

appropriations act except as it applies to abortion activities.

Background

On July 29, 1987, LSC published at 52 FR 28434 final revisions to its lobbying rule, 45 CFR part 1612. At the same time, LSC requested public comments on part 1612's private funds provisions. See 52 FR 28441 (July 29, 1987). On August 27 and 28, 1987, the Committee and the Board heard public comment at their meetings in Seattle, Washington. As a result of the Seattle deliberations, the Board approved two minor changes to the rule but rejected arguments that LSC's regulation of private funds was unauthorized and unconstitutional. The two minor changes were never published as final. Nor are they included in this final rule. The first change merely clarified that the "regulations" referenced in § 1612.13(c) are regulations that apply to private funds. The second change was a grandfather clause that has subsequently become outdated.

Congress soon thereafter imposed a restriction on the implementation and enforcement of the rule, in the form of a proviso in LSC's appropriations act which is commonly referred to as the Rudman Amendment. The proviso prohibited the Corporation from using its funds to implement or enforce those private funds provisions in the 1987 rule that were not explicitly authorized by the LSC Act, 42 U.S.C. 2996 *et seq.* Public Law 100-202, 101 Stat. 1329 (1987). With some minor changes, Congress has continued to include the Rudman Amendment in LSC's appropriations acts. See Public Law 100-459, 102 Stat. 2226-2227 (1988); Public Law 101-162, 103 Stat. 1036-1037 (1989); Public Law 102-140, 105 Stat. 824 (1991), incorporating Public Law 101-515, 104 Stat. 2152 (1990).

Applicable Law

There is an important distinction between the LSC Act and LSC's appropriations act. Section 1010(c) of the LSC Act prohibits the use of private funds by LSC grantees for activities prohibited by the LSC Act, 42 U.S.C. 2996i(c). The appropriations act, on the other hand, does not contain a private funds provision and thus does not generally restrict a grantee's private funds. Nevertheless, part 1612, which implements the lobbying and certain other political activity provisions of both acts,¹ applies its private funds

¹ Part 1612 regulates lobbying, training, organizing and certain other political activities. In the Supplementary Information, "lobbying" includes all such activities included in the rule.

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends regulations on restrictions on lobbying and certain other activities to conform with a statutory proviso in the Legal Services Corporation's ("LSC" or "Corporation") appropriations act for the current fiscal year that limits the Corporation's ability to implement certain private funds provisions.

EFFECTIVE DATE: October 2, 1993.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Office of the General Counsel, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On July 30, 1992, the Corporation published a proposed rule to amend 45 CFR part 1612 to conform to a statutory limitation on the rule's enforcement contained in LSC's appropriations act, 57 FR 33699 (July 30, 1992). LSC received and reviewed written public comments. In addition, public hearings were held variously by the LSC Board of Directors ("Board") and the LSC Board's Committee on Operations and Regulations ("Committee") in Minneapolis, Minnesota (Sept. 24, 1992), Washington, DC (October 19, 1992), Lake Buena Vista, Florida (December 7, 1992), Washington, DC (Jan. 29, 1993) and Phoenix, Arizona (Feb. 22, 1993). The Board voted on February 22, 1993, to revise the rule to conform to the limitation in the

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provisions to all prohibited lobbying activities, regardless of the statutory source of the restriction. Thus, grantees are prohibited by the rule from using private funds for those lobbying activities prohibited by the appropriations act, even when such activities are allowed under the LSC Act.

The Rudman Amendment prohibits the Corporation from implementing any of the rule's private funds prohibitions that apply to restrictions in LSC's appropriations act that are not also included in the LSC Act. Such activities include self-interest lobbying, grassroots lobbying on behalf of an eligible client, and the dissemination of information about certain public policies and political activities during training programs.

The consistent inclusion of the Rudman Amendment in LSC's appropriations act demonstrates a congressional intent that LSC not apply part 1612's private funds provisions to lobbying restrictions in LSC's appropriations acts that go beyond the lobbying restrictions in the LSC Act. Therefore, the Corporation is amending part 1612 to conform to the Rudman Amendment.

Effective Date

LSC's appropriations act provides that any regulations promulgated by the LSC Board after October 1, 1990, shall not become effective until after October 1, 1993. Public Law 102-395, 106 Stat. 1875, incorporating Public Law 101-515, 104 Stat. 2153 (1990). Therefore, this rule will not be effective until October 2, 1993.

Section Analysis

Section 1612.2

With one exception, § 1612.2 is amended to incorporate the meaning of the Rudman Amendment so that the rule's private funds provisions apply only to lobbying activities explicitly restricted by the LSC Act. The one exception is for abortion activities. Thus, the rule's private funds provisions shall continue to apply to abortion activities prohibited by LSC's appropriations act as well as those prohibited by the LSC Act.

The LSC Board has long held a policy, in part required by statutory law, of prohibiting involvement by LSC grantees in most abortion activities. The inclusion of the abortion exception in this revised rule continues that policy.

Section 1612.3

At present, § 1612.3(b) does not allow the use of LSC or private funds to pay

transportation costs for "lay advocates" to accompany a client to a legislative or administrative proceeding. In 1987, the LSC Board rejected allowing payment for lay advocates because it found the term to be too vague. 52 FR 28435 (1987). However, comments submitted pursuant to the current rulemaking explained the nature and role of lay advocates and offered persuasive examples of situations where lay advocates should accompany the clients to proceedings. Examples include the need for a mental health counselor or supportive friend to accompany an abuse victim to a hearing when the client needs emotional support. Accordingly, § 1612.3(b) is amended to authorize the use of private funds to be used for the transportation costs of lay advocates to accompany eligible clients to legislative or administrative proceedings when necessary and appropriate.

Section 1612.3(e) is amended to make the rule internally consistent by adding a cross reference to related exceptions in § 1612.13.

Section 1612.3(f) is amended to clarify that the prohibition against attendance at coalition meetings applies when the principal purpose of the meeting is to discuss or engage in legislative or political activities that are prohibited by the rule.

Section 1612.6

At present, § 1612.6(a) permits a grantee to respond to requests for information from governmental officials and bodies as long as the response is to a specific matter and is made only to the requesting party. Because the LSC Board found that limiting a response to a specific matter is based on a standard too vague to enforce, the rule is revised to delete that limitation.

In addition, comments pointed out that the limit on responding only to the requesting official would prevent a recipient from responding at all in some instances. Often governmental bodies require that written representations be provided in many copies and be distributed to other members. The Board decided to remedy this problem by replacing the strict limitation by a reasonableness standard. Thus, communications made in response to requesting officials or entities may be made to the extent that the distribution is reasonable and necessary and done in a manner consistent with the standards set out in LSC's regulation on cost standards and procedures, 45 CFR part 1630.

Section 1612.13

Section 1612.13(b) is revised to conform the rule to the Rudman Amendment by allowing the use of private funds for grassroots lobbying when done on behalf of an eligible client. It also clarifies that the anti-solicitation provision applies when solicitation violates the applicable professional code.

Section 1612.13(d) is also revised to conform the rule to the Rudman Amendment. The revision allows the use of private funds to make certain communications that contain publicity and propaganda when done on behalf of an eligible client. It is further revised to clarify that articles as well as references to proposed or pending legislation are included in the types of communications that may be disseminated with private funds.

Section 1612.13(e) is added to conform to the Rudman Amendment by allowing the use of private funds to disseminate information about particular public policies or political activities during training programs. This amendment does not permit the dissemination of information that contains any publicity or propaganda otherwise prohibited by part 1612.

Section 1612.13(f) is added to conform the rule to the Rudman Amendment and to the purpose of section 1007(b)(7) of the LSC Act. Section 1007(b)(7) of the LSC Act prohibits recipients from using funds to initiate the formation, or act as an organizer, of any association, federation, or similar entity. 42 U.S.C. 2996f(b)(7). The legislative history of this provision distinguishes between actually initiating and organizing groups, and encouraging poor people aggrieved by particular problems to consider organizing in order to foster joint solutions to common problems. Section 1612.10 prohibits recipients from encouraging poor people aggrieved by particular problems to consider organizing to foster joint solutions to their common problems. Therefore, § 1612.13(f) is added as an exception to this prohibition as it relates to private funds so that the rule conforms to the Rudman Amendment.

List of Subjects in 45 CFR Part 1612

Civil disorders, Legal services, Lobbying, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 45 CFR part 1612 is amended as follows:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

1. The authority citation for part 1612 is revised to read as follows:

Authority: Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996a(b)(5), 2996f(a) (5), (6) and (7), 2996g(e), 2996(j); Pub. L. 102-395, 106 Stat. 1875 (1992).

2. Section 1612.2 is revised to read as follows:

§ 1612.2 Legal assistance activities.

Except as hereinafter provided, the provisions of this part shall apply to all legal assistance activities carried out with funds made available by the Legal Services Corporation. In addition, the provisions of this part shall apply to funds made available by private entities for those restrictions on legal assistance activities that are explicitly set forth by sections 1007(a)(5), (b)(6), (b)(7) and 1010(c) of the LSC Act, or for any restriction on abortion activity currently included in the Corporation's appropriations act, notwithstanding the exceptions in § 1612.13.

3. Section 1612.3 is amended by removing the period at the end of paragraph (a) and adding a semicolon in its place, and by revising paragraphs (b), (e) and (f) to read as follows:

§ 1612.3 Legislative activities in general.

(b) Pay for transportation to legislative or administrative proceedings of persons other than employees, or law students directly engaged in the activities permitted under this section or witnesses entering appearances in such proceedings on behalf of clients of the recipient, except that this does not prohibit transportation of the client and the client's family where necessary and appropriate; this paragraph does not authorize payment of transportation expenses for employees not actually engaged in permitted legislative or administrative representation, unless they are being trained in how to handle administrative adjudicatory proceedings. However, private funds may be used to pay transportation costs for lay advocates to accompany the client(s) when necessary and appropriate;

(e) Knowingly assist others to engage in legislative or political activities; provided, however, that this paragraph shall not be construed to prohibit the administrative or legislative representation permitted by § 1612.5 or § 1612.13; or

(f) Attend meetings of coalitions if a principal purpose of the meeting is to

discuss or engage in legislative or political activities that are prohibited by this part.

4. Section 1612.6 is amended by revising paragraph (a) to read as follows:

§ 1612.6 Permissible activities undertaken pursuant to request of public officials.

(a) To the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to part 1620 of this chapter or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance, an employee may respond to a request from a governmental agency, elected official, legislative body, committee, or member made to the employee or to a recipient to testify, draft, or review legislation, or to make representations to such agency, official, body, committee, or member. Communications made in response to such requests may be distributed to other persons or entities to the extent that such distribution is reasonable and necessary to fully comply with the request or for the provision of legal assistance for eligible clients or for the accomplishment of another permissible or required function, including, but not limited to, requirements of the law or formal procedures for public comment. Such distribution must be done in a manner consistent with the standards of part 1630 of this chapter.

5. Section 1612.13 is amended by revising paragraphs (b) and (d) and adding paragraphs (e) and (f) to read as follows:

§ 1612.13 Private funds.

(b) A recipient may use private funds to engage in legislative activities at the request of a current eligible client of a recipient, to the extent such activities are necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities, but no recipient shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible.

(d) Private funds provided for the provision of legal assistance to eligible clients may be used to support the preparation, production, or dissemination of any article, newsletter, or other publication or written matter or other form of mass communication which contains references to or articles about proposed or pending legislation so long as the publication does not contain any publicity or propaganda,

unless the publicity or propaganda is necessary to the provision of legal advice and representation to an eligible client.

(e) A recipient may use private funds to disseminate information about particular public policies or political activities when supporting or conducting training programs, to train clients or others about the law, and to engage in training about how to provide representation before administrative or legislative bodies. However, recipients may not disseminate information that contains any publicity or propaganda prohibited by this part.

(f) Private funds may be used for any communication or meeting to encourage poor people to consider organizing in order to foster joint solutions to common problems. This provision does not permit a recipient to initiate the formation or to act as an organizer of any association, federation, labor union, coalition, network, alliance or any similar entity.

Dated: April 14, 1993.

Victor M. Fortuno,
General Counsel.

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