

announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request it.

(b) A recipient may represent an otherwise eligible individual seeking legal assistance from the recipient as a result of information provided as described in § 1638.4(a), provided that the request has not resulted from in-person unsolicited advice.

§ 1638.5 Recipient policies.

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

Dated: August 20, 1996.

Suzanne B. Glasow,
Senior Counsel for Operations & Regulations.
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45 CFR Part 1639

Welfare Reform

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is intended to implement a provision in the Legal Services Corporation's ("Corporation" or "LSC") FY 1996 appropriations act which restricts recipients from initiating legal representation or challenging or participating in any way in an effort to reform a Federal or State welfare system. Although this rule is effective upon publication, the Corporation also solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: This interim rule is effective on August 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)(16) of the Corporation's FY 1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), which restricts recipients of LSC funds from initiating

legal representation or participating in any other way involving efforts to reform a Federal or State welfare system. The Committee held hearings on July 10 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 also solicits public comment on the rule for review and consideration by the Committee. After receipt of public comments, the Committee intends to hold public hearings to discuss written comments and hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

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

Section 1639.1 Purpose

The purpose of this new rule is to ensure that LSC recipients do not initiate litigation or challenge or participate in any effort to reform a Federal or State welfare system. In addition, the rule clarifies when recipients can engage in legal representation of a client seeking specific relief from a welfare agency and incorporates § 504(e) of 110 Stat. 1321, which permits recipients to use non-LSC funds to comment on public rulemaking or respond to requests from legislative or administrative officials.

Section 1639.2 Definitions

Federal or State welfare system is defined to include the Federal and State AFDC programs under Title IV-A of the Social Security Act, 42 U.S.C. § 601 *et seq.* These programs are the current Federal-State welfare cash assistance programs for needy families with dependent children. It would also include new programs or provisions enacted by Congress to replace or modify these programs, such as the block grant proposals for cash assistance in Title I of H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, adopted by Congress on August 1, 1996. Also

included in the definition would be any components or requirements from other public benefit or human service programs that are a part of the AFDC program, such as requirements of establishment of paternity and cooperation with child support enforcement. In addition, it would also include State changes in AFDC or JOBS programs, State efforts to implement any Federal block grant cash assistance program for needy families with children, and State efforts to eliminate AFDC and replace it with a new program (for example, the Wisconsin Works program). Federal or State welfare system would also include any State AFDC programs or their replacements conducted under waivers granted either by the Department of Health and Human Services pursuant to § 1115 of the Federal Social Security Act or by enacted legislation.

Finally, the definition would include State General Assistance, General Relief, Direct Relief, Home Relief or similar state means-tested programs for basic subsistence which operate with State funding or under State mandate, and new programs enacted by States to replace or modify these programs. For example, if a State eliminated or replaced its General Assistance program, the new program would be included within the definition. In a State with county-run State General Assistance programs, State legislation or regulatory changes in those programs would be included within the definition of *Federal or State welfare system*.

Federal or State welfare system does not include other Federal programs such as: the Job Training Partnership Act and pending legislation that would revise and consolidate job training, vocational education, and other training programs such as the Workforce Development Act; the Food Stamp Program, adult nutrition programs, child nutrition programs, Women and Infants Care (WIC) program, and the school lunch program; Social Security and Supplemental Security Income; Medicaid; Medicare; Unemployment Insurance; Veterans Benefits; Child Support Enforcement; and child welfare programs including adoption assistance, foster care and termination of parental rights.

Reform of a Federal or State welfare system means an effort or action initiated or undertaken to effect legislative or regulatory proposals for changes in key components of the Federal or a State welfare system. For example, Federal legislative proposals to block grant the AFDC program and State legislative or regulatory proposals which implement any new Federal

block grant would be a *reform* of the Federal or State welfare system. State legislative or regulatory efforts to develop AFDC demonstration programs under Federal waiver authority and State efforts to eliminate or modify a State General Assistance program would also be *reform*.

The regulation focuses on "key" components of a Federal or State welfare system because the statute references the "welfare system," as distinguished from any particular provision of a welfare law or regulation. A change to a "key component" would cause a fundamental restructuring of the AFDC or General Assistance program such as the Federal proposals to block grant the AFDC program or waiver proposals to eliminate the AFDC programs and replace them with a new program that offers eligible families a subsidized job or a position in a work program. A "key component" would also include changes that would not fundamentally restructure the welfare system but would make significant changes in how the system operates, such as proposals or enactments in recent welfare reform waivers which: (1) impose time limits on the receipt of AFDC or General Assistance; (2) require work in exchange for receipt of assistance; (3) deny benefit increases for additional children (family cap); or (4) require teen parents to reside at home or to regularly attend school. Recipients may not initiate litigation challenging regulations or legislation incorporating these policies.

A "key component" would not include technical or isolated changes in Federal or State welfare laws or regulations that are not made as part of an effort to change the basic structure of a welfare system or how a welfare system functions. For example, a change in an agency's child care reimbursement policy or a change in what assets are used to determine eligibility would not be a "key component" of a Federal or State welfare reform effort. A key component would also not include minor changes in policy that are not necessary to a State effort to reform the welfare system. Several examples from recent State activity illustrate changes that are not key components of a welfare reform effort.

Thus, for example, a change in the definition of which costs associated with a required search for employment qualifies for reimbursement would not be considered a key component. Similarly, a policy changing the allowed value of an automobile which an applicant may own and remain eligible for AFDC, or the use to which the automobile must be put to qualify,

would not be considered a key component.

The term *existing law* is defined to mean Federal, State or local statutory law or ordinances.

The definitions of *Federal or State welfare system*, *reform* and *existing law* all are consistent with the legislative history which led to the enactment of this new restriction. This legislative history included: debate around an amendment by Senator Gramm during consideration of the FY 1995 Commerce, Justice and State, the Judiciary and Related Agencies appropriations bill in July of 1994 (140 *Cong. Rec.*, S. 9402 (July 31, 1994)); debate around an amendment by Senator Gramm during consideration of the Senate Welfare Reform bill on September 15, 1995 (141 *Cong. Rec.*, S. 13640 (Sept. 15, 1995)); brief references made to the welfare reform prohibition during the debate on the Domenici Amendment in late September of 1995 [141 *Cong. Rec.*, S. 14671 (Sept. 29, 1995)] and during the debate on the Cohen-Bumpers Amendment on March 14, 1996 [142 *Cong. Rec.*, S. 2055 (March 14, 1996)]. The committee reports that accompanied the House appropriations legislation and the two conference committee reports accompanying H.R. 2076 and H.R. 3019 also made brief reference to "welfare reform" advocacy and are part of the legislative history. The cases that are mentioned in these debates as objectionable are cases challenging specific new policies which eliminated State general assistance programs or made changes in key components of State AFDC programs that were enacted as part of an overall State welfare reform effort. For example, Members of Congress specifically referenced new state laws which imposed time limits on the receipt of benefits and "family cap" laws which denied benefits to a family for additional children. In addition, a major concern throughout these debates was the fear that legal services programs would challenge Federal block grant legislation replacing the AFDC program or State legislation or regulations created pursuant to the block grant authority. However, at no time during the debates did any Member of Congress mention cases challenging child support, Food Stamps, Medicaid, foster care, child welfare, SSI, Veterans benefits, Job Training or other programs, including other means-tested benefit programs.

Language identical to that in 110 Stat. 1321 first appeared in Section 21 of H.R. 1806, the legislation co-sponsored by Representatives McCollum and Stenholm to reform the legal services

program. Neither of these representatives provided any description of this new provision when the legislation was introduced. The only discussion by either co-sponsor about the meaning of the provision was a statement made by Rep. Bill McCollum during the House Reauthorization hearing in May 1995, in which he stated that legal services:

Should be prohibited and restricted from being engaged in trying to change or reform the welfare systems that are undergoing changes in the States or at the Federal level, that is not their role, that they be able to represent individuals and do the bread-and-butter work, landlord-tenant problems, perhaps the welfare laws, making claims for people, and so forth, but not trying to reform the system.

(See, Transcript, Reauthorization of Legal Services Corporation, Tuesday, May 16, 1995, House of Representatives, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, Washington, D.C., p. 31)

Section 1639.3 Prohibition

This section prohibits any involvement by a recipient in initiating legal representation or challenging or participating in efforts to reform a Federal or State welfare system. The prohibition includes, but is not limited to, litigation challenging laws or regulations enacted as part of a reform of a Federal or State welfare system; participating in rulemaking involving proposals that are being considered as part of a reform of a Federal or State welfare system; and lobbying or other advocacy before legislative or administrative bodies involving pending or proposed legislation that is part of a reform of a Federal or State welfare system. The prohibition also precludes litigation or other advocacy with regard to the granting or denying of State requests for Federal waivers or Federal requirements for AFDC including: (1) Participation at the State level before administrative agencies, the legislature or the Executive when waivers are under consideration; (2) commenting upon or engaging in other advocacy on waivers that are being considered by the Department of Health and Human Services; and (3) engaging in advocacy before Congress if Congress undertakes to adopt a State waiver request.

Section 1639.4 Permissible Representation of Eligible Clients

This section incorporates the statutory language which permits a recipient to represent "an individual eligible client who is seeking specific relief from a welfare agency, if such relief does not involve an effort to amend or otherwise

challenge existing law in effect on the date of the initiation of the representation." Pursuant to this provision, an action to enforce existing law would not be proscribed. Thus, when representing an eligible client seeking individual relief, a recipient may challenge a regulation or policy on the basis that it violates a higher State or Federal law. In addition, such representation might also challenge the agency's interpretation of the law or challenge the application of an agency's regulation or policy, or the law on which it is based, to the individual seeking relief.

Section 1639.5 Exception for Public Rulemaking and Responding to Requests With Non-LSC Funds

The 1996 appropriations act includes a provision, § 504(e) of 110 Stat. 1321, which provides that nothing in § 504—

Shall be construed to prohibit a recipient from using funds derived from a source other than the Legal Services Corporation to comment on 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.

This exception applies to the prohibition on welfare reform lobbying and rulemaking in § 504(a)(16). Therefore, recipients may use non-LSC funds to make oral or written comments in a public rulemaking proceeding involving an effort to reform a Federal or State welfare system or to respond to a written request from a government agency or official thereof, elected official, legislative body, committee or member thereof, made to the employee or to a recipient, to testify or provide information regarding an effort to reform a State or Federal welfare system, provided that the response by the recipient is made only to the party making the request and the recipient does not arrange for the request to be made.

Section 1639.6 Recipient Policies and Procedures

In order to ensure that the recipient's staff are fully aware of the restriction on welfare reform activity and to ensure that staff receive appropriate guidance, this section requires that recipients adopt written policies and procedures to guide its staff in complying with this part.

List of Subjects in 45 CFR Part 1639

Grant programs-law; Legal services; Welfare reform.

For reasons set forth in the preamble, Chapter XVI is amended by adding part 1639 as follows:

PART 1639—WELFARE REFORM

Sec.

1639.1 Purpose.

1639.2 Definitions.

1639.3 Prohibition.

1639.4 Permissible representation of eligible clients.

1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

1639.6 Recipient policies and procedures.

Authority: Pub. L. 104-134, 110 Stat. 1321; 42 U.S.C. 2996g(e).

§ 1639.1 Purpose.

The purpose of this rule is to ensure that LSC recipients do not initiate litigation, challenge or participate in efforts to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

§ 1639.2 Definitions.

(a)(1) *Federal or State welfare system* as used in this Part means:

(i) The Federal and State AFDC program under Title IV-A of the Social Security Act and new programs or provisions enacted by Congress or the States to replace or modify these programs, including State AFDC programs conducted under Federal waiver authority.

(ii) General Assistance or similar state means-tested programs conducted by States or by counties with State funding or under State mandates, and new programs or provisions enacted by States to replace or modify these programs.

(2) *Federal or State welfare system* does not include other public benefit programs unless changes to such programs are part of a reform of the AFDC or General Assistance programs.

(b) *Reform of Federal or State Welfare Systems* as used in this Part means a legislative or administrative effort to change key components of the Federal or State welfare system, including laws and regulations that implement the changes.

(c) *Existing law* as used in this part means Federal, State or local statutory laws or ordinances.

§ 1639.3 Prohibition.

Except as provided in §§ 1639.4 and 1639.5, recipients may not initiate legal representation, challenge or participate in any other way in efforts to reform a Federal or State welfare system. Prohibited activities include participation in:

(a) Litigation challenging laws or regulations enacted as part of a reform of a Federal or State welfare system;

(b) Rulemaking involving proposals that are being considered to implement a reform of a Federal or State welfare system;

(c) Lobbying or other advocacy before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of a reform of a Federal or State welfare system; or

(d) Litigation or other advocacy undertaken with regard to the granting or denying of State requests for Federal waivers of Federal requirements for AFDC.

§ 1639.4 Permissible representation of eligible clients.

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation.

§ 1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

Consistent with the provisions of § 1612.6 (a)–(e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system.

§ 1639.6 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.

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