

PROGRAM LETTER 98-4

TO: All LSC Program Directors

FROM: Karen J. Sarjeant
Acting Vice President for Programs

DATE: July 1, 1998

RE: Prior Approval Procedures under 45 C.F.R. § 1630.5

This memorandum explains the process by which the Office of Program Operations (OPO) grants prior approval pursuant to 45 C.F.R. § 1630.5(b) for:¹

- 1) pre-award costs and costs incurred after the cessation of funding;
- 2) purchases and leases of equipment, furniture, and other personal, non-expendable property, if the current purchase price of any individual item of property exceeds \$10,000;
- 3) purchases of real property; and
- 4) capital expenditures exceeding \$10,000 to improve real property.

Part I of this memorandum describes the prior approval process.

Part II of this memorandum describes information to include in a request for prior approval. This memorandum supersedes the January 12, 1995, LSC memorandum on the same subject.

PART- I. The Prior Approval Process

The Timing of Prior Approval

Approval to purchase non-expendable property, real property, and leases of equipment, furniture, or other non-expendable property; pursuant to 45 C.F.R. § 1630.5(b), should be obtained before signing a contract to purchase or lease equipment or purchase and improve real property. For pre-award costs and costs incurred after the cessation of funding, programs should seek approval

¹ Please note that effective February 1, 1998, prior approval for consultant contracts is no longer required.

prior to incurring the costs. **After-the-fact approval does not satisfy the prior approval requirement of 45 C.F.R. § 1630.5(b).**

Determination by OPO to Approve

Reasonableness is the standard which guides the decision of OPO whether to approve an expenditure of LSC funds. OPO adheres to the definition of reasonable cost which appears at 45 C.F.R. § 1630.3(b). OPO will approve an expenditure as being reasonable when an approval request demonstrates that: 1) the expenditure is of a type and amount generally recognized as ordinary and necessary to the operation of a legal services program or the performance of the grant or contract; 2) the program requesting approval has followed generally accepted sound business practices, arms-length bargaining, Federal and State laws and regulations; and the terms and conditions of the grant or contract; 3) the program acted prudently under the circumstances; and 4) the program did not significantly deviate from its established practices which may unjustifiably increase the grant or contract costs.

The Effect of Approval

Unless otherwise provided in a letter granting prior approval pursuant to 45 C.F.R. § 1630.5(c), the approval by OPO of an expenditure is effective for one year from the date of the letter approval. Prior approval is LSC's acknowledgment that an expenditure is reasonable and necessary according to 45 C.F.R. § 1630.3(b). Programs are responsible for ensuring that their accounting for expenditures meets the requirements of 45 C.F.R. § 1630.3(a). All expenditures of LSC funds must meet the nine criteria of that section.

PART - II. Information to Include in a Request for Approval

Leases and Purchases of Personal Property

Pursuant to 45 C.F.R. § 1630.5(b), programs planning to expend LSC funds to lease or purchase personal property valued over \$10,000 must obtain LSC's prior approval. Programs seeking prior approval of a lease or purchase of personal property should submit to OPO, three written bids (except when bids are not obtained for the reasons explained in (3)), and a letter or memorandum containing:

- 1) Statement of Need. The statement should explain how the purchase will further the delivery of legal services to eligible clients;
- 2) Description of the Property to be Leased or Purchased. The description should identify each component of the lease or purchase by manufacture and model; the quantity to be leased or purchased; the total dollar amount of the lease or purchase; and the identity of the vendor or vendors of the product; and

- 3) Description of the Vendor Selection Process. The description should explain the reason for selecting the vendor or vendors, including the identities of vendors who submitted bids; the amounts of the bids; and the manufacturer, model, and quantity of the products which the bidders offered. In the absence of bids, the description should explain why obtaining bids was not practical.

Purchases of Real Property

Pursuant to 45 C.F.R. § 1630.5(b)(3) and (4), programs planning to expend LSC funds to purchase real property or make capital expenditures exceeding \$10,000 to improve real property must obtain LSC's prior approval. Leases of real property do not require LSC's approval. Programs seeking prior approval of a purchase of real property should submit to OPO a letter or memorandum containing:

- 1) Statement of Need. The statement should explain how the purchase will further the delivery of legal services to eligible clients. Specifically, the statement should discuss:
 - a) the location of the property in terms of accessibility to program clients;
 - b) trends in funding and program staffing levels in relation to space needs; and
 - c) whether the property will replace or be in addition to existing program offices.
- 2) Cost Analysis. The analysis should compare the estimated annual costs of the planned purchase over the life of the financing of the purchase with the estimated annual costs of renting or purchasing other, similar property over the same time period. The comparison should include estimates of the costs of maintenance, utilities, and taxes.
- 3) Current Independent Appraisal. The appraisal should be of a type sufficient to secure a mortgage.
- 4) Documentation of Board Approval. The documentation can be a copy of a board resolution or board minutes demonstrating approval of the purchase.

- 5) Statement of Handicapped Accessibility. This statement is necessary to meet the requirement of 45 C.F.R. § 1624.5(c) that program offices be accessible to handicapped persons.
- 6) Explanation of the Financing of the Purchase. The explanation should describe the estimated total cost of the purchase; the terms of a mortgage or other debt obtained to finance the purchase; including the amount of monthly mortgage payment and the source of funds to be used to pay the monthly mortgage; the source and amount of funds to be applied to a down payment; and the source and estimated amounts of funds to cover moving, renovations, and closing costs.
- 7) Copy of a Purchase Agreement or Contract. This document should include a description of the property and the terms of the purchase.

Reversionary Interest Agreement. At the time of approval, the Corporation and the recipient purchasing real property will enter into a reversionary interest agreement approved by the LSC Office of General Counsel. The existence of an executed Reversionary Interest Agreement will be a condition for the Corporation's approval of the purchase.

Capital Expenditures to Improve Real Property

Programs seeking approval of capital expenditure over \$10,000 to improve real property should submit to OPO a letter or memorandum containing:

- 1) Statement of Need. The statement should explain how the expenditure will further the delivery of legal services to clients. Specifically, the statement should discuss:

A statement of need with the improvement(s), including the nature of the work to be done, the name of the contractor performing the work, and the total expected cost of the improvements; and
- 2) A Description of the Contractor Selection Process. A description of the process to select the contractor including the names of the contractors submitting quotations, the amounts of the quotations, and a brief explanation of the way the contractor who will perform the work was selected.

Costs Incurred After the Cessation of Funding

Programs seeking approval of costs to be incurred after cessation of funding must, prior to incurring the cost, submit to OPO a request for approval demonstrating that the costs are related to closure of the LSC funded activities, such as:

- 1) Costs associated with the closing or transfer of clients' cases;

- 2) Rental costs under unexpired leases;
- 3) Settlement expenses including: closeout audit, accounting, legal, clerical and indirect costs related to salaries and wages, or other similar expenditures. In addition, the request should set forth a statement of:
 - a) non-LSC funds available to the program; and
 - b) whether the program will continue to operate as a legal entity, and other facts deemed appropriate to support the request.

Approval of the costs to be incurred after the cessation of funding will not be provided unless the program has submitted to LSC the following information:

- 1) the amount of LSC fund balance at the time of cessation of funding;
- 2) a statement indicating the reason or reasons for the existence of the fund balance;
- 3) the program's plan for the disposition of the fund balance, including a description of the types of cases or matters on which the program will expend the fund balance;
- 4) a certification that the LSC fund balance will be expended in accordance with the LSC Act, regulations, and the current appropriations act governing LSC funds; and
- 5) an accounting for all property which was purchased in whole or in part with LSC funds and which has a current book or market value exceeding \$1,000. The property accounting should include: a) a brief description of the property item; b) the date of acquisition of the property item; c) the total amount of funds expended to acquire the property; d) the amount of LSC funds expended to acquire the property; e) the current book or estimated market value of the property; and f) if the property is to be retained, a certification that the program shall use the property in connection with the delivery of legal assistance to low-income persons.

Programs which have used LSC funds to acquire real property, should submit an accounting of the real property upon cessation of funding which includes the following information:

- 1) the address and a brief description of the property and the date it was acquired;
- 2) the total amount of funds expended to acquire or improve the property, including principal and interest payments, and payment for capitol improvements;
- 3) the current assessed and estimated market values of the property;

- 4) the amount of outstanding debt on the property;
- 5) a statement indicating the program's plan for disposing of or retaining the property;
and
- 6) copies of any agreements or contracts governing disposition of the property.

In addition the program should submit verification of prepayment of a final audit.

Pre-award Costs

Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule. Programs which expect to incur pre-award costs must seek LSC approval of those costs prior to incurring them. LSC will grant approval of those costs provided that they meet the requirements of 45 C.F.R. Part 1630 and provided that the program has received a grant award letter from LSC confirming that an award of LSC funds is imminent.

Programs seeking approval of pre-award costs should submit to OPO a letter or memorandum containing:

- 1) Statement of Need. The statement should explain how the expenditure is necessary to its performance of the grant and reasonable in light of the circumstances; and
- 2) Budget for the Expenditure.

For further information, please contact Kimberly Heron, Office of Program Operations, at (202) 336-8864.