

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing, the Coast Guard is amending 33 CFR Part 100 as follows:

1. The authority citation for 33 CFR Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In § 100.1103, paragraph (a) is suspended and a new paragraph (d) is added to read as follows:

§ 100.1103 Opening Day Marine Parade, San Francisco Bay.

* * * * *

(d) This section is effective from 8 a.m. until 4 p.m. PDT, May 5, 1996.

Dated: March 19, 1996.

D.D. Polk,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District Acting.

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BILLING CODE 4910-14-M

LEGAL SERVICES CORPORATION**45 CFR Part 1633****Restriction on Representation in Certain Eviction Proceedings**

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This rule is intended to proscribe the use of Legal Services Corporation ("LSC" or "Corporation")

funds to provide representation in eviction proceedings of persons engaged in certain illegal drug activity. Should it become a statutory requirement, the rule will be amended to also proscribe the use of non-LSC funds for this purpose.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Victor M. Fortunato, General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250. (202) 336-8800.

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 persons alleged to be engaging in illegal drug activity in certain eviction proceedings. On September 9, 1995, the Board's Operations and Regulations Committee ("Committee") held public hearings on a proposed rule, to be designated 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 proposed rule was published in the Federal Register on September 21, 1995 (60 FR 48950). Thirteen comments were submitted during the allotted time and seven arrived after the deadline, but all twenty were fully considered. The Committee met on December 17, 1995, and February 23, 1996, to consider the written and oral comments to the proposed rule. Based on the comments, the Committee revised the proposed rule. On February 24, 1996, the Board voted to adopt the rule as recommended by the Committee as a final rule.

Corporation's Authority To Promulgate the Rule

One comment questioned LSC's authority to promulgate the rule. Under the LSC Act, the Corporation has been granted both general and specific rulemaking authority. The Corporation's rulemaking authority includes the authority to promulgate this rule in the absence of legislation intended to restrict the Corporation's discretion to regulate the matter which is the subject of the rule. See *Texas Rural Legal Aid v. LSC*, 940 F.2d 685, 690-91 (D.C. Cir. 1991), citing to provisions of the LSC Act, including 42 U.S.C. 2996e(a) and 2996f(a). As noted below, promulgation of this rule is consistent with provisions in H.R. 2076, the appropriations bill which included funds for LSC for Fiscal Year ("FY") 1996. (H.R. 2076 was passed by Congress but vetoed by the President; however, the Corporation anticipates passage of legislation

containing substantially similar language in the near future.)

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 ongoing concern of the Congress, as evidenced by H.R. 2076, section 504(18) of the House bill, section 14(a)(18) of the Senate version, and section 504(a)(17) of the House-Senate Conference version, and of the U.S. Department of Housing and Urban Development ("HUD"). 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 in eviction proceedings of those formally charged with or convicted of such activities is not consistent with the purposes of the LSC Act. This rule 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 for revising their priorities and procedures in the area of representation in drug-related eviction proceedings.

The remainder of this commentary provides a section-by-section analysis of the rule, discusses the major issues raised by comments, and notes the changes made in the final regulation.

Section 1633.1 Purpose

This rule is intended to preclude recipients' use of Corporation funds to defend, in certain evictions proceedings, persons who have been charged with or convicted of illegal drug activities.

Section 1633.2 Definitions

This section defines key terms used in the regulation. Several comments advocated changing the definition of "being prosecuted" which was included in the proposed rule. This is unnecessary, as the final rule no longer contains a definition of "being prosecuted." The Corporation has revised the Prohibition section of the rule to be consistent with the apparent intent of Congress, as expressed in H.R. 2076. Section 504(a)(17) of that bill prohibited a recipient from using funds to defend a person in a proceeding to evict that person from a public housing project, if "that person has been charged with the illegal sale or distribution of a controlled substance." Therefore, in the final rule, recipients are prohibited from providing representation in eviction

proceedings to persons who have been charged with or convicted of illegal drug activities. At the same time, the Corporation emphasizes that the prohibition on representation applies only when a formal charge of illegal drug activity, whether by information or indictment or their equivalent, has been made and is pending against a person, or there has been a conviction. Thus, the prohibition on representation of a person will be lifted if and when such a charge has been dismissed, that person has been acquitted of the charged illegal drug activity, or one year has elapsed since that person's conviction.

Section 1633.3 Prohibition

This section sets out the prohibition on the use of Corporation funds. It is intended to preclude a recipient from defending a person who has been charged with or, within the previous year, convicted of certain illegal drug activity in a proceeding to evict that person from a public housing project.

The prohibition set forth in the final rule, as in the proposed rule, only restricts recipients' use of Corporation funds. The Corporation notes, however, that the House-Senate Conference bill, section 504(a)(17), which was passed by Congress and vetoed by the President, would have prohibited LSC from funding any recipient that engages in representation in the eviction proceedings which are the subject of this rule, regardless of whether the recipient uses LSC or some other funds to support the representation. Thus, should it become a statutory requirement, the rule will be amended to also proscribe the use of non-LSC funds for this purpose.

Not surprisingly, most comments addressed this section of the rule. In general, the comments ranged from generally supportive to generally opposed, and from advocating expansion of the rule (for example, to cover all illegal activity) to advocating limiting the rule (for example, by permitting discretion on the part of attorneys). After considering all of the comments, the Corporation has concluded that the rule should reflect the apparent intent of Congress as declared in H.R. 2076. In response to the comments, however, some modifications have been made to clarify the intent of the rule. These changes are discussed below, as are some of the specific comments.

Recent Conviction

Several comments pointed out that the term "recent" as used in the proposed rule is vague and subject to inconsistent interpretation. In response,

the final rule has been modified to specify a time period of one year. Thus, under the rule, a recipient may not represent, in eviction proceedings, a person who, within one year of applying for legal services, has been convicted of illegal drug activities which threatened the health or safety of tenants or employees of the public housing project.

Illegal Drug Activities

Although the Corporation does not want to encourage recipients to provide legal assistance to persons who use, manufacture, or possess illegal controlled substances, in the final rule, LSC has decided to restrict the prohibition on recipients' provision of representation to persons who have been charged with or convicted of the illegal sale or distribution of controlled substances. Such a restriction is consistent with H.R. 2076, section 504(a)(17), which, if signed into law, would have precluded the Corporation from providing funds to any person or entity that defends in eviction proceedings a person who has been charged with the illegal sale or distribution of a controlled substance. Since, in H.R. 2076, Congress did not include possession, use, or manufacture of controlled substances as proscribed drug-related activities, the Corporation has decided not to extend the prohibition on representation to such activities. However, sound judgment should be exercised by recipients on this issue.

Constitutional Objections

Two comments expressed concern that the prohibition impinges upon the due process rights of those tenants denied representation under the rule. One of these comments argues that the rule contradicts the notion of constitutional due process. The apparent concern is that the rule penalizes those merely alleged to have engaged in criminal behavior.

The Corporation is aware of the likelihood that some tenants who are eventually acquitted or against whom charges are eventually dismissed will be denied representation in their eviction proceeding. While mindful of the burden on those denied representation under the rule, the Corporation continues to be of the view that the rule should be consistent with the apparent intent of Congress, as indicated in H.R. 2076. Under the final rule, the prohibition applies when a formal charge of illegal drug activity has been made against a person, for example, by indictment or information. Statements of witnesses or even an arrest will not suffice. Finally, although the rule denies

certain individuals access to a legal services attorney to represent them in eviction proceedings, it does not deny such individuals the opportunity to participate in the eviction procedures provided under HUD regulations. See, generally, 24 CFR part 966.

Health and Safety

In the comments, an issue arose concerning the prohibition's qualification that the drug activity threaten the health and safety of those residing in the public housing project or working in the public housing agency. It was suggested that, for the prohibition to apply, a threat to health or safety should not have to be alleged. While true that under the HUD regulations governing lease terminations, illegal drug activity provides grounds for such termination without reference to health or safety, the Corporation has decided to adopt the congressional view and to restrict representation when the basis for the eviction procedure is a threat to health or safety. See H.R. 2076, section 504(18) of the House bill, section 14(a)(18) of the Senate version, and section 504(a)(17) of the House-Senate Conference version.

Other Members of Household

Several comments suggested expanding the rule to prohibit representation in eviction proceedings of those being evicted because other members of the household engaged in illegal drug activity. Upon reflection, the Corporation has decided to limit the prohibition on representation to the person charged with or convicted of the illegal drug activity, which is consistent with the apparent intent of Congress. Thus, representation of household members in eviction proceedings is not prohibited under the final rule.

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 and policy development purposes. This section has been modified to indicate that, in addition to the Corporation and its agents and representatives, records will be available to those entitled to access by statute.

The proposed rule included language advising recipients that the records should be maintained in a manner consistent with the attorney-client privilege and all applicable rules of professional responsibility. Since all actions of recipients must be consistent

with the attorney-client privilege and rules of professional responsibility, upon consideration, the Corporation has determined that inclusion of specific language in the rule is not necessary. In implementing the requirement, recipients should remain aware of the access provision and mindful of the ethical precepts governing client confidentiality.

List of Subjects in 45 CFR 1633

Legal services, Drugs, Public housing.

For the reasons set forth in the preamble, LSC amends 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 recipients do not use Corporation funds to provide representation in certain public housing 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);

(c) A person has been "charged with" engaging in illegal drug activities if a criminal proceeding has been instituted against such person by a governmental entity with authority to initiate such proceeding and such proceeding is pending.

§ 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 charged with or, within one year of the date when services are requested from a legal services provider, has been convicted of the illegal sale or distribution of a controlled substance; and

(b) The eviction proceeding is brought by a public housing agency on the basis that such illegal drug activity for which the person has been charged or for

which the person has been convicted 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 to any other person or entity statutorily entitled to access to such records.

Dated: March 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96-7823 Filed 3-29-96; 8:45 am]

BILLING CODE 7050-01-P

45 CFR Part 1634

Competitive Bidding for Grants and Contracts

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: Congress has adopted legislation requiring the Legal Services Corporation ("LSC" or "Corporation") to utilize a system of competitive bidding for the award of grants and contracts. Pursuant to that law, this rule is intended to implement 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 has been structured so as to meet the primary purposes of the LSC Act as amended, that is, to ensure the economical and effective delivery of high quality civil 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.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On June 25, 1995, the Corporation's 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 Provisions for the Delivery of Legal Services Committee ("Committees") 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. The proposed rule was published on September 21, 1995 (60 FR 48951), and eleven comments were received and reviewed by the Corporation. Seven comments came from LSC recipients; the rest were submitted by the State Bar of California, the Maryland Task Force on Statewide Planning for Essential Legal Services for the Indigent ("SPELSI"), the National Organization of Legal Services Workers ("NOLSW") and the Center for Law and Social Policy ("CLASP"). On February 23, 1996, the Committees met to consider written and oral comments to the proposed rule. Based on those comments, the Committees made several revisions. On February 24, 1996, the Board voted to adopt the rule as recommended by the Committees for publication as a final rule in the Federal Register.

Generally, this rule is intended to set out the framework for a system of competitive bidding that is structured to meet the primary purposes of the LSC Act, that is, to ensure the effective and economical delivery of high quality legal services to eligible clients.

Through the competitive bidding system, qualified attorneys and entities are to be provided an opportunity to compete for grants and contracts to participate in the delivery of 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. Proposals should favor cost-effectiveness, rather than simply cost, and favor delivery systems that provide a full range of legal assistance, rather than only some kinds of services in only some types of cases. Competitive bidding is also intended to ensure that recipients are those best able to provide high quality legal assistance to the poor.

Finally, the rule provides authority for the Corporation to modify the timetables and other provisions of the system to conform to requirements imposed by law.

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

§ 1634.1 Purpose

This section sets out the purpose of the rule, which is to encourage the economical and effective delivery of high quality legal services to eligible clients through an integrated system of