

materials used buy EPA to make this determination during normal business hours at the following locations: Utah Department of Environmental Quality, Division of Solid and Hazardous Waste, 288 North 1460 West, Salt Lake City, Utah 84114-4880, phone (801) 538-6776 and EPA Region VIII, 999 18th St., Suite 300, Denver, Colorado 80202-2466, phone (303) 312-6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr at EPA Region VIII, 999 18th St., Suite 300, Denver, Colorado 80202-2466, phone (303) 312-6139.

SUPPLEMENTARY INFORMATION: For additional information, please see the Immediate Final Rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: October 18, 2001.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

[FR Doc. 01-28851 Filed 11-23-01; 8:45 am]

BILLING CODE 6560-50-P

LEGAL SERVICES CORPORATION

45 CFR Part 1639

Welfare Reform

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking sets forth a proposed change to the Legal Services Corporation's rule relating to limitations on grantee activities challenging or seeking reform of a welfare system. The proposed change, to delete the prohibition on the representation of an individual seeking welfare benefits if any such representation involves an effort to amend or otherwise challenge existing law, is necessitated to conform the regulation to the U.S. Supreme Court's decision *Legal Services Corporation v. Velazquez, et al.*

DATES: Comments on this NPRM are due on January 25, 2002.

ADDRESSES: Written comments may be submitted by mail, fax, or e-mail to Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE., Washington, DC 20002-4250; 202-336-8817; mcondray@lsc.gov.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, 202-336-8817.

SUPPLEMENTARY INFORMATION: On February 28, 2001, the United States Supreme Court issued a decision in *Legal Services Corporation v. Velazquez, et al.*, Nos. 99-603 and 99-960, 121 S. Ct. 1043, 2001 WL 193738 (U.S.), striking down as unconstitutional

the restriction prohibiting LSC grantees from challenging welfare reform laws when representing clients seeking specific relief from a welfare agency. The stricken restriction was first imposed by Congress in § 504(a)(16) of the FY 1996 Legal Services Corporation appropriations legislation (the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321-53 (1996)) and has been retained in each subsequent annual LSC appropriation. The relevant portion of § 504(a)(16) prohibits funding of any organization:

that initiates legal representation or participates in any other way, in litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system, except that this paragraph shall not be construed to preclude a recipient from representing 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.

This restriction was incorporated into LSC's regulations at 45 CFR part 1639. Specifically, 45 CFR 1639.3, Prohibition, provides that:

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

- (a) Litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system.
- (b) Rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system.
- (c) Lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system.

45 CFR 1639.4 Permissible representation of eligible clients, provides that:

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.¹

The Supreme Court in *Velazquez*, upholding the decision of the Court of Appeals, invalidated that portion of the statute which provides that representation of an individual eligible client seeking specific relief from a welfare agency may not involve an effort to amend or otherwise challenge existing law. The Court held that such

a qualification constitutes impermissible viewpoint discrimination under the First Amendment because it "clearly seeks to discourage challenges to the status quo." 121 S. Ct. 1043, 1047 (2001).

In determining specifically which language in the 1996 Act to strike as invalid, the Supreme Court noted that the Court of Appeals had concluded that congressional intent regarding severability was unclear. Since that "determination was not discussed in the briefs of either party or otherwise contested" in the appeal to the Supreme Court, the majority opinion noted that it was exercising its "discretion and prudential judgement" by declining to address the issue. *Id.* at 1053. Instead, the Supreme Court opted to simply affirm the decision of the Court of Appeals to "invalidate the smallest possible portion of the statute, excising only the viewpoint-based proviso rather than the entire exception of which it is a part." *Id.* at 1052.

The effect of the *Velazquez* decision has been to render the stricken language null and void. This means that the limitation on representation of an individual eligible client seeking specific relief from a welfare agency which prohibits any such representation from involving an effort to amend or otherwise challenge existing law is not valid and may not be enforced or given effect. An individual eligible client seeking relief from a welfare agency may be represented by a recipient without regard to whether the relief involves an effort to amend or otherwise challenge existing welfare reform law.

In light of foregoing, at its June 2001 meeting the LSC Board of Directors identified Part 1639 as an appropriate subject for rulemaking for the purpose of amending the regulation to make it conform to the decision in *Velazquez*.

For reasons set forth above, LSC proposes to amend 45 CFR Part 1639 as follows:

PART 1639—WELFARE REFORM

1. The authority citation continues to read as follows: 42 U.S.C. 2996g(e); Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

Section 1639.4 Permissible representation of eligible clients

2. Section 1639.4 would be amended by deleting the words "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" and by changing the

¹ The exception at § 1639.5 regarding public rulemaking and responding to requests with non-LSC funds is not at issue here.

comma after the word “agency” to a period.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 01-29301 Filed 11-23-01; 8:45 am]

BILLING CODE 7050-01-P