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PROGRAM LETTER 96 - 4

TO: All LSC Program Directors

FROM: John A. Tull and Merceria L. Ludgood
Office of Program Operations

DATE: November 22, 1996

RE: New Restrictions on LSC Grantees

Later this month, LSC will publish four regulations which on September 30, 1996, the LSC Board of Directors adopted as final rules to be effective January 1, 1997. Those regulations are 45 CFR Parts 1610 (Use of Non-LSC Funds), 1617 (Class Actions), 1632 (Redistricting) and 1633 (Restrictions on Representation in Certain Eviction Proceedings). The purpose of this letter is to apprise you of certain issues of immediate importance related to two of those regulations, and to call your attention to Section 502(a)(2)(C) of the FY1997 Omnibus Consolidated Appropriations Bill (the "Kennedy Amendment"). Copies of the pertinent regulations, and the relevant portion of the pertinent amendment, are attached to this letter.

Section 502(a)(2)(C) -- The Kennedy Amendment

As you know, the current appropriation under which LSC and its recipients are funded incorporates the restrictions contained in Public Law 104-134, the FY 1996 LSC Appropriation. Section 504(a)(11) of that law prohibits recipients from using any funds to provide legal assistance to aliens, except for those in certain enumerated categories. The Kennedy Amendment to the 1997 appropriation provides that Section 504(a)(11) shall not be construed to prohibit recipients from using non-LSC funds to provide related legal assistance to an alien who has been battered or subjected to extreme cruelty by a spouse or parent, as defined in the amendment. Related legal assistance is defined as "... legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty"

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considered to be participation in a class action. Specifically, the interim rule stated that "Initiating or participating in any class action ... does not include non-adversarial monitoring of an order granting relief or involvement in the enforcement or administration of an order on behalf of an individual client seeking the benefit of the order."

The term "monitoring" used in the interim rule may have been understood by recipients to imply a more active role than was intended by the Board. In the final regulation, therefore, the Board replaced the term "monitoring" with the term "activities," and more explicitly defined the kind of activities permitted. The final rule states that "*(2) Initiating or participating in any class action does not include representation of an individual client seeking to withdraw from or opt out of a class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief.*" (Emphasis supplied.)

This change was not intended to create a different standard from that set forth in the interim regulation, but, because the interim rule may have been unclear, the Board believes that it is necessary to clarify what non-adversarial activities the Board deems permissible. If your interpretation of the language in the interim rule has resulted in your participation in activities beyond the scope of the final regulation, you should take immediate steps to withdraw from further participation and should not be participating in such cases as of the effective date of the final rule on January 1, 1997.

NOTE: Immediately following is the text only of the final rule of 45 C.F.R. Part 1610 as adopted by the LSC Board of Directors on September 30, 1996. The rule with supplementary information will be published in the Federal Register soon; the expected effective date of the rule is January 1, 1997.

PART 1610 - USE OF NON-LSC FUNDS

Sec.

1610.1 Purpose.

1610.2 Definitions.

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1610.4 Authorized use of other funds.

1610.5 Notification.

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1610.7 Transfers of recipient funds.

1610.8 Accounting.

Authority: 42 U.S.C. 2996i; 110 Stat. 3009 (1996); 110 Stat. 1321 (1996).

§1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients.

§1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act:

(1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR Part 1608 of the LSC Regulations (Political activities);

(2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities);

(3) Section 1007(b)(1) of the LSC Act and 45 CFR Part 1609 of the LSC regulations (Fee-generating cases);

(4) Section 1007(b)(2) of the LSC Act and 45 CFR Part 1613 of the LSC Regulations (Criminal proceedings);

(5) Section 1007(b)(3) of the LSC Act and 45 CFR Part 1615 of the LSC Regulations (Actions challenging criminal convictions);

(6) Section 1007(b)(7) of the LSC Act and 45 CFR Part 1612 of the LSC Regulations (Organizing activities);

(7) Section 1007(b)(8) of the LSC Act (Abortions);

(8) Section 1007(b)(9) of the LSC Act (School desegregation); and

(9) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion).

(b) *Activity prohibited by or inconsistent with Section 504* means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat.

or for any activity prohibited by or inconsistent with §504 , unless such use is authorized by §§1610.4, 1610.6 or 1610.7 of this part.

§1610.4 Authorized use of other funds.

(a) A recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with §504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with §504.

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of these regulations, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with §504.

§1610.5 Notification.

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

(b) A recipient is not required to provide such notification for receipt of contributions of less than \$250.

§1610.6 Applicability.

Notwithstanding §1610.7(a), the prohibitions referred to in §§1610.2(a)(3) (Criminal proceedings), (a)(4) (Actions challenging criminal convictions), (b)(7) (Aliens) or (b)(11) (Prisoner litigation) of this part will not apply to:

(a) A recipient's or subrecipient's separately funded public defender program or project; or

(b) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

§1610.7 Transfers of recipient funds.

(a) For a transfer of LSC funds, the prohibitions and requirements referred to in this part, except as modified by paragraphs (c) and (d) of this section, will apply both to the funds transferred and to the non-LSC funds of the person or entity.

(b) For a transfer of non-LSC funds, the prohibitions and requirements referred to in this part, except as modified by paragraphs (c) and (d) of this section, will apply to the funds transferred, but will not apply to the other non-LSC funds of the person or entity.

(c)(1) In regard to the requirement in §1610.2(b)(5) on priorities, persons or entities

NOTE: Immediately following is the text only of the final rule of 45 C.F.R. Part 1617 as adopted by the LSC Board of Directors on September 30, 1996. The rule with supplementary information will be published in the Federal Register soon; the expected effective date of the rule is January 1, 1997.

45 CFR Part 1617: CLASS ACTIONS

Sec.

1617.1 Purpose.

1617.2 Definitions.

1617.3 Prohibition.

1617.4 Recipient policies and procedures.

Authority: 29 U.S.C. 2996e(d)(5); 110 Stat. 3009 (1996; 110 Stat. 1321 (1996).

§1617.1 Purpose.

This rule is intended to ensure that LSC recipients do not initiate or participate in class actions.

§1617.2 Definitions.

(a) *Class action* means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

(b)(1) *Initiating or participating in any class action* means any involvement at any stage of a class action prior to or after an order granting relief. "Any involvement" includes acting as *amicus curiae*, co-counsel or otherwise providing representation relating to a class action.

(2) *Initiating or participating in any class action* does not include representation of an individual client seeking to withdraw from or opt out of a class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief.

§1617.3 Prohibition.

Recipients are prohibited from initiating or participating in any class action.

§1617.4 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Section 502(a)(2)(C) - THE KENNEDY AMENDMENT

(C) subsection (a)(11) of such section 504 shall not be construed to prohibit a recipient from using funds derived from a source other than the Corporation to provide related legal assistance to:

- (i) an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; or
- (ii) an alien whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty.

DEFINITIONS - For purposes of subsection(a)(2)(C):

- (1) The term "battered or subjected to extreme cruelty" has the meaning given such term under regulations issued pursuant to subtitle G of the Violence Against Women Act of 1994 (Publ. L. 103-322; 108 Stat. 1953).
- (2) The term "related legal assistance" means legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty described in such subsection.