

PROGRAM LETTER 96-2

TO: All LSC Program Directors

FROM: John A. Tull, Director
Office of Program Evaluation, Analysis and Review

DATE: June 14, 1996

RE: Priorities

As you know, Public Law 104-134, signed into law on April 26, 1996, has provisions which require recipients to take certain affirmative steps with regard to priorities.¹ We are writing to advise you of what you should do to implement the priority setting requirements. We are also sending you a list of suggested priorities promulgated by the LSC Board on May 20, 1996 for consideration in your priority setting.

What is Required by Sec. 504 (a) (9).

We want to draw your attention to four aspects of the priorities provisions which go beyond previous requirements:

- your priorities must be written and specific as to the types of cases and matters and must encompass all of the cases and matters, including those undertaken with non-LSC funds, to which the program will devote its time and resources;

¹ **Priorities.**

Sec. 504. (a) None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a 'recipient')

(9) unless-

(A) prior to the provision of financial assistance-

(i) if the person or entity is a nonprofit organization, the governing board of the person or entity has set specific priorities in writing; pursuant to section 1007(a)(2)(C)(i) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)(i)), of the types of matters and cases to which the staff of the nonprofit organization shall devote time and resources; and

(ii) the staff of such person or entity has signed a written agreement not to undertake cases or matters other than in accordance with the specific priorities set by such governing board except in emergency situations defined by such board and in accordance with the written procedures of such board for such situation; and

(B) the staff of such person or entity provides to the governing board on a quarterly basis, and to the Corporation on an annual basis, information on all cases or matters undertaken other than cases or matters undertaken in accordance with such priorities;

- you must have a written definition of an emergency situation and a written procedure for addressing the emergency;
- your casehandlers must sign a written agreement that they will not undertake cases or matters other than those set as priorities by the Board except for emergency cases or matters as defined by your Board;
- your program must report information to its Board quarterly and to LSC annually on all cases or matters, including emergencies, undertaken that were not in accordance with the priorities.

Priorities must still be set in compliance with the LSC Act (Section 1007 (a)(2)(C)(i)) which requires consideration of the relative needs of eligible clients for assistance, including outreach training and support services, particularly the needs of clients with special difficulties of access to legal services or with special legal problems. Please note that the LSC Board of Directors anticipates adopting an interim revised regulation governing priority setting at its July 1996 meeting.

What Your Program Should Do.

1. **Review Current Priorities and Adopt Changes as Appropriate.** After considering the LSC suggested priorities, you should review your program's current priorities to ensure that they are specific and are framed to include all of the cases and matters to which the Board wants the program to devote its time and resources. The Board should revise the program's priorities if they are not written so that they cover all the program's legal work. We do not contemplate programs undertaking a new legal needs assessment assuming that current priorities were adopted in accordance with 45 CFR Part 1620.

To avoid any question regarding whether your program is engaged in activities which are not approved within the program's priorities we recommend that you draw your priorities specifically to cover both cases and matters as defined by the timekeeping regulation. A case is a distinct legal problem or set of closely related problems and the legal work performed by the attorneys and paralegals to resolve those problems. Cases include litigation, hearings, negotiations, advice, brief services and assistance with individual PAI cases. Matters are actions which contribute to the overall delivery of program services that do not involve direct legal advice or representation. Matters include community education, pro se clinics, training, CLE, preparing informational materials, and PAI recruitment.²

Please note as well that a priority category of "other" or "miscellaneous" is not sufficiently specific under 504(a)(9), unless it is further defined. It would be permissible to define a category of cases which may be accepted, even though not specifically set forth in the priorities if, for example, they involve threats to the health and safety of the applicant.

Advice, brief service and referral. You should review your intake system in light of the new requirements on priorities. A high percentage of the cases closed by recipients involve the provision of counsel and advice, brief service or referral assistance. Moreover, we realize that with the Corporation's encouragement, many recipients are increasingly employing centralized telephone intake and delivery systems to provide these services in a more efficient and effective manner. Often the issues addressed in those calls may not fall under cases listed as priorities for full representation. You may, however, give advice on cases or matters that are not specified as substantive case types so long as the priorities are framed to

² 45 CFR Part 1635.2 contains the definitions of case and matter. See the LSC Timekeeping Guide page 4-5 for additional examples of cases and matters.

cover such advice. To accomplish this, you may enumerate advice and referral as a priority. However, brief service such as negotiation or the production of a letter to a third party should be in a substantive priority area.³

2. **Develop a Policy and Procedure for Emergencies.** If your current priorities do not already do so, your Board needs to define what constitutes emergency situations and establish a procedure for acceptance of emergency cases or matters. Emergencies may be defined to include a variety of circumstances: 1) the need for immediate legal action to protect the client's rights; 2) a significant threat to the health and safety of the applicant for which no other legal help is available; and 3) issues that arise because of new and unforeseen circumstances, such as natural disasters, changes in the law affecting large numbers of clients and other emerging legal issues not anticipated when priorities were set. You should consider the severity of the consequences to the individual and family, the likelihood of success, the availability of other resources, and the overall expenditure of time and resources by the staff.⁴

The procedure should address who will determine that a particular case constitutes an emergency situation and how and when the request and approval are recorded.

3. **Develop and have Staff Sign the Required Written Agreements.** You need to develop a written agreement, which each case handler must sign, affirming that only priority and emergency cases and matters will be undertaken. Staff not directly engaged in cases or matters are not required to sign the agreement. Intake and referral staff do not need to sign the agreement unless they give advice or brief service. PAI coordinators and training coordinators who engage in "matters" should sign the agreement. A staff member analyzing the facts presented on intake and referring the case will have to sign the agreement.

The agreement should specify that the case handler understands the priorities, the definition of an emergency situation, the procedure to follow with regard to emergencies, and that the case handler will not undertake non-priority cases or matters. The signed agreements should be kept in a separate file. A sample agreement is attached to this letter.

4. **Develop a System for Reporting to Your Board and to LSC.** You should develop a system to report to your Board and to LSC on cases and matters undertaken which are outside specific priorities. Under the appropriations act, all cases or matters that are undertaken by case handlers that are outside of priorities, including emergencies, must be reported to your Board on a quarterly basis and to LSC annually. You should develop a reporting form which gives the number of cases or matters undertaken that were not in accordance with the priorities, including emergencies, the types of cases or matters, the reason they were undertaken, and other information your Board deems appropriate. You will need to report to your Board for the third quarter of 1996. The Corporation will provide a form for the annual report. It will be due by January 15, 1997.

³ Advice includes reviewing relevant information and counseling the client on the action the individual might take to resolve the issue including sending pamphlets on the legal issues. Brief service is to resolve the case as a result of action taken at or soon after the intake such as preparing a short letter or making a telephone call.

⁴ For example a program whose priority in the housing area is to take only federally subsidized and public housing cases and provide no other type of service for clients with housing matters, may determine that it will take housing emergencies caused by a natural disaster where no other resource is available.

TIMING

Recipients should revise priorities as necessary within thirty (30) days from the date that the Legal Services Corporation Board of Directors adopts an interim revised regulation (July 20). The Staff Agreement should be developed and signed by that time as well.

**SAMPLE
AGREEMENT**

I, _____, a _____ (Job Title) at the
(Recipient's Name) have read and I am familiar with the priorities and emergency policy of my
employer. I agree not to undertake any case or matter other than in accordance with the specific
priorities set by the Board of Directors or Governing Body (choose appropriate term) of the
(Recipient's Name) except in emergency situations as defined by the Board and in accordance
with the written procedures as set by the Board in the emergency policy.

SIGNATURE

DATE