

**SHORT PRIMER
ON
POLICY ADVOCACY**

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Many staff attorneys and paralegals in LSC-funded legal services programs believe they cannot engage in policy advocacy before various policy making bodies. While some advocacy is prohibited, much policy work is permitted and can still go forward despite the statutory prohibitions of the LSC appropriations legislation and the implementing regulations that LSC has promulgated, 45 CFR 1612.

Some of the questions that commonly arise are covered in this brief Primer. Others are discussed in the ***GUIDE TO PART 1612***. Some questions will involve individual fact situations that will require more detailed analysis of the regulations. Please do not hesitate to contact Linda Perle or me at CLASP if you have questions about what can and can not be done. Linda can be reached at (202) 906-8002 or lperle@clasp.org and I can be reached at (202) 906-8001 or ahouse@clasp.org.

GENERAL APPROACH

In examining what we can and cannot do, we must begin by asking two questions.

First, is the activity prohibited?

Second, is there any exception to the prohibition?

Too often, we fail to ask the first question. Of the 1000 calls/e-mails per year that CLASP receives from legal services directors and attorneys seeking advice on whether their activities are legal under the LSC regulations, in over 90% of those cases, we advise the program that the activity they want to do is not prohibited and can be carried out with LSC funds.

RULEMAKING

ACTIVITIES NOT INCLUDED WITHIN RULEMAKING

- You may participate in administrative proceedings adjudicating the rights of individuals, such as public housing eviction proceedings and welfare fair hearings.
- You may communicate with the personnel of local, state and federal agencies such as the Public Housing Authority (PHA), welfare department, labor department, and other agencies for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.
- You may negotiate with agency personnel about the application of an agency rule or policy to the client being represented and may attempt to get the agency to change its interpretation or even its policies as they affect an individual client.
- You may track regulatory developments at the Local, State or Federal levels and inform clients, other recipients, private attorneys, community organizations, human services providers or others about the status, content and meaning of new or proposed plans, executive orders, or administrative regulations.
- You may also participate in discussions about PHA plans, Consolidated Plans and regulatory developments during task force meetings or in other settings.
- You may advise clients, community groups and others about the effect of agency policies or plans as well as other agency rules and policies, analyze and explain proposed changes and their effect, and advise their clients and community groups about their right to themselves participate in agency rulemaking proceedings.
- You may participate in the agency planning process to, for example, develop the Public Housing Plan.

WHAT IS PROHIBITED WITH LSC FUNDS

Under the prohibition using LSC funds, you **CANNOT**:

- Comment upon proposed rules or regulations;
- Seek to have an administrative agency issue regulations or petition for rulemaking in order to address a client's problem;
- Engage in discussions with those officials making the rules in an attempt to influence the rules during the course of a rulemaking proceeding.

“Rulemaking” includes “notice and comment” rulemaking procedures under the Federal Administrative Procedures Act or similar procedures used by State or local government agencies.

COHEN-BUMPERS EXCEPTIONS FOR USING NON-LSC FUNDS TO COMMENT IN RULEMAKING

Under the Cohen-Bumpers amendment you may provide oral or written comment to an agency and its staff in a public rulemaking proceeding when using non-LSC funds. LSC defined *public rulemaking* to mean any rulemaking proceeding or portion of such proceeding or procedure that is open to the public.

Thus, you may, using non-LSC funds:

- prepare written comments in response to a Notice of Proposed Rulemaking in the *Federal Register* or in response to a similar notice in a state or local publication;
- prepare written or oral comments in response to a publication for the general public or a rulemaking proceeding that is public under state or local law;
- respond orally or in writing to notices of proposed rulemaking from a Federal or State agency, if the recipient routinely receives such notices;
- meet with agency officials and discuss your concerns about proposed regulations during the course of a rulemaking proceeding; and
- meet with agency officials who are considering a rulemaking proceeding to discuss concerns about drafts of regulations that have not yet been published for comment but which have been sent to you for review.

LOBBYING

ACTIVITIES NOT COVERED

- You may track legislative developments at the Local, State or Federal levels and inform clients, other recipients, private attorneys, community groups, human services providers and others about the content and status of new or proposed statutes and explain how such developments would affect eligible clients.
- You may also publish newsletters and other written materials which report the content or status of pending or proposed legislation or regulations, explain the meaning of such legislation with regard to the rights and responsibilities of low-income clients and explain how such legislation would affect legal representation.
- You may discuss legislative developments in task force meetings and other settings.
- You may advise clients, community groups and others about pending or proposed legislation and analyze and explain proposed changes and their effect to clients.

- You may also advise clients and community groups about their right to participate in legislative proceedings or about their right to communicate directly with an elected official. You may advise specific clients whom they are representing about, for example, who their elected representatives are, how legislation is enacted, and the procedures for testifying. You may not prepare testimony for their clients nor train clients to become effective participants in lobbying.

WHAT IS PROHIBITED

1. **Direct Lobbying:** You cannot attempt to influence pending or proposed legislation.

Legislation is defined as “any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy.”

Public policy means “an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules or regulations.”

Therefore, you can not engage in direct lobbying activity on pending or proposed matters involving eligible clients even if you have a retainer from the client to do so.

2. **Grassroots Lobbying:** You cannot engage in any grassroots lobbying.

Grassroots lobbying is defined as any written or oral communication in any form which “contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions” or ballot measures. Thus, an LSC funded program staff member could not send an e-mail to a mailing list telling the list to contact an agency official in support of in or opposition to a proposed regulation.

WHAT MAY BE DONE WITH NON-LSC FUNDS

You may use non-LSC funds to respond to a written request from an elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to:

- (1) Testify orally or in writing;
- (2) Provide information which may include analysis of, or comments upon, existing or proposed legislation, or drafts of, proposed legislation or agency regulations or policies.

Such written requests for responses or participation may involve any pending or proposed legislation or agency regulations or policies.

Such responses to requests may be distributed only to parties that make the request or to other persons or entities to the extent that such distribution is required to fully comply with the request. For example, agencies or legislative bodies may have rules about how and to whom written

testimony is to be distributed, and recipients are permitted to comply with those rules, even if they require a distribution to others.

Recipient staff may not solicit or arrange for such requests, but they can inform officials and their staff about the process for obtaining their testimony or information.

PARTICIPATION ON GOVERNMENTAL, BAR ASSOCIATION OR OTHER COMMITTEES AND GROUPS

You may participate in a variety of organizations, task forces, meetings, advisory boards, committees and the like which may discuss a host of issues relating to the representation of eligible clients. These discussions would include newly enacted legislation as well as pending or proposed legislation or regulations and the impact of such legislation or regulation on low-income persons and families.

For example:

- You may participate in the PHA planning process under housing legislation.
- You may participate in efforts to inform the Consolidated Plan process about housing needs and plans for action.
- You may participate as legal adviser or program representative to, or a member of, an organization, task force, consortium, advisory board or committee which seeks to improve service to clients or share information about community resources or needs.

You may use any funds to participate in meetings or serve on committees of bar associations. You may participate in discussion regarding how pending or proposed legislation or regulations would affect low-income persons and families.

You may participate on government advisory bodies, commissions or committees which are engaged in making recommendations for legislation or regulations, so long as you are invited in writing to participate by an agency or official thereof, elected official, legislative body or committee, or member thereof and the employee uses non-LSC funds to do so. If government advisory bodies are not proposing regulations or legislation, you may participate using LSC funds. If you are asked to participate you may testify before, and provide information to, the body.

There are some limitations on what you can do, but they do not prohibit your participation on these various types of bodies.

COORDINATION WITH NON-LSC FUNDED LEGAL SERVICES ENTITIES

LSC-funded programs may work with the Non-LSC funded entities such as the Legal Services

Advocacy Project in a coordinated and collaborative manner.

- You may communicate about problems of clients with the non-LSC funded entity.
- You may analyze the impact on your clients of existing policies or pending or proposed legislation or regulations and share analyzes with the non-LSC funded entity.
- You may participate in discussion and task forces with the Non-LSC funded entity and discuss legislative and regulatory issues.
- You may advise the Non-LSC funded entity about the most important issues facing your client and how legislative or regulatory change could address such critical issues.
- You may work with the Non-LSC funded entity on proposed rules using non-LSC funds.
- If asked to testify or provide information to a legislative or administrative official, you may coordinate testimony or information with the non-LSC funded entity.

ACTIVITY ON A STAFF PERSON'S OWN TIME

Recipient staff may undertake direct and grassroots lobbying designed to influence local, State or Federal legislative bodies on welfare reform only if they are operating **on their own time** and if **recipient funds or resources are not used** to support these activities.

However, extreme care must be used to ensure that personal time for any restricted activity is adequately documented so that there can be no question that the activity was taken on the staff's own time (e.g., vacation time, other leave time as permitted by the recipient, off-duty time). Further, no office supplies, equipment, phone or other resources of the recipient can be used in any way to engage in direct or grassroots lobbying or communications. Specifically:

- Recipient staff must make clear that they are acting on their own time and speaking as individuals not as representatives of the recipient.
- Recipient attorneys may not represent clients or client groups in such lobbying activity because they would be engaging in outside practice of law if they did so.¹ Recipient attorneys may only speak for themselves when doing lobbying on their own time.
- Recipient staff may not engage in direct or grassroots lobbying if they are on official travel being paid for with recipient funds.

¹The outside practice of law regulation, 45 CFR 1604, sets out what can and cannot be done by attorneys employed full time by a legal services program receiving LSC funds.

Recipient board members may, on their own time, lobby, engage in grassroots lobbying, form and participate in coalitions, prepare information materials or action alerts, and generally undertake whatever is necessary to support or oppose welfare reform legislation. However, board members may not use recipient stationary or recipient resources when engaging in direct or grassroots lobbying activity.

Private attorneys participating in PAI plans may, on their own time, engage in all of the activities necessary to lobby about welfare reform or related issues.

Clients and client councils may engage in direct and grassroots activities, so long as they are not using recipient funds or resources. If they are using recipient funds or resources, the same restrictions apply to clients as apply to recipient staff.