contract that is issued by a legislative body or administrative agency. Subparagraph (c)(2) provides that recipients and employees of recipients can communicate with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies. Under subparagraph (c)(3), recipients and their employees can inform clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations. Thus, recipients can advise clients about the effect of agency rules and policies, analyze them and explain proposed changes and their effect, and advise their clients about their right to participate on their own behalf in agency rulemaking proceedings.

Under subparagraph (c)(4), recipients and their employees may communicate directly or indirectly with the Corporation for any purpose, including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies. Because the restriction applies only to contacts with government agencies and the Corporation is not a department, agency or instrumentality of the Federal Government, 42 U.S.C. 2996d(e)(1), recipients can contact LSC about any

matter and comment on LSC rules, regulations or policies.

Subparagraph (c)(5) allows recipient employees to participate in bar association activities, provided that recipient resources are not used to support and the recipient is not identified with activities of bar associations that are devoted to activities prohibited by this part. This provision is a change from that in the prior rule, which permitted a recipient's employees to use recipient funds to participate in bar activities involving otherwise prohibited advocacy, provided the employee did not engage in grassroots lobbying. Although comments urged the Corporation to retain the prior rule's policy, the Board determined that a policy change was necessary, because the statutory prohibitions on lobbying and rulemaking in 110 Stat. 1321 are significantly more extensive and restrictive than in past legislation. Recognizing that recipient attorneys participate in bar association activities as members of the legal profession rather than as staff attorneys, this new provision allows recipient attorneys to participate fully and actively in bar association activities, provided that they do not use recipient resources for and do not identify the recipient with any activities devoted to activities proscribed by this part. Permissible participation may include attending meetings and serving on committees of a bar association or serving as an officer or in other leadership roles in a bar association.

The Corporation recognizes that there will be some situations where bar association activities will require the attorneys employed by a recipient to decline participation or to participate on the attorney's own time as, for example, when a bar association activity is devoted to a prohibited activity, such as participating in a meeting whose principal purpose is to determine and communicate the bar's position on pending or proposed legislation or regulations. Recipient attorneys must either decline to participate or participate solely on their own time. On the other hand, recipient attorneys could use recipient resources to attend and participate in a bar association meeting that was not focused on prohibited legislative or regulatory activity and where any discussion of prohibited activity was incidental to the decisions and actions taken at the meeting. Because it is not possible to craft a bright line between permissible and impermissible bar association activities, attorneys employed by recipients will have to exercise careful

judgment when they are participating in bar association activities that may involve prohibited activities.

Subparagraph (c)(6) allows recipients and their employees to advise a client of the client's right to communicate directly with an elected official. For example, recipient staff may advise specific clients whom they are representing of the identity of their elected representatives, about how legislation is enacted, and about the procedures for testifying. However, providing advice does not authorize recipient staff to prepare testimony for their clients or to conduct formal training sessions for clients on how to participate in lobbying or rulemaking.

Finally, subparagraph (c)(7) permits recipients and their employees to participate in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility or disciplinary rules, or participating on committees appointed by the courts to advise the courts about judicial matters. However, a recipient cannot become involved in any attempt to influence a legislative body confirming judicial nominations.

Section 1612.6 Permissible Activities Using Non-LSC Funds

This section sets out activities authorized by §§ 504 (b) and (e) of the Corporation's FY 1996 appropriations act to be conducted with non-LSC funds. Paragraphs (a) through (e) implement § 504(e) and delineate the records required to be maintained by recipients responding to requests from appropriate officials. Paragraph (a) provides that employees of recipients may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee or to a recipient. Such response could include testifying, providing information and analyses, and participating in negotiated rulemaking. The Board deleted a reference in the interim rule to testifying or providing information to commissions, committees or advisory bodies because it judged that there was no need to single out this particular activity from the more generic listings of activities that could be undertaken in response to such a written request. The Board did not intend, however, to restrict participation on commissions, committees or advisory bodies provided that the participation is consistent with the requirements of this section. Under no circumstances may recipients engage in any grassroots lobbying when

responding to a request for information or testimony.

Paragraph (b) provides that responses to requests may be distributed only to parties that make the request or to other persons or entities to the extent that such distribution is required to comply fully with the request. For example, agencies may require specific distribution of written testimony to committee members. If required by the agency or legislative rules, such distribution would be proper.

Paragraph (c) includes the statutory restriction that no employee of the recipient shall solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

In order to ensure compliance with § 504(e), paragraph (d) requires that recipients maintain copies of all written requests received by the recipient and any written responses provided, and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

Paragraph (e) implements § 504(e), which provides that recipients may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding. Recipients may prepare written comments in response to a Notice of Proposed Rulemaking in the **Federal Register**, in response to a similar notice in a State or local publication, or in response to any notice to the general public regarding a rulemaking proceeding that is public under State or local law. Commenting in public rulemaking, however, does not permit a recipient to engage in grassroots efforts to encourage comment by other recipients or other persons.

Paragraph (f) implements § 504(b), which permits recipients to engage in self-interest lobbying with non-LSC funds to seek funds for program activities. Under this provision, recipients may contact, 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 the recipient, including a pending or proposed legislative or agency proposal to fund such recipient. Consistent with § 1612.6(c)(1), writing grant proposals in response to a request for proposals is not covered by this section and is not prohibited by this part. Both LSC and non-LSC funds may be used for this activity.

Section 1612.7 Public Demonstrations and Activities

This section prohibits participation in public demonstrations and related activities. Two technical changes were made from the interim rule. Paragraph (a) was revised to clarify that the provision is referring to "recipient" resources, and the term "person" is used instead of "employee." Thus, paragraph (a) prohibits any person from participating in public demonstrations, picketing, boycotts, or strikes (except as permitted by law in connection with the employee's own employment situation) or encouraging, directing, or coercing others to engage in such activities during working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation or private entities. This section is similar to previous regulations, but the text was rewritten to set out the prohibition more clearly.

Paragraph (b) sets out prohibitions on activities engaged in by employees at any time, whether during working hours or not. These prohibitions apply to any recipient employee and apply regardless of what source of funds is used for the employee's compensation. Thus, employees of a recipient may not engage in or encourage others to engage in (1) any rioting or civil disturbance; (2) any activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or (3) any other illegal activity that is inconsistent with an employee's responsibilities under the LSC Act, appropriation law, Corporation regulation, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

Minor changes in the regulatory provisions have been made from the previous rule. First, the prohibition on identification of the Corporation or any recipient with any political activity was removed from Part 1612 because an identical prohibition is included in 45 CFR § 1608.4(b). In addition, the regulatory language used in § 1612.7(b)(2) now explicitly provides that it is a court, and not LSC, that should determine whether there has been a violation of an outstanding injunction. Finally, the regulation clarifies in § 1612.7(b)(3) that the prohibition against the participation by employees in other illegal activity refers to activity that violates the LSC Act or other appropriate law or the rules of professional responsibility in the jurisdiction where the recipient is located or the employee practices law.

By clarifying what activity is proscribed, § 1612.7(b)(3) gives realistic guidance to recipients about what illegal activity would be deemed a violation.

Consistent with the longstanding regulatory provisions, paragraph (c) provides that the restrictions on public demonstrations, strikes and boycotts do not prohibit an attorney working for or paid by a recipient 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.

Section 1612.8 Training

This section implements the prohibitions on public policy advocacy training in § 504(a)(12) of 110 Stat. 1321 and § 1007(b)(6) of the LSC Act. Also, § 1612.8(c) of the interim rule has been moved to § 1612.8(a)(4) of this rule.

Paragraph (a) sets out the prohibitions on advocacy training, including the dissemination of information about public policies and political activities. New subparagraph (4) clarifies that recipients may not conduct a training program to train participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions. A similar restriction was included in both the interim and prior regulations, but the Board has adopted language in this final rule which more carefully delineates the scope of the restriction. Thus, under this new formulation of the restriction, a recipient could not run a training program which included training participants about how to engage in class actions, lobbying, welfare reform and the like. This new formulation makes clear, however, that using recipient resources, recipient employees may attend and participate in training programs sponsored by bar associations or continuing legal education institutes even if a portion of the training program involved training about a prohibited activity.

Paragraph (b) tracks other provisions of § 504(a)(12) and provides that attorneys or paralegals may be trained to prepare them to (1) provide adequate legal assistance to eligible clients and (2) inform any eligible client of the client's rights under any existing statute, order or regulation, or about the meaning or significance of particular bills. In previous regulations on training, there was an explicit statement that it was permissible to train attorneys and paralegals to understand what activities are permitted or prohibited under relevant laws and regulations.

This language was removed in both the interim and final rules as unnecessary and self-evident.

Section 1612.9 Organizing

This section implements § 1007(b)(7), 42 U.S.C. § 2996f(b)(7), of the LSC Act which prohibits organizing activities. It is essentially the same as in the prior rule but has been restructured for clarity. The final rule makes no changes from the interim rule. Paragraph (a) provides that 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. Paragraph (b) includes the two existing exceptions included in prior regulations. It first provides that the prohibition on organizing does not apply to 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. Thus, recipients can establish or participate in task forces and other meetings of advocates to share information and develop more effective approaches to representation in particular subject areas. Paragraph (b) also provides that the prohibition does not apply to organizations composed exclusively of eligible clients formed for the purpose of advising a legal services programs about the delivery of legal services. Finally, paragraph (c) provides that the organizing prohibition does not prevent recipients and their employees from providing legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

Section 1612.10 Recordkeeping and Accounting for Activities Funded With Non-LSC Funds

This section implements § 504(a)(6) of 110 Stat. 1321. No changes have been made from the interim rule. Thus, under paragraph (a) no LSC funds may be used to pay for administrative overhead or related costs associated with any activity permitted to be undertaken with non-LSC funds by § 1612.6.

Paragraph (b) continues existing practice that requires recipients to maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

Paragraph (c) provides that recipients shall submit semi-annual reports describing their non-LSC funded legislative and rulemaking activities conducted pursuant to these regulations

under § 1612.6, together with such supporting documentation as specified by the Corporation. The only change from existing policy is that the period for reporting such activities has been changed from quarterly to semi-annually in order to reduce the administrative burden on recipients.

Section 1612.11 Recipient Policies and Procedures

This section requires that recipients adopt written policies and procedures to guide the recipient's staff in compliance with the requirements of this part.

Additional Changes

The prior rule, which was superseded by the interim rule and now this final regulation, included § 1612.12, which set out enforcement procedures for part 1612. Section 1612.12 was deleted because the Corporation will be developing a comprehensive enforcement regulation that will address enforcement of all regulations and restrictions. Section 1612.13, permitting the use of private funds for certain lobbying activities, was also deleted, because, under 110 Stat. 1321, all funds of a recipient are restricted and the statutory exceptions to the prohibitions in § 1612.6 make no distinction between non-LSC public or private funds.

List of Subjects in 45 CFR Part 1612

Civil disorders, Grant program, Legal services, Lobbying.

For the reasons set forth in the preamble, 45 CFR part 1612 is revised to read as follows:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.

- 1612.1 Purpose.
- 1612.2 Definitions.
- 1612.3 Prohibited legislative and administrative activities.
- 1612.4 Grassroots lobbying.
- 1612.5 Permissible activities using any funds.
- 1612.6 Permissible activities using non-LSC funds.
- 1612.7 Public demonstrations and activities.
- 1612.8 Training.
- 1612.9 Organizing.
- 1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.
- 1612.11 Recipient policies and procedures.

Authority: Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321, secs. 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e); 42 U.S.C. 2996e(b)(5), 2996f(a) (5) and (6), 2996f(b) (4), (6) and (7), and 2996g(e).

§ 1612.1 Purpose.

The purpose of this part is to ensure that LSC recipients and their employees

do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

§ 1612.2 Definitions.

(a) (1) *Grassroots lobbying* means any oral, written or electronically transmitted communication or any advertisement, telegram, 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 in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote. It also includes 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 such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) *Grassroots lobbying* does not include communications which are limited solely to reporting on the content or status of, or explaining, pending or proposed legislation or regulations.

(b) (1) *Legislation* means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, ratification of treaties and intergovernmental agreements, approval of appointments and budgets, and approval or disapproval of actions of the executive.

(2) *Legislation* not include those actions of a legislative body which adjudicate the rights of individuals under existing laws; nor does it include legislation adopted by an Indian Tribal Council.

(c) *Public policy* means an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules, and regulations.

(d) (1) *Rulemaking* means any agency process for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

(i) The customary procedures that are used by an agency to formulate and adopt proposals for the issuance, amendment or revocation of regulations or other statements of general applicability and future effect, such as negotiated rulemaking and "notice and comment" rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies; and

(ii) Adjudicatory proceedings that are formal adversarial proceedings to formulate or modify an agency policy of general applicability and future effect.

(2) *Rulemaking* does not include:

(i) Administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as Social Security hearings, welfare fair hearings, or granting or withholding of licenses;

(ii) Communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

(e) *Public rulemaking* means any rulemaking proceeding or portion of such proceeding or procedure that is open to the public through notices of proposed rulemaking published in the **Federal Register** or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) *Similar procedure* refers to a legislative process by which matters must be determined by a vote of the electorate.

§ 1612.3 Prohibited legislative and administrative activities.

(a) Except as provided in §§ 1612.5 and 1612.6, recipients shall not attempt to influence:

(1) The passage or defeat of any legislation or constitutional amendment;

(2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;

(3) Any provision in a legislative measure appropriating funds to, or

defining or limiting the functions or authority of, the recipient or the Corporation; or,

(4) The conduct of oversight proceedings concerning the recipient or the Corporation.

(b) Except as provided in §§ 1612.5 and 1612.6, recipients shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order.

(c) Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense associated with an activity prohibited in paragraphs (a) and (b) in this section.

§ 1612.4 Grassroots lobbying.

A recipient shall not engage in any grassroots lobbying.

§ 1612.5 Permissible activities using any funds.

(a) A recipient may 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.

(b) A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this part is intended to prohibit a recipient from:

(1) Applying for a governmental grant or contract;

(2) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(3) Informing clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations;

(4) Communicating directly or indirectly with the Corporation for any purpose including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies;

(5) Permitting its employees to participate in bar association activities, provided that recipient resources are not used to support and the recipient is not identified with activities of bar associations that are devoted to activities prohibited by this part.

(6) Advising a client of the client's right to communicate directly with an elected official; or

(7) Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.

§ 1612.6 Permissible activities using non-LSC funds.

(a) If the conditions of paragraphs (b) and (c) of this section are met, recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to:

(1) Testify orally or in writing;

(2) 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; or

(3) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561, *et seq.*, or comparable State or local laws.

(b) Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that made the request and to other persons or entities only to the extent that such distribution is required to comply with the request.

(c) No employee of the recipient shall solicit or arrange for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

(d) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

(e) Recipients may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.

(f) Recipients may use non-LSC funds to 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 the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

§ 1612.7 Public demonstrations and activities.

(a) During working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation or by private entities, no person 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;

(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;

(3) Disseminate information about such policies or activities; or

(4) Train participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.

(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.

§ 1612.9 Organizing.

(a) Recipients may not use funds provided by the Corporation or by private entities 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, 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: April 14, 1997.

Victor M. Fortuno,
General Counsel.

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LEGAL SERVICES CORPORATION

45 CFR Part 1620

Priorities in Use of Resources

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") regulation concerning priorities. The revisions are intended to implement a restriction first appearing in the Corporation's Fiscal Year ("FY") 1996 appropriations act that is currently incorporated by reference in the Corporation's FY 1997

appropriations act. The restriction prohibits LSC recipients from expending resources on activities that are outside their specific priorities.

DATES: Effective May 21, 1997.

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 an interim rule on July 20 for publication in the **Federal Register**. The interim rule was published on Aug. 29, 1996 (61 FR 45747), and the Corporation received 2 timely comments.

After receipt of written public comment, the Committee held public hearings on the interim rule on December 13, 1996, and January 5, 1997. The Committee made revisions to the rule and recommended the revised version to the Board. The Board adopted the revised version on January 6, 1997, for publication as a final rule in the **Federal Register**.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104-208, 110 Stat. 3009. It incorporated by reference the § 504 condition on LSC grants included in the FY 1996 appropriations act implemented by this rule. Accordingly, the preamble and text of this rule continue to refer to the applicable section number of the FY 1996 appropriations act.

Generally, this final rule prohibits any recipient from expending time or resources on cases or matters that are not within its written priorities and explains the obligation of recipients to set specific written priorities and to assure that their staff will, except for limited emergency situations, only engage in work within the priorities.

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

Section 1620.1 Purpose

This rule is intended to clarify a recipient board's obligation to set written priorities for the use of their resources. It is also intended to permit recipients to take emergency cases outside of their priorities within the limits set out in this rule.