

(Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 11, 1997.

Jerry Clifford,

*Acting Regional Administrator.*

[FR Doc. 97-6511 Filed 3-13-97; 8:45 am]

BILLING CODE 6560-50-P

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1610

#### Use of Non-LSC Funds

**AGENCY:** Legal Services Corporation.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule revises the Legal Services Corporation's ("Corporation" or "LSC") rule concerning the use of non-LSC funds by LSC recipients. The revisions are intended to address constitutional challenges raised by the previous rule, and to ensure that no LSC-funded entity engages in restricted activities. This revised rule deletes the provisions on transfers of non-LSC funds and adds a new section setting out standards for the integrity of recipient programs.

**DATES:** The interim rule is effective on March 14, 1997. Comments must be submitted on or before April 14, 1997.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002-4250.

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

**SUPPLEMENTARY INFORMATION:** On December 2, 1996, the Corporation published a completely revised final rule to implement Section 504 in the Corporation's FY 1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), as incorporated by the Corporation's FY 1997 appropriations act, Pub. L. 104-208, 110 Stat. 3009. Section 504 applies certain restrictions to any person or entity receiving LSC funds, effectively restricting the use of virtually all of a recipient's funds to the same degree that it restricts LSC funds. Although not required to by law, the Corporation extended the restrictions on a recipient's funds to a transfer of a recipient's non-LSC funds. Thus, the rule required that when a recipient transferred its non-LSC funds to an entity that had no LSC funds, the conditions would remain attached to the transferred funds. However, the other funds of the entity would not be affected.

In January 1997, five legal services recipients in Hawaii, Alaska, and California, together with two of their program lawyers, two non-federal funders and a client organization, filed suit in the United States District Court for the District of Hawaii challenging a number of the Section 504 restrictions as unconstitutional conditions on their use of non-LSC funds. *Legal Aid Society of Hawaii, et al. v. Legal Services Corporation*, Civil Action No. 97-00032 ACK. On February 14, 1997, the Court entered an order which preliminarily enjoined the Corporation from enforcing restrictions on the recipients' use of non-LSC funds for certain restrictions as to which the Court determined that the plaintiffs' had a fair likelihood of demonstrating an infringement of First Amendment rights. The Court's preliminary ruling was grounded in pertinent part on its understanding of the Corporation's interrelated organization policy, but also implicated the expansive reach of the Corporation's restrictions on non-LSC funds. The effect of the preliminary order is to allow those recipients who are plaintiffs in the case to use their non-LSC funds to engage in certain prohibited activities within their recipient programs during the interim period before a trial on the merits and a final ruling by the judge. This creates at least a temporary situation clearly at odds with congressional intent.

The Corporation has reviewed its policies and regulations and is making certain limited adjustments, which are

intended both to preserve the statutory system created by Congress that forbids recipients from engaging in prohibited activities and subsidizing prohibited activities with LSC funds and to respond to the constitutional concerns addressed by the Court. In making these limited revisions, the Corporation is acting to reinforce its commitment to the statutory structure of prohibitions and restrictions intended by Congress without risking the possible infringement of constitutional rights where the prohibited activities are supported entirely by non-LSC funds and carried out without subsidization by the LSC grantee. Under the Court's decision, an LSC-funded entity can engage in restricted activities. While recognizing that this initial decision is not dispositive of the issue, the Corporation is mindful that Congress clearly intended to assure that no LSC-funded entity engage in restricted activities.

The Operations and Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") held public hearings on this matter and considered a draft interim rule on March 7, 1997. The Committee recommended and the Board agreed on March 8, 1997, to publish this revised rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on the revised legal status of these regulations, address the alleged constitutional infirmities, and yet preserve the integrity of LSC-funded programs consistent with congressional intent. Accordingly, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3). This rule is effective upon publication. However, the Corporation also solicits comment on this interim rule for review and consideration by the Committee and Board. After receipt of written public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued, which will supersede this interim rule.

Generally, this rule deletes provisions in Section 1610.7 on the transfer of non-LSC funds and adds a new section dealing with the integrity of recipient programs. This section also formally replaces and nullifies Section 1-7 of the Corporation's 1986 Audit and Accounting Guide, which sets out the Corporation's policy on interrelated organizations.

A section-by-section analysis is provided below.

### Section 1610.1 Purpose

The purpose section is revised to reflect congressional intent that no LSC-funded organization engage in any restricted activities.

### Section 1610.7 Transfers of funds

The provisions on the transfer of non-LSC funds are deleted from this section. The new § 1610.8, which sets out standards to ensure the integrity of the recipient program, has been added.

### Section 1610.8 Program Integrity of Recipient

The purpose of this new section is to ensure the integrity of recipient programs. It provides that this part's restrictions on non-LSC funds will be applied to an organization found to be interrelated with a recipient such that it controls, is controlled by or is subject to common control with another organization, unless the recipient can demonstrate that it meets this part's standards of program integrity. This new policy on program integrity is based in part on the Corporation's policy on interrelated organizations, which is modified in this rule to allow recipients to have an affiliation or relationship with separate organizations which may engage in prohibited activities funded solely with non-LSC funds, provided that the standards for program integrity in this rule are met. The standards of program integrity require that there be a wall of separation between the recipient and another organization so that LSC funds will not be used to subsidize prohibited activities. Thus, although the recipient's governing body could control the other organization, the separate and distinct integrity of the recipient program is required to be maintained.

Paragraph (a) of this section essentially reflects the Corporation's old policy on interrelated organizations. It states that if a recipient controls, is controlled by or is subject to common control with another organization, the two organizations will be found to be interrelated and will be subject to the restrictions of this part unless they meet the standards of program integrity in paragraph (b). "Control" is defined as the ability to determine or influence the management or policies of another organization. The test for determining whether such control exists is largely the same as in the old interrelated policy, with a few adjustments that are reflected in the Section 1610.8(a)(3). The old policy stated that a determination of interrelatedness will be based on the totality of the facts and that no one factor would be

determinative. This new rule retains this provision except that it cites one factor that is determinative of interrelatedness. If there is an overlap of officers and directors such that the governing body of one organization includes enough representatives of the other to cause or prevent action by the other, interrelated status will be found. Nevertheless, this interrelation does not automatically mean that the restrictions of this part will be applied to both organizations. The restrictions would only be applied if the standards of program integrity in paragraph (b) are not met.

Paragraph (b) sets out the standards of program integrity. First, the other organization must not receive any LSC funds. Second, the relationship of the recipient with the other organization must be approved by the recipient's governing body. This ensures that it is the local board, which is governed by the Corporation's governing body regulation, 45 CFR Part 1607, rather than a recipient's staff or management, that approves the relationship. The third standard requires clear physical and financial separation of the recipient from the other organization such that the recipient must have an objective integrity and independence. Factors considered to determine whether such objective integrity and independence exist include the existence of separate personnel, the existence of separate accounting and timekeeping records, the existence of separate facilities, and the extent to which signs or other forms of identification distinguish the recipient from the organization. Determinations taking into account these standards are necessary to ensure that there is no identification of the recipient with restricted activities and that the other organization is not a sham or paper organization and is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient's involvement with or endorsement of prohibited activities.

#### List of Subjects in 45 CFR Part 1610

Grant programs, Legal services.

For reasons set forth in the preamble, LSC revises 45 CFR Part 1610 to read as follows:

### PART 1610—USE OF NON-LSC FUNDS

#### Sec.

- 1610.1 Purpose.
- 1610.2 Definitions.
- 1610.3 Prohibition.
- 1610.4 Authorized use of other funds.
- 1610.5 Notification.
- 1610.6 Applicability.
- 1610.7 Transfers of recipient funds.

1610.8 Program integrity of recipient.

1610.9 Accounting.

Authority: 42 U.S.C. 2996i; Pub. L. 104-208, 110 Stat. 3009 Pub. L. 104-134 110 Stat. 1321 (1996).

#### § 1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients and to ensure that no LSC-funded entity shall engage in any activities restricted by this part.

#### § 1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act:

(1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR part 1608 of the LSC Regulations (Political activities);

(2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities);

(3) Section 1007(b)(1) of the LSC Act and 45 CFR part 1609 of the LSC Regulations (Fee-generating cases);

(4) Section 1007(b)(2) of the LSC Act and 45 CFR part 1613 of the LSC Regulations (Criminal proceedings);

(5) Section 1007(b)(3) of the LSC Act and 45 CFR part 1615 of the LSC Regulations (Actions challenging criminal convictions);

(6) Section 1007(b)(7) of the LSC Act and 45 CFR part 1612 of the LSC Regulations (Organizing activities);

(7) Section 1007(b)(8) of the LSC Act (Abortions);

(8) Section 1007(b)(9) of the LSC Act (School desegregation); and

(9) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion).

(b) *Activity prohibited by or inconsistent with Section 504* means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat. 1321 (1996) and those provisions of the Corporation's regulations that implement those sections:

(1) Section 504(a)(1) and 45 CFR part 1632 of the LSC Regulations (Redistricting);

(2) Sections 504(a)(2) through (6), as modified by Sections 504(b) and (e), and 45 CFR part 1612 of the LSC Regulations (Legislative and administrative advocacy);

(3) Section 504(a)(7) and 45 CFR part 1617 of the LSC Regulations (Class actions);

(4) Section 504(a)(8) and 45 CFR part 1636 of the LSC Regulations (Statement of facts and client identification);

(5) Section 504(a)(9) and 45 CFR part 1620 of the LSC Regulations (Priorities);  
(6) Section 504(a)(10) and 45 CFR part 1635 of the LSC Regulations (Timekeeping);

(7) Section 504(a)(11) and 45 CFR part 1626 of the LSC Regulations (Aliens);

(8) Section 504(a)(12) and 45 CFR part 1612 of the LSC Regulations (Public policy training);

(9) Section 504(a)(13) and 45 CFR part 1642 of the LSC Regulations (Attorneys' fees);

(10) Section 504(a)(14) (Abortion litigation);

(11) Section 504(a)(15) and 45 CFR part 1637 of the LSC Regulations (Prisoner litigation);

(12) Section 504(a) (16), as modified by Section 504(e), and 45 CFR part 1639 of the LSC Regulations (Welfare reform);

(13) Section 504(a)(17) and 45 CFR part 1633 of the LSC Regulations (Drug-related evictions); and

(14) Section 504(a)(18) and 45 CFR part 1638 of the LSC Regulations (In-person solicitation).

(c) *IOLTA funds* means funds derived from programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(d) *Non-LSC funds* means funds derived from a source other than the Corporation.

(e) *Private funds* means funds derived from an individual or entity other than a governmental source or LSC.

(f) *Public funds* means non-LSC funds derived from a Federal, State, or local government or instrumentality of a government. For purposes of this part, IOLTA funds shall be treated in the same manner as public funds.

(g) *Transfer* means a transfer of a recipient's funds for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities.

(h) *Tribal funds* means funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

#### **§ 1610.3 Prohibition.**

A recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless such use is authorized by §§ 1610.4, 1610.6 or 1610.7 of this part.

#### **§ 1610.4 Authorized use of other funds.**

(a) A recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with Section 504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with Section 504.

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of this chapter, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with Section 504.

#### **§ 1610.5 Notification.**

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

(b) A recipient is not required to provide such notification for receipt of contributions of less than \$250.

#### **§ 1610.6 Applicability.**

Notwithstanding § 1610.7(a), the prohibitions referred to in §§ 1610.2(a)(4) (Criminal proceedings), (a)(5) (Actions challenging criminal convictions), (b)(7) (Aliens) or (b)(11) (Prisoner litigation) of this part will not apply to:

(a) A recipient's or subrecipient's separately funded public defender program or project; or

(b) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

#### **§ 1610.7 Transfers of recipient funds.**

(a) For a transfer of LSC funds, the prohibitions and requirements referred to in this part, except as modified by paragraphs (b) and (c) of this section, will apply both to the funds transferred and to the non-LSC funds of the person or entity.

(b)(1) In regard to the requirement in § 1610.2(b)(5) on priorities, persons or entities receiving a transfer of LSC funds shall either:

(i) use the funds transferred consistent with the recipient's priorities; or

(ii) establish their own priorities for the use of the funds transferred consistent with 45 CFR part 1620;

(2) In regard to the requirement in § 1610.2(b)(6) on timekeeping, persons or entities receiving a transfer of LSC funds are required to maintain records of time spent on each case or matter undertaken with the funds transferred.

(c) For a transfer of LSC funds to bar associations, pro bono programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, the prohibitions or requirements of this part shall apply only to the funds transferred.

#### **§ 1610.8 Program integrity of recipient.**

(a) If a recipient controls, is controlled by or is subject to common control with another organization, the two organizations are interrelated organizations and the restrictions in this part will be applied to both organizations, unless the association between the two organizations meets the standards of program integrity in paragraph (b) of this section.

(1) *Control* means the direct or indirect ability to determine the direction of management and policies or influence the management or policies of another organization.

(2) Factors considered to determine whether control exists are:

(i) The extent and pattern of any overlap of officers, directors, or other managers between two organizations;

(ii) The contractual and financial relationships (especially in terms of the proportion of the organization's funds or resources that are provided by the possibly controlling organization);

(iii) The history of relationships among the organizations (e.g., the fact that one organization provided initial funding and named initial director of another would be a relevant fact; as would facts relating to decision-making on policies or transactions of mutual interest; actual control of particular decisions);

(iv) A close identity of interest;

(v) One organization has become a mere conduit, "incorporation pocketbook," or "straw" party for another;

(vi) Funds are solicited by a separate entity in the name of and with the expressed or implicit approval of the recipient and substantially all of the funds solicited are intended by the contributor or are otherwise required to be transferred to the recipient or used at its discretion or direction;

(vii) A recipient transfers resources to another entity that holds these resources for the benefit of the recipient; and

(viii) A recipient assigns functions to an entity whose funding is primarily

derived from sources other than public contributions.

(3) A determination of interrelatedness will be based on the totality of the facts and the presence or absence of any one or more factors is not determinative, except that an overlap of officers and directors such that the governing body of one organization includes enough representatives of the other to cause or prevent action by the other will be determinative that the organizations are interrelated.

(b) The restrictions in this part will not be applied to an organization found to be interrelated pursuant to paragraph (a) if:

(1) The organization receives no LSC funds, and LSC funds do not directly or indirectly subsidize restricted activities;

(2) The relationship with the organization is approved by the recipient's governing body; and

(3) The recipient is physically and financially separate from the organization. Mere bookkeeping separation of LSC funds from other funds is not sufficient. In order to be physically and financially separate, the recipient and the organization must have an objective integrity and independence from one another. Factors considered to determine whether such objective integrity and independence exist shall include, but are not limited to:

(i) The existence of separate personnel;

(ii) The existence of separate accounting and timekeeping records;

(iii) The existence of separate facilities; and

(iv) The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

#### **§ 1610.9 Accounting.**

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.

Dated: March 11, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97-6542 Filed 3-13-97; 8:45 am]

BILLING CODE 7050-01-P

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[MM Docket No. 95-142; RM-8685]

#### **Radio Broadcasting Services; Zapata, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Arturo Lopez, allots Channel 228A at Zapata, Texas, as the community's first local FM service. See 60 FR 46562, September 7, 1995. Channel 228A can be allotted to Zapata in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 228A at Zapata are 26-54-30 NL and 99-16-18 WL. Since Zapata is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

**DATES:** Effective April 21, 1997. The window period for filing applications will open on April 21, 1997, and close on May 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 95-142, adopted February 26, 1997, and released March 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Zapata, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-6429 Filed 3-13-97; 8:45 am]

BILLING CODE 6712-01-F

### **47 CFR Part 73**

[MM Docket No. 96-122; RM-8795; RM-8860]

#### **Radio Broadcasting Services; Riverdale and Huron, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document dismisses a petition for rule making filed by Happy Nice Valley Broadcasting requesting the allotment of Channel 252A to Riverdale, California, as that locality's first local aural transmission service (RM-8795). The proposal is dismissed based upon the lack of interest by the petitioner or any other interested party to provide information, as requested, to establish that Riverdale constitutes a *bona fide* "community", as that term is defined for purposes of Section 307(b) of the Communications Act, as amended by the Telecommunications Act of 1996, for allotment objectives. See 61 FR 30585, June 17, 1996. However, in response to a counterproposal filed by Radio Coalinga Latino, Channel 252A is allotted to the incorporated community of Huron, California, as that locality's first local aural transmission service (RM-8860). Coordinates used for Channel 252A at Huron, California, are 36-15-41 and 120-04-19. With this action, the proceeding is terminated.

**DATES:** Effective April 21, 1997. The window period for filing applications on Channel 252A at Huron, California, will open on April 21, 1997, and close on May 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 252A at Huron, California, should be addressed to the Audio Services Division, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96-122, adopted February 26, 1997, and released March 7, 1997. The full text of this Commission decision is available for