

administered either by oral gavage, in the diet, or in capsules.

\* \* \* \* \*

(2) *Subchronic toxicity*—(i) *Required testing.* (A) An oral 90-day subchronic toxicity test shall be conducted with 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650 (e)(3), (e)(7)(i), and (e)(11)(v). The test shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

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## LEGAL SERVICES CORPORATION

### 45 CFR Part 1633

#### Restriction on Representation in Certain Eviction Proceedings

**AGENCY:** Legal Services Corporation.  
**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is intended to ensure that recipients refrain from using Legal Services Corporation ("LSC" or "Corporation") funds to provide representation in eviction proceedings of persons engaged in certain illegal drug activity.

**DATES:** Comments must be submitted on or before October 23, 1995.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, at (202) 336-8810.

**SUPPLEMENTARY INFORMATION:** On June 25, 1995, the Corporation Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation prohibiting the use of Corporation funds to represent in certain eviction proceedings persons alleged to be engaging in illegal drug activity. On September 9, 1995, the Board's Operations and Regulations Committee ("Committee") held public hearings on proposed 45 CFR Part 1633. After adopting several changes to the staff draft of the regulation, the Committee voted to publish the proposed rule in the Federal Register for notice and comment.

The LSC Act grants the Corporation both general and specific rulemaking

authority. *Texas Rural Legal Aid v. LSC*, 940 F.2d 685, 690-91 (D.C. Cir. 1991); see e.g., 42 U.S.C. 2996e(a)(1)(A), (a)(1)(B), and 2996f(a)(3). In particular, section 1007(a)(3) of the LSC Act "gives [the Corporation] substantial power to regulate the 'delivery of legal assistance' by program recipients." *TRLA*, at 691. In addition, as a private corporation granted the powers of a District of Columbia nonprofit corporation, 42 U.S.C. 2996e(a), the Corporation has the power to establish the terms under which it will make grants to entities to provide legal assistance. *Id.* Congress intended the exercise of "considerable discretion" by the Corporation in its implementation of the LSC Act. *Id.* Finally, under section 1007(a)(2)(C) of the LSC Act, 42 U.S.C. 2996f(a)(2)(C), the Corporation may provide guidance to its recipients as to appropriate caseload matters by establishing national goals, in conformance with which recipients are to establish priorities for the acceptance of cases. *Id.* at 693.

A purpose of the legal services program is to assist in improving opportunities for low income persons. 42 U.S.C. 2996(3). In addition, in its grantmaking and oversight functions, the Corporation must ensure that recipients provide legal assistance in the most economical and effective manner. 42 U.S.C. 2996f(a)(3). Hence, a principal national goal of the Corporation, based in the LSC Act, is to provide economical and effective legal assistance in a manner that improves opportunities for low income persons.

The drug problem has had a devastating effect on the poor in our country, especially those living in public housing. This situation is of grave concern to the Board, and has been an on-going concern in Congress. For example, section 508(18) of H.R. 2076, an appropriations measure currently before Congress, would prohibit recipients from providing representation in certain drug-related eviction proceedings. See H.R. 2076, 104th Cong., 1st Sess., section 504(18).

Since tenants of public housing projects who engage in illegal drug activity may be viewed as a destructive force within public housing communities acting to the detriment of low income persons, it is the Corporation's considered view that representation of those who engage in such activity undermines the purposes of the LSC Act. Based on the above, the Board directed staff to prepare a proposed regulation addressing these concerns. Such regulation will implement the Corporation's goal of providing economical and effective legal

assistance in a manner that improves opportunities for low income persons and will provide specific guidance to recipients to revise their priorities and procedures in the area of representation in drug-related eviction proceedings.

A section-by-section discussion of the proposed rule is provided below.

#### Section 1633.1 Purpose

This section sets out the purpose of the proposed rule: to implement the goal of the Corporation to provide economical and effective legal assistance in a manner that improves opportunities for low income persons and to provide specific guidance in the case of drug-related eviction proceedings by prohibiting any recipient from providing representation in certain proceedings to evict from public housing projects persons convicted of or being prosecuted for certain drug-related activity.

#### Section 1633.2 Definitions

This section defines "controlled substance," "public housing project," and "public housing agency" in the manner those terms are defined by federal statute. The term "being prosecuted" is defined to make clear that the prohibition attaches only when a prosecution has been instituted and is being pursued by a governmental authority, for example, by indictment or information. It is not sufficient for an affidavit to have been sworn by a private citizen or for an arrest to have occurred if no prosecution has followed.

#### Section 1633.3 Prohibition

This section sets out the prohibition on the use of Corporation funds. It is intended to preclude the provision of representation in a proceeding to evict from a public housing project a person who has been recently convicted of or is being prosecuted for illegal drug activity. Such activity must be evidenced by a conviction or current prosecution for the sale, distribution, use or manufacture of a controlled substance. Under the prohibition if representation was commenced prior to prosecution, the recipient should seek to end the representation if a prosecution is thereafter commenced. The Corporation has concluded that a formal charge of illegal drug activity against a client will suffice to prohibit representation even though a conviction has not as yet resulted. The Corporation, however, believes that the prohibition should apply only when the charge of illegal drug activity has resulted in formal prosecution proceedings.

In addition, the prohibition applies only if the allegation which forms the

basis for the eviction proceeding is that the particular illegal drug activity for which the person has been convicted or is being prosecuted did or does now threaten the health or safety of others living in the public housing project or working in the public housing agency. This qualification is intended to make clear that, in order for the prohibition to apply, the allegation which forms the basis for the eviction must be that, at the time the illegal drug activity was engaged in, it threatened the health or safety of others within the public housing community or that the activity currently threatens such health or safety. In other words, the threat must stem from the illegal drug activity which resulted in prosecution/conviction.

Finally, the prohibition extends only to the individual who has been convicted or is being prosecuted, and does not extend to other members of the individual's household who may be facing eviction because of the individual's illegal activity. For example, if a person is facing eviction based on the fact that another person in the household has been convicted of or is being prosecuted for the illegal sale, distribution, use or manufacture of a controlled substance, then the prohibition would not attach.

#### *Section 1633.4 Recordkeeping*

This section requires recipients to maintain documentation regarding representation declined under this part. Such recordkeeping will assist the Corporation in its compliance monitoring efforts and will provide empirical data for informational purposes.

#### List of Subjects in 45 CFR 1633

Legal services, Drugs, Public housing.

For reasons set forth in the preamble, LSC proposes to amend 45 CFR chapter XVI by adding part 1633 as follows:

### **PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS**

Sec.

- 1633.1 Purpose.
- 1633.2 Definitions.
- 1633.3 Prohibition.
- 1633.4 Recordkeeping.

Authority: 42 U.S.C. 2996e(a), (b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e).

#### **§ 1633.1 Purpose.**

This part is designed to ensure that Corporation funds will not be used to provide representation in certain eviction proceedings to persons charged with or convicted of illegal drug activities.

#### **§ 1633.2 Definitions.**

(a) "Controlled substance" has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) "Public housing project" and "public housing agency" have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a); and

(c) A person is "being prosecuted" if a criminal proceeding has been instituted against such person by a governmental authority with jurisdiction to bring such prosecution.

#### **§ 1633.3 Prohibition.**

Corporation funds shall not be used to defend any person in a proceeding to evict that person from a public housing project if:

(a) the person has been recently convicted of or is being prosecuted for the illegal sale, distribution, use or manufacture of a controlled substance; and

(b) the eviction proceeding is brought by a public housing authority on the basis that such illegal drug activity for which the person has been convicted or for which the person is being prosecuted did or does now threaten the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

#### **§ 1633.4 Recordkeeping.**

Recipients shall maintain a record of all instances in which representation is declined under this part. Records required by this section shall be available to the Corporation, and should be maintained in a manner consistent with the attorney-client privilege and the rules of professional responsibility applicable in the local jurisdiction.

Dated: September 18, 1995.

Suzanne B. Glasow,

*Senior Counsel for Operations & Regulations.*

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### **45 CFR Part 1634**

#### **Competitive Bidding for Grants and Contracts**

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed Rule.

**SUMMARY:** The Corporation anticipates that Congress will adopt legislation requiring the Corporation to utilize a system of competitive bidding for the award of grants and contracts. This proposed rule is intended to implement such a system of competitive bidding for the award of grants and contracts for the

delivery of legal services to eligible clients. The competitive bidding system would be structured so as to meet the primary purposes of the Legal Services Corporation Act as amended—to ensure the economical and effective delivery of high quality legal services to eligible clients and improve opportunities for low income persons. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

**DATES:** Comments must be submitted on or before October 23, 1995.

**ADDRESSES:** Comments should be submitted to the Office of General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, at (202) 336-8810.

**SUPPLEMENTARY INFORMATION:** On June 25, 1995 the LSC Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation on competition in the delivery of legal services. On September 8 and 9, 1995, the Board's Operations and Regulations Committee and the provision for the Delivery of Legal Services Committee ("Committee") held public hearings on a draft proposed rule, 45 CFR part 1634. After adopting several changes to the draft proposed rule, the Committees voted to publish a proposed rule in the Federal Register for notice and comment.

Generally, the proposed rule is intended to set out the framework for a system of competitive bidding that would be structured so as to meet the primary purposes of the Legal Services Corporation Act, that is, to ensure the effective and efficient delivery of high quality legal services to eligible clients and to improve opportunities for low-income persons. Through the proposed competitive bidding system, qualified attorneys and entities would be provided an opportunity to compete for grants and contracts to deliver a full range of high quality legal services in service areas determined by the Corporation. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

The competitive system envisioned in this regulation is intended to encourage realistic and responsible bids aimed toward the provision of quality legal services. Applicants should submit proposals that favor cost-effectiveness rather than cost and a system that provides a full range of legal assistance rather than fragmented services.