

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Union Gap (city), Yakima County (FEMA Docket No. 7218)	
<i>Yakima River:</i>	
Just upstream of Ahtanum Road at the corporate limits	*971
Approximately 3,700 feet upstream of Ahtanum Road at the corporate limits	*982
Maps are available for inspection at the City of Union Gap Department of Community Development, City Hall, 102 West Ahtanum Road, Union Gap, Washington.	
Yakima (city), Yakima County (FEMA Docket No. 7218)	
<i>Yakima River:</i>	
Approximately 1.1 miles downstream of East Nob Hill Road	*986
Approximately 1.8 miles upstream of Burlington Northern Railroad	*1,083
Maps are available for inspection at the City of Yakima Department of Community and Economic Development, City Hall, 129 North Second Street, Yakima, Washington.	
Yakima County (Unincorporated areas) (FEMA Docket No. 7218)	
<i>Yakima River:</i>	
Approximately 2,200 feet downstream of Interstate Highway 82 (near Wapato Dam)	*945
Approximately 600 feet upstream of confluence with Selah Creek	*1,152
Maps are available for inspection at the Yakima County Planning Department, Yakima County Courthouse, Room 417, 128 North Second Street, Yakima, Washington.	
WYOMING	
Sheridan County (Unincorporated areas) (FEMA Docket No. 7222)	
<i>Big Goose Creek:</i>	
Approximately 1,800 feet downstream of State Highway 388	*3,697
Approximately 4 miles upstream of Works Street	*3,800
<i>Little Goose Creek:</i>	
Approximately 1,250 feet downstream of Brundage Lane	*3,782
Just upstream of County Road 66	*3,836
<i>Tongue River:</i>	
Approximately 2 miles downstream of Wolf Creek Road, at the north section line of Section 20	*3,728

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of Wolf Creek Road	*3,761
Approximately 3 miles upstream of Wolf Creek Road	*3,776
<i>Fivemile Creek:</i>	
At township line between Townships 85 and 86 West	*3,776
Approximately 800 feet upstream of township line between Townships 85 and 86 West	*3,780
Maps are available for inspection at the Sheridan County Engineering Department, 224 South Main Street, Sheridan, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 18, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97-33930 Filed 12-29-97; 8:45 am]

BILLING CODE 6718-04-P

LEGAL SERVICES CORPORATION

45 CFR Part 1643

Restriction on Assisted Suicide, Euthanasia, and Mercy Killing

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule is intended to implement a new statutory restriction that amends the Legal Services Corporation Act and is applicable to recipients of grants from the Legal Services Corporation. The restriction prohibits the use of LSC funds by recipients for legal or other assistance that would cause, assist in, advocate for, or fund assisted suicide, euthanasia, or mercy killing.

DATES: This final rule is effective on January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336-8817.

SUPPLEMENTARY INFORMATION: The Assisted Suicide Funding Restriction Act of 1997 ("Assisted Suicide Act" or "Act"), Pub. L. 105-12, was enacted and became effective on April 30, 1997. Several provisions of the Assisted Suicide Act expressly apply to the Legal Services Corporation ("LSC" or "Corporation"), one of which amends Section 1007(b) of the LSC Act, 42 U.S.C. 2996f(b)(11). This rule is intended to implement this legislation as it applies to the Corporation and its recipients.

On September 19, 1997, the Corporation's Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") held public hearings in Washington, DC, on a draft proposed rule in Washington, DC, and, after making revisions to the draft, adopted a proposed rule for publication in the **Federal Register** for public notice and comment. The Corporation received two timely comments, one from the Advocacy Training/Technical Assistance Center ("ATTAC") and another from the National Legal Center for the Medically Dependent & Disabled, Inc. ("Legal Center"). Both comments stated that, in general, the proposed rule fairly and accurately reflected the intent of Congress in enacting the Assisted Suicide Act. ATTAC, however, recommended including several clarifying provisions in the final rule and questioned whether the recordkeeping provision should be less burdensome. The comment from the Legal Center urged that the final rule address the effect of the rule on free speech activities in a public forum. These comments are addressed more specifically in the section-by-section analysis below.

On November 14, 1997, the Committee met in Washington, DC, to consider public comment and act on a draft final rule. The Committee made several clarifying changes to the proposed rule and recommended adoption of the revised rule to the Board. The Board adopted the recommended rule as final on November 15, 1997.

Background and Summary of Law

The stated purpose of the Assisted Suicide Act is to maintain current Federal policy that Federal funds not be used to support, assist in, or advocate for assisted suicide, euthanasia or mercy killing. H. Rep. No. 46, 105th Cong., 1st Sess. at 3 (April 8, 1997). Although assisted suicide, euthanasia and mercy killing are illegal in almost all states, Congress was concerned that pending litigation might change the status quo and wanted to make it clear by legislation that, regardless of a change in State law, Federal policy would remain the same. H. Rep. at 3-4. Subsequent to the passage of the Act, the Supreme Court upheld as constitutional laws in the States of New York and Washington which prohibit assisted suicide and euthanasia. See *Vacco v. Quill*, 117 S. Ct. 2293 (1997); *Washington v. Glucksberg*, 117 S. Ct. 2302 (1997). The State of Oregon, on the other hand, adopted an initiative in 1996 that legalized physician-assisted suicide for

competent, terminally ill adults. H. Rep. at 4. Court challenges and a recent voter initiative effort have so far failed to overturn the law and, absent a successful legal challenge, the law is poised to go into effect. See *Washington Post*, Nov. 5, 1997 at A-1, col. 4; *Lee v. Oregon*, 107 F.3d 1382 (9th Cir. Feb. 27, 1997); *Certiorari denied*, 1997 WL 274930, _____ S. Ct. _____, (Oct. 14, 1997) (No. 96-1824).

The Assisted Suicide Act applies to numerous Federally funded health care programs and facilities, such as Medicare, Medicaid, CHAMPUS and the veterans and military health care systems. It also applies to certain legal aid and advocacy programs, including the Legal Services Corporation.

Section 9 of the Assisted Suicide Act amends Section 1007(b) of the LSC Act to provide that "No funds made available by the Corporation under this title, either by grants or contract, may be used * * * to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997." Section 5 of the Assisted Suicide Act sets out the restrictions as they apply to LSC funds by generally prohibiting the use of appropriated funds for legal or other assistance for the purpose of (1) securing or funding any activity or service that would assist in or cause the suicide, euthanasia, or mercy killing of an individual; (2) compelling any person or entity to provide funding or service for such purposes; or (3) asserting or advocating a legal right to assisted suicide, euthanasia or mercy killing. Finally, Section 3(b) clarifies what activities are not included within the restrictions.

This final rule implements those sections of the Act that apply to the Corporation. A section-by-section analysis is set out below.

Section-by-Section Analysis

Section 1643.1 Purpose

The purpose of this rule is to ensure that LSC recipients do not use any LSC funds to engage in legal assistance activities inconsistent with the Assisted Suicide Act.

Section 1643.2 Definitions

The definitions in this section are all based primarily on the House Report for the Assisted Suicide Act and the common dictionary definitions of the terms. H. Rep. at 12; *Random House Webster's College Dictionary* (1997) ("Webster's").

Assisted suicide is defined as providing any means to another person to enable or assist that person to commit suicide. See Webster's at 80 (suicide

aided by a person, esp. a physician, who organizes the logistics of the suicide). For example, if a doctor provided a person with a lethal drug overdose so that the person could commit suicide by ingesting the lethal overdose, the action of providing the drug overdose would constitute assisted suicide.

Euthanasia and *mercy killing* have the same meaning. The consistent use of both terms throughout the Act might suggest that they are two different activities. However, both the House Report and Webster's Dictionary give them the same meaning. Apparently, State laws commonly use the terms together or use one term or the other to mean the same activity.¹ *Euthanasia* and *mercy killing* are defined as the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person who is killed consents to be killed. According to the House Report, such a death is often considered merciful because the person is deemed to be dying or suffering or the person is considered to be a burden on family, community or society. H. Rep. at 12.

Suicide is defined as the taking of one's own life voluntarily and intentionally and is included in this rule to clarify its meaning within the term *assisted suicide*.

Section 1643.3 Prohibition

This section prohibits the use of LSC funds by recipients for legal or other assistance for those activities delineated therein.

Paragraph (a) prohibits a recipient from using LSC funds for any action that would cause or assist in causing the suicide, euthanasia or mercy killing of an individual. This would include, for example, providing a client with assistance to obtain the means of death or providing a client the financial means for death by suicide or euthanasia.

Paragraph (b) prohibits the use of LSC funds for compelling any person or private or governmental entity to engage in the activities prohibited in paragraph (a). For example, a recipient could not provide legal assistance to a client for the purpose of suing a public or private hospital to permit the client to receive assistance in committing suicide in its facilities.

¹ The terms are found in statutes from 45 States and the District of Columbia, which disapprove of euthanasia, mercy killing, suicide, or assisted suicide in their natural death/living will statutes, or in their durable power of attorney for health care acts. For citations to these statutes, see *Relief or Reproach? Euthanasia Rights in the Wake of Measure 16*, 74 *Oregon Law Review*, 449, 462 notes 44 and 45 (Summer 1995).

Paragraph (c) implements Section 5(a)(3) of the Assisted Suicide Act and prohibits asserting or advocating a legal right to cause or assist in causing the suicide, euthanasia, or mercy killing of an individual. This means, for example, that legal assistance may not be provided to assert that a law or regulation prohibiting or regulating assisted suicide, euthanasia, or mercy killing is unconstitutional or otherwise in violation of the law. It also prohibits any lobbying efforts to promote or advocate for passage of legislation that would legalize assisted suicide, euthanasia, or mercy killing.

The comment from the Legal Center urged the Corporation to clarify that paragraph (c) should not be construed in a way that is inconsistent with constitutional protections for free speech in the context of a public forum as set out in *Rust v. Sullivan*, 500 U.S. 173(1991) and *Rosenberger v. Rectors and Visitors of the University of Virginia*, 115 S.Ct. 2510 (1995), because a failure to do so might jeopardize the entire regulation. The Legal Center pointed out that when President Clinton signed the Assisted Suicide Act, he issued a statement on Section 5(a)(3) of the Act that directed executive agencies to implement the legislation in a way that would protect the free exchange of ideas in public forums. The President's statement provided that:

The Department of Justice has advised * * * that a broad construction of this section would raise serious First Amendment concerns. I am therefore instructing the Federal agencies that they should construe section 5(a)(3) only to prohibit Federal funding for activities and services that provide legal assistance for the purpose of advocating a right to assisted suicide, or that have as their purpose the advocacy of assisted suicide, and not to restrict Federal funding for other activities, such as those that provide forums for the free exchange of ideas. In addition, I emphasize that section 5(a)(3) imposes no restriction on the use of nonfederal funds.

Statement by the President, April 30, 1997; see also 143 Cong. Rec. S3264-65 (daily ed. April 16, 1997) (letter of Andrew Foies, Asst. Attorney General, Department of Justice). Although the Legal Center recognized that the Corporation is not subject to executive orders, it suggested three possible actions to be taken by the Corporation depending on the applicability of the law on public forums to LSC-funded legal aid programs. If it is possible for LSC recipients to use LSC funds to create a public forum, the Legal Center recommended that the rule should include an express public forum exception. However, if LSC funds may

not be used to create public forums, the Legal Center suggested that this limitation should be made clear in the commentary to the final rule. Finally, the Legal Center suggested that, even if public forums may not be financed with LSC funds under current law, perhaps the rule should include an exception in case the law should change in the future.

Because LSC programs are not public forums and LSC funds may not be used to create public forums, the Board adopted the second suggestion made by the Legal Center. The Board did not adopt the third suggestion because an express public forum exception might inadvertently suggest to recipients that LSC funds may be used for public forum activities.

The cases cited in the Legal Center's comment dealt with traditional public forums, such as universities, parks, and public streets, which are forums "created by government designation as a place or channel of communication for use by the public at large for assembly and speech." *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.*, 473 U.S. 788, 802 (1985). *Rosenberger* involved a state university's efforts to exclude religious groups from a general funding program intended to foster a diverse range of student publications. *Rust*, by contrast, involved government support for a limited range of family planning services; although those services did involve speech, the purpose of the program was to provide the services to clients rather than promote a diversity of views.

The LSC program is a nonpublic forum much like the Title X program in *Rust*. LSC's enabling statute and its regulations sharply limit advocacy activities and define LSC's purpose as meeting the basic legal needs of the poor rather than facilitation of expression. Nor do LSC grantees create public forums when they conduct training sessions or develop training manuals on end-of-life issues relating to advance directives or powers of attorney for health care; indeed, LSC's training restriction prohibits recipients from using any funds to advocate particular public policies or to train participants to engage in restricted activities.² These limitations on the scope of the LSC program bar any inference that, in funding that program, Congress has attempted to create a public forum.

² This restriction was recently upheld against constitutional challenge in *Legal Aid Society of Hawaii v. Legal Services Corporation*, Civ. No. 97-00032 (D. Hawaii, Aug. 1, 1997).

Section 1643.4 Applicability

Paragraph (a) of this section is based on Section 3(b) of the Assisted Suicide Act, which clarifies that the Act's restrictions do not apply to or affect any limitation relating to certain activities. Subparagraphs (a)(1) through (a)(3) clarify that the restrictions are intended to include the use of active means of causing death, such as by lethal injection or the provision of a lethal oral drug overdose, but do not apply to or affect any limitation relating to decisions to withhold or withdraw medical care, medical treatment, nutrition, or hydration. Nor do the restrictions apply to or affect limitations relating to abortion activities. This means that the Corporation's current restrictions on abortion activities are unaffected by this rule and are still in full force and effect in their current status, see 45 CFR § 1610.2(a)(7) and (b)(10). To clarify the meaning of the phrase "or affect any limitation relating to" included in the introductory language of paragraph (a) in the proposed rule, the Board deleted the phrase from the beginning of the paragraph and instead added a sentence at the end of the paragraph, which now provides that § 1643.3 shall not be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in § 1643.3(a)

LSC recipients traditionally do not become involved in legal assistance in the area of assisted suicide or euthanasia, but they do provide legal assistance to clients in preparing advance directives, such as living wills and powers of attorney. The preparation of such documents will generally be unaffected by this rule, because the rule's restriction applies only to active means of causing death. Advance directives normally apply to passive actions, such as withholding or withdrawing nutrition or medical care. Only if an advance directive seeks to secure death by active means, that is, by assisted suicide, euthanasia or mercy killing, would it be restricted by this rule. Although this is unlikely, because such actions are illegal in most States, it may now be permissible in Oregon, where the law permits assisted suicide. Recipients in Oregon, therefore, should take special care to ensure that any legal assistance they provide regarding advance directives is consistent with this rule.

ATTAC urged the Corporation to include language in the rule itself to reflect the preamble discussion of advance directives. The Board did not agree. Advance directives constitute one

example of activity already implicated by the language of paragraph (a) and a separate reference to advance directives in unnecessary and might cause confusion. The preamble discussion is intended to state how the corporation will interpret paragraph (a) as to advance directives and provides sufficient guidance to recipients. The Corporation routinely provides the preamble along with the text of final published rules to recipients as a matter of practice.

Subparagraph (a)(4) clarifies that the restriction does not include treatment aimed solely at alleviating suffering, even if the treatment has the unintended consequence of risking or shortening life. Thus, The restriction would not include the administration of morphine for the purpose of alleviating pain, even if its use might risk causing death or risk shortening life because it might also have the side effect of suppressing respiratory functions. The restriction, however, would include treatment that has a two-fold purpose of alleviating pain or discomfort and causing death.

Paragraph (a)(5) was added in response to a comment from ATTAC which urged the Corporation to clarify that the prohibition in § 1643.4 does not prohibit recipients from providing information on applicable law on assisted suicide, euthanasia or mercy killing, or from counseling clients about other forms of health care, such as hospice care. The Board agreed that permitting recipients to provide factual information regarding the law in these areas is consistent with the Assisted Suicide Act. The House Report makes this clear by explaining:

An advocacy program could provide factual answers to a client's questions about State law on assisting suicide, since that alone would not be providing assistance for such purposes. Similarly, these provisions do not prohibit such programs from counseling clients about alternatives to assisted suicide, such as pain management, mental health care and community-based services for people with disabilities.

H. Rep. at 18-19. The Board decided not to include a reference in paragraph (5) to counseling activities, as suggested by ATTAC, because it is already implied by the terms of the rule that recipients are not prohibited from providing legal counsel in such areas as hospice care, mental health care or services for the disabled, as long as such assistance does not include activities prohibited by § 1643.3 of this part.

Paragraph (b) clarifies that the prohibition on LSC funds does not apply to a recipient's non-LSC funds. Section 5 of the Assisted Suicide Act expressly applies the restriction only to

“funds appropriated by Congress.” This is also reflected in the House Report, which provides:

Section 5 is not intended to have the effect of de-funding an entire program, such as a Legal Services program or other legal or advocacy program, simply because some State or privately funded portion of that program may advocate for or file suit to compel funding or services for assisted suicide. This section is intended only to restrict Federal funds from being used for such activities.

House Report at 19–20. This distinction is particularly important for recipients in the State of Oregon, where the law now permits assisted suicide. If recipients in Oregon undertake any of the activities prohibited by this part, they must be able to demonstrate that no LSC funds supported the activities.

In addition, recipients may have other Federal grants restricted by various provisions of the Assisted Suicide Act. This paragraph does not affect the recipient's obligation to comply with all the terms of such a grant. Although this rule restricts only the use of LSC grant funds, a recipient's other funds are still subject to any restrictions that are included in other grant agreements.

Section 1643.5 Recipient Policies and Recordkeeping

The proposed rule required recipients to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule and to maintain sufficient documentation to demonstrate compliance with this part. ATTAC urged the Corporation to revise this section to minimize the recordkeeping burden of recipients and noted that the preamble to the proposed rule stated that “the type of recordkeeping necessary to demonstrate compliance with this rule would be documentation that only non-LSC funds were used for any activities prohibited by this rule.” ATTAC interpreted this statement as requiring recipients to create new records to ensure compliance. The Board did not revise the recordkeeping requirement because it is not new to recipients. To comply with this requirement, recipients need only follow their normal accounting standards and procedures.

The Board did, however, delete the requirement that recipients adopt procedures because no procedures should be necessary for an activity in which the recipients must not engage. It is sufficient for recipients to establish a policy prohibiting engagement in the prohibited activities.

List of Subjects in 45 CFR Part 1643

Grants, Lobbying, Health care, Legal Services.

For reasons set forth in the preamble, LSC amends CS Chapter XVI of Title 45 by adding part 1643 as follows:

PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

Sec.

- 1643.1 Purpose.
- 1643.2 Definitions.
- 1643.3 Prohibition.
- 1643.4 Applicability.
- 1643.5 Recipient policies and recordkeeping.

Authority: Pub. L. 105–12; 42 U.S.C. 2996f(b)(11).

§ 1643.1 Purpose.

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

§ 1643.2 Definitions.

(a) *Assisted suicide* means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) *Euthanasia (or mercy killing)* is the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) *Suicide* means the act or instance of taking one's own life voluntarily and intentionally.

§ 1643.3 Prohibition.

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

§ 1643.4 Applicability.

(a) Nothing in § 1643.3 shall be interpreted to apply to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion;

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or

(5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing. Nor shall § 1643.3 be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in this paragraph.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

§ 1643.5 Recipient policies and recordkeeping.

The recipient shall adopt written policies to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: December 23, 1997.

Victor M. Fortunato,
General Counsel.

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BILLING CODE 7050–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Parts 1201, 1202, 1203, 1205, 1206, 1209, 1214, 1216, 1217, 1222, 1224, 1225, 1236, 1237, 1246, and 1252

Amendment of Department of Transportation Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Transportation Acquisition Regulation (TAR) to reflect the changes to the Federal Acquisition Regulation through the Federal Acquisition Circular 90–46 and to delete certification requirements. **DATES:** This rule is effective January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Charlotte Hackley, Office of Acquisition and Grant Management, M–60, 400 Seventh Street SW., Washington, DC 20590: (202) 366–4267.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation has determined that changes to the