

(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.

[FR Doc. 97-10037 Filed 4-18-97; 8:45 am]

BILLING CODE 7050-01-P

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.

Section 1620.2 Definitions

The definitions of "cases" and "matters" are the same as those contained in the timekeeping regulation in 45 CFR part 1635 to assure consistency in the use of terminology throughout the regulations.

Section 1620.3 Establishing Priorities

Paragraph (a) requires recipients to adopt procedures for establishing priorities and to adopt priorities for the use of all of their resources. It also requires recipients to undertake only those cases and matters that are within their priorities. Comments expressed a concern that applicants for legal services might interpret this rule as providing an entitlement to legal assistance for any person needing representation in one of a recipient's priority areas. This was clearly not the intent of the rule. Congress did not create legal services as an entitlement program.

In order to clarify that the rule does not create an entitlement to legal services, the Board replaced "are to be undertaken" with "may be undertaken." The rule is simply intended to ensure that each recipient focuses its resources on cases and matters that its board had determined to be a priority. It does not require recipients to represent every eligible applicant who seeks assistance, even though the applicant's case falls within the recipient's priorities. Recipients may and do utilize other case acceptance criteria in addition to their priorities statement to determine whether to represent any particular applicant whose case falls within priorities. Recipients' funds and staffing are seldom sufficient to take every applicant as a client. Some recipients rank their priorities as a way of helping them make choices among applicants, but they are not required to do so by this rule. Recipients need the additional flexibility to utilize case acceptance criteria in addition to their priorities statements, because they cannot control the volume or timing of requests for aid, nor can they always predict their funding status.

Paragraph (b) specifies that a recipient's procedures must include an appraisal of the needs of the client community in the service area based on consultation with the client community, the recipient's governing body members and employees, the private bar, and other interested persons.

Paragraph (c) sets out the factors a recipient must consider when setting priorities. The interim rule used the term "should consider," which replaced "shall consider" in the prior rule. No

substantive change in meaning was intended. However, the change in terms created some confusion over the meaning of the provision, and the Board returned to "shall" for the final rule.

This rule retains all of the factors in the interim rule. All except two of these factors were also found in the rule that preceded the interim rule. The first of the two new factors is the requirement to consider the suggested priorities promulgated by the Corporation pursuant to § 504(c) of Pub. L. 104-13. The second new factor is consideration of whether there is a need to vary priorities for different parts of the service area. The rule has added the consideration of whether there is a need to vary priorities for unique parts of the service area, because some recipients serve a diverse community, different parts of which have distinctive characteristics. The differences may arise because of geographic factors, such as the distinctions between rural and urban areas, or because of characteristics of the client population, such as the fact that there is a concentration of the elderly or of immigrants. Program-wide priorities may not be suitable for all recipients, and the rule allows a recipient to set different priorities for a particular segment of its service area.

The Corporation intends to revisit this section of the rule in the near future in order to consider the factors in conjunction with the criteria used in the Corporation's new competition process, see 45 CFR part 1634. If a review results in the Corporation staff making recommendations for additional changes, such changes will be presented to the Committee as a proposed rule.

Section 1620.4 Establishing Policies and Procedures for Emergencies

This section requires a recipient's governing body to develop procedures that the staff must follow when determining whether a particular circumstance is an emergency case that may be taken even though it falls outside of the recipient's priorities. Since the recipient is prohibited from expending its resources and time on any activities outside its priorities other than emergencies, each recipient must clearly define those emergencies to give its staff clear guidance regarding their identification and acceptance.

Several changes were made by the Board to the interim rule's version of this section. Changes were made to the section's title and to paragraph (a). Paragraph (a) of the interim rule required the adoption of "procedures" only. Paragraph (a) in this final rule requires that a recipient adopt "written

policies and procedures" to guide it in undertaking emergency cases outside of its priorities. Reference to "non-priority cases or matters" has been added to clarify the meaning of the provision, and the examples of natural disaster or unanticipated changes in the law have been deleted and, instead, are discussed below in this commentary.

This paragraph describes emergencies as including circumstances where action must be taken in a short period of time as well as unusual and infrequent circumstances where no action needs to be initiated quickly, but where inordinate harm is likely to be incurred by the client or client's family members if action is not taken. Emergency situations might include unusual circumstances, such as a natural disaster or an unanticipated change in the law, where issues which severely affect a large segment of the client community were not anticipated at the time priorities were set. Because engaging in a comprehensive priority-setting process can be time-consuming and expensive, recipients need some flexibility to deal with significant changes in the law on an emergency basis. The recipient's board, however, should determine at the earliest opportunity whether it is appropriate to revise priorities to reflect those changes.

Paragraph (b) of the interim rule has not been retained in the final rule. The interim provision required a recipient's executive director to decide when an emergency occurs and to authorize taking the case, and suggested factors to be considered to determine what constitutes an emergency. The Board deleted the paragraph, because it decided to keep the focus of this section on the responsibilities of the governing body to establish policies and procedures. Besides, some of the factors in the paragraph are already listed in paragraph (a) of the interim rule.

Section 1620.5 Annual Review

This section states the obligation of the recipient's governing body to review its priorities annually, or more frequently when a significant number of similar cases have been accepted under the recipient's emergency procedures. This is most likely to happen when there is a change in law that adversely affects a large number of eligible clients. For the program to continue to accept such emergency cases, the governing body should affirmatively include a priority that encompasses those cases if the recipient is to continue accepting them. This section also sets out factors that should be considered by the governing body in determining whether to change the recipient's priorities.

Section 1620.6 Signed Written Agreement

This section implements § 504(a)(9) of the Corporation's appropriation's act. It clarifies that no recipient staff who works on cases or matters may engage in work outside of a recipient's adopted priorities. Each staff person that handles a case or matter or is authorized to make decisions about case acceptance must sign a written agreement not to undertake non-priority cases or matters except for those that are emergencies. This normally would not include clerical staff.

Section 1620.7 Reporting

Paragraph (a) reflects the requirement in § 504(9)(B) of the Corporation's FY 1996 appropriations act that a recipient must report on a quarterly basis to its governing body about the emergency work performed outside of the recipient's priorities. The report must include a rationale for taking any such non-priority cases or matters.

Paragraph (b) reflects the requirement in § 504(9)(B) that a recipient report annually to the Corporation, on a form the Corporation provides, the non-priority emergency work in which it has engaged.

Paragraph (c) contains language from the current rule instructing the recipient to report annually to the Corporation on its priorities.

List of Subjects in 45 CFR Part 1620

Legal services.

For reasons set forth in the preamble, 45 CFR part 1620 is revised to read as follows:

PART 1620—PRIORITIES IN USE OF RESOURCES

Sec.

- 1620.1 Purpose.
- 1620.2 Definitions.
- 1620.3 Establishing priorities.
- 1620.4 Establishing policies and procedures for emergencies.
- 1620.5 Annual review.
- 1620.6 Signed written agreement.
- 1620.7 Reporting.

Authority: 42 U.S.C. 2996f(a)(2); Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

§ 1620.1 Purpose.

This part is designed to provide guidance to recipients for setting priorities and to ensure that a recipient's governing body adopts written priorities for the types of cases and matters, including emergencies, to which the recipient's staff will limit its commitment of time and resources.

§ 1620.2 Definitions.

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual Private Attorney Involvement (PAI) cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

§ 1620.3 Establishing priorities.

(a) The governing body of a recipient must adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which may be undertaken by the recipient.

(b) The procedures adopted must include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient's employees, governing body members, the private bar, and other interested persons. The appraisal should address the need for outreach, training of the recipient's employees, and support services.

(c) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The suggested priorities promulgated by the Legal Services Corporation;

(2) The appraisal described in paragraph (b) of this section;

(3) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(4) The resources of the recipient;

(5) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(6) The availability of other sources of training, support, and outreach services;

(7) The relative importance of particular legal problems to the individual clients of the recipient;

(8) The susceptibility of particular problems to solution through legal processes;

(9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served;

(10) Whether legal efforts will result in efficient and economic delivery of legal services; and

(11) Whether there is a need to establish different priorities in different parts of the recipient's service area.

§ 1620.4 Establishing policies and procedures for emergencies.

The governing body of a recipient shall adopt written policies and procedures to guide the recipient in undertaking emergency cases or matters not within the recipient's established priorities. Emergencies include those non-priority cases or matters that require immediate legal action to:

(a) Secure or preserve the necessities of life,

(b) Protect against or eliminate a significant risk to the health or safety of the client or immediate family members, or

(c) Address other significant legal issues that arise because of new and unforeseen circumstances.

§ 1620.5 Annual review.

(a) Priorities shall be set periodically and shall be reviewed by the governing body of the recipient annually or more frequently if the recipient has accepted a significant number of emergency cases outside of its priorities.

(b) The following factors should be among those considered in determining whether the recipient's priorities should be changed:

(1) The extent to which the objectives of the recipient's priorities have been accomplished;

(2) Changes in the resources of the recipient;

(3) Changes in the size, distribution, or needs of the eligible client population; and

(4) The volume of non-priority emergency cases or matters in a

particular legal area since priorities were last reviewed.

§ 1620.6 Signed written agreement.

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

- (a) Has read and is familiar with the priorities of the recipient;
- (b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- (c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

§ 1620.7 Reporting.

(a) The recipient shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) The recipient shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that were not within the recipient's priorities.

(c) The recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities.

Dated: April 14, 1997.

Victor M. Fortuno,
General Counsel.

[FR Doc. 97-10036 Filed 4-18-97; 8:45 am]

BILLING CODE 7050-01-P

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Final rule and interim rule with request for comments.

SUMMARY: This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") interim rule on legal representation of aliens. This rule is intended to implement the

restrictions on alien representation in the Corporation's Fiscal Year ("FY") 1996 appropriations act that are currently incorporated by reference into the Corporation's FY 1997 appropriations act. In general, these restrictions apply to a recipient's LSC and non-LSC funds where, under prior legislation and the prior rule, the restrictions applied only to a recipient's LSC funds. In addition, the final rule includes a number of technical and substantive revisions suggested by public comments, and substantially reorganizes portions of the rule to give it a more logical and coherent structure and to make it easier to understand and apply. Finally, this final rule incorporates provisions to implement the Kennedy Amendment, a new statutory provision permitting the use of a recipient's non-LSC funds for legal assistance to otherwise ineligible aliens who are the victims of domestic abuse. This provision was included in the Corporation's FY 1997 appropriations act, which was enacted after publication of the interim rule. Because these provisions were added after publication of the interim rule, the Corporation is publishing the Kennedy Amendment provisions as interim provisions and is requesting public comment on the manner in which the Corporation has implemented the Kennedy Amendment in this rule.

DATES: Effective Dates: The final rule is effective on May 21, 1997. The interim provisions, § 1612.2(f) and (g) and § 1612.4, are effective on April 21, 1997.

Comments: Comments on the interim provisions must be submitted on or before May 21, 1997.

ADDRESSES: Comments should be submitted to the Office of 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: Section 504(a)(11) of the LSC appropriations act for FY 1996, Pub. L. 104-134, 110 Stat. 1321 (1996), prohibits the Corporation from providing funding to any person or entity ("recipient") that provides legal assistance to ineligible aliens. This restriction effectively restricts a recipient's non-LSC funds for alien representation to the same degree as LSC funds. The prior rule, promulgated in 1983, expressly allowed recipients to use their non-LSC funds to provide legal assistance to ineligible aliens.

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 the restrictions in § 504(a)(11). The Committee held public hearings on staff proposals on July 9 and 10, 1996, and the Board adopted the interim rule on July 20 which was published in the **Federal Register** on August 29, 1996, at 61 FR 45750.

The interim regulation extended the restrictions on alien representation to recipients' non-LSC funds and made numerous other revisions to the prior rule to correct technical problems, to clarify several confusing provisions, and to remove outdated provisions. No other major structural revisions or substantive changes were made by the interim rule. This final rule includes changes made to the interim rule largely in response to public written and oral comments and recommendations made by the LSC staff. Public hearings were held on the rule by the Committee on December 14, 1996, and January 5, 1997, and by the LSC Board on January 6, 1997, when this final rule was adopted.

Subsequent to the publication of the interim rule, Congress passed the Corporation's 1997 appropriations act, Pub. L. 104-208, 110 Stat. 3009 (1996). That legislation amended the § 504(a)(11) restriction in the FY 1996 appropriations act to permit recipients to use non-LSC funds to serve indigent aliens who are victims of domestic abuse on matters directly related to the abuse ("Kennedy Amendment"). The Kennedy Amendment became effective on October 1, 1996, during the comment period for the interim rule. A number of comments urged incorporation of the Kennedy Amendment into the final regulations, even though the interim rule understandably made no mention of the Kennedy Amendment because the rule was published before its enactment. While the few comments the Corporation received made suggestions on how to include the Amendment into this rule, the general public was not provided notice of the Amendment. Accordingly, the Corporation requests comments on these provisions for its review and consideration. In addition, the Corporation has determined that it is necessary to publish the Kennedy Amendment provisions as interim rules, effective upon publication, in order to provide prompt and critically needed guidance to LSC recipients on the changed status of legislative requirements. LSC determined that because of the circumstances, prior notice and public comment were impracticable, unnecessary and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The Corporation intends to hold a public