

Program Letter 09-3

TO: All Executive Directors

FROM: Helaine M. Barnett *HMB*

DATE: December 17, 2009

SUBJECT: Compliance Guidance and Interim Guidance on Attorneys Fees

Interim Guidance on Attorneys Fees

On December 16, 2009, President Obama signed into law the FY 2010 consolidated appropriations bill that covers LSC. The legislation lifts the statutory restriction on claiming, collecting and retaining attorneys' fees but the regulatory restriction in Part 1642 of the LSC regulations remains in place until the LSC Board revokes or revises it. However, at the December 15, 2009 LSC Board of Directors meeting, in anticipation of the enactment of the consolidated appropriations bill, the Board directed LSC management to suspend enforcement of Part 1642 effective as of the date that the bill was signed by the President and became law.

The Board's action was expressly premised on: 1) enforcement being suspended only until the Board acts on Part 1642; and 2) any grantee facing a deadline by which their fees petition must be filed, may file their petition without being subject to later LSC enforcement action being taken against them for that filing.

At the direction of the Board, LSC staff is working on a Rulemaking Options Paper ("ROP") to be provided to the Operations and Regulations Committee in advance of a potential rulemaking to consider rescinding or amending Part 1642 in the near future. One of the issues that the Committee will consider is whether attorneys' fees claims filed after the effective date of this consolidated appropriations statute could include a claim for work done prior to the law's effective date.

If you have any questions about this issue, please contact Victor M. Fortuno, LSC's General Counsel, at vfortuno@lsc.gov.

This Program Letter is being sent to all LSC grantees to share important information on compliance issues that affect program operations. As part of our continuing oversight responsibility for ensuring that grantees have systems and procedures in place to deliver high quality legal services in full compliance with LSC rules and regulations, LSC hopes that you will find this information to be a helpful reminder of your ongoing responsibilities as an LSC grantee.

Similar to the 2008 Compliance Guidance memorandum from LSC, this particular Program Letter focuses on recurrent issues seen by LSC staff when engaged in compliance oversight visits. The Program Letter identifies the most frequent and several of the most serious compliance issues to alert programs to be attentive to those issues.

LSC encourages you to use this Program Letter to review these selected aspects of your program operations and ensure that you have systems, policies and procedures in place that address each of these frequently seen issues.

Fiscal Management Issues

All grantees are required to implement and use essential fiscal policies and procedures that are consistent with the appropriate LSC guidance documents such as the LSC Accounting Guide, the LSC regulations, and your program's accounting manual.

There are two areas of fiscal management where we continue to see areas of improvement needed.

- **Accounting Manual.** Grantees should develop, implement and keep current, a program accounting manual as required by the Accounting Guide for LSC Recipients. Grantees are frequently operating under an outdated accounting manual, i.e., they have updated their practices and procedures being used for fiscal operations but have not documented these revised procedures in the accounting manual.

LSC is also updating the LSC Accounting Guide for Recipients because it has become dated in several areas. See page 3 of this Program Letter.

- **Segregation of Duties.** This issue of segregation of duties was noted in the 2008 LSC Compliance Guidance memorandum and is noted again as an issue that LSC frequently observes and finds in need of correction during on-site visits.

Duties in the program's fiscal operations must be segregated to ensure that no one individual simultaneously has both the physical control and the recordkeeping responsibility for any asset, including, but not limited to, cash, client deposits, supplies and property. No individual should be able to initiate, execute, and record transactions without a second independent individual being involved in the process. (LSC Accounting Guide, § 3-4).

In smaller programs with a minimal number of fiscal staff, additional guidance on how to achieve appropriate segregation of duties should be sought from your auditor.

Case Service Reporting Issues

The Case Service Report (CSR) Handbook, 2008 Edition, guides the gathering of quantifiable information on cases to ensure that LSC is reporting data to Congress accurately reflecting the level of civil legal services provided across the nation. Accuracy in this data gathering is critical and is one reason why LSC continues the annual Self-Inspection of CSR data by grantees.

In 2007, LSC provided CSR training at numerous sites across the country in preparation for implementation of the revised CSR Handbook in January 2008. Since that time, LSC has determined that a recurring training function for CSR data gathering and reporting is necessary to assist grantees in ensuring that staff is accurately implementing the CSR requirements. LSC is available to provide CSR training to grantee staff. Most training will be done via web cast.

Requests for training should be made to Danilo Cardona, Director, Office of Compliance and Enforcement at dcardona@lsc.gov or 202-295-1520.

Based on LSC's on-site visits, the following areas of program operations related to CSR data gathering and reporting are noted for special vigilance.

- Legal assistance provided to a client must be documented in the case file. Without this documentation, the case cannot be reported to LSC. (CSR Handbook 2008 Edition, §5.6).
- Staff responsible for closing cases should be trained on the proper closing code categories to ensure the accurate application of those codes in accordance with Chapters VIII and IX, CSR Handbook (2008 Ed.).
- Cases reported to LSC must be closed in a timely manner, as defined by in the CSR Handbook. (CSR Handbook (2008 Ed.) § 3.3).
- Case files should be periodically reviewed and monitored for dormancy to ensure timely closure. (CSR Handbook (2008 Ed.) § 3.3).
- Citizenship status or alien eligibility must be documented in all cases. (CSR Handbook (2008 Ed.) § 5.5).

Specific Regulations Issues

45 CFR Part 1610 - Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity

- Grantees must include the requirements of 45 CFR § 1610.5(a), including the prohibition and conditions which apply to donated funds, when accepting (e.g., in a "thank you" letter) or soliciting donations in amounts greater than \$250.

45 CFR Part 1611 – Financial Eligibility

- Staff responsible for intake screening should ensure they consistently screen applicants where income is between 125% and 200% of the Federal Poverty Guidelines in accordance with the grantees' financial eligibility policies as established by the governing body.
- Grantees' governing bodies should establish a financial eligibility policy which specifies which government benefits meet the government benefits exemption as required by 45 CFR § 1611.3 and grantees should ensure that staff is correctly applying the exemption.
- Grantees must document the basis for financial eligibility determinations made pursuant to 45 CFR § 1611.3.
- Grantees must document the basis for financial eligibility determinations made pursuant to 45 CFR § 1611.5, regarding authorized exceptions to the annual income ceiling.

- Intake staff must screen for prospective income in accordance with 45 CFR § 1611.7(a)(1) in all cases. (OLA Advisory Opinion # AO-2009-1006).

Updates on LSC Advisory Groups

During 2009, LSC used training opportunities at national, state and regional project directors' meetings to discuss ongoing compliance and delivery issues. This year, our work was supplemented in two major areas by advisory groups of grantee staff working with LSC on particular issues of concern. These issues include private attorney involvement and program fiscal operations.

With the assistance of the Fiscal Operations Advisory Group, LSC is undertaking an updating of the LSC Accounting Guide to reflect developments since it was last published in 1997. The revisions incorporate Sarbanes-Oxley governance and financial oversight concepts, add new sections on electronic transactions and fraud prevention, update citations, and include other necessary changes. The proposed revised Accounting Guide will be posted on www.lsc.gov and published in the Federal Register in the near future for public comment. LSC encourages grantees to review the Draft Revised LSC Accounting Guide and offer comments and suggestions to LSC within the public comment period.

Early in 2010, LSC will distribute written information about the work of the Private Attorney Involvement (PAI) Advisory Group and share additional information gathered on creative private attorney involvement activities that were the subject of a recent PAI Advisory Group facilitated workshop at the November 2009 NLADA Annual Conference.

We continue to appreciate the contributions of all advisory group members to these efforts and we look forward to continuing to work together in 2010.