

of property or (2) a subcontract it has received under such a contract, or (3) a contract of \$10,000 or less it has received.

(b) *Retention period.* The State, subgrantee, or contractor shall retain the records for 3 years after the starting date specified in the succeeding paragraphs of this section. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the State, subgrantee, or contractor shall retain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 3-year period, whichever is later.

(c) *Starting date—basic records.* Except for records subject to paragraph (d):

(1) *Records of a State.* The retention period for a State's records of a funding period starts on the day the State submits to HHS its last Financial Status Report for the funding period. If the last report is waived by HHS, the retention period starts 90 days after the end of the period.

(2) *Records of a subgrantee or contractor.* The retention period of a subgrantee's or contractor's records of a subgrant or contract funding period starts on the day the subgrant or contract funding period is closed out (that is, the day when final reports and payments have been made and all pending matters closed).

(3) *Records before first or after last funding periods.* Pertinent records created or received before a first or after a last funding period are considered records of the first or last funding periods respectively.

(d) *Starting date—cost allocation plans, etc.* (1) This paragraph applies to the following documents and their supporting records:

(i) Cost allocation plans under OMB Circular A-87; and

(ii) Any accounting computations or proposals for the rate at which a particular group of costs is to be charged (such as computations or proposals for indirect cost rates, computer usage chargeback rates, or composite fringe benefit rates).

(2) If the document is required to be submitted to the Federal Government, then the retention period for its supporting records starts from the date of submission. Otherwise, the retention period for the document and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the document.

(e) *Access to records.* HHS and the Comptroller General of the United States and any of their authorized

representatives shall have the right of access to the records in order to make audit, examination, excerpts, and transcripts. The right shall not be limited to the required retention period but shall last as long as the records are retained. For the records of a subgrantee or contractor, the State shall also have this right of access.

(f) *Substitution of copies.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(g) *Subawards.* The State shall have a provision requiring compliance with this section placed in every contract or subgrant giving rise to contractor or subgrantee records subject to this section.

#### § 98.90 Enforcement.

(a) *Remedies for noncompliance.* If a State materially fails to comply with any term of a grant, whether stated in a Federal statute or regulation, an assurance in a State plan or grant application, a notice of grant award, or elsewhere, HHS may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold Federal cash to the State for the State's program pending correction of the deficiency by the State or more severe enforcement action by HHS;

(2) Disallow (that is, deny both use of grant funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(3) Suspend or terminate the current grant for the State's program;

(4) Withhold further awards for the program; or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, HHS will provide a State an opportunity for such hearing, appeal, or other administrative proceeding to which the State is entitled under any Federal statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a State resulting from obligations incurred by the State during suspension or after termination of a grant are not allowable unless HHS expressly authorizes them in the notice of suspension or termination or subsequently. Other State costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the State before the effective date of suspension or termination and not in anticipation of it and, in the case of a termination, are noncancellable; and

(2) The costs would allowable if the grant were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Later disallowances and adjustments.* The closeout of a grant does not affect (1) HHS' right to disallow costs and recover funds on the basis of a later audit or other review or (2) the State's obligation to return any funds due HHS as a result of later refunds, corrections, or other transactions.

(e) *Collection of amounts due.* (1) Any grant funds paid to a State in excess of the amount to which the State is finally determined to be entitled under the terms of the grant constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the debt will be collected from the State by setoff or other action permitted by law.

(2) Except where otherwise provided by statutes or regulations, HHS charges interest on an overdue debt in accordance with common law and the Federal and HHS Claims Collection Standards (4 CFR Chapter II and 45 CFR Part 30). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

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## LEGAL SERVICES CORPORATION

### 45 CFR Part 1612

#### Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Service Corporation.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule implements the provisions of Pub. L. 98-166 concerning the use of the Legal Services Corporation's 1984 appropriation for communication with elected officials and agencies or the dissemination of information on public policies, demonstrations and labor activities at training events. In addition, the regulations governing these activities in the absence of special appropriations language is clarified to meet problems of compliance with the law on lobbying activities noted by the General Accounting Office and the Senate Labor and Human Resources Committee in 1983 oversight hearings. Regulations to enforce the provisions of the Legal Services Corporation Act on training and organizing are likewise proposed to prevent a recurrence of

violations of the Act reported by the General Accounting Office.

**DATE:** Comments must be received on or before March 26, 1984.

**ADDRESS:** Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street NW., Room 620, Washington, D.C. 20005.

**FOR FURTHER INFORMATION CONTACT:** Alan Swendiman, General Counsel, (202) 272-4010.

**SUPPLEMENTARY INFORMATION:**

**General**

This proposed rule establishes new subsections concerning prohibited organizing activity (§ 1612.3), activity prohibited in connection with training (§ 1612.4), administrative representation under Pub. L. 98-166 (§ 1612.6), legislative representation under Pub. L. 98-166 (1612-7) and the posting of notices concerning these restrictions (§ 1612.9). Former § 1612.3 concerning the attorney-client relationship has been renumbered § 1612.2(c) since it solely relates to the activities proscribed by that section. The present regulation on public demonstration (§ 1612.2), legislative and administrative representation (formerly § 1612.4, renumbered § 1612.5) and enforcement (formerly § 1612.5, renumbered § 1612.8) are modified to better achieve the statutory purpose of strictly limiting the use of Legal Services Corporation funds for these activities. The significant changes effected by the proposed regulations are summarized below:

**Title**

It is proposed that the title of Part 1612 be changed to specifically mention lobby so as to facilitate the reader's finding the regulations governing legislative and administrative representation.

**Definitions**

The definition of "legal assistance activities" is modified to clarify that the term covers the use of Corporation or recipient resources by a subrecipient.

Secondly, a definition is proposed for the term "legislation" to make clear that it encompasses all potential actions of the Congress and any other body of elected officials acting in a legislative capacity as opposed to their actions as an adjudicatory body. Specifically mentioned is action on constitutional amendments, treaties and intergovernmental agreements, approval of appointments or budgets proposed by an executive branch official, simple resolutions not have the force of law,

and approval or disapproval of executive action.

**Public Demonstrations, Boycotts, Strikes, etc.**

Sections 1612.2 and 1612.3 are combined and the following statement of old § 1612.3(b) is deleted: "Nothing in this part shall prohibit an attorney from . . . attending a public demonstration, picketing, boycott or strike for the purpose of providing legal assistance to a client". Section 1612.2(c)(2) makes clear that the prohibition on participation in demonstrations, strikes, etc. does not prohibit an attorney from fulfilling his professional responsibilities to a client. Such responsibilities can be met without personal attendance at events in which participation by an employee of the Corporation or a recipient is strictly prohibited by Section 1006(b)(5) of the Act, while carrying out legal assistance activities.

**Organizing**

A new § 1612.3 is proposed to implement the restrictions of section 1007(b)(7) on the use of Corporation funds to initiate the formation, or at as an organizer, of any association, federation or similar entity. The regulation would make clear that no funds may be used for publicizing an organization or to defray the costs of any meeting at which persons are urged to form or join any organization. The regulation does not restrict a recipient from providing advice or assistance to eligible clients concerning the laws applicable to formation or operation of an organization, as long as the organization does not have as a substantial purpose the exercise of influence with respect to legislation, elections or ballot propositions. The last provision implements the restrictions of sections 1006(e) and 1007(a)(5), (a)(6), (b)(6) and (b)(7) concerning political or lobbying activity.

**Training**

A new § 1612.4 is proposed to implement section 1007(b)(5) and the related provision of Pub. L. 98-166 prohibiting the conduct of training programs for the purpose of advocating particular public policies or encouraging political activities, labor activities, etc. In accordance with Pub. L. 98-166 the conduct of training programs for the purpose of disseminating information about public policies, labor or political activities, etc. is likewise prohibited. Training programs whose purpose is to encourage the formation of coalitions or organizations to advocate particular public policies or which involve the development of legislative strategy are

specifically prohibited, in accordance with the Comptroller General's legal opinion of September 1983. The limitations of § 1612.7(b)(2) on the use of Corporation grant proceeds to pay for outside training for activities which are prohibited or severely limited by law is extended to inhouse training events. The regulation incorporates the provisions of Pub. L. 98-166 making clear that it does not prohibit the training of attorneys or paralegals to prepare them to advise an eligible client of his rights under a statute or regulation already enacted, or to explain the nature of the legislative process to an eligible client.

**Legislative and Administrative Representation**

Two new sections are created to describe the rules peculiar to the use of 1984 appropriated funds in legislative (§ 1612.7) and administrative representation (§§ 1612.6). The rules applicable otherwise are retained in § 1612.5 (formerly § 1612.4). The revisions in § 1612.5 summarized below are made in recognition that the general rule of section 1007(a)(5) is that the use of Legal Services Corporation funds for legislative and administrative lobbying is prohibited unless it falls within one of three carefully defined exceptions. Congress has repeatedly indicated since 1977 through oversight hearings, appropriations riders and House adoption of the Kramer amendment to H.R. 3480 that it believes legal services programs have interpreted section 1007(a)(5) as authorizing more lobbying activity than intended.

First, § 1612.5 is made applicable to the introduction, amendment, enactment, defeat, repeal or signing of any legislation. Section 1612.5(a)(1) is amended to conform to 1612.5(f)(2) which provides that a recipient's employee is not to solicit a request from a governmental agency or public official in order to create a right to make representations to the agency or official. Further, in conformance with § 1612.5(f), the authority to respond to official requests is limited to requests concerning "a specific matter" and does not authorize communications with persons other than the requesting party.

Section 1612.5(a)(2) is revised to make it clear that legislative or administrative representation of a client is only authorized where it is necessary to secure relief concerning a particular legal right or responsibility with respect to which the client has sought legal representation.

The documentation requirements of § 1612.5(b) are modified to conform to the language of 1612.5(g) so as to reduce

the number of different forms and procedures with which a recipient must comply. The client retainer required by § 1612.5(b)(2) is modified to include a statement in the client's own words of the legal problem on which he seeks representation. The purpose of requiring a retainer is to insure that the work done conforms to the desires of the client and to facilitate Co. poration auditing of grantee compliance with the strict terms of section 1007(a)(5)(A). The retainer will be more useful for these purposes if there is a clear record at the commencement of representation of the client's description of the legal problem for which the attorney finds it necessary to seek relief from the legislature or administrative agency.

A new requirement is added, as required by Pub. L. 98-166, that the recipient maintain records of the time and the direct and indirect expenses associated with lobbying activity. The records are required regardless of the source of funds involved and must specify the source. For all employees who are registered lobbyists, or who spend over ten percent of their time lobbying, full time logs will be required. Such records are necessary to ensure the completions of the records furnished pursuant to the requirement of Pub. L. 98-166 and to enable the Corporation to enforce section 1010(c) of the Act which prohibits the use of private non-Corporation funds for purposes prohibited by the Act.

The authorization for full time legislative offices is deleted in light of the fact that lobbying activity is an exceptional, rather than a routine, function of a legal services program.

Proposed § 1612.5(c) would make it clear that no Corporation funds are to be used to pay dues to organizations a substantial purpose of which is to take positions on pending legislative or administrative matters. To make it clear that the provision is not intended to prevent the payment of dues to bar associations, an express exception is stated. The circumstances in which advocating the support or defeat of legislative or administrative measures is authorized are strictly limited under the Act. It is not appropriate for recipients to pay dues to others to engage in lobbying outside those parameters, nor is it appropriate for a recipient to delegate to another organization its limited authority to lobby under section 1007(a)(5). It should be noted that the provision does not address the payment of dues to organizations for whom policy advocacy is a minor purpose.

The proposed regulation would also clarify that LSC grant funds may not be used to pay for transportation to

legislative or administrative proceedings of nonemployees other than witnesses entering formal appearances on behalf of the recipient's client. It further would make clear that payment of administrative costs associated with a prohibited activity is not an authorized use of LSC grant funds. The proposed regulations would also prevent an expenditure of LSC grant funds for an event if a primary purpose of the expenditure is the facilitation of lobbying activity that would be prohibited if conducted with LSC funds. This is simply an elaboration of the basic rule that only those costs which further the purpose of legal assistance to eligible clients within the guidelines of the Act may be charged against the LSC grant. If the primary purpose of the expenditure is furtherance of an objective that is not an authorized use of LSC funds, the expenditure is not an authorized cost of the LSC grant. The Corporation gives deference to the recipient's characterization of the purpose of all expenditures but wishes to put recipients on notice to document fully the purpose of any expenditure associated with attendance at a conference if the attending employee takes leave while out of town to engage in lobbying activities. Costs associated with an event that explicitly gives participants a block of time to engage in lobbying activities will be questioned.

Finally, § 1612.5(c) would prohibit the use of LSC grant proceeds to assist others to attempt to influence legislation through providing those so engaged with the benefit of legislative liaison activities. This follows the Defense Acquisition Regulations which disallow as a cost of defense contracts "any legislative liaison activities" and the General Services Administration Contract Cost Principles and Procedures which disallow such expenses "except to the extent that such activities do not relate to lobbying or related activities . . ."

#### Publicity or Propaganda

Proposed § 1612.5(d) would extend the prohibition against publicity or propaganda to that designed to support proposed rules or regulations under consideration by an administrative agency or legislation under consideration by a county or municipal legislative body. This change is required by Pub. L. 98-166 and would, in any case, serve to conserve scarce legal services resources for legal representation as opposed to public relations. The regulation is also modified to prohibit communications containing a suggestion that the reader participate in or contribute to a

demonstration, march, rally, fundraising drive, lobbying, letter writing or telephone campaign to influence legislation or rulemaking. This too follows the Defense and Federal Procurement Regulations. The objective of the proscription against publicity or propaganda is to prevent the use of federal funds to stimulate grassroots lobbying. Accomplishing this objective requires that the prohibition extend beyond solicitation of letters to legislators to solicitation of other efforts to persuade a legislator such as through participation in a march, rally or fundraising to support advertising. In either case, public funds are being used artificially to stimulate public pressure on the legislative process.

Section 1612.5(e) would be modified under the proposal to limit the distribution of publications concerning legislative proposals to attorneys, recipient staff and eligible clients who have sought representation in a matter relating to the proposed legislation. Mailings to all eligible clients in the area concerning proposed or pending legislation would no longer be authorized.

#### Administrative Representation

Proposed §§ 1612.5(f) and 1612.6, concerning administrative representation under Pub. L. 97-377 and 98-166 respectively, specify that funds appropriated under the acts may not be used in connection with rulemaking proceedings. Administrative representation is authorized in adjudicatory proceedings affecting an eligible client's legal rights with respect to particular applications, claims and cases. The meaning of the identical provisions of Pub. L. 97-377 and 98-166 was made clear by the author of the language in Pub. L. 98-166, Senator Orrin Hatch, in offering his amendment to the pending bill:

Secondly, the language would bar various communications or services intended to influence a decision by an administrative agency except where legal assistance is being provided in an adjudicatory proceeding. Funds would not be available for communications intended to influence an administrative agency decision involving its rulemaking responsibilities. *Congressional Record* S14445 (October 21, 1983)

Deletion is proposed of the requirement of present § 1612.4(g)(1) for a special retainer in administrative cases funded under Pub. L. 97-377. This is proposed in light of the new client retainer requirement of Part 1611 applicable to all forms of representation. In addition the reference in § 1612.5(g)(2) to requests for legislative drafting is

deleted since such time consuming work for a public official, as opposed to an eligible client, is not contemplated by § 1612.5(f).

Section 1612.5(h) would be modified under the proposal to authorize expressly communication with agencies to request funding for legal assistance programs (if not otherwise precluded by law such as an appropriations rider) and to make clear that the authorization of communication with the LSC is not an authorization to solicit others to communicate with the Corporation.

Section 1612.5(h)(4) concerning direct contact with elected officials is deleted in light of the substantial restrictions imposed on such contact. Section 1612.5(h)(3) is modified to make clear that it does not authorize unsolicited advice, advice to groups on communications with officials, the composition of communications for the client's use, or publications or training on lobbying techniques. Such restrictions are necessary to avoid the abuse of the authority to offer advice that has occurred in the past.

#### Legislative Representation in 1984

Section 1612.7 is a new section to implement the provisions of Pub. L. 98-166 with respect to communication with elected officials. No such communications are permitted in connection with authorizations or appropriations for the Corporation or a recipient, to influence oversight proceedings concerning the Corporation or any recipient, or in connection with any referenda, initiative, constitutional amendment or similar procedure while under consideration by a legislative body. The proposed regulation would define "similar procedure" to mean legislative consideration of any measure requiring subsequent ratification by the electorate or a measure concerning the structure of government itself (such as a constitutional amendment or a reapportionment measure). There are no exceptions for communications in this area.

Section 1612.7(b) prohibits communication concerning legislation (other than that specified in § 1612.7(a)) except for the sole purpose of bringing a specific and distinct legal problem to the official's attention after exhaustion of administrative and judicial relief. As required by Pub. L. 98-166, § 1612.7(c) requires a project director's written approval of the communication, a statement of each client's specific legal interest, and the director's determination that the communication is authorized by his governing board's policy and has not resulted from participation in a coordinated effort to

contact officials on the subject. The proposal would accordingly require the director to certify that the communication was prepared without consulting with persons other than the client and employees of the recipient and to document the exhaustion of administrative and judicial relief.

Section 1612.7(d) implements the requirement of Pub. L. 98-166 that the recipient's governing body adopt policies to guide the director in his approval of communications bringing legal problems to the attention of officials. The proposed regulation stipulates such policies shall require periodic reports to the governing body, take into account the recipient's priorities determined under Part 1620 and prohibit solicitation of client requests to communicate with elected officials. Section 1612.7(e) permits requests to introduce private relief bills allowing claims against a government and § 1612.7(f) permits responses to requests from officials to comment on proposed legislation subject to the requirements of § 1612.5(f). That section further provides that no recipient shall expend more than one per cent of its annual LSC support in responding to requests to comment on legislation. This limitation recognizes that the primary purpose of LSC grants is to respond to client requests for representation rather than requests from elected officials. Legal services attorneys must avoid becoming staff to elected officials.

Section 1612.7(g) makes clear that the requirements of § 1612.5 apply to the use of funds made available under Pub. L. 98-166.

#### Miscellaneous

Section 1612.8 concerning enforcement would be amended to make clear that denial of refunding is one remedy for violations of this part. The requirement of § 1612.8(b)(3) (previously § 1612.5(b)(3)) that a recipient consult with the Corporation's General Counsel before suspending or terminating an employee for violation of this part is expanded to require consultation before the determination of any sanction for violation of this part.

Finally, a new § 1612.9 is added which would require each recipient to post a notice prepared by the Office of Compliance and Review summarizing the restrictions of this part and stating that complaints of violations may be reported to the Office of Compliance and Review.

#### List of Subjects in 45 CFR Part 1612

Administrative representation, Legal services, Lobbying, Publicity, Reporting and recordkeeping requirements.

For the reasons set out above, Part 1612 is proposed to be revised as follows:

#### PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

- Sec.  
 1612.1 Definitions.  
 1612.2 Public demonstrations and other activities.  
 1612.3 Organizing.  
 1612.4 Training.  
 1612.5 Legislative and administrative representation.  
 1612.6 Administrative representation under Pub. L. 98-166.  
 1612.7 Legislative representation under Pub. L. 98-166.  
 1612.8 Enforcement.  
 1612.9 Posting of notices.

Authority: Secs. 1008(b)(5), 1007(a)(5), (6) and (7), 1011, 1608(e), Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(5), 2996f(a)(5), (6) and (7), 2996j, 2996g(e)); Pub. L. 95-431, 92 Stat. 1021; Pub. L. 98-68, 93 Stat. 316; Pub. L. 98-536, 94 Stat. 3166; Pub. L. 97-161, 90 Stat. 22; Pub. L. 97-377, 90 Stat. 1874; Pub. L. 98-166, 97 Stat. 1071.

#### § 1612.1 Definitions.

(a) "Legal assistance activities," as used in this part, means any activity:

(1) Carried out during an employee's working hours;

(2) Using resources provided by the Corporation or a recipient, directly or through a subrecipient; or

(3) That, in fact, provides legal advice or representation to an eligible client.

(b) "Legislation", as used in this part, means any potential action of the Congress, any State legislature or other body of elected officials acting in a legislative capacity (including action on constitutional amendments, the ratification of treaties and intergovernmental agreements, approval of appointments and budgets, adoption of resolutions not having the force of law, and approval or disapproval of actions of the executive). The term includes proposals for legislative action but it does not include these actions of a legislative body which adjudicate the rights of individuals under existing laws (such as action taken by a total council sitting as a Board of Zoning Appeals).

#### § 1612.2 Public demonstrations and other activities.

(a) While carrying out legal assistance activities under the Act no employee shall:

(1) Knowingly 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) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(b) While employed under the Act, no employee shall, at any time:

(1) Knowingly participate in any rioting or civil disturbance; activity in violation of an outstanding injunction of any court of competent jurisdiction; or any other illegal activity that is inconsistent with an employee's responsibilities under the Act, Corporation regulations, or the Code of Professional Responsibility; or

(2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(c) Nothing in this part shall prohibit an attorney from:

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Fulfilling the professional responsibilities of an attorney to a client.

#### § 1612.3 Organizing.

No funds made available by the Corporation may be used to initiate the formation, or to act as an organizer, of any association, federation, coalition, network, alliance or any similar entity. No funds may be employed for any publicity or any meeting to advocate that anyone organize or join any organization. This section shall not be interpreted to prevent recipients and their employees from providing legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles to incorporation and by-laws. Such legal advice or assistance may not be provided, however, in the formation of an organization, a substantial purpose of which is to influence legislation or the results of elections or ballot propositions.

#### § 1612.4 Training.

(a) No funds made available by the Corporation may be used to support or conduct training programs for the purpose of:

(1) Advocating or opposing particular public policies; or

(2) Encouraging or facilitating:  
(i) Political activities (including formation of organizations or coalitions, a substantial purpose of which is to advocate or oppose particular public policies);

(ii) Labor or antilabor activities;

(iii) Boycotts, picketing, strikes or demonstrations;

(iv) Development of strategies to influence legislation or rulemaking with persons other than other employees of that recipient and clients who sought representation on the matter (to the extent otherwise permissible under these regulations); or

(v) The dissemination of information about such activities or public policies.

(b) Nothing in this section shall be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to:

(1) Provide adequate legal assistance to eligible clients;

(2) Advise any eligible clients as to the nature of the legislative process, provided such advice is not intended to assist prohibited activity; or

(3) Inform any eligible client of his rights under any statute, order or regulation already enacted.

(c) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or educational activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in areas wherein only limited and incidental activities are allowed (such as lobbying) under the Act, other applicable Federal law, Corporation regulations, guidelines or instructions.

#### § 1612.5 Legislative and administrative representation.

(a) No funds made available by the Corporation shall be used, at any time, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to undertake to influence the introduction, amendment, enactment, defeat, repeal or signing of any legislation or State proposals by initiative petition, except that:

(1)(i) An employee may respond to a request from a governmental agency or a legislative body, committee, or member made to the employee or to a recipient to testify, draft or review measures or to make representation to such agency, body, committee or member on a specific matter;

(ii) The exception for responses to officials does not authorize communication with anyone other than the requesting party. No employee of the recipient shall, directly or indirectly, solicit a request from any official to testify or otherwise make

representations in connection with legislation.

(2) An employee may engage in such activities at the request of an eligible client of a recipient, to the extent such activities are necessary to the provision of legal advice and representation to a client who has sought such legal advice and representation with respect to particular legal rights and responsibilities which would be affected by particular legislation or administrative measures but no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible; or

(3) An employee may engage in such activities if a governmental agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities under the Act of the recipient or the Corporation. This exception extends only to appropriations or other measures directed to the Corporation, or the recipient or its employees.

The expenditure of funds appropriated under Pub. L. 97-377 and 93-166 are subject to the further limitations set forth in paragraphs (f) and (g) of this section and §§ 1612.6 and 1612.7.

(b) Recipients shall adopt procedures and forms to document that the legislative and administrative activities in which they engage fall within the activities permitted in paragraph (a) of this section. Such documentation shall include:

(1) With respect to activities permitted under paragraph (a)(1) of this section, a written request directed to the recipient and signed by an official of the governmental agency or a member of the legislative body or committee making the request which states the type of representation or assistance requested and identifies the executive or administrative order or regulation, or legislation, to be addressed. Such documentation shall also include the written approval of the recipient's project director (or his or her designee) authorizing the communications requested;

(2) With respect to activities permitted under paragraph (a)(2) of this section, a retainer agreement, signed by the client or clients represented, or by an official of the client group in the case of a group client, which agreement shall specify the legislative or administrative measure on which representation is sought, the type of representation sought (appearance at a hearing, legislative drafting, etc.), and which shall include a statement in the client's own words of the matter on

which relief is sought and the client's direct interest in the particular legislative or administrative measure to be addressed; or

(3) With respect to activities permitted under paragraph (a)(3) of this section, a written statement signed by the recipient's project director authorizing the initiation of such activities.

(4) Recipients shall obtain the documentation required by this section prior to undertaking any of the activities permitted by paragraph (a) or (f) of this section, except that recipients may respond to an oral request made pursuant to paragraph (a)(1) or (g)(2) of this section in the absence of a written request provided that the fact, nature, and circumstances of the request are subsequently documented in writing signed by the requesting authority.

(5) The recipient shall maintain records, in the manner specified by the Corporation, of the direct and indirect expenses, time spent on, and the sources of the funds supporting, all lobbying or related activity, regardless of the sources of the funds employed. In addition, the recipient shall require all employees who are registered lobbyists or who devote over ten (10) per cent of their time to lobbying or related activities to maintain a time log accounting for all working hours.

(6) Recipients shall submit quarterly reports, in a form prescribed by the Corporation, describing their legislative and administrative advocacy activities conducted pursuant to these regulations.

(c) No funds made available by the Corporation shall be used to:

(1) Maintain separate offices for the sole purpose of engaging in legislative activity;

(2) Pay dues to any organization (other than a bar association), a substantial purpose or function of which is to take positions on matters pending before legislative or administrative bodies;

(3) Pay for transportation to legislative or administrative proceedings of persons other than employees engaged in activities permitted under this section or witnesses entering appearances in such proceedings on behalf of clients of the recipient;

(4) Pay, in whole or in part, for the conduct of, or transportation to, an event if a primary purpose of the expenditure is to facilitate lobbying or any other activity which would be prohibited if conducted with funds made available by the Corporation;

(5) Pay for administrative or related costs associated with any activity prohibited by this part; or

(6) Assisting others to influence legislation through legislative liaison

activities, including attendance at legislative sessions or committee hearings; gathering information regarding pending legislation or analyzing the effect of pending legislation in a manner that would be prohibited if undertaken with funds made available by the Corporation.

(d) Notwithstanding the provisions of paragraph (a) of this section, recipients shall not use funds made available by the Corporation for publicity or propaganda purposes designed to support or defeat proposed legislation, or rules or regulations under consideration by any federal, state, county or municipal legislative or administrative body. For purposes of this regulation, "publicity or propaganda" means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion, or, when taken as a whole, an indirect suggestion to the public at large or to selected individuals to contact public officials in support of or in opposition to pending or proposed legislation, rules or regulations or to contribute to or participate in any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing such legislation, rules or regulations.

(e) No funds made available by the Corporation shall be used to support the preparation, production, and dissemination of any article, newsletter, or other publication or written matter for general distribution or other form of mass communication which contains any reference to proposed or pending legislation unless:

(1) The publication does not contain any publicity or propaganda prohibited by paragraph (d) of this section;

(2) The recipient has adopted a policy requiring the recipient's project director, or his or her designee, to review each publication produced by the recipient prior to its dissemination of conformity to these regulations;

(3) The recipient provides a copy of any such material produced by the recipient to the Corporation within 30 days after publication; and

(4) Such funds are used only for costs incident to the preparation, production, and dissemination of such publications to recipients, recipient staff and board members, private attorneys representing eligible clients, eligible clients who have sought representation in a matter related to the legislation and the Corporation, as opposed to the public at large, or eligible clients generally.

(f)(1) Notwithstanding the provisions of paragraph (a) of this section, no funds made available to a recipient by the Corporation under the authority of Pub. L. 97-377 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State, or local agency, except, where legal assistance is provided by an employee of a recipient to an eligible client on a particular application, claim, or case, which directly involves the client's legal rights and responsibilities, or to influence any Member of Congress or any other Federal, State, or local elected official in connection with any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State Legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications made in response to any Federal, State, or local official on a specific matter.

(2) The exception for communications to officials does not authorize communication with anyone other than the requesting party. No employee of the recipient shall, directly or indirectly, solicit a request from any official to testify or otherwise make representations in connection with legislation.

(3) None of the funds made available by the Corporation under the authority of Pub. L. 97-377 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State or local agency, commission, authority or government corporation, except for the provision of legal assistance to an eligible client in an adjudicatory proceeding affecting that client's legal rights or responsibilities with respect to a particular application, claim or case.

(g) Recipients shall adopt procedures and forms to document that the legislative and administrative activities in which they engage utilizing funds made available under the authority of Pub. L. 97-377 fall within the activities permitted under paragraph (f) of this section. With respect to activities in response to a request from a Federal, State, or local elected official, such documentation shall include a written request signed by the official making the

request which states the type of communication requested (testimony, legal analysis, etc.) and identifies the legislative measure to be addressed. Such documentation shall also include the written approval of the recipient's project director (or his or her designee) authorizing the communications requested.

(h) Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation consistent with the requirements of paragraphs (d) and (e) of this section;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Act, Corporation regulations or other applicable law. This provision does not authorize publications or training of clients in lobbying techniques or the composition of a communication for the client's use;

(4) Making direct contact with the Corporation for any purpose; or

(5) Communicating with a governmental agency to request funding for legal assistance activities which are consistent with the purposes and restrictions of the Act and regulations, provided that no attempt is made to influence related legislative action except in accordance with this section and provided such communication is authorized under these regulations or applicable law.

**§ 1612.6 Administrative representation under Pub. L. 98-166.**

None of the funds made available by the Corporation under the authority of Pub. L. 98-166 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State or local agency, commission, authority or government corporation, except for the provision of legal assistance to an eligible client in an adjudicatory proceeding affecting that client's legal rights or responsibilities with respect to a particular application, claim or case.

**§ 1612.7 Legislative representation Under Pub. L. 98-166.**

(a) None of the funds made available by the Legal Services Corporation under

the authority of Pub. L. 98-166 may be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device directly or indirectly intended to influence any Member of Congress or any other Federal, State or local elected nonjudicial official:

(1) In connection with any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in a legislative capacity. The term "similar procedure" as used in this part refers to legislative consideration of matters which by law must be ratified by a vote of the electorate or matters relating to the structure of government itself, such as a plan for reapportionment;

(2) In connection with inclusion of any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or

(3) To influence the conduct of oversight proceedings concerning the recipient or the Corporation.

(b) None of the funds made available by the Legal Services Corporation under the authority of Pub. L. 98-166 shall be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device intended or designed to influence any Member of Congress or any other Federal, State or local elected official in connection with any Act, bill, resolution or similar legislation not described in paragraph (a) of this section, except that an employee of a recipient may, upon the request of a client or clients, communicate directly with a Federal, State or local elected official for the sole purpose of bringing a specific and distinct legal problem to the attention of such official if the project director or chief executive of such recipient has determined, prior to such communication:

(1) That the client or each such client is in need of relief that can be provided by the legislative body with which the official is associated; and

(2) That appropriate judicial and administrative relief have been exhausted and has documented the effort to obtain such judicial and administrative relief.

(c) In connection with each communication authorized by paragraph (b) of this section, the project director shall maintain the following documentation:

(1) The content of each such communication;

(2) The basis for the two determinations specified in paragraph (b) of this section;

(3) The director's written approval of such communication, setting forth the basis of his determination that such communication is authorized under the policies of the recipient's governing board adopted pursuant to paragraph (d) of this section;

(4) A retainer in the form specified in § 1612.5(b) setting forth the specific legal interest of each client at whose request the communication was undertaken;

(5) The director's determination that such communication is not the result of participation in a coordinated effort to communicate with elected officials on the subject matter. The determination shall include the director's certification that the communication was prepared by the attorney and client without consulting with persons not employed by the recipient.

(d) The governing body of a recipient shall adopt a policy by July 1, 1984 to guide the director of the recipient in determining when to approve a communication to a Federal, State or local official under paragraph (c) of this section. The policy adopted shall:

(1) Require periodic reports to the governing body on the communications approved, which shall include a report on the exhaustion of judicial and administrative relief;

(2) Ensure that staff does not solicit requests to undertake communications with elected officials nor participate in a coordinated effort to provide communications on a particular subject;

(3) Require that, in determining the amount of effort to be expended in preparing the communication, the director take into account the recipient's priorities in resource allocation.

(e) Notwithstanding the prohibition in paragraph (b) of this section of communications to elected officials that do more than bring a problem to the official's attention, a project director may approve a communication to an elected official requesting introduction of a specific "private relief bill," which for purposes of this part means a bill allowing a claim against a government for which there is no other remedy.

(f) Funds made available by the Corporation under the authority of Pub. L. 98-166 may be used to respond to requests from Federal, State and local officials in accordance with the limitations of § 1612.5(f) but no recipient shall expend more than one (1) percent of its annual support from the Corporation for this purpose without a waiver from the Corporation.

(g) Funds made available by the Corporation under the authority of Pub. L. 98-188 are subject to the requirements of § 1612.5 (b), (c), (d), (e), (g) and (h) unless inconsistent with the provisions of this section.

#### § 1612.6 Enforcement.

(a) The Corporation shall have authority in accordance with the procedures set forth in Parts 1606, 1623 and 1625 of these regulations:

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this part; and

(2) To suspend or terminate financial assistance or deny refunding to a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(b) A recipient shall:

(1) Advise employees about their responsibilities under this part; and

(2) Establish procedures, consistent with the notice and hearing requirements of Section 1011 of the Act, for determining whether an employee has violated a provision of this part; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for the enforcement of this regulation; and

(3) Consult the General Counsel of the Corporation before making a final determination as to the appropriate sanction to be imposed on any person for violation of this part.

#### § 1612.9 Posting of notices.

By August 1, 1984 each recipient shall post conspicuously in each of its offices a notice provided by the Corporation's Office of Compliance and Review briefly summarizing the activities prohibited by these regulations. Such notice shall include a statement that apparent violations may be reported to the Office of Compliance and Review and the address and telephone number of that office.

Dated: February 21, 1984.

Donald P. Bogard,  
President.

[FR Doc. 84-5008 Filed 2-23-84; 9:45 am]  
BILLING CODE 6820-35-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 74

[Gen. Docket No. 83-425; FCC 84-49]

### Use of the frequencies 161.7 and 161.75 MHz by the United States Coast Guard

**AGENCY:** Federal Communications Commission.

**ACTION:** Report and order; denial of proposed rule.

**SUMMARY:** In response to a request for rulemaking, the Federal Communications Commission is denying use of two VHF frequencies by the United States Coast Guard. The frequencies are presently used by broadcast stations including Emergency Broadcasting System stations and the proposed shared use with the Coast Guard was not found to be an acceptable sharing arrangement.

**ADDRESS:** Federal Communications Commission, 2025 "M" Street, NW., Washington, D.C. 20554, (202) 653-8162.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sam Tropea, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554, (202) 653-8167.

#### Report and Order

In the matter of amendment of Parts 2 and 74 of the Commission's rules to permit use of the frequencies 161.7 and 161.75 MHz by the U.S. Coast Guard; Gen. Docket No. 83-425; FCC 84-49.

Adopted: February 15, 1984.

Released: February 17, 1984.

By the Commission.

1. On May 16, 1983, the Commission released a *Notice of Proposed Rule Making (Notice)* in this proceeding to amend §§ 2.106 and 74.402 of the Commission's Rules to make available, on a shared basis with remote pickup broadcast (RPU) stations, two frequencies in the 161.625-161.775 MHz band (161 MHz band) for use by certain United States Coast Guard (hereinafter "Coast Guard") stations. The frequency 161.7 MHz was proposed for use to transmit safety information concerning navigational or environmental matters to foreign vessels from certain U.S. coast stations. The frequency 161.75 MHz was proposed for use for portable receiver operations involved in Search and Rescue (SAR) missions in 21 states.<sup>1</sup>

<sup>1</sup>The frequency 161.75 MHz actually falls between two RPU frequencies, 161.73 MHz and 161.76 MHz.

#### Background

2. Our proposal was in response to a request from the Coast Guard for amendment of the Commission's Rules to provide use of the frequency 161.7 MHz for communicating with foreign vessels and use of the frequency 161.75 MHz by SAR units. The frequency 161.7 and 161.75 MHz were considered to be best suited for Coast Guard operation. These frequencies are allocated internationally to the maritime mobile service in a paired manner with 157.1 and 157.15 MHz, respectively, and paired usage is necessary to contact certain foreign vessels equipped with Channel 22 and to achieve repeater coverage to some remote areas. In the U.S., however, the 161 MHz band is also allocated for land mobile operation and is presently limited to use by remote pickup broadcast base and mobile stations operating in the Broadcast Auxiliary Radio Service.

3. The *Notice* stated that the available data showed the number of RPU authorizations within the areas the Coast Guard proposed to serve was not excessive. It also appeared that shared use might be possible because of the temporary nature of the use of the channels by the Coast Guard and the transmitter powers proposed. However, concern was raised in the *Notice* and specific public comment was invited regarding the compatibility of frequency sharing between the Coast Guard and RPU stations in an emergency situation and particularly key RPU stations participating in the Emergency Broadcast System (EBS).<sup>2</sup>

#### Comments

4. Comments and reply comments in the proceeding were received from twelve (12) parties. (See list contained in the Appendix attached hereto). Generally speaking, the *Notice* received an unfavorable response. Only the Coast Guard and the American Pilots Association supported the concept of shared usage of the RPU frequencies. Most commentators claimed that Coast Guard use would disrupt essential RPU

<sup>2</sup>The Emergency Broadcast System is composed of broadcast stations operating on a voluntary, organized basis during emergencies at National, State, and Local Levels. There are 573 EBS operational areas in the United States and these are served by approximately 600 key broadcast stations. Key RPU stations are those associated with these broadcast stations and are used: (1) To transmit, for broadcasting station use, warnings, instructions, and information relating to war, threat of war, a state of public peril or disaster, or other national, state, or local emergency constituting a threat to the safety of life or property; (2) for coordination of effort in connection with such broadcasts; and (3) for periodic tests or drills to ascertain the reliability of the circuit.