

INSTRUCTIONS FOR CERTIFICATION OF PROGRAM INTEGRITY

Introduction. Section 1610.8(b) of 45 CFR part 1610 requires each recipient's governing body to certify by December 19, 1997 that the recipient is in compliance with the program integrity requirements of section 1610.8. This regulation requires a recipient to have objective integrity and independence from any organization which engages in restricted activities as defined in 45 CFR 1610.¹

To comply with part 1610, the president or chair of the recipient's governing body must sign and date the attached certification and mail it by *December 19, 1997* to:

Office of Program Operations
Legal Services Corporation
750 First Street, NE, 10th Floor
Washington, D.C. 20002-4250

Written Report to Governing Body. To enable each recipient's governing body to undertake the review required by the regulation, the program director must provide its governing body with a written report which either:

(a) states that the recipient has not transferred recipient funds to nor subsidizes, employs, shares or utilizes any of the same personnel, office space, facilities or equipment with an organization which engages in restricted activity; or

(b) addresses the following:

A. Legally separate entity. A recipient may not engage in restricted activity and must be a legally separate entity from any organization which engages in restricted activity. If the recipient has any relationship with an organization which engages in restricted activity which involves a transfer of recipient funds, overlapping board membership between the two organizations, joint employment or utilization of any of the same personnel, office space, facilities or equipment, the director must provide the governing body with a statement that the other organization is a legally separate entity such as a separately incorporated non-profit organization or a legally separate partnership.

B. Transfers of program funds. Except to support its private attorney involvement

¹ "Restricted Activity" means those activities defined in 45 CFR 1610.2 (a) "*Purpose prohibited by the LSC Act*" and (b) "*Activity prohibited by or inconsistent with Section 504.*" Note that restrictions in §1610.2(a) are not "entity" restrictions and only apply to LSC and private funds. Thus, recipients may use public funds to engage in §1610.2(a) activities without compromising the program integrity standards.

activity under 45 CFR 1614,² an LSC recipient may not transfer LSC funds to an organization which engages in restricted activity. Recipients may transfer non-LSC funds to organizations which engage in restricted activity only if the recipient maintains objective integrity and independence from the transferee organization.³

If, since January 1, 1997, the recipient has transferred funds to another organization, the director's report should demonstrate that the transfers were permissible because they involved either:

- (1) LSC funds to support the recipient's private attorney involvement activity under 45 CFR 1614; or
- (2) LSC funds pursuant to a previously approved subgrant under 45 CFR 1627; or
- (3) non-LSC funds.

If LSC funds have been transferred for any other purpose, the recipient may not be able to complete the certification form and should contact LSC for guidance.

C. Subsidies. LSC recipients may not use recipient resources to subsidize restricted activity.⁴

² An LSC recipient may transfer LSC funds to bar associations, *pro bono* programs, private attorneys, law firms, or other entities *for the sole purpose* of funding the recipient's private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, regardless of whether such associations, programs, attorneys, law firms or other entities otherwise engage in restricted activity using their other funds. Of course, the PAI activities supported by the recipient's funds and counted towards the recipient's PAI activity must not include any restricted activity.

³ "Transfer" means a payment of LSC funds by a recipient to a person or entity for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities. The term "transfer" does not include payment of recipient funds to vendors, accountants or other providers of goods and services made by the recipient in the normal course of business.

⁴ "Subsidize" means to use recipient resources to support, in whole or in part, restricted activity conducted by another entity, or payment by the recipient to cover another entity's

overhead for restricted activity. A "subsidy" does not include a transfer of a recipient's non-LSC funds to another organization regardless of the use the other entity makes of those funds. However, a recipient will be considered to be subsidizing the activities of another organization if

If the recipient employs any of the same personnel, donates to, or shares or utilizes office space or equipment, with an organization which engages in restricted activity, the director should provide the governing body with information establishing that the recipient is not subsidizing restricted activity.

Such information might include, for example, evidence that the recipient receives fair value for a sublease of space or use of recipient equipment; or that the donated space is not used for restricted activity. In the case of shared personnel, the director should establish that compensation by the recipient of staff who are jointly employed by the other organization is consistent with compensation policies established in recipient personnel policies or union contracts. Such information may be a part of the description provided in paragraphs D (1) or (2) below.

D. Physical and Financial Separation. Whether a recipient maintains sufficient physical and financial separation from an organization which engages in restricted activity is determined by the totality of the circumstances. If the recipient employs, shares or utilizes any of the same personnel, office space or equipment with an organization which engages in restricted activity, the director must describe the joint utilization in the report to the governing body.

(1) Physical Separation. If the recipient shares or utilizes any of the same office space or equipment with an organization which engages in restricted activity, and the office space or equipment is under the control of the recipient or the other organization, the director's report should include the following information:

- a. the name of the organization with whom the recipient jointly utilizes facilities or equipment,**
- b. what facilities and equipment are jointly utilized,**
- c. the frequency of use of such facilities or equipment by the recipient**

it provides the use of its resources (e.g., donates space or telephone services) for restricted activity without receiving fair value for such use. A recipient will also be considered to be subsidizing the activities of another organization if it pays a third party to cover the overhead expenses for the restricted activities of the other entity (e.g., pays the rent for space that the other organization uses to conduct restricted activity without reimbursement from the other entity). Note, however, that the fact that the recipient receives a fair payment does not necessarily mean the arrangement is permissible. A recipient must also maintain physical and financial separation from an entity which engages in restricted activity.

- and the other organization,**
- d. the financial arrangement for such joint utilization,**
- e. whether there are separate entrances, signs and other forms of identification distinguishing the recipient from the other organization.**

- (2) **Separate Personnel.** If the recipient employs any staff who are also employed by an organization which engages in restricted activity, where
- a. there is an arrangement between the recipient and the other organization regarding the terms and conditions of employment of such staff; or
 - b. the recipient and the other organization are using any of the same facilities or equipment; or
 - c. although there is no arrangement or sharing of facilities or equipment, a substantial proportion⁵ of the recipient's attorney and/or paralegal staff work part-time for an organization which engages in restricted activity;

the director's report should include the following information:

- a. the name of the organization employing such recipient staff,**
- b. the positions occupied and duties performed by such recipient staff for the recipient,**
- c. the terms and conditions of employment between the recipient and such staff.**

- (3) **Separate Accounting and Timekeeping Records.** If there is any joint utilization of facilities, equipment, or staff required to be reported above, the director's report should include information describing how the recipient maintains separate accounting and timekeeping records.

- E. Recordkeeping.** Recipients must maintain copies of the report and any accompanying documentation provided the governing body under these instructions.

⁵ For larger organizations, 10% of the recipients's attorney/paralegal staff should serve as a guide. However, for recipients with smaller staffs, the program director should use his or her best judgement to determine whether part-time staff constitute a substantial proportion of the recipient's legal workforce.