



## Program Letter 2000-5

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**TO:** All LSC Program Directors

**FROM:** Randi Youells  
Vice President for Programs

**DATE:** August 31, 2000

**RE:** 1635 Certification

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The purpose of this program letter is to distribute the certification form mandated by Part 1635 of the Legal Services Corporation ("LSC") regulations. The LSC Board of Directors have promulgated and adopted revisions to Part 1635, the Timekeeping Requirement. This revised final rule became effective on August 7, 2000. Under one section of the newly revised regulation, recipients of LSC funding are required to maintain certifications for part-time advocates (attorneys and paralegals) who also work for organizations that engage in restricted activities ("*restricted activities*" is defined in the regulation).

The pertinent section of the revised regulation, 45 CFR Section 1635.3(d) provides:

Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. The certification requirement does not apply to a *de minimis* action related to a restricted activity. Actions consistent with the *de minimis* standard are those that meet all or most of the following criteria: actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable. Certifications shall be made on a quarterly basis and shall be made on a form determined by LSC.

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In completing the form, several things should be kept in mind. First, the certification must only be completed by employees who are (1) either attorneys or paralegals, (2) part-time workers, *and* (3) work for an organization which performs restricted activities, as defined by the LSC regulations. Second, the certification requirement does not apply to *de minimis* activities. Of primary import, is whether the part time employee initiates these activities. If the covered employee receives an unavoidable telephone call, this would be considered *de minimis*. If the covered employee places a telephone call on behalf of the restricted activity, this would be a violative activity.<sup>1</sup> Third, as noted in the "Supplementary Information" the requirement is a *record keeping* rather than a *reporting* requirement. Accordingly, these certificates are to be maintained by the program rather than submitted to LSC. The regulation does not specify the period of time these certifications must be maintained. Pursuant to prior LSC instructions mandating retention of records for at least five years, these records should also be maintained for at least five years.<sup>2</sup>

If an employee is required to certify, but is not able to do so, a statement of explanation should be prepared by that employee and attached to the form. Upon receipt of this statement of non-certification, the recipient should immediately notify the Office of the Inspector General and/or the Office of Compliance and Enforcement.<sup>3</sup>

The certification form includes an *optional* Part C for those programs that do not have any employees who are covered by this provision. It allows you to record that it was determined that there were no covered staff during the time period. This is not required by the regulation, however, we provide it to assist you in documenting continued compliance with this regulation.

If you have any questions or comments, please contact me.

Enclosures:

Certification Form

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<sup>1</sup> In addition, it should be noted that as LSC funds are provided for the purpose of "furnishing legal assistance to eligible clients" (Section 1006(a)(1)(A)), these funds may not be used for any other purpose. See also, the January 5, 1978, letter from Alice Daniel, LSC General Counsel, to Mary K. Hanna.

<sup>2</sup> See, for example, the December 8, 1997, memorandum from John A. Tull, concerning record keeping and Program Letter 99-3.

<sup>3</sup> Additional guidance may be sought from the Office of Legal Affairs. See also, 45 CFR §1618.4.