

## MEMORANDUM

**TO:** All LSC Program Directors, Board Chairs

**FROM:** John A. Tull, Director  
Office of Program Operations

**DATE:** October 30, 1997

**RE:** Certification of Program Integrity

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Each LSC recipient's governing body is required under 45 CFR 1610 to certify by December 19, 1997, and annually thereafter, that the program is in compliance with the program integrity requirements of section 1610.8. This section requires a recipient to have "objective integrity and independence" from any organization which engages in restricted activities as defined in 45 CFR 1610. This memorandum and the attached documents are intended to provide guidance on the certification process and the requirements of 45 CFR 1610.

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC-funded entity shall engage in restricted activity. A list of restricted activities can be found at 45 CFR 1610.2(a)<sup>1</sup> and (b). They include, among other things, lobbying, participation in class actions, representation of prisoners, and claiming, or collecting and retaining attorneys' fees. Under this regulation, an LSC recipient cannot itself engage in such activities, transfer LSC funds to another organization which engages in restricted activity,<sup>2</sup> or use recipient resources to subsidize the restricted activity of another organization.

Recipients may transfer *non*-LSC funds to another organization which engages in

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<sup>1</sup> The 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 discussed in this memo and attached documents.

<sup>2</sup> An LSC recipient may transfer LSC funds to bar associations, *pro bono* programs, private attorneys or 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.

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restricted activity if, and only if, the other organization is a legally separate entity<sup>3</sup> and the LSC recipient maintains objective integrity and independence from it. Even where there is no transfer of funds, the LSC recipient must maintain objective integrity and independence from any organization which engages in restricted activity.

To meet the objective integrity and independence test, a recipient must be organized so it is *physically and financially separate* from the other organization. Mere bookkeeping separation is insufficient.

To determine whether there is sufficient physical and financial separation, a range of factors, including the following, must be considered:

- existence of separate personnel;
- existence of separate accounting and timekeeping records;
- degree of separation from facilities in which restricted activities occur, and the extent of such activities; and
- the extent to which signs and other forms of identification which distinguish the recipient from the other organization are present.

The presence or absence of any one or more factors will not be determinative. Each situation will be viewed on a case-by-case, totality of the circumstances basis.

Recipient governing bodies must consider the same factors when preparing the enclosed Certification of Program Integrity. To assist recipients and their governing bodies, additional guidance is contained in the instructions to the Certification form and the attached Guidance in Applying the Program Integrity Standards.

If you have any questions, please contact Anh Tu at (202) 336-8946 or Bob Gross at (202) 336-8856.

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<sup>3</sup> An LSC recipient may have an overlapping board with a legally separate organization which engages in restricted activity as long as the recipient maintains objective independence and integrity from the other organization.

## CERTIFICATION OF PROGRAM INTEGRITY

Recipient Name: \_\_\_\_\_

Recipient Number: \_\_\_\_\_

**I certify that the governing body has received and reviewed a written report from the executive director pertaining to the recipient's compliance with the program integrity requirements of 45 CFR 1610 and authorized me, based on the governing body's review and discussion of the director's report, to certify that:**

1. The recipient is a legally separate entity from any organization which engages in restricted activity; *and*
2. Except for funds provided to a bar association, *pro bono* program, private attorney or law firm, or other entity for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, since January 1, 1997, the recipient has not transferred LSC funds to any organization which engages in restricted activity; *and*
3. Since January 1, 1997, the recipient has not utilized recipient funds or resources to subsidize the restricted activity of any organization; *and*
4. The recipient meets the requirements of 45 C.F.R. 1610.8(a) in that the recipient is physically and financially separate from any organization which engages in restricted activity. Factors relevant to the Board's determination of program independence and integrity include:
  - a. The existence of separate personnel;
  - b. The existence of separate accounting and timekeeping records;
  - c. The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities;
  - d. The extent to which signs and other forms of identification which distinguish the recipient from the other organization are present.

**On behalf of the governing body, I acknowledge that compliance with the integrity and independence requirements of 45 C.F.R. 1610.8(a) is a prerequisite to the recipient receiving continued funding from the Legal Services Corporation.**

\_\_\_\_\_ (Chair or President of the Board)  
\_\_\_\_\_ (Date)