



OFFICE OF LEGAL AFFAIRS

**ADVISORY OPINION
AO-2015-001**

SUBJ: Permissibility of Recipient Subscription to Agency Mailing Lists Under 45 C.F.R. § 1612.6(e)

DATE: June 15, 2015

QUESTION PRESENTED

May an LSC recipient (1) subscribe to an email list or listserv operated by a state regulatory agency for the purpose of informing subscribers of pending regulatory actions and (2) provide comments on proposed rulemaking?

BRIEF ANSWER

Yes. Signing up to receive notices of proposed regulatory action from an agency is not prohibited by 45 C.F.R. § 1612.6(c), because it does not constitute soliciting or arranging for a request from a public official to provide testimony in connection with a rulemaking. Rather, subscribing to an email list is an appropriate way for recipients to ensure that they are aware of rulemakings that may affect their client populations. Recipients may use non-LSC funds to provide comments in a public rulemaking proceeding. 45 C.F.R. § 1612.6(e).

BACKGROUND

A state agency contacted LSC to inquire whether LSC recipients may subscribe to a listserv operated by the agency. The agency uses the listserv to inform subscribers of pending regulatory actions, including public meetings to discuss proposals and upcoming public comment periods for proposed rulemakings. The agency asked whether the statutory and regulatory restrictions on solicitation of requests for comment prohibit LSC recipients from subscribing to an agency mailing list.

AUTHORITY

Section 504 of the fiscal year 1996 LSC appropriations act prohibits LSC from making grants to any organization “that attempts to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency[.]” Pub. L. 104-134, § 504(a)(2), 110 Stat. 1321, 1321-53

(1996) (incorporated by reference in LSC’s annual appropriations thereafter).¹ Section 504 contains limited exceptions to this general prohibition, including an exception allowing the use of non-LSC funds to engage in public rulemaking:

Nothing in this section shall be construed to prohibit a recipient from using funds derived from a source other than the Legal Services Corporation to comment on a public rulemaking or to respond to a written request for information or testimony from a Federal, State, or local agency, legislative body or committee, or a member of such an agency, body, or committee, so long as the response is made only to the parties that make the request and the recipient does not arrange for the request to be made.

Id. § 504(e).

LSC promulgated a rule at 45 C.F.R. Part 1612 implementing the general prohibition and the exceptions in 1997. 62 Fed. Reg. 19404 (Apr. 21, 1997). 45 C.F.R. § 1612.6 describes the permissible activities recipients may engage in using non-LSC funds. According to section 1612.6(a), 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[.]” 45 C.F.R. § 1612.6(a). Section 1612.6(c) requires that “[n]o 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[.]” consistent with Section 504(e) of the fiscal year 1996 LSC appropriations act. Id. § 1612.6(c). Finally, section 1612.6(e) states that recipients “may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.” Id. § 1612.6(e).

ANALYSIS

Congress enacted the restrictions on attempts to influence legislation and administrative rulemaking to direct the use of LSC funds toward providing legal assistance to low-income individuals. See H.R. Rep. No. 104-196, at 119-21 (1996) (“The Committee understands advocacy on behalf of poor individuals for social and political change is an important function in a democratic society. However, the Committee does not believe such advocacy is an appropriate use of Federal funds. . . . The Committee notes that any funding devoted to advocacy is funding taken away from basic legal assistance.”). At the same time, Congress enacted an exception

¹ See also 42 U.S.C. § 2996f(a)(5) (requiring LSC to ensure that no funds awarded by LSC to recipients be used “to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition[.]”).

allowing recipients to use non-LSC funds to participate in public rulemaking and to respond to requests for information from legislators and policymakers. See Pub. L. 104-134, § 504(e).

The fiscal year 1996 LSC appropriations act does not prohibit recipients from seeking out information about potential legislative or administrative action that may affect the interests of their clients. To the contrary, section 504 of that law contemplates that recipients may be asked for their views on pending rules or statutes *and explicitly authorizes recipients to participate in public rulemaking*. In order for recipients to engage in either activity competently, they must have knowledge of both the subject matter of the proposed action and the proposed action itself. Accordingly, we believe that actively seeking information about proposed legislative or regulatory changes in order to participate in public rulemaking as permitted by Section 504(e) is consistent with the statute. Subscriptions to agency mailing lists represent requests to be notified about the timing and subject matter of pending regulatory actions. Such subscriptions are not solicitations or arrangements of requests for comment from lawmakers or policymakers. Subscriptions are therefore not prohibited by 45 C.F.R. § 1612.6(c).

CONCLUSION

45 C.F.R. § 1612.6(c) does not prohibit recipients from subscribing to agency listservs or mailing lists that inform the public of upcoming regulatory actions. Recipients must use only non-LSC funds and comply with the provisions of the LSC Act, the fiscal year 1996 LSC appropriations act, and part 1612 if they participate in public rulemakings that they learn about through such subscription services.

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