

(1) The appraisal described in paragraph (a)(1) of this section;

(2) 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;

(3) The resources of the recipient;

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

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

(6) The relative importance of particular legal problems of the clients of the recipient;

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

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

§ 1620.3 Access.

A recipient shall allocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, so as to substantially provide that all potentially eligible clients in the recipient's service area have reasonably equal access to the same type of services and level of representation to the maximum extent economically practical. Type of services may vary as required to meet different priorities in different parts of the recipient's service area, and level of representation may vary based on differences in client financial resources. Availability of services should be reasonably proportional to the distribution of eligible clients by county or parish within the recipient's service area. Where a recipient serves an area that is not easily defined by parish or county jurisdictions, other units of political subdivision should be utilized.

§ 1620.4 Implementation.

(a) The governing body of a recipient shall establish policies and procedures that assure clients and the Corporation that cases which are accepted for representation of eligible clients substantially comply with the priorities adopted by the recipient.

(b) By June 30, 1984, each recipient shall prepare an initial written report describing its priorities, how they were developed, the resultant case acceptance schedule, and the implications of those priorities for the allocation of its resources and the composition, training, and support of its personnel. This report shall be submitted to the Corporation for

acceptance and shall be available to the public.

§ 1620.5 Annual review.

Priorities shall be reviewed by the governing body of the recipient at least annually. After the initial report described in § 1620.4(b) each recipient shall submit to the Corporation 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, and mechanisms which will be utilized to ensure effective client participation in priority-setting, and any changes in priorities. The report shall also include a copy of the case acceptance schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review. The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

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

(b) Changes in the resources of the recipient;

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

(d) Implementation of § 1620.3.

Dated: December 27, 1984.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-179 Filed 1-3-85; 8:45 am]

BILLING CODE 4420-35-M

45 CFR Part 1622

Public Access to Meeting Under the Government in the Sunshine Act

AGENCY: Legal Services Corporation.
ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1622, concerning public access to meetings under the Government in the Sunshine Act, was previously adopted by the Board on July 9, 1984, and published in final form in the Federal Register on August 2, 1984, 49 FR 30939. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Room 612, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: On May 29, 1984, the Legal Services Corporation published in the Federal Register (49 FR 22348) a proposed rule which would revise the Corporation's regulations implementing the Sunshine Act.

Interested parties were given thirty days, until June 28, 1984, in which to submit comments on the proposed rule. Six comments were received on or before that date and four comments were received after the close of the comment period. All ten comments were given full consideration. The final rule contains no modifications in response to those comments.

The only change made between the proposed and final versions is a technical change in paragraph (g) of § 1622.6. The word "significantly" is removed after the word "likely" and inserted after the word "frustrate". This change does not change the substance of the paragraph. It is merely a correction of English usage, the need for which was discovered when the regulation was reviewed for final publication in the Federal Register.

The comments received opposed three basic provisions of the proposed rule contained in §§ 1622.2, 1622.4, and 1622.9.

Section 1622.2 Definitions. The comments received opposed the new definition of the term "public observation". Commentators argued that the definition acted to limit or reduce public comment and participation in Board meetings. The definition, however, does not restrict public comment, but merely clarifies the term "public observation". The Sunshine Act does not create any right of participation for observers of meetings. The Corporation's By-laws always have left participation to the invitation of the Chairman of the meeting. The proposed rule provided for an orderly method by which public comment may proceed. Therefore, no change was made in the proposed regulation.

Section 1622.4 Public announcement of meetings. Comments received on this section opposed the change in the sending of notices of meetings to the governing bodies of recipients rather than to each recipient of funds. The

commentators believed that this change would result in recipients not receiving timely notice of meetings.

The Corporation's primary relationship is with the governing body of a recipient. Therefore, it is appropriate that notice be sent by the Corporation to the governing body. The language of the regulation does not preclude additional notice. No change was made in the proposed regulation.

Section 1622.9 Emergency proceedings. The comments received on this section opposed the provision for emergency proceedings. The comments argued that the provision violates the Sunshine Act in that the emergency proceedings are a closed meeting and that notice of any change in the place of the meeting must be made seven days prior to the change of the meeting place. Several comments advocated the removal of disruptive members of the audience. Several other comments argued that the provision was too broad in that it neither defined when emergency proceedings could be instituted with sufficient specificity to avoid abuse nor defined who would be allowed to attend the emergency proceedings.

The emergency proceedings provision is intended to allow the Board to conduct Corporation business in that unusual circumstance when the conduct of members of the public renders the Board incapable of conducting its business. The phrase "rendered incapable of conducting a meeting" implies that the disruption is of an extraordinary magnitude such that any attempts at order have failed.

The phrase "representatives of the public and media" ensures that the removed proceedings will be observed by the public, and together with the additional safeguards provided in paragraph (c) of the section, ensures that the meeting is an open meeting within the spirit and letter of the Sunshine Act.

The argument that seven days' notice is required by the Sunshine Act is not well founded. The Sunshine Act provides that for each meeting "the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by this agency to respond to requests for information about the meetings." 5 U.S.C. 552b(e)(1). This notice requirement applies to the initial setting of the meeting. Indeed, the Sunshine Act provides for meetings on less than one week's notice where the members of the agency determine, by a recorded vote, that agency business

requires a meeting to be called at an earlier date. 5 U.S.C. 552b(e)(1). The public announcement requirement under the Sunshine Act is also a requirement under the Corporation's regulations, 45 CFR 1622.4, and should be fulfilled prior to the meeting in which the emergency proceedings are implemented.

The implementation of emergency proceedings is not the setting of a meeting, and does not change the time, date or subject matter of a meeting, nor does it change whether the meeting is open or closed. The implementation of emergency proceedings merely changes the place of the meeting. Under the Sunshine Act, "[t]he time or place of a meeting may be changed following the public announcement required [by 5 U.S.C. 552b(e)(1)] only if the agency publicly announces such change at the earliest practicable time." 5 U.S.C. 552b(e)(2). The public announcement requirements of 5 U.S.C. 552b(e)(1) do not apply to the changes in the place of the meeting made by the implementation of the emergency proceedings provision. Therefore, action taken pursuant to the emergency proceedings provision does not require seven days prior notice.

The comment suggesting expulsion of disruptive observers implies the use of force. Such action in an already tense atmosphere would cause a confrontational situation that may escalate into violence endangering the safety of non-disruptive observers and the Board members. By moving the meeting from the disruption, the Corporation has elected the least confrontational option that will allow the Board to conduct its business and at the same time adhere to the Sunshine Act.

For the foregoing reasons, the Corporation has made no changes in § 1622.9 in response to comments received.

List of Subjects in 45 CFR Part 1622

Legal services, Sunshine Act.

For the reasons set out in the preamble, 45 CFR Part 1622 is set forth below in its entirety.

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

- Sec.
- 1622.1 Purpose and scope.
 - 1622.2 Definitions.
 - 1622.3 Open meetings.
 - 1622.4 Public announcement of meetings.
 - 1622.5 Grounds on which meetings may be closed or information withheld.
 - 1622.6 Procedures for closing discussion or withholding information.
 - 1622.7 Certification by the General Counsel.
 - 1622.8 Records of closed meetings.

Sec.
1622.9 Emergency proceedings.
1622.10 Report to Congress.

Authority: Sec. 1004(g), Pub. L. 95-222, 91 Stat. 1619 (42 U.S.C. 2996c(g)).

§ 1622.1 Purpose and scope.

This Part is designed to provide the public with full access to the deliberations and discussions of the Board of Directors of the Legal Services Corporation, committees of the Board, and state Advisory Councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§ 1622.2 Definitions.

"Board" means the Board of Directors of the Legal Services Corporation.

"Committee" means any formally designated subdivision of the Board established pursuant to § 1601.27 of the By-Laws of the Corporation.

"Council" means a state Advisory Council appointed by a state Governor or the Board pursuant to section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f).

"Director" means a voting member of the Board or a Council. Reference to actions by or communications to a "Director" means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

"General Counsel" means the General Counsel of the Corporation, or, in the absence of the General Counsel of the Corporation, a person designated by the President to fulfill the duties of the General Counsel or a member designated by a council to act as its chief legal officer.

"Meetings" means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

"Public observation" means the right of any member of the public to attend and observe a meeting within the limits of reasonable accommodations made available for such purposes by the Corporation, but does not include any right to participate unless expressly invited by the Chairman of the Board of Directors, and does not include any right to disrupt or interfere with the disposition of Corporation business.

"Publicly available" for the purposes of § 1622.6(e) means to be procurable either from the Secretary of the Corporation at the site of the meeting or from the Office of Government Relations at Corporation Headquarters upon reasonable request made during business hours.

"Quorum" means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation's By-laws, or the number of council members authorized to conduct its business.

"Secretary" means the Secretary of the Corporation, or, in the absence of the Secretary of the Corporation, a person appointed by the Chairman of the meeting to fulfill the duties of the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be posted of every meeting. The announcement shall include:

(1) The time, place, and subject matter to be discussed;

(2) whether the meeting or a portion thereof is to be open or closed to public observation; and

(3) the name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be posted at least seven calendar days before the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In the event that such a determination is made, public announcement shall be posted at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the Federal Register for publication. Reasonable effort shall be made to communicate the announcement of a Board or committee meeting to the chairman of each council and the governing body of each recipient of funds from the Corporation, and of a council meeting to the governing body of each recipient within the same state.

(d) An amended announcement shall be issued of any change in the information provided by a public

announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the Directors that Corporation business so requires and that no earlier announcement of the change was possible. An amended public announcement shall be made at the earliest practicable time and in the manner specified by § 1622.4 (a) and (c). In the event that changes are made pursuant to § 1622.4(d)(2), the amended public announcement shall also include the vote of each Director upon such change.

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552); Provided, That such statute

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(d) Involve accusing any person of a crime or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigatory records compiled for the purpose of enforcing the Act or any other law, or information which if written would be contained in such records, but only to the extent that the production of such records or information would

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(g) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Corporation action, except that this paragraph shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(h) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§ 1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a record vote of a majority of the Directors with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) A separate vote of all the Directors shall be taken with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information which is proposed to be withheld; except, a single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which the interest will be affected at the meeting, and the grounds upon

which closure is claimed to be proper under § 1622.5. The Secretary shall promptly communicate the request to the Directors, and a recorded vote as required by paragraph (a) of this section shall be taken if any Director so requests. ↻

(d) With respect to each vote taken pursuant to paragraph (a) through (c) of this section, the vote of each Director participating in the vote shall be recorded and no proxies shall be allowed.

(e) With respect to each vote taken pursuant to paragraph (a) through (c) of this section, the Corporation shall within one business day, make publicly available:

(1) A written record of the vote of each Director on the question;

(2) A full written explanation of the action closing the meeting, portion(s) thereof, or series of meetings, together with a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation.

§ 1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemption. A copy of the certification together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of a meeting or any portion thereof closed to the public pursuant to paragraph (h) of § 1622.5, a transcript, a recording, or a set of minutes shall be made. Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each Director's views expressed on any item and the record of each Director's vote on the question. All documents contained in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by paragraph (a) of this section shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting, or until one year after the

conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs, later.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by paragraph (a) of this section that do not contain information that may be withheld under § 1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this Part may be pursued in accordance with Part 1602 of these regulations.

§ 1622.9 Emergency proceedings.

(a) In the event that the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting to remove the meeting to a different location and to invite representatives of the public and media to attend the proceeding at the new location.

(b) The emergency proceedings at the new location shall be recorded by means of an electronic recording adequate to record fully the emergency proceedings, or a transcript of the emergency proceedings shall be made by a certified court reporter.

(c) In the event that the actions of members of the public present at the meeting necessitate action pursuant to § 1622.9 (a), the Corporation shall also—

(1) Make a written statement summarizing the proceedings at the emergency proceedings available to the public at the close of the emergency proceedings;

(2) Make the entire transcript of electronic recording produced pursuant to paragraph (b) of this section available for public inspection within a reasonable time after the close of the emergency proceedings. A copy of the transcript or recording shall be furnished to any person upon request at the actual cost of duplication or transcription.

(3) Report the activities of the emergency proceedings at the next scheduled meeting of the Board.

(d) Actions taken pursuant to this section shall not be construed to be actions taken pursuant to § 1622.6 (Procedure for closing discussion or withholding information). Action taken pursuant to this section does not create

any right to withhold any information regarding the emergency proceedings or action taken therein.

§ 1622.10 Reporting to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552(b), including any costs assessed against the Corporation in such litigation.

Dated: December 27, 1984.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-182 Filed 1-3-84; 8:45 am]

BILLING CODE 6020-35-M