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RIKER, DANZIG, SCHERER, HYLAND & PERRETTI

One Speedwell Avenue
P.O. Box 1981
Morristown, NJ 07962-1981
(201) 538-0800
FAX(201) 538-1984

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From:	Douglas S. Eakeley	
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Message:

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AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON
LEGAL AID AND INDIGENT
DEFENDANTS541 North Fairbanks Court
Chicago, Illinois 60611-3314
FAX: 312/988 5032

CHAIR

Dennis W. Archer
800 First National Building
Detroit, MI 48226
313/223-3124
ABA/net: IARCHERDW

MEMBERS

Jonathan D. Asher
Denver, CO
Herbert J. Belgrad
Baltimore, MD
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New York, NY
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Stanford, CA
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Phoenix, AZ
Laurie D. Zelin
Los Angeles, CA
ABA/net: IZELONI

August 11, 1993

Mr. Douglas S. Eakeley, Esq.
Riker, Danzig, Scherer,
Hyland & Perretti
Headquarters Plaza
1 Speedwell Plaza
Morristown, NJ 07962

Dear Mr. Eakeley:

The American Bar Association has had a long-standing commitment to an effective federally funded legal services program for the poor. The Association played a significant role in the creation of the Legal Services Corporation and has continuously advocated for sufficient funding and responsible Congressional oversight of the program.

Congressional committees have been interested in the Association's views on a variety of legal services related issues. For example, the Association has provided testimony to the Senate Labor and Human Resources Committee regarding satisfactory and unsatisfactory qualities and characteristics of LSC Board members.

In 1989, the ABA House of Delegates, the organization's policy making body, adopted a resolution urging that the Senate, when considering nominations to the LSC Board, apply specific enumerated criteria regarding conflicts of interest, support for the program and its underlying principles, freedom from political control, and Board composition. The Association's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) was authorized to conduct an evaluation of each LSC Board nominee, based on these criteria, with these findings to be presented to the Senate Committee.

I am writing to request your cooperation as SCLAID conducts its evaluation of you and President Clinton's other nominees. The evaluation process, and the criteria to be applied, are described in the enclosed statement of procedures. Also enclosed is a questionnaire that we request that you complete and return to Lynn Serman, SCLAID's counsel, at the American Bar Association, 541 N. Fairbanks Court, Chicago, IL 60611. Because it is our understanding that the Senate Committee wishes to hold hearings on your nomination shortly and we do not wish to hold up the confirmation process, we are requesting that your responses be received no later than August 21, 1993. We appreciate that this time frame is short but fully expect that you will make every effort to assist us in this process. Your responses as a whole will be utilized during our investigation process.

BOARD OF GOVERNORS
LIAISONBrooksley E. Born
Washington, DC
ABA/net: BORNBSYOUNG LAWYERS DIVISION
LIAISONBarbara Louise Baxter
Wheeling, WVDIVISION FOR
LEGAL SERVICESLynn R. Serman
Committee Counsel
312/988-3765

ABA/net: ISTERMANL

Dorothy Gayles-Jackson
Assistant Staff Director
312/988-3766Tasha N. Jordan
Administrative Assistant
312/988-3764Tonya K. Beeson
Administrative Assistant
312/988-3756

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Mr. Eakoley
August 11, 1993
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We have designated one member of our committee to be the principal evaluator for each nomination. The principal evaluator for your nomination will be L. Jonathan Ross.

Please feel free to contact me if you have any questions or comments about the ABA evaluation process. I look forward to a cooperative effort to provide the Senate with useful information and input during the confirmation process.

Yours truly,

A handwritten signature in black ink, appearing to read "D. W. Archer", with a long horizontal line extending to the right.

Dennis W. Archer

cc: Senator Ted Kennedy
Senator Nancy Landon Kassebaum

lsceval.wp/37

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS:
PROCEDURES FOR EVALUATING NOMINEES
TO THE BOARD OF DIRECTORS
OF THE LEGAL SERVICES CORPORATION

In 1989 the Board of Governors of the American Bar Association (ABA) authorized the President of the Association to express to the United States Senate the support or opposition of the ABA with respect to individuals nominated to the Board of Directors of the Legal Services Corporation (LSC). In taking on the role of evaluating candidates, the ABA will not be involved in making recommendations of possible candidates. The evaluations will be based upon five broad criteria, described below, adopted by the ABA House of Delegates and designed to ensure the most effective operation of this federal initiative to provide civil legal assistance to the Nation's poor.

The evaluations of the qualifications of candidates will be made by a special subcommittee of the 9-member ABA Standing Committee on Legal Aid and Indigent Defendants. The evaluation subcommittee will not include anyone who works for a LSC-funded legal services program. Each member of the subcommittee agrees, as a condition of membership, not to seek or accept appointment to the LSC Board of Directors during their tenure on the subcommittee and for at least one year thereafter.

EVALUATION CRITERIA

The subcommittee will evaluate nominees according to the following criteria:

1. The nominees should be free of all conflict, or the appearance of such conflict, with the existence and function of the Legal Services Corporation or with the representation of poor persons in legal matters, so that the nominees will be able to act and will be perceived as able to act with objectivity and fairness;
2. The nominees should be committed to, and have demonstrated a commitment to, the continued existence and the effective operation of the LSC;
3. The nominees should be committed to the freedom of the Corporation and its grantees from political control;
4. The nominees should be cognizant of and fully committed to the role of legal services attorneys and the principle that the poor should have full access under law to comprehensive and effective legal services.

5. The Board of Directors as finally constituted should adequately represent the organized bar, the legal education community, legal services attorneys, clients to be served by Corporation grantees and organizations involved in the development of legal assistance for the poor.

The evaluation subcommittee, based on these criteria, will recommend that nominees be either "supported" or "opposed."

EVALUATION PROCEDURE

When a nomination to the Board is made, the evaluation subcommittee will send a letter and questionnaire to the nominee explaining the ABA evaluation process and requesting appropriate and relevant information about his or her background and experience.

The chair of the evaluation subcommittee will assign a member of the subcommittee as the principal evaluator to conduct a particular evaluation. The chair may appoint a second evaluator if the complexity of the evaluation or other factors so require. In addition to the nominee's responses, the principal evaluator will review available public documents on the candidate, including any information available from disciplinary authorities or relevant voting records for those who have held public office.

The principal evaluator will conduct confidential telephone interviews with a broad and representative array of persons likely to have information reflecting on the nominee's qualifications, including, as appropriate but not limited to, representatives of state and local bar associations, legal services programs, pro bono programs, interest on lawyer trust account (IOLTA) programs and community groups; federal and state court judges; opposing counsel; academics; prosecuting and defense lawyers; public officials; and individuals identified by the nominee.

A summary of the background information and interviews will be submitted to the subcommittee chair for review, to make certain all appropriate steps were taken in researching the nomination.

Once the preliminary research is complete, the principal evaluator will meet with the nominee to review his or her background and qualifications, ask questions relating to the evaluation criteria and confirm or clarify, as necessary, data gathered during the research process. The nominee will be provided an opportunity to respond to any questions raised in the course of the evaluation and to suggest any additional lines of inquiry to be pursued.

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Following the interview with the nominee, the principal evaluator will conduct follow-up interviews as appropriate. A memorandum will be added to the summary that details information from the interview with the nominee, recommends an evaluation and provides supporting analysis for that recommendation. Each member of the subcommittee will receive a copy of the principal evaluator's final report.

A conference call of evaluation subcommittee members will be held and a vote will be taken on whether to accept the recommendation.

REPORTING EVALUATION RESULTS

The subcommittee chair transmits the report and evaluation of the subcommittee to the ABA President. The ABA President or the subcommittee chair is authorized to testify before the United States Senate.

AMERICAN BAR ASSOCIATION QUESTIONNAIRE

General Instructions: Please provide your own answers to the following questions. If you have consulted with or received assistance from others in connection with your answer to any of these questions, please indicate with your answer the name or names of those providing assistance and the extent of that assistance.

1.
 - a. Does your employment, or any of your business or financial activities, pose a conflict of interest, or an appearance of a conflict of interest, with your duties as a Board member? If yes, please explain.
 - b. Are you a member of, affiliated with, or do you provide representation to any group, organization, corporation, association, network, coalition or other entity which has opposed legal services for the poor, sought to eliminate or reduce funds for LSC, or otherwise sought to restrict the representational activities of legal services attorneys? If so, please explain your relationship.
2. Legal Services programs receive substantial funds from non-LSC sources. Under Section 1010(c) of the LSC Act, public funds can be used without any LSC restriction so long as they are used consistent with the purposes for which they are provided. However, private funds provided for the provision of legal assistance to eligible clients cannot be used for purposes prohibited by the LSC Act.
 - a. Assuming the funding sources permit and the LSC Act could be amended, should legal services programs be permitted to use non-LSC funds to carry out representation in cases for which LSC funds cannot be used?
 - b. Assuming the funding sources permit and the LSC Act could be amended, should legal services programs be permitted to use non-LSC funds to engage in legislative representation or other representational activities for which LSC funds cannot be used?
 - c. Should there be any difference between public and private funds? Please explain.
3. The Legal Services Corporation was formed "to continue the present vital legal services programs."

American Bar Association Questionnaire

- a. Will you support continuing the present, vital legal services programs that provide general, full-service legal assistance in a specified geographic area? Do you support the continuation of: National support centers? State support centers? Migrant legal services programs? Native American legal services programs? Private Attorney Involvement Programs? If you do not support continuing any of these components, please explain why not?
 - b. Would you institute any new programs that would change or supplement the current delivery system?
 - c. Do you favor a routine use of competitive awards of grants and contracts for all programs? If so, please explain what you mean by "competitive awards" and how you see them being used.
4. Section 1007(d) requires LSC to "monitor and evaluate and provide for independent evaluations of programs" to "insure that the provisions of this [Act] ... are carried out." Do you believe that LSC monitoring should focus solely on compliance with the Act and Regulations or should LSC also monitor to determine whether programs are maintaining "the highest quality of service and professional standards" as suggested by Section 1007(a)(1)? Should LSC commission independent evaluations by independent parties to evaluate the quality of representation provided by the program to eligible clients? Should LSC develop standards for measuring quality and effectiveness? Should LSC provide technical assistance to help programs deal with any problems uncovered by monitoring? Please explain your answer to each question.
5. The Legal Services Corporation was last reauthorized in 1977. While there have been a number of reauthorization bills recently considered in Congress, the Corporation is continued through appropriations bills, with a number of substantive riders having been added.
- a. Which, if any, of the current riders on Pub. L. 102-395 should be retained in the reauthorization legislation and why?
 - b. Which of the provisions of the reauthorization bill passed in the last Congress by the House (HR 2039) do you support and which do you oppose? Please explain your answers.
 - c. Which of the provisions of the reauthorization bill approved by the Senate Committee on Labor and Human Resources in the last Congress (S 2870) do you support and which do you oppose? Please explain your answers.

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American Bar Association Questionnaire

- d. What additional changes to the LSC Act of 1977 do you believe should be contained in a bill to reauthorize the Corporation?
6. The "legal services program must be kept free from the influence of or use by it of political pressures." Sec. 1001(5). The Senate Committee Report accompanying the 1974 Act stated that board members should be persons "who are committed to the Corporation's freedom from political control." S. Rep. No. 93-495, 93rd Cong., 1st. Sess 10 (Nov. 9, 1973).
- a. How do you define "freedom from political control"?
- b. What steps do you believe the LSC Board should take to prevent political pressure from influencing what legal services programs do, and/or are permitted to do, on behalf of their clients?
7. Were you asked to make, or did you make, any commitments to any member of the Administration about issues that would come before the Board? If yes, please describe. Were you asked to make, or did you make, any commitments to any other individual or group about positions on specific issues that you would take as a Board member? If yes, please describe those commitments.
8. Legal services attorneys "must have full freedom to protect the best interest of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession." Sec. 1001(6). See also 1006(b)(3).
- a. Do you believe that legal services attorneys should be able, within the confines of congressional restrictions and program resources and priorities, to undertake any type of case or engage in any form of representation to the same extent that members of the private bar can?
1. Should legal services programs be prohibited or restricted by the LSC Board (as opposed to the Congress) from representing any specific category of clients or undertaking any particular type of case? If so, please specify and explain.
 2. Should legal services attorneys be restricted by the LSC Board from engaging in class actions? If so, please explain.
 3. Should legal services be prohibited from representing eligible clients before a legislative body? Responding to a request from a legislator? If so, please explain.

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American Bar Association Questionnaire

4. Should legal services attorneys be prohibited from representing eligible clients in a rulemaking proceeding? Responding to requests of officials to comment on proposed rules or otherwise participate in rulemaking? If so, please explain.
- b. What should LSC do if a grant condition or other LSC requested action is inconsistent with the interpretation by the appropriate state enforcement authorities of state ethical or professional responsibility rules?
9. Should local program boards make decisions on whether the program should be permitted to initiate a specific case on behalf of an eligible client? If so, please explain under what circumstances. Should program boards have the authority to reject a specific case to be brought on behalf of an eligible client, assuming that the case falls within program priorities? Should local program board members become involved in any way with ongoing representation? If so, please explain. Do you believe that local board involvement in decisions on particular cases pose any ethical problems for legal services programs or individual board members?
10. Please describe any activities you have undertaken to increase the availability of legal services to the poor or address any other concerns of low-income persons. Include, for example, service, with dates and a description of your participation, on (a) legal services program boards, (b) public defender program boards, (c) pro bono program boards or advisory groups, (d) public interest law firms, civil rights organizations or other legal or policy advocacy group boards, or (e) bar association committees concerned with the poor or pro bono activities. Please provide information about any representation that you have undertaken on behalf of low-income people, either as a program staff member, through a pro bono or judicare program, or as an individual member of the private bar.
11. What are the appropriate roles for the organized bar in ensuring the availability of legal services to the poor and for private attorneys in actually providing services?
12. Section 1004(a) of the LSC Act provides that the membership of the board should "include eligible clients, and ... be representative of the organized bar, attorneys, providing legal assistance to eligible clients, and the general public." The 1974 Senate Committee Report also included reference to "representatives of legal education, and organizations involved in the development of legal assistance for the poor..." S. Rep. p. 10. What category do you represent? Indicate what factors, affiliations or activities support that characterization.

American Bar Association Questionnaire

13. Please provide copies of, or citations to, public speeches, articles, statements, press quotes, media appearances and of correspondence, past or present, describing or relating to your views on legal services for the poor. Describe any public positions that you have taken in the past that reflect your support for or opposition to legal services to the poor.
14. Please provide the names, addresses and telephone numbers of persons who would have knowledge about your professional qualifications and activities, and views and involvement in legal services.
15. Is there any additional information you believe would be helpful or should be shared in the consideration of your nomination? If yes, please explain.

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LSC Reauthorization

Sec. 3. Reauthorization for 4 years (1993-1996).

Sec. 4. Protection against theft and fraud.

These provisions insure that federal fraud and embezzlement statutes and the False Claims Act apply to LSC funds. Also makes LSC auditors the equivalent of federal auditors for purposes of laws prohibiting the obstruction of federal audits.

Sec. 5. Prohibition on lobbying. (Based on Appropriations riders in place in various forms since 1984.)

Prohibits use of LSC funds for purposes of lobbying on the federal, state or local levels. Includes exceptions for (1) self-help lobbying; (2) in response to requests from government agencies; and (3) in the representation of an individual if the director approves and it is required to protect client's existing legal rights. This is more restrictive than the existing (non-rider) legislation. It prohibits all grass-roots type of activities. It essentially stops most types of communications with lawmakers that do not involve the legal interests of clients or the Corporation itself.

Note: Section 19(a) of the bill also prohibits the use of all private, non-LSC funds for these purposes as well.

Sec. 6. Enforcement, sanctions & monitoring.

The provisions contained in this section are primarily aimed at preventing the type of conduct engaged in by the Reagan-era LSC in which investigations of recipients were abusive, the LSC attempted to impose restrictions on the use of LSC funds as well as private funds that were not included in any legislation and audits seemed arbitrary in style and purpose. The section provides increased authority for LSC to issue regulations to ensure compliance with the Act but prohibits LSC from restricting types of cases recipients can take unless the restrictions are specifically included in the legislation (enhances local control); rules for independent evaluations of recipients to ensure they are efficient and effective; and due process requirements for investigating complaints. The section also provides rules regarding de-funding and monitoring actions. It attempts to make the monitoring less intrusive and emphasizes local control.

Sec. 7. Prohibition regarding class actions.

This section continues the general prohibition against use of funds for class actions unless project director gives express approval in accordance with the recipient's policies. It also adds the requirement that before a class suit can be filed against any government entity the relief sought must be for the primary benefit of individuals eligible for legal assistance, the project director must determine that the gov't entity is unlikely to change the policy or practice in question and that the policy will continue to adversely affect eligible clients, and efforts at ADR must have been made.

Sec. 8. Negotiation Requirement.

This section simply requires the use of negotiations and other ADR where appropriate.

Sec. 9. Redistricting.

This section prohibits the use of LSC funds in cases involving redistricting at any level of government, including cases involving the timing or manner of the taking of a census. The limitation is included due to the "inherently partisan" nature of such cases and the belief that civil rights groups and others will be interested in such cases.

Sec 10. Restrictions on use of funds for legal assistance to aliens.

This section essentially adopts some rules in current riders regarding legal assistance to aliens. LSC funds are not allowed to be used on behalf of aliens unless they fall under certain categories. Basically, if they are PRUCOL or have some other status so that they have some claim to remain in the US, legal service may be provided. Eligibility is also provided to those aliens eligible for emergency medical assistance under Medicaid for the purpose of obtaining that medical assistance.

Sec. 11. Governing bodies.

Adopts rules regarding the make-up of governing boards of recipients that have been in the appropriations riders since 1983. (It requires that the recipients' board be made up of attorneys appointed by local bar associations.) It also encourages more effective local control by stating that the governing bodies of the recipients, and not the LSC, determine the broad policies concerning the provision of legal services.

Sec. 12. Professional Responsibilities.

This section simply updates certain sections of the law to conform with changes in various ethics rules.

Sec. 13. Solicitation.

This section prohibits recipient employees from soliciting clients. It does provide for specific exceptions.

Sec. 14. Certain eviction proceedings.

This section prohibits the use of LSC funds to represent an individual against an eviction from a public housing project if the individual has been convicted of the sale of a controlled substance and the eviction is to protect the health and welfare of other residents.

Sec. 15. Procedural safeguards for litigation.

This section requires that, before pre-complaint settlement negotiations or before litigation is initiated, the recipient must get the client to sign a written retainer agreement. This was added in response to concerns by farmers that suits were being brought by legal services representatives without any factual basis or where individual plaintiffs were not identified.

Sec. 16. Competition study.

This section requires a study be performed over the next three years regarding the feasibility of a system of competition in the awarding of some or all grants and contracts. This was added, it appears, merely to appease those who wanted competitive grants to be phased in beginning immediately. The majority of the Committee thinks it's a very bad idea.

Sec. 17. Training.

This sections retains prohibitions against use of funds for training programs to advocate certain policies but does allow for training of attorneys and paralegals to provide services.

Sec. 18. Limitation on use amendments.

This section strikes the prohibition on use of funds for school desegregation cases.

Sec. 19. Recordkeeping and non-Corporation funds.

This section has two parts. The first provides that public funds received by a recipient from any source, including IOLTAs, shall not be used in lobbying efforts. The general rule under the Act is that private funds cannot be used by a recipient for purposes prohibited by the Act. The general exception to that rule is that "public" funds may be expended in accordance with the purposes for which they were provided. It is worth noting that the bill passed by the House last year included language that allowed private funds to be used by recipients for any purposes except those specifically identified in the section.

The second part sets out strict timekeeping and recordkeeping requirements. The law is intended to allow easier oversight of the use of LSC funds.

Sec. 20 Evasion.

This section prohibits the evasion of the LSC law by use of "alternative corporations," i.e. alter ego corporations or entities.

Sec. 21. Fee-generating cases.

This section amends the section of the Act prohibiting the use of LSC funds in fee-generating cases. The changes make it clear that recipients may not be prevented from seeking attorneys' fees from opposing parties that may be undertaken pursuant to acceptable guidelines. It also provides that the LSC may not offset recovered attorneys' fees from grant amounts.

Sec. 22. Attorneys' fees provisions.

This section expands the circumstances in which attorneys' fees may be awarded against recipient attorneys. The section allows the award of fees if the suit was frivolous, without foundation or brought to harass. The award would be payable by the LSC which may recoup some of it from the recipient.

Sec. 23. Corporation board control over policy.

This section simply makes it clear that the LSC board is to set policy and its staff is to carry out that policy. This section is in response to perception that the LSC staff had been taking significant actions without notice to the board.

Sec. 24. Reprogramming provisions.

This section requires that the House and Senate be provided with all rules and regulations promulgated by the LSC board at least 15 days before they are to take effect. This rule has been included in riders since 1984.

Sec. 25. 12-month grants.

This section requires all grants under the Act to be made on a 12 month basis. This requirement has been in the riders since 1989.

Sec. 26. Establishment of local priorities.

Consistent with the overall goal of stressing local control, this section provides some rules about the procedure to be followed in establishing annual local priorities.

Sec. 27. Staff attorneys.

This section merely clarifies the definition of "staff attorney" for purposes of the Act.

Sec. 28. Study on legal assistance to older Americans.

This section requires the LSC to conduct a study, within 6 months of the effective date of the legislation, on the effectiveness of the delivery of services to older Americans by LSC recipients.

103D CONGRESS
1ST SESSION

H. R. 2644

To authorize appropriations for the Legal Services Corporation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1993

Mr. BRYANT introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To authorize appropriations for the Legal Services Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Legal Services Reauthorization Act of 1993”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is
7 as follows:

- Sec. 1. Short title.
- Sec. 2. Reference to the Legal Services Corporation Act.
- Sec. 3. Authorization of appropriations.
- Sec. 4. Protection against theft and fraud.
- Sec. 5. Prohibitions on lobbying.
- Sec. 6. Enforcement, sanctions, and monitoring.
- Sec. 7. Class actions.
- Sec. 8. Negotiation requirement.
- Sec. 9. Prohibition on use of funds for redistricting.
- Sec. 10. Restrictions on use of funds for legal assistance to aliens.
- Sec. 11. Governing bodies of recipients.
- Sec. 12. Professional responsibilities.
- Sec. 13. Solicitation.
- Sec. 14. Certain eviction proceedings.
- Sec. 15. Procedural safeguards for litigation.
- Sec. 16. Competition study.
- Sec. 17. Training.
- Sec. 18. Limitation on use amendments.
- Sec. 19. Recordkeeping and noncorporation funds.
- Sec. 20. Evasion.
- Sec. 21. Fee-generating case provisions.
- Sec. 22. Attorneys' fees provisions.
- Sec. 23. Corporation board control over policy.
- Sec. 24. Reprogramming provisions.
- Sec. 25. 12-month grants.
- Sec. 26. Establishment of local priorities.
- Sec. 27. Staff attorneys.
- Sec. 28. Study on legal assistance to older Americans.

1 **SEC. 2. REFERENCE TO THE LEGAL SERVICES CORPORA-**
 2 **TION ACT.**

3 Except as otherwise expressly provided, whenever in
 4 this Act an amendment or repeal is expressed in terms
 5 of an amendment or repeal of a section or other provision,
 6 the reference shall be considered to be made to a section
 7 or other provision of the Legal Services Corporation Act
 8 (42 U.S.C. 2996 and following).

9 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

10 Section 1010(a) (42 U.S.C. 2996i(a)) is amended by
 11 striking the first three sentences and inserting the follow-
 12 ing: "There are authorized to be appropriated for the pur-

1 pose of carrying out the activities of the Corporation such
2 sums as may be necessary for each of fiscal years 1993,
3 1994, 1995, and 1996.”.

4 **SEC. 4. PROTECTION AGAINST THEFT AND FRAUD.**

5 Section 1005 (42 U.S.C. 2996d) is amended by add-
6 ing at the end the following:

7 “(h) For purposes of sections 286, 287, 641, 1001,
8 and 1002 of title 18, United States Code, the Corporation
9 shall be considered to be a department or agency of the
10 United States Government.

11 “(i) For purposes of sections 3729 through 3733 of
12 title 31, United States Code, the term ‘United States Gov-
13 ernment’ shall include the Corporation, except that actions
14 that are authorized by section 3730(b) of such title to be
15 brought by persons may not be brought against the Cor-
16 poration, any recipient, other grantee or contractor of the
17 Corporation, subgrantee or subcontractor of any such en-
18 tity, or employee thereof.

19 “(j) For purposes of section 1516 of title 18, United
20 States Code—

21 “(1) the term ‘Federal auditor’ shall include
22 any auditor employed or retained on a contractual
23 basis by the Corporation,

24 “(2) the term ‘contract’ shall include any grant
25 or contract made by the Corporation, and

1 “(3) the term ‘person’, as used in subsection
2 (a) of such section, shall include any recipient or
3 other grantee or contractor receiving financial assist-
4 ance under section 1006(a)(1) or 1006(a)(3).

5 “(k) Funds provided by the Corporation under sec-
6 tion 1006 shall be deemed to be Federal appropriations
7 for the purpose of all Federal criminal laws when used
8 by a recipient, another grantee or contractor of the Cor-
9 poration, or any subgrantee or subcontractor of any such
10 entity.

11 “(l) For purposes of section 666 of title 18, United
12 States Code, funds provided by the Corporation shall be
13 deemed to be benefits under a Federal program involving
14 a grant or contract.”.

15 **SEC. 5. PROHIBITIONS ON LOBBYING.**

16 Section 1007(a)(5) (42 U.S.C. 2996f(a)(5)) is
17 amended to read as follows:

18 “(5) ensure that no funds made available by the
19 Corporation to any recipient or other grantee or con-
20 tractor are used to pay for any personal service, ad-
21 vertisement, telegram, telephone communication, let-
22 ter, printed or written matter, or other device, or to
23 pay for any publicity or propaganda, intended or
24 designed—

1 “(A) to influence any decision by a Fed-
2 eral, State, or local agency, except when legal
3 assistance is provided by an employee of a re-
4 cipient or other grantee or contractor of the
5 Corporation to an eligible client on a particular
6 application, claim, case, or other matter, which
7 directly involves the client’s legal rights or re-
8 sponsibilities, or

9 “(B) to influence any Member of Congress
10 or any other Federal, State, or local elected of-
11 ficial to favor or oppose any Act, bill, resolu-
12 tion, or similar legislation, or any referendum,
13 initiative, constitutional amendment, or any
14 similar procedure of the Congress, any State
15 legislature, any local council, or any similar
16 governing body,

17 except that this paragraph shall not preclude such
18 funds from being used in connection with—

19 “(i) any communication made in response
20 to any Federal, State, or local agency or elected
21 official,

22 “(ii) any communication to a Federal,
23 State, or local elected official pertaining to the
24 authorization or appropriation of funds or any
25 other measure affecting the authority, func-

1 tions, or funding of the recipient, grantee, or
2 contractor, or the Corporation or pertaining to
3 oversight measures directly affecting the recipi-
4 ent, grantee, or contractor, or the Corporation,
5 if the project director or designee of the recipi-
6 ent, grantee, or contractor has expressly deter-
7 mined that the legislative body involved is con-
8 sidering such authorization, appropriation, or
9 other measure, or is conducting oversight of the
10 recipient, grantee, or contractor, or the Cor-
11 poration, or

12 “(iii) any communication on behalf of an
13 eligible client in the course of representation of
14 that client before a legislative body, if the
15 project director or designee of the recipient,
16 grantee, or contractor has expressly approved
17 such representation in accordance with policy
18 established by the governing or policy body of
19 the recipient, grantee, or contractor, and if such
20 project director or designee has determined, be-
21 fore approving the undertaking of such rep-
22 resentation, that—

23 “(I) the client seeks representation to
24 protect the client’s existing legal rights or
25 interests or is in need of relief which can

1 be provided by the legislative body in-
2 volved, and

3 “(II) documentation specifically au-
4 thorizing such representation has been se-
5 cured from the eligible client by a recipient
6 or other grantee or contractor,

7 but nothing in this paragraph shall be construed to
8 permit an attorney or an employee of a recipient or
9 other grantee or contractor of the Corporation to en-
10 gage in any publicity or propaganda intended or de-
11 signed to support or defeat legislation pending be-
12 fore the Congress or State or local legislative bodies
13 or intended or designed to influence any decision by
14 a Federal, State, or local agency or to solicit a cli-
15 ent, in violation of professional responsibilities, for
16 the purpose of making possible any activity per-
17 mitted by this paragraph;”.

18 **SEC. 6. ENFORCEMENT, SANCTIONS, AND MONITORING.**

19 (a) **ENFORCEMENT.**—Section 1006(b)(1)(A) (42
20 U.S.C. 2996e(b)(1)(A)) is amended to read as follows:

21 “(b)(1)(A)(i) The Corporation shall have the author-
22 ity to ensure the compliance of recipients, other grantees
23 and contractors of the Corporation, and their respective
24 employees with the provisions of this title. The Corpora-
25 tion may issue rules, regulations, guidelines, and instruc-

1 tions to interpret the provisions of this title, but may not
2 impose, by regulation or otherwise, restrictions or limita-
3 tions on types of cases or forms of representation of clients
4 unless such restrictions or limitations are explicitly au-
5 thorized by this title or other applicable law, and may not
6 impose, by regulation or otherwise, restrictions or require-
7 ments on such recipients, grantees, or contractors that are
8 in addition to or inconsistent with the provisions of this
9 title and other applicable law.

10 “(ii) The Corporation shall have the authority to en-
11 force the rules, regulations, guidelines, and instructions is-
12 sued under this title, and to terminate, in accordance with
13 the standards described in paragraph (5) of this sub-
14 section, financial support to a recipient or other grantee
15 or contractor of the Corporation. Pursuant to regulations
16 adopted by the Corporation under section 1008(e), the
17 Corporation shall—

18 “(I) arrange for independent evaluations to de-
19 termine whether recipients and other grantees and
20 contractors of the Corporation are providing com-
21 prehensive, economical, and effective legal assistance
22 of high quality to eligible clients, and

23 “(II) conduct reasonable monitoring and inves-
24 tigation into allegations that a recipient or other
25 grantee or contractor has violated this title, the

1 rules, regulations, guidelines, or instructions issued
2 under this title, or other laws.

3 “(iii) Not later than 30 days after receiving a written
4 request alleging that a recipient or other grantee or con-
5 tractor has violated the provisions of this title, or any rule,
6 regulation, guideline, or instruction issued under this title,
7 or any other law, the Corporation may initiate an inves-
8 tigation of the matter. A recipient or other grantee or con-
9 tractor that is the subject of such investigation shall be
10 so notified by the Corporation and, prior to the completion
11 of the investigation, shall be provided with a reasonable
12 opportunity to respond to the allegations either in writing
13 or in person, as determined by the Corporation. Unless
14 required by law, the Corporation shall not make the find-
15 ings of its investigation public until a final report is issued
16 or unless such disclosure is made with the consent of such
17 recipient, grantee, or contractor. If, at the conclusion of
18 the investigation, the Corporation determines that it will
19 take action under paragraph (5) of this subsection, it shall
20 notify the recipient, grantee, or contractor of its right to
21 request a hearing. A hearing must be requested not later
22 than 30 days after receiving the notification.”.

23 (b) REGULATIONS FOR ENFORCEMENT.—Section
24 1006(b)(5) (42 U.S.C. 2996e(b)(5)) is amended to read
25 as follows:

1 “(5)(A) The Board shall issue regulations to provide
2 for the enforcement of this title. Such regulations may in-
3 clude, among available remedies, provisions for the imme-
4 diate suspension of financial assistance under this title,
5 suspension or termination of an employee of the Corpora-
6 tion, or of any employee of a recipient or other grantee
7 or contractor by such recipient, grantee, or contractor, the
8 reduction or termination of such financial assistance or
9 employment, and denial of an application for refunding.
10 Any such employee may be terminated only after consider-
11 ation of other remedial measures and only after the em-
12 ployee has been afforded reasonable notice and oppor-
13 tunity for a timely, full, and fair hearing. When requested,
14 such hearing shall be conducted by an independent hear-
15 ing examiner. The Corporation may suspend, reduce, or
16 terminate financial assistance under this title, or deny an
17 application for refunding under this title—

18 “(i) when there has been a substantial failure
19 to comply with the provisions of this title, or rules,
20 regulations, guidelines, or instructions issued under
21 this title, or of other laws, and after notice and an
22 opportunity to correct such failure has been provided
23 to the recipient, grantee, or contractor involved; or

24 “(ii) when independent evaluations demonstrate
25 that a recipient or other grantee or contractor has

1 consistently failed to use its resources to provide ec-
2 onomical and effective legal assistance of high qual-
3 ity as measured by generally accepted professional
4 standards, and after notice and an opportunity to
5 correct such failure has been provided to such recipi-
6 ent, grantee, or contractor.

7 The Corporation may deny an application for refunding
8 of a recipient or other grantee or contractor when the Cor-
9 poration has identified an applicant for financial assist-
10 ance under this title that is better able to provide high
11 quality, comprehensive, economical, and effective legal as-
12 sistance for the geographic area served by such recipient,
13 grantee, or contractor, consistent with the provisions of
14 subsections (a)(2) and (c) of section 1007 of this title.

15 “(B) Financial assistance under this title may not be
16 terminated or suspended, an application for refunding
17 under this title may not be denied, and the annual level
18 of financial assistance under this title may not be reduced
19 by more than 5 percent or \$20,000, whichever is less, un-
20 less the recipient or other grantee or contractor involved
21 has been afforded reasonable notice and, at the request
22 of the recipient, grantee, or contractor, a timely and fair
23 hearing before an independent hearing examiner pursuant
24 to regulations issued by the Corporation. Such regulations
25 shall provide for commencement of the hearing before an

1 independent hearing examiner at the earliest appropriate
2 date, but in no case more than 45 days after a request
3 for such a hearing is received. As soon as practical after
4 the hearing, but in no case more than 60 days after its
5 conclusion, the independent hearing examiner shall make
6 a recommended decision on the matter involved. A copy
7 of the recommended decision shall be sent to the Corpora-
8 tion and the recipient, grantee, or contractor involved. If
9 neither the Corporation nor the recipient, grantee, or con-
10 tractor involved requests review by the president of the
11 Corporation of that recommended decision within 10 days
12 after the date the recipient, grantee, or contractor receives
13 a copy of the decision, that decision shall become final.
14 Within 30 days after receipt of a request for a review of
15 a recommended decision, the president of the Corporation
16 shall make a final decision with respect to that rec-
17 ommended decision. In addition to other remedies pro-
18 vided by law, the recipient, grantee, or contractor may ap-
19 peal the final decision to the Board.”.

20 (c) MONITORING AND INDEPENDENT EVALUATIONS
21 OF PROGRAMS.—Section 1007(d) (42 U.S.C. 2996f(d)) is
22 amended to read as follows:

23 “(d)(1) The Corporation shall monitor recipients and
24 other grantees and contractors of the Corporation in order
25 to ensure that the provisions of this title, the rules, regula-

1 tions, guidelines, and instructions issued under this title,
2 and other laws are carried out by such recipients, grant-
3 ees, and contractors, and shall provide for independent
4 evaluations to determine whether such recipients, grant-
5 ees, and contractors are providing economical and effective
6 legal assistance of high quality to eligible clients. The Cor-
7 poration shall adopt standards and procedures to imple-
8 ment the provisions of section 1006(b)(1)(A) and this sub-
9 section as regulations under section 1008(e).

10 “(2) The standards and procedures adopted under
11 paragraph (1) shall take into account—

12 “(A) that the responsibility of the Corporation
13 with regard to monitoring and evaluation is to en-
14 sure compliance with this title, the rules, regula-
15 tions, guidelines, and instructions issued under this
16 title, and any other laws and to provide for inde-
17 pendent evaluations to assess the extent to which the
18 overall delivery of legal assistance by a recipient or
19 other grantee or contractor is economical, effective,
20 and of high quality and not to manage the day-to-
21 day operations of recipients and other grantees and
22 contractors;

23 “(B) that each recipient or other grantee or
24 contractor has the responsibility to manage its day-
25 to-day operations and to assure that its employees

1 comply with all applicable law and deliver high qual-
2 ity legal assistance in an effective and economical
3 manner;

4 “(C) that the personal privacy of eligible clients
5 could be adversely affected by the public disclosure
6 of records or documents obtained in connection with
7 monitoring under paragraph (1) or an investigation
8 pursuant to section 1006(b)(1)(A); and

9 “(D) the rules of ethics and professional re-
10 sponsibility that are applicable in the jurisdiction
11 where a recipient or other grantee or contractor de-
12 livers legal assistance.

13 The Corporation may not require disclosure of records de-
14 scribed in subparagraph (C) except to the extent such
15 records can be expected to contain information directly
16 pertinent and necessary to an audit, or to an investigation
17 of a likely pattern of discrimination, lack of compliance
18 with the law, or poor performance by a recipient or other
19 grantee or contractor which is indicated by other external
20 evidence.

21 “(3) The Corporation shall ensure that the monitor-
22 ing process is fair and conducted in a manner that does
23 not cause more than necessary disruption to the provision
24 of legal services provided by the recipient or other grantee
25 or contractor being monitored, and provides—

1 “(A) sufficient notice before monitoring is con-
2 ducted;

3 “(B) flexibility to negotiate with the Corpora-
4 tion when disagreements arise over the timing and
5 conduct of monitoring;

6 “(C) reasonable opportunity to respond and
7 comment on draft reports on monitoring;

8 “(D) protection from disclosure to third parties
9 of the results of monitoring and the contents of any
10 draft reports on monitoring before a final report on
11 the monitoring is issued; and

12 “(E) protection from disclosure to third parties
13 of any documents obtained during monitoring except
14 to the extent necessary to carry out the monitoring,
15 consistent with the laws and the rules of ethics and
16 professional responsibility applicable to the jurisdic-
17 tion where such documents are maintained, except
18 that the Corporation shall at all times have the au-
19 thority to make evidence of criminal conduct avail-
20 able to the appropriate legal authority.

21 The Corporation shall ensure that the monitoring process
22 is reasonably related to the purposes which the monitoring
23 is intended to accomplish.

24 “(4) The Corporation, in cooperation with recipients
25 and other appropriate groups, shall develop criteria for

1 evaluating the capability and performance of recipients
2 and other grantees and contractors of the Corporation.
3 Such criteria shall provide for the assessment of—

4 “(A) the degree to which any such recipient,
5 grantee, or contractor provides a comprehensive
6 range of legal assistance to eligible clients, including,
7 in the case of support entities, a comprehensive
8 range of appropriate support services;

9 “(B) the past demonstrated record of any such
10 recipient, grantee, or contractor in providing effective,
11 economical, and high quality legal services to
12 poor individuals and in developing additional resources,
13 including pro bono services from the private
14 bar;

15 “(C) the ability of any such recipient, grantee,
16 or contractor to determine and address the needs of
17 eligible clients for particular services, including, in
18 the case of support entities, the range of support
19 services needed in the geographical or subject matter
20 area served; ..

21 “(D) the adherence by any such recipient,
22 grantee, or contractor to accepted norms of performance
23 to guide the provision of legal assistance to
24 poor individuals; and

1 “(E) the adherence by any such recipient,
2 grantee, or contractor to applicable rules of profes-
3 sional responsibility for attorneys providing legal as-
4 sistance to poor individuals.

5 “(5) Notwithstanding the preceding provisions of this
6 subsection, the Inspector General of the Corporation shall
7 not, in carrying out his or her functions, be subject to
8 any restriction that—

9 “(A) is contained in the standards and proce-
10 dures adopted by the Corporation under this sub-
11 section; and

12 “(B) limits access by the Corporation to docu-
13 ments or other information.”.

14 (d) TECHNICAL AMENDMENTS.—

15 (1) Section 1006(b) (42 U.S.C. 2996e(b)) is
16 amended by adding at the end the following:

17 “(7) The Corporation shall ensure that—

18 “(A) no employee of the Corporation or of any
19 recipient or other grantee or contractor of the Cor-
20 poration (except as permitted by law in connection
21 with such employee’s own employment situation),
22 while carrying out legal assistance activities sup-
23 ported under this title, engages in, or encourages
24 others to engage in, any public demonstration or
25 picketing, boycott, or strike; and

1 “(B) no such employee, at any time, engages in,
2 or encourages others to engage in—

3 “(i) any rioting or civil disturbance,

4 “(ii) any activity which is in violation of an
5 outstanding injunction of any court of com-
6 petent jurisdiction,

7 “(iii) any other illegal activity, or

8 “(iv) any intentional identification of the
9 Corporation or any recipient or other grantee or
10 contractor of the Corporation with any political
11 activity prohibited by section 1007(a)(6).”.

12 (2) Section 1006(b)(2) (42 U.S.C. 2996e(b)(2))
13 is amended by striking “provisions of section 1011”
14 and inserting “regulations issued under paragraph
15 (5) of this subsection”.

16 (3) Section 1007(a)(9) (42 U.S.C. 2996f(a)(9))
17 is amended by striking “1011” and inserting
18 “1006(b)(5)”.

19 (4) Section 1011 (42 U.S.C. 2996j) is repealed.

20 **SEC. 7. CLASS ACTIONS.**

21 Section 1006(d)(5) (42 U.S.C. 2996e(d)(5)) is
22 amended—

23 (1) by striking “No” and inserting “(A) Subject
24 to subparagraph (B), no”; and

25 (2) by adding at the end the following:

1 “(B) No recipient, other grantee or contractor
2 of the Corporation, or employee of any such recipi-
3 ent, grantee, or contractor may bring a class action
4 suit against the Federal Government or any State or
5 local government unless—

6 “(i) the project director of the recipient,
7 grantee, or contractor has expressly approved
8 the filing of such an action in accordance with
9 policies established by the governing or policy
10 body of the recipient, grantee, or contractor and
11 the filing of such action has not been expressly
12 disapproved by such governing or policy body;

13 “(ii) the class relief which is the subject of
14 such an action is sought for the primary benefit
15 of individuals who are eligible for legal assist-
16 ance under this title; and

17 “(iii) before filing such an action, the
18 project director of the recipient, grantee, or
19 contractor determines that the government en-
20 tity is not likely to change the policy or practice
21 in question, that the policy or practice will con-
22 tinue to adversely affect eligible clients, that the
23 recipient, grantee, or contractor has given no-
24 tice of its intention to seek class relief, and that
25 responsible efforts to resolve without litigation

1 the adverse effects of the policy or practice have
2 not been successful or would be adverse to the
3 interest of the clients.”.

4 **SEC. 8. NEGOTIATION REQUIREMENT.**

5 Section 1007(a) (42 U.S.C. 2996f(a)) is amended—

6 (1) in paragraph (9) by striking “and” after
7 the semicolon; and

8 (2) by adding at the end the following:

9 “(11) require recipients and other grantees and
10 contractors of the Corporation to adopt policies, con-
11 sistent with the rules of ethics and professional re-
12 sponsibility that apply in the jurisdiction in which
13 legal assistance is to be provided, which require em-
14 ployees of the recipients, grantees, and contractors
15 to attempt to negotiate settlements and to use alter-
16 native dispute resolution mechanisms, where appro-
17 priate and available, before filing suit, except that
18 nothing in this paragraph shall be construed to per-
19 mit the Corporation—

20 “(A) to require policies which restrict rep-
21 resentation of clients to matters where the cli-
22 ents agree to such negotiation or use of alter-
23 native dispute resolution mechanisms; or

24 “(B) to preclude an attorney from filing
25 suit where the attorney’s professional respon-

1 sibility to the client requires that litigation be
2 commenced without notice to or negotiations
3 with the opposing parties.”.

4 **SEC. 9. PROHIBITION ON USE OF FUNDS FOR REDISTRICT-**
5 **ING.**

6 Section 1007(b) (42 U.S.C. 2996f(b)) is amended—

7 (1) in paragraph (10) by striking the period
8 and inserting “; or”; and

9 (2) by adding at the end the following:

10 “(11) to—

11 “(A) advocate or oppose, or contribute or
12 make available any funds, personnel, or equip-
13 ment for use in advocating or opposing, any
14 plan or proposal, or

15 “(B) represent any party or participate in
16 any other way in litigation,

17 that is intended to or has the effect of altering, re-
18 vising, or reapportioning a legislative, judicial, or
19 elective district at any level of government, including
20 influencing the timing or manner of the taking of a
21 census.”.

22 **SEC. 10. RESTRICTIONS ON USE OF FUNDS FOR LEGAL AS-**
23 **SISTANCE TO ALIENS.**

24 Section 1007 (42 U.S.C. 2996f) is amended by add-
25 ing at the end the following:

1 “(i) No funds appropriated to the Legal Services Cor-
2 poration may be used to provide legal assistance for or
3 on behalf of any alien unless the alien is present in the
4 United States and is—

5 “(1) an alien lawfully admitted for permanent
6 residence as defined in section 101(a)(20) of the Im-
7 migration and Nationality Act (8 U.S.C.
8 1101(a)(20)), including aliens who acquire the sta-
9 tus of lawful permanent resident aliens under the
10 provisions of section 216 or 245A of that Act (8
11 U.S.C. 1186a, 1255a);

12 “(2) an alien who is either married to a United
13 States citizen or is a parent or an unmarried child
14 under 21 years of age of such citizen and who has
15 filed an application to adjust status to lawful perma-
16 nent resident under the Immigration and Nationality
17 Act, and such application has not been finally adju-
18 dicated;

19 “(3)(A) an alien who is lawfully present in the
20 United States pursuant to an admission under sec-
21 tion 207 of the Immigration and Nationality Act (8
22 U.S.C. 1157), who has been granted suspension of
23 deportation under section 244 of the Immigration
24 and Nationality Act, or who has been granted asy-
25 lum by the Attorney General under such Act, or

1 “(B) an alien who is lawfully present in the
2 United States as a result of being granted condi-
3 tional entry pursuant to section 203(a)(7) of the Im-
4 migration and Nationality Act before April 1, 1980,
5 because of persecution or fear of persecution on ac-
6 count of race, religion, or political opinion or be-
7 cause of being uprooted by catastrophic natural ca-
8 lamity;

9 “(4) an alien who is lawfully present in the
10 United States as a result of the Attorney General’s
11 withholding of deportation pursuant to section
12 243(h) of the Immigration and Nationality Act (8
13 U.S.C. 1253(h));

14 “(5) an alien whose employment to perform
15 temporary agricultural labor or services is author-
16 ized by the Immigration and Naturalization Service;

17 “(6) an alien who has been provided a record
18 of permanent residence under section 249 of the Im-
19 migration and Nationality Act;

20 “(7) an alien who is an eligible immigrant (as
21 defined in section 301(b)(1) of the Immigration Act
22 of 1990), was physically present in the United
23 States on May 5, 1988, and is seeking admission as
24 an immediate relative under the Immigration and
25 Nationality Act or under section 203(a)(2) of such

1 Act (including under section 112 of the Immigration
2 Act of 1990) or is seeking (or is being provided)
3 benefits under section 301(a) of the Immigration
4 Act of 1990; or

5 “(8) an alien who is eligible for medical assist-
6 ance for treatment of an emergency medical condi-
7 tion under title XIX of the Social Security Act, if
8 the legal assistance to be provided is needed in order
9 to help obtain such medical assistance.”.

10 **SEC. 11. GOVERNING BODIES OF RECIPIENTS.**

11 Section 1007(c) (42 U.S.C. 2996f(c)) is amended to
12 read as follows:

13 “(c)(1) In making grants or entering into contracts
14 for legal assistance, the Corporation shall ensure that—

15 “(A) any recipient which has as one of its pur-
16 poses the provision of legal assistance to eligible cli-
17 ents is governed by a body—

18 “(i) the majority of which is comprised of
19 attorneys who are appointed by the governing
20 bodies of State, county, or local bar associations
21 the memberships of which represent a majority
22 of the attorneys practicing law in the locality in
23 which the recipient is to provide legal assistance
24 or, in the case of programs providing service in
25 more than one State, in the State or locality in

1 which the principal office of the recipient is lo-
2 cated;

3 “(ii) at least 60 percent of which consists
4 of attorneys who are members of the bar of a
5 State in which the legal assistance is to be pro-
6 vided, except that the Corporation—

7 “(I) shall, upon application, grant
8 waivers of the requirements of this clause
9 for a legal services program, supported
10 under section 222(a)(3) of the Economic
11 Opportunity Act of 1964, which on the
12 date of the enactment of this title has a
13 majority of persons who are not attorneys
14 on its policymaking board, and

15 “(II) may grant, pursuant to regula-
16 tions issued by the Corporation, a waiver
17 of the requirements of this clause for re-
18 cipients which, because of the nature of the
19 population they serve, are unable to comply
20 with such requirements; and

21 “(iii) at least one-third of which consists of
22 persons who are, when selected, eligible clients
23 who may also be representatives of associations
24 or organizations of eligible clients; and

1 “(B) any other recipient, grantee, or contractor
2 of the Corporation is governed by a body that meets
3 the requirements of subparagraph (A) or has estab-
4 lished a policy body, whose membership is selected
5 consistent with such requirements, to establish policy
6 with respect to the administration of any grant or
7 contract under this title.

8 Any attorney serving on a governing body or policy body
9 of a recipient, grantee, or contractor described in this
10 paragraph may not, while so serving, receive compensation
11 from such recipient, grantee, or contractor. Subparagraph
12 (A)(i) shall not be construed to prevent the governing body
13 of a bar association from appointing members of the gov-
14 erning or policy bodies of more than one recipient or other
15 grantee or contractor of the Corporation.

16 “(2) Consistent with the provisions of this title, the
17 rules, regulations, guidelines, and instructions issued
18 under this title, and any other laws, each recipient or other
19 grantee or contractor of the Corporation, pursuant to the
20 direction and control of its governing or policy body, and
21 not the Corporation, shall determine all broad policies con-
22 cerning its provision of legal assistance and other activities
23 of the recipient, grantee, or contractor, including—

1 “(A) financial eligibility criteria of clients rep-
2 resented, consistent with the guidelines established
3 pursuant to section 1007(a)(2);

4 “(B) the services that the recipient, grantee, or
5 contractor will make available;

6 “(C) the policies that will govern the fiscal, ad-
7 ministrative, and representational activities of the
8 recipient, grantee, or contractor, in compliance with
9 the provisions of this title and regulations issued
10 under this title, other applicable law, or require-
11 ments imposed by grantors of resources to the recip-
12 ient, grantee, or contractor;

13 “(D) subject to the prohibitions contained in
14 this title, the priorities of the recipient, grantee, or
15 contractor for the use of all available resources, in-
16 cluding the policies regarding the types of cases or
17 matters attorneys, paralegal staff, and other staff
18 may undertake using such resources; and

19 “(E) significant policy decisions concerning the
20 use of staff attorneys and other available and appro-
21 priate staff and nonstaff resources, including private
22 attorneys and others, to provide legal assistance to
23 eligible clients and to carry out activities relating to
24 the delivery of legal assistance.

1 “(3) The governing or policy body of a recipient or
2 other grantee or contractor of the Corporation shall—

3 “(A) not interfere with the lawyer-client rela-
4 tionship in the representation of specific clients by
5 the recipient, grantee, or contractor;

6 “(B) comply with the legal and ethical require-
7 ments on conflicts of interest that apply in the juris-
8 diction where the recipient, grantee, or contractor is
9 located;

10 “(C) not act on a case-by-case basis in setting
11 priorities, except that the governing or policy body
12 may reconsider priorities at any time for future ap-
13 plications for services in light of changing legal
14 needs of clients or in light of an emergency; and

15 “(D) ensure that activities under this title are
16 carried out in a manner consistent with attorneys’
17 professional responsibilities to a client as established
18 in the rules of ethics and professional responsibility
19 that apply in the jurisdiction where the legal assist-
20 ance is provided.

21 “(4) The Corporation shall not—

22 “(A) interfere with the governing or policy bod-
23 ies described in paragraph (1) in their determina-
24 tions of the broad policy matters described in para-
25 graph (2);

1 “(B) impose requirements or limitations on the
2 types of cases or representation of clients unless
3 those requirements or limitations are explicitly au-
4 thorized by this title or other applicable law; or

5 “(C) impose requirements or limitations on the
6 governing or policy bodies of recipients and other
7 grantees or contractors of the Corporation that are
8 additional to, or more restrictive than, the provisions
9 of this subsection, including requirements or limita-
10 tions with respect to—

11 “(i) the procedures of appointment, the po-
12 litical affiliations, or the length of terms of
13 board members,

14 “(ii) the size, quorum requirements, and
15 committee operations of such governing or pol-
16 icy bodies;

17 “(iii) the content of the bylaws of such re-
18 cipients, grantees, or contractors; or

19 “(iv) the communications between govern-
20 ing or policy bodies and appointing authorities
21 specified in paragraph (1).”.

22 **SEC. 12. PROFESSIONAL RESPONSIBILITIES.**

23 (a) STATEMENT OF FINDINGS.—Section 1001(6) (42
24 U.S.C. 2996(6)) is amended to read as follows:

1 “(6) attorneys providing legal assistance must
2 have full freedom to protect the best interests of
3 their clients in keeping with the rules of ethics and
4 professional responsibility that apply in the jurisdic-
5 tion where the legal assistance is provided and the
6 high standards of the legal profession.”.

7 (b) RESPONSIBILITIES OF THE CORPORATION.—Sec-
8 tion 1006(b)(3) (42 U.S.C. 2996e(b)(3)) is amended to
9 read as follows:

10 “(3) The Corporation shall not, under any provision
11 of this title, interfere with any attorney in carrying out
12 his or her ethical or professional responsibilities to a client
13 as established in the rules of ethics and professional re-
14 sponsibility that apply in the jurisdiction where the legal
15 assistance is provided or abrogate as to attorneys in pro-
16 grams assisted under this title the authority of a State
17 or other jurisdiction to enforce the standards of profes-
18 sional responsibility generally applicable to attorneys in
19 such jurisdiction.”.

20 (c) GRANTS AND CONTRACTS.—Section 1007(a)(10)
21 (42 U.S.C. 2996f(a)(10)) is amended to read as follows:

22 “(10) ensure that all attorneys, while engaged
23 in legal assistance activities supported, in whole or
24 in part, by the Corporation, refrain from the persist-
25 ent incitement of litigation and any other activity

1 prohibited by the rules of ethics or professional re-
2 sponsibility that apply in the jurisdiction where the
3 legal assistance is provided, and ensure that such at-
4 torneys refrain from personal representation for a
5 private fee in any cases in which they were involved
6 while engaged in such legal assistance activities;
7 and”.

8 (d) ACCESS TO RECORDS.—Section 1009(d) (42
9 U.S.C. 2996h(d)) is amended by inserting before the pe-
10 riod at the end the following: “or protected from disclosure
11 by the laws or the rules of ethics or professional respon-
12 sibility that apply in the jurisdiction where such reports
13 or records are maintained”.

14 **SEC. 13. SOLICITATION.**

15 Section 1007 (42 U.S.C. 2996f) is amended by add-
16 ing at the end the following:

17 “(j) Any recipient or other grantee or contractor of
18 the Corporation, and any employee of any such recipient,
19 grantee, or contractor, who has given in-person unsolicited
20 advice to a nonattorney that such nonattorney should ob-
21 tain counsel or take legal action shall not accept employ-
22 ment resulting from that advice, or refer that nonattorney
23 to another such recipient, grantee, contractor, or em-
24 ployee, except that—

1 “(1) a recipient or other grantee or contractor
2 of the Corporation, or an employee of any such re-
3 cipient, grantee, or contractor may accept employ-
4 ment by a close friend, relative, former client (if the
5 advice given is germane to the previous employment
6 by the client), or person whom the recipient, grant-
7 ee, contractor, or employee reasonably believes to be
8 a client because the recipient, grantee, contractor, or
9 employee is currently handling an active legal matter
10 or case for that specific person;

11 “(2) a recipient or other grantee or contractor
12 of the Corporation, or an employee of any such re-
13 cipient, grantee, or contractor may accept employ-
14 ment or refer a nonattorney to another such recipi-
15 ent, grantee, contractor, or employee when the em-
16 ployment or referral (as the case may be) results
17 from the participation of the recipient, grantee, con-
18 tractor, or employee in activities designed to educate
19 nonattorneys about their legal rights, to recognize
20 legal problems, to make intelligent selection of coun-
21 sel, or to utilize available legal services if such out-
22 reach activities are conducted or sponsored by the
23 recipient, grantee, or contractor, another legal as-
24 sistance organization, or a church organization; and

1 “(3) without affecting the right of a recipient,
2 other grantee or contractor of the Corporation, or
3 employee of any such recipient, grantee, or contrac-
4 tor to accept employment, any such recipient, grant-
5 ee, contractor, or employee may speak publicly or
6 write for publication on legal topics if such recipient,
7 grantee, contractor, or employee does not emphasize
8 his, her, or its own professional experience or rep-
9 utation and does not undertake to give individual
10 advice in such speech or publication.”.

11 **SEC. 14. CERTAIN EVICTION PROCEEDINGS.**

12 Section 1007 (42 U.S.C. 2996f) is amended by add-
13 ing at the end the following:

14 “(k)(1) No funds made available by or through the
15 Corporation may be used for initiating the defense of a
16 person in a proceeding to evict that person from a public
17 housing project if the person has been convicted of the
18 illegal sale or distribution of a controlled substance and
19 if the eviction proceeding is brought by a public housing
20 agency because the illegal drug activity of that person
21 threatens the health or safety of other tenants residing
22 in the public housing project or employees of the public
23 housing agency.

24 “(2) As used in this subsection—

1 “(A) the term ‘controlled substance’ has the
2 meaning given that term in section 102 of the Con-
3 trolled Substances Act (21 U.S.C. 802); and

4 “(B) the terms ‘public housing project’ and
5 ‘public housing agency’ have the meanings given
6 those terms in section 3 of the United States Hous-
7 ing Act of 1937 (42 U.S.C. 1437a).”.

8 **SEC. 15. PROCEDURAL SAFEGUARDS FOR LITIGATION.**

9 Section 1007 (42 U.S.C. 2996f) is amended by add-
10 ing at the end the following:

11 “(l) No recipient, other grantee or contractor of the
12 Corporation, or employee of such recipient, grantee, or
13 contractor may engage in precomplaint settlement nego-
14 tiations, file a complaint, or otherwise pursue litigation
15 against a defendant unless a written retainer agreement
16 which enumerates the particular facts on which the claim
17 or controversy is initially based has been signed by the
18 plaintiffs (including named plaintiffs in a class action).
19 Such retainer agreement shall be executed when represen-
20 tation commences or, if not possible at that time because
21 of an emergency situation, then as soon thereafter as is
22 practicable. Such retainer agreement—

23 “(1) shall be kept on file by the recipient,
24 grantee, or contractor, in a manner that does not
25 disclose information protected by the attorney-client

1 privilege or by the rules of ethics or professional re-
2 sponsibility that apply in the jurisdiction in which
3 the legal assistance is provided, and

4 “(2) shall be made available—

5 “(A) to any Federal department or agency
6 that is auditing the activities of the Corporation
7 or of any such recipient, grantee, or contractor,
8 and

9 “(B) to any auditor receiving Federal
10 funds to conduct such auditing, including any
11 auditor or monitor of the Corporation.

12 Other parties shall have access to such agreement only
13 through the applicable rules of discovery after litigation
14 has begun. Claims of attorney-client privilege shall not
15 protect information contained in such agreement which,
16 after the agreement is signed, is disclosed by the plaintiff
17 or the plaintiff’s counsel to third parties during
18 precomplaint settlement negotiations or litigation. The re-
19 cipient, grantee, or contractor is not required to execute
20 a written retainer agreement under this subsection when
21 the only service to be provided is brief advice and consulta-
22 tion. Unless authorized by a court of competent jurisdic-
23 tion, no recipient, grantee, or contractor of the Corpora-
24 tion or employee of such recipient, grantee, or contractor
25 may file a complaint or petition in a court until all plain-

1 tiffs known to plaintiff's counsel at the time have been
2 specifically identified in the complaint or petition.”.

3 **SEC. 16. COMPETITION STUDY.**

4 Section 1007 (42 U.S.C. 2996f) is amended by add-
5 ing at the end the following:

6 “(m)(1) The Corporation shall study the feasibility
7 of a system of competition in the awarding of some or
8 all grants or contracts for legal assistance and related ac-
9 tivities under section 1006 (a)(1) and (a)(3) of this title.
10 The Corporation shall, within 3 years after the date of
11 the enactment of the Legal Services Reauthorization Act
12 of 1993, report to the Congress the results of this study,
13 based on independent evaluation. Such study shall be con-
14 ducted in conjunction with an advisory committee which
15 includes project directors, attorneys providing legal assist-
16 ance, the organized bar, and eligible clients, who are se-
17 lected by appropriate representatives of these groups.

18 “(2) The study under paragraph (1) shall examine
19 how a system of competition would—

20 “(A) ensure access to, and the continued provi-
21 sion of, high-quality, economical, and effective legal
22 services to resolve problems of clients, consistent
23 with section 1001;

24 “(B) take into account locally determined needs
25 for particular kinds of cases or services;

1 “(C) take into account the ongoing ethical and
2 professional responsibilities of recipients, other
3 grantees or contractors of the Corporation, and their
4 attorneys for existing cases, the potential disruption
5 in client services, and loss of experienced staff, pro
6 bono services, funds from sources other than the
7 Corporation, and other resources if an existing recip-
8 ient or other grantee or contractor were replaced;

9 “(D) ensure that every recipient or other grant-
10 ee or contractor seeking a grant or contract through
11 a competitive bidding process will comply with all
12 provisions of this title and the rules, regulations,
13 guidelines, and instructions issued under this title
14 that are applicable to those recipients and other
15 grantees and contractors organized for the purpose
16 of providing legal services to eligible clients; and

17 “(E) ensure that a new recipient or other
18 grantee or contractor selected would provide a suffi-
19 cient level of quality, economy, and effectiveness to
20 justify the burdens of replacing the current recipi-
21 ent, grantee, or contractor, using the criteria set
22 forth in this paragraph and those developed by the
23 Corporation in accordance with section 1007(d)(4).”.

1 **SEC. 17. TRAINING.**

2 Section 1007(b)(6) (42 U.S.C. 2996f(b)(6)) is
3 amended to read as follows:

4 “(6) to support or conduct training programs
5 for the purpose of advocating particular public poli-
6 cies or encouraging political activities, labor or
7 antilabor activities, boycotts, picketing, strikes, or
8 demonstrations, except that this paragraph shall not
9 be construed to prohibit the training of attorneys or
10 paralegal personnel necessary to prepare them to
11 provide adequate legal assistance to eligible clients,
12 to advise any eligible client as to the nature of the
13 legislative process, or to inform any eligible client of
14 his or her rights under any statute, order, or regula-
15 tion;”.

16 **SEC. 18. LIMITATION ON USE AMENDMENTS.**

17 Section 1007(b) (42 U.S.C. 2996f(b)) is amended by
18 striking paragraph (9) and redesignating paragraph (10)
19 and paragraph (11) (as added by section 9 of this Act)
20 as paragraphs (9) and (10), respectively.

21 **SEC. 19. RECORDKEEPING AND NONCORPORATION FUNDS.**

22 (a) NON-CORPORATION FUNDS.—Section 1010(c)
23 (42 U.S.C. 2996i(c)) is amended by adding at the end the
24 following: “Public funds received by any recipient or other
25 grantee or contractor of the Corporation, including funds
26 from Interest on Lawyer Trust Account (IOLTA) pro-

1 grams, shall not be used to engage in publicity or propa-
2 ganda as restricted by section 1007(a)(5).”.

3 (b) TIMEKEEPING.—Section 1008(b) (42 U.S.C.
4 2996g(b)) is amended—

5 (1) by inserting “(1)” after “(b)”; and

6 (2) by adding at the end the following:

7 “(2) The Corporation, by regulation adopted pursu-
8 ant to subsection (e) of this section, shall require each re-
9 cipient or other grantee or contractor of the Corporation
10 to maintain records of time spent on the cases or matters
11 with respect to which that recipient, grantee, or contractor
12 is engaged in activities and to maintain a recordkeeping
13 system that discloses the source of funds to be charged
14 for each such case or matter. The specific time and record-
15 keeping system to be employed shall be determined by the
16 recipient or other grantee or contractor in a manner that
17 meets the requirements of a recordkeeping system as set
18 forth in the preceding sentence and meets obligations that
19 are imposed by other funding sources. Pursuant to regula-
20 tions adopted under this paragraph, each employee of such
21 recipient, grantee, or contractor, who is an attorney or
22 paralegal, shall be required to keep contemporaneous
23 records of the time spent by case or matter and the type
24 of case or matter.”.

1 **SEC. 20. EVASION.**

2 The Legal Services Corporation Act is amended—

3 (1) by redesignating sections 1013 and 1014 as
4 sections 1014 and 1015, respectively; and

5 (2) by inserting after section 1012 the following
6 new section:

7 “EVASION

8 “SEC. 1013. The use of ‘alternative corporations’ to
9 avoid or otherwise evade the provisions of this title or the
10 Legal Services Reauthorization Act of 1993 is prohibited.
11 The term ‘alternative corporation’ means any corporation,
12 law firm, business association, group, entity, or enterprise
13 which, through shared staff or control over workload or
14 interlocking boards of directors, has a single identity of
15 interest with a recipient or other grantee or contractor of
16 the Corporation. Any recipient or other grantee or con-
17 tractor of the Corporation which shares employees with
18 any other corporation, law firm, business association,
19 group, entity, or enterprise shall specify with particularity
20 the use of any funds by such employees in accordance with
21 the timekeeping and recordkeeping requirements estab-
22 lished under section 1008(b).”.

23 **SEC. 21. FEE-GENERATING CASE PROVISIONS.**

24 Section 1007(b)(1) (42 U.S.C. 2996f(b)(1)) is
25 amended by striking “(which guidelines” and all that fol-

1 lows through the end of the paragraph and inserting the
2 following: “, except that—

3 “(A) such guidelines shall not preclude the pro-
4 vision of legal assistance in cases in which a client
5 seeks only statutory benefits and appropriate private
6 representation is not available; and

7 “(B) the Corporation may not—

8 “(i) prevent recipients or other grantees or
9 contractors of the Corporation from seeking, re-
10 ceiving, or retaining attorneys’ fees awarded or
11 approved by a court or administrative body or
12 included in a settlement in any matter that may
13 be appropriately undertaken under the guide-
14 lines promulgated under this paragraph, or

15 “(ii) offset attorneys’ fees against grant
16 amounts or take into account the amount of
17 any such attorneys’ fees in establishing funding
18 levels, fund balances, or distributing funds ap-
19 propriated under this title;”.

20 **SEC. 22. ATTORNEYS’ FEES PROVISIONS.**

21 Section 1006(f) (42 U.S.C. 2996e(f)) is amended to
22 read as follows:

23 “(f) If any court finds, based on substantial evidence,
24 that a recipient or other grantee or contractor of the Cor-
25 poration commenced an action for the purpose of harass-

1 ment or retaliation or maliciously abused legal process, or
2 that the plaintiff's action was frivolous, unreasonable, or
3 without foundation, the court may award reasonable costs
4 and attorneys' fees incurred by the defendant in defending
5 the action. Any such costs and fees shall be paid directly
6 by the Corporation. The Corporation may recover the
7 amount of any costs and fees paid by the Corporation from
8 the recipient, grantee, or contractor against whom the
9 award was made by offsetting that amount against future
10 grant awards made by the Corporation to such recipient,
11 grantee, or contractor. Unless otherwise agreed by the
12 Corporation and the recipient, grantee, or contractor, the
13 Corporation, in any one grant year, may not deduct more
14 than 5 percent of a grant for purposes of recoupment of
15 such costs and fees.”.

16 **SEC. 23. CORPORATION BOARD CONTROL OVER POLICY.**

17 Section 1006 (42 U.S.C. 2996e) is amended by add-
18 ing at the end the following:

19 “(g) All rules, regulations, guidelines, instructions,
20 and grant conditions under this title, and all policies or
21 changes in policy directly affecting recipients or other
22 grantees or contractors of the Corporation, shall be adopt-
23 ed by the Board of the Corporation after notice and com-
24 ment. For purposes of this subsection, policies or changes
25 in policies include, but are not limited to, increasing or

1 decreasing funding to, imposing new terms and conditions
2 on, or making changes in the classes of recipients or other
3 grantees or contractors which provide and support the de-
4 livery of legal assistance. This subsection shall not pre-
5 clude the staff of the Corporation from imposing, without
6 notice and comment, specific conditions on a grant to an
7 individual recipient or other grantee, or on a contract with
8 a recipient or other contractor, that are not applicable to
9 other such recipients, grantees, or contractors if the condi-
10 tions relate specifically to a prior determination that the
11 recipient, grantee, or contractor has not complied with the
12 provisions of this title or the rules, regulations, guidelines,
13 or instructions issued under this title.”.

14 **SEC. 24. REPROGRAMMING PROVISIONS.**

15 Section 1008 (42 U.S.C. 2996h) is amended by add-
16 ing at the end the following:

17 “(f) The Corporation may not promulgate rules, reg-
18 ulations, guidelines, or instructions under this title unless
19 the Corporation has so notified the Committees on Appro-
20 priations and on the Judiciary of the House of Represent-
21 atives and the Committees on Appropriations and on
22 Labor and Human Resources of the Senate at least 15
23 days before final publication of the rules, regulations,
24 guidelines, or instructions, and has given such committees

1 an opportunity to comment on such rules, regulations,
2 guidelines, or instructions.”.

3 **SEC. 25. 12-MONTH GRANTS.**

4 Section 1010 (42 U.S.C. 2996i) is amended by add-
5 ing to the end the following:

6 “(e) All grants and contracts made pursuant to sec-
7 tions 1006(a) (1) and (3) for calendar years 1993, 1994,
8 1995, and 1996 shall be made for a period of at least
9 12 months, except for any grant to a new program com-
10 mencing operations after the beginning of the applicable
11 calendar year.”.

12 **SEC. 26. ESTABLISHMENT OF LOCAL PRIORITIES.**

13 Section 1007(a) (42 U.S.C. 2996f(a)) is amended—

14 (1) in paragraph (2)(C)(i) by striking “goals es-
15 tablished by the Corporation” and inserting “the
16 principles of section 1001 of this title and any goals
17 established by law”; and

18 (2) by adding after paragraph (11) (as added
19 by section 8(2) of this Act) the following:

20 “The procedures adopted pursuant to paragraph (2)(C)(i)
21 shall require the governing or policy bodies of recipients
22 and other grantees and contractors of the Corporation to
23 review annually the priorities that are determined in ac-
24 cordance with such procedures, and periodically analyze
25 the legal needs of clients in the area served by each such

1 recipient, grantee, or contractor to take into account new
2 or changing circumstances of such clients. As part of such
3 analysis, each such recipient, grantee, or contractor shall
4 seek comments and information from clients, the orga-
5 nized bar, and program staff, as well as other parties with
6 relevant information concerning client needs, including
7 community groups, private attorneys participating in the
8 private attorney involvement plans of the recipient, grant-
9 ee, or contractor, and human services agencies. In the case
10 of support entities, their governing or policy bodies shall
11 also periodically analyze the advocacy, support, and co-
12 ordination needs of recipients served by the support
13 entity.”.

14 **SEC. 27. STAFF ATTORNEYS.**

15 Section 1002(7) (42 U.S.C. 2996a(7)) is amended to
16 read as follows:

17 “(7) ‘staff attorney’ means an attorney who—

18 “(A) is employed by a recipient organized
19 in whole or in part for the provision of legal as-
20 sistance to eligible clients under this title, and

21 “(B) receives more than one-half of his or
22 her annual professional salary from the pro-
23 ceeds of a grant or contract from the Corpora-
24 tion to such recipient.”.

1 SEC. 28. STUDY ON LEGAL ASSISTANCE TO OLDER AMERI-
2 CANS.

3 The Legal Services Corporation shall conduct a study
4 to determine the extent and effectiveness of legal assist-
5 ance provided to older Americans by recipients and other
6 grantees and contractors under the Legal Services Cor-
7 poration Act. The Corporation shall submit to the Con-
8 gress, not later than 6 months after the date of the enact-
9 ment of this Act, a report on the study, together with any
10 recommendations that the Corporation has on ways to im-
11 prove the provision of such legal assistance to older Ameri-
12 cans.

○