


## Program Letter 11-1

**TO:** All Executive Directors

**FROM:** James J. Sandman, President 

**DATE:** September 14, 2011

**SUBJECT:** 45 C.F.R. Part 1608 Compliance Advisory

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### Introduction

In June 2011, the Office of Inspector General (“OIG”) of the Legal Services Corporation (“LSC” or “Corporation”) determined that, by publishing and distributing a pamphlet containing a cartoon-figure rendition of former President George W. Bush shoveling dirt onto a grave with a headstone labeled “H2A Wages,” an LSC grant recipient had engaged in political activity that would be in violation of section 1007(a)(6)(A) of the LSC Act if LSC funds or, under certain circumstances, non-LSC funds, were used to support the creation and distribution of the publication. This determination was issued in response to an April 2011 inquiry from Representative Frank Wolf, the Chairman of the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies (“CJS Appropriations Subcommittee”).

In its July 2011 Report accompanying its Fiscal Year (“FY”) 2012 appropriations bill, the CJS Appropriations Subcommittee described that pamphlet as containing “needless political representations and ideological biases.” The Report went on to state that, “Because LSC routinely testifies that it lacks funds to serve all of the many low income Americans in need of civil legal assistance, it is all the more important that LSC grantees not squander funds on political activism. Using Federal funds in violation of the LSC statute undermines the confidence necessary to sustain annual funding for the LSC.” The Report recommended that LSC’s FY 2012 funding be cut to \$300,000,000 -- \$104,190,000 below current levels. The Subcommittee’s Report further recommended “the removal of funds from any LSC grantee found engaging in political activity.”

As a result of the OIG’s finding, and in light of the serious nature of the issue, LSC asked the grant recipient, and the recipient agreed, to reimburse all LSC funds utilized for the production and distribution of the pamphlet in question. The grant recipient also conducted a complete review of all of its on-line and hard-copy materials and publications and implemented additional levels of review for all future publication or distribution of new pamphlets and booklets.

## **Guidance**

Section 1007(a)(6)(A) of the LSC Act requires the Corporation to “insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from any political activity . . . .” Section 1007(b)(4), in turn, applies this restriction to all grant recipient employees when using LSC funds. Section 1010(c) further applies this restriction to all grantee funds except for “other public funds or tribal funds [used] in accordance with the purpose for which they are provided . . . .” These restrictions apply to any political activities, not just those associated with a particular campaign or party, and are codified at 45 C.F.R. Section 1608.4(b) of the LSC regulations. That section prohibits grant recipient employees from using LSC funds for “activities prohibited to attorneys under § 1608.6” (which precludes attorneys engaged in legal assistance activities supported under the LSC Act from engaging in “any political activity.”)

Part 1610 further applies those restrictions to the use of private funds but not to the use of tribal funds or public or IOLTA funds used “in accordance with the specific purposes for which they were provided.” 45 C.F.R. §§ 1610.2(1) (defining these restrictions as “purposes prohibited by the LSC Act”), 1610.4 (distinguishing which restrictions, and under what circumstances, apply to tribal, public or private funds).

LSC’s status as a publicly-funded entity requires that we, and the entities we fund, be scrupulously non-partisan and apolitical in our public image and dealings. LSC grant recipients must strive to avoid the appearance of conveying any political leanings. Even the perception that an LSC grant recipient used LSC funds in a manner that might be viewed as political in nature can undermine Congress’ confidence in LSC and have an adverse impact on future appropriation levels.

Grant recipients should review their Board-approved policies and procedures relating to 45 C.F.R. Part 1608 to ensure that proper safeguards are in place to ensure that no political materials are produced or distributed. Each grant recipient should also develop and implement a method for the review of all on-line and hard-copy informational materials and publications which it distributes or otherwise makes available to applicants and clients to ensure adherence to LSC regulations and restrictions.

Please consult LSC’s Office of Legal Affairs regarding any questions you have about the sufficiency of your policies related to prohibited political activities, or LSC’s Office of Compliance and Enforcement regarding questions about the sufficiency of the procedures and oversight mechanisms utilized to comply with this restriction.

Thank you for your assistance.