

surveys have not detected any effects of disposal at the existing site.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).) Some interference with shipping, recreational and commercial fishing and boating are expected during dredged material disposal operations. Although there is no fish or shellfish culture within the site, there will be some impacts on naturally occurring fish and shellfish within the site. The only mineral extraction within the site is oil and gas; past experience has indicated no interference during dredged material disposal.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

The water quality and ecology at the existing site is generally similar to the nearshore region off the Louisiana coast affected by discharges from the Southwest Pass of the Mississippi River. The water quality varies depending on the amount and mixing of fresh water runoff occurring at the time. Data gathered during the 1960 and 1961 surveys indicated that trace metal concentrations and chlorinated hydrocarbon concentrations were comparable to historic data for the area.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).)

There are no known features of historical or cultural significance that occur within the site. There are some shipwrecks located about 3.5 miles from the site.

#### E. Proposed Action

Based on the Draft and Final EISs, EPA proposes to designate the Southwest Pass—Mississippi River ocean dredged material disposal site. The existing site is compatible with the general criteria and specific factors used for site evaluation. While the Corps does not administratively issue itself a permit, the requirements that must be

met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

#### F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12281, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

#### List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 22, 1988.

Robert E. Layton Jr.,  
Regional Administrator of Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

#### PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Mississippi River, Baton Rouge to the Gulf of Mexico, La.—Southwest Pass and adding paragraph (b)(73) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

(b) \* \* \*

(73) Southwest Pass—Mississippi River, Louisiana—Region VI Location: 28° 54' 12" N, 89° 27' 15" W; 28° 54' 12" N, 89° 26' 00" W; 28° 51' 00" N, 89° 27' 15" W; 28° 51' 00" N, 89° 26' 00" W.

Size: 3.44 square nautical miles.

Depth: Ranges from 2.7 to 32.2 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of the Southwest Pass Channel.

[FR Doc. 89-30184 Filed 12-30-88; 8:45 am]

DOLLAR CODE 5998-20-00

#### LEGAL SERVICES CORPORATION

#### 45 CFR Part 1610

#### Use of Funds From Sources Other Than the Corporation

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

**SUMMARY:** Part 1610 is proposed to be amended to conform the rule to the changes made by the 1977 amendments to the Legal Services Corporation Act of 1974. The application of the words "any purpose prohibited" in section 1010(c) of the Act is proposed to be amended to include all prohibitions of the LSC Act, whether characterized as procedural or conditional. In addition, a provision is added establishing a presumption that all recipient funds are LSC or private funds received for the provision of legal assistance, unless shown by the recipient to be otherwise by clear and convincing evidence. These changes collectively will redirect private funds toward the purposes intended by the LSC Act.

**DATES:** Comments must be submitted on or before February 2, 1989.

**ADDRESSES:** Comments should be mailed to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751.

**FOR FURTHER INFORMATION CONTACT:** Timothy B. Shea, General Counsel, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1823.

**SUPPLEMENTARY INFORMATION:** Part 1610, concerning the use of non-LSC funds by LSC recipients, implements section 1010(c) of the LSC Act, which restricts the use of private funds received for the provision of legal assistance to purposes not prohibited by the Act, and restricts the use of public funds to the purposes for which they were received. The regulation was

originally promulgated in 1976 and has not been revised since. See 41 FR 25901, June 23, 1976.

#### Section 1610.1

Section 1610.1, which identifies specific prohibitions found in the LSC Act pertaining to LSC and private funds, does not reflect the renumbering of portions of the Act or the deletion of a prohibition in the Act made in 1977 when the Act was amended. The 1977 amendments to the Act removed the prohibition on representation of juveniles and renumbered several other provisions listed in § 1610.1. 91 Stat. 1621 (1977). The proposed changes would make the references to the LSC Act in § 1610.1 conform with the 1977 amendments.

Nowhere in the Act is the phrase "any purpose prohibited by this title" defined or explained, nor do the committee reports lend specificity to the provision. When explaining the conference language to the Senate for final approval, however, Senator Cranston stated that "private foundation funds may not be used by a recipient for legal assistance activities that we do not permit that same recipient to engage in with Corporation funds." 120 CONG. REC. S12935 (daily ed. July 19, 1974). Thus, wherever in the Act the use of LSC funds is prohibited for certain legal assistance activities, the use of private funds likewise is prohibited.

When promulgating Part 1610 in 1976, the Corporation applied section 1010(c) to prohibitions on types of legal assistance activities, as opposed to affirmative requirements or procedural limitations. Pursuant to this determination, the Corporation classified those activities covered by this construction of section 1010(c) in § 1610.1 of Part 1610. As there is nothing in the Act limiting application of section 1010(c) to specific types of legal assistance activities, the decision as to which provisions in the Act should be included in § 1610.1 as prohibited purposes properly may be influenced by discretionary policy considerations consistent with the purposes of the Act.

Upon review of these issues, it is now proposed to define "any purpose prohibited by this title" to include four additional categories of activities in § 1610.1. Given the scarcity of funds available for the direct provision of legal assistance to the poor, the use of private funds appropriately should be limited for these four categories in the same manner as LSC funds.

LSC proposes to revise Part 1610 to require recipients to follow the same procedural requirements for the use of private funds for class action cases as

the LSC Act presently requires for LSC funds. Requiring project directors to consider the resources necessary for a class action undertaken with private funds will provide a measure of assurance that the competing interests of individual clients who could benefit from the program's services are appropriately weighed. While section 1006(d)(5) does not prohibit all class action suits, it does prohibit any class action not expressly approved by the project director in accordance with board policies. If LSC funds cannot be used for unapproved class actions, then under section 1010(c) regulation of the use of private funds in the same manner serves the purposes of the Act.

While attempting to allow class actions when appropriate and necessary, Congress wanted such cases initiated only after being given careful consideration by the top program managers. Ordinarily, a class action will consume a disproportionate share of a program's staff time and resources. LSC recipients should not, without careful consideration, invest large portions of their resources, whether private or LSC funds, in class actions, because this precludes the use of those resources for needed individual service. The same intent is reinforced by the inclusion of even stricter procedural requirements in LSC's annual appropriations act. See, e.g., Pub. L. No. 99-180, 99 Stat. 1162 (1985); Pub. L. No. 100-102 Stat. 2223 (1988).

LSC also proposes to prohibit the use of private funds to provide assistance to ineligible clients. The centerpiece of the Act is that LSC funds may not be used to represent ineligible clients, that is, those who are not poor by LSC standards. Indeed, the central purpose of the Act is "to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel." 42 U.S.C. 2996, section 1001(2). Once it is determined that a client is ineligible, LSC funds may not be used for legal representation. Pursuant to section 1010(c), if LSC funds may not be used to provide legal assistance to ineligible clients, private funds may be likewise restricted. Because the need for legal assistance to eligible clients is still often unmet, directing private funds—as well as LSC funds—to eligible clients will serve the Act's central mandate of providing equal access to justice for the nation's poor.

The Corporation proposes to include as a prohibited purpose the provision in section 1006(a)(3), 42 U.S.C. 2996e(a)(3), which prohibits the Corporation from making grants or contracts for broad general legal or policy research ("general research") unrelated to

representation of eligible clients. For the purposes of section 1010(c), which applies to private funds provided for legal assistance activities, general research is legal assistance when done on behalf of a client. If section 1006(a)(3) prohibited general research unrelated to representation of any client, then such research might arguably be interpreted as research that is not legal assistance. Although general research done on behalf of an eligible client is allowable, section 1006(a)(3) prohibits general research when done on behalf of an ineligible client. Since the Act prohibits the use of LSC funds for general research for ineligible clients, section 1010(c) provides authority for the Corporation to prohibit the use of private funds for such research. Again, the Corporation believes it to be sound policy for LSC recipients to direct all available funds for the provision of legal assistance to eligible clients.

Finally, LSC proposes to include as a prohibited purpose the prohibition in section 1007(b)(5), 42 U.S.C. 2996f(b)(5), which provides that LSC funds must not be used "to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public," i.e., a public interest law firm. Since LSC funds may not be used by recipients to make grants to or enter into contracts with public interest law firms, section 1010(c) requires that recipients may not use their private funds for such grants or contracts. The type of law firm that may not be funded with LSC or private funds is one that receives a majority of its revenue from retainers or fees of private clients, and spends a majority of its time and resources on social or legal reform litigation.

#### Section 1610.4

A new paragraph (b) is proposed for addition to § 1610.4 to establish a presumption that, absent a clear and convincing demonstration to the contrary by the recipient, all recipient funds are LSC or private funds received for the provision of legal assistance. Not only would recipients have to prove when funds were public, they would also have to prove that the funds are received for a purpose other than the provision of legal assistance.

It is appropriate to place the burden of proving that funds are public funds on the recipient, because the recipient possesses pertinent documents and information, such as applications for grants, award letters, correspondence with the funding entity, and grantor audits and monitoring reports, to which

the corporation may not have ready access. As part of its planning and budgeting process, a recipient must match funds if it receives with activities that are consistent with the funding and, therefore, the recipient will have a basis for its determination that readily can be documented. Also, as the Corporation's 1981 and 1986 editions of the *Audit and Accounting Guide for Recipients and Auditors* require that contributions with restrictions be recorded in a restricted fund, a recipient's independent auditors will likely have made an independent determination of the nature of all the recipient's funds, which will be able to substantiate the recipient's assertion. Finally, because § 1630.3 allocates to the recipient the burden of proof in defending a questioned cost to show that funds used are not subject to a restriction, a recipient should be able to determine the existence of any restrictions before allocating expenses.

The proposal also establishes a presumption that all private funds received by a recipient are received for the provision of legal assistance, absent a clear and convincing showing that the funds were received for other than legal assistance activities. Basic field and support recipients deliver services using lawyers and paralegal staff, and so all services provided by a recipient should be for the purpose of legal assistance. Therefore, unless a private funding source specifically restricts the use of its funds to some non-legal purpose, all LSC and private funds would be considered received for legal assistance.

Finally, the authority section is proposed to be amended to add section 1008(e) of the LSC Act, which provides authority for the Corporation to promulgate regulations.

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

##### Legal services.

For reasons set out above, 45 CFR Part 1610 is proposed to be amended as follows:

#### PART 1610—USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION

1. The authority citation for Part 1610 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e) and 2996i(c).

2. Section 1610.1 is revised to read as follows:

##### § 1610.1 Definitions.

As used in this part, the phrase "purposes prohibited by the Act or Corporation Regulations" refers to activities prohibited by the following Sections of the Act and the regulations promulgated thereunder:

(a) Section 1006(a)(3) (Broad general legal or policy research);

(b) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6) (Political activities);

(c) Section 1006(d)(5) (Class actions);

(d) Section 1007(a)(2)(A) (Ineligible clients);

(e) Section 1007(a)(5) (Legislative and administrative lobbying);

(f) Section 1007(a)(10) (Activities inconsistent with professional responsibilities);

(g) Section 1007(b)(1)–(10) (Fee-generating cases; criminal proceedings; civil actions challenging criminal convictions; political activities; grants or contracts with public interest law firms; advocacy training; organizing activities; abortions; school desegregation; and violations of Military Selective Service Act or military desertion).

3. Section 1610.4 is amended by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

##### § 1610.4 Accounting.

(b) All funds received by recipients shall be presumed to be LSC or private funds received for the provision of legal assistance, absent a clear and convincing demonstration to the contrary by the recipient.

December 28, 1988.

Timothy B. Shea,

General Counsel.

[FR Doc. 88-30239 Filed 12-30-88; 8:45 am]  
BILLING CODE 7050-01-M

#### 45 CFR Part 1611

##### Eligibility

AGENCY: Legal Services Corporation.  
ACTION: Proposed rule.

**SUMMARY:** The Legal Services Corporation proposes to amend Part 1611 by revising § 1611.3(e), so that no person whose income exceeds the maximum annual income level established by a recipient would be eligible for legal assistance provided with private funds. This amendment would conform Part 1611 to the changes proposed in an accompanying proposed rule for 45 CFR Part 1610, LSC's regulation governing the use of funds from sources other than the Corporation.

In addition, a technical change is proposed for the authority section to include section 1008(e) of the LSC Act, 42 U.S.C. 2996g, the provision providing the Corporation authority to promulgate regulations.

DATE: Comments must be submitted on or before February 2, 1989.

**FOR FURTHER INFORMATION CONTACT:**  
Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751; (202) 863-1823.

##### SUPPLEMENTARY INFORMATION:

Section 1010(c) of the LSC Act restricts the use of private funds received for the provision of legal assistance to purposes not prohibited by the Act. 42 U.S.C. section 2996f. In 1978, LSC promulgated 45 CFR Part 1610 to implement section 1010(c). Section 1610.1 listed those activities which the Corporation decided to include as "any purpose prohibited" within the meaning of section 1010(c). No prohibition against providing legal assistance to ineligible clients with private funds was included. Similarly, when LSC first promulgated Part 1611 in 1978, it included a provision, § 1611.3(e), allowing the use of non-LSC funds for ineligible clients.

Upon review, as set out in the accompanying notice of proposed revisions to 45 CFR Part 1610, it is proposed that private funds should not be used to represent ineligible clients, because program resources should be focused on the client population with the most pressing needs. This proposal would revise § 1611.3(e) to prohibit the representation of ineligible clients with private funds.

#### List of Subjects in 45 CFR Part 1611

##### Legal services.

For reasons set out above, 45 CFR Part 1611 is proposed to be amended as follows:

#### PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 is revised to read as follows:

Authority: Sec. 1006(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1); sec. 1007(a)(2), 42 U.S.C. 2996f(a)(2); sec. 1008(e), 42 U.S.C. 2996g.

2. Section 1611.3(e) is revised to read as follows:

##### § 1611.3 Maximum income level.

(e) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance provided with private funds.

December 28, 1988.

Timothy B. Shea,

General Counsel.

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