

PROGRAM LETTER 98-2

TO: All LSC Program Directors

FROM: John A. Tull, Vice-President, Programs

DATE: April 28, 1998

SUBJECT: Fund Balances Waivers: 45 C.F.R. Part 1628

This is to remind you of the criteria established in 45 C.F.R Part 1628.4, for approving waivers of excess fund balances. Under this part of the regulation, LSC may approve waiver requests for excess fund balances due to “extraordinary circumstances.” Section 1628.4(b)(5) describes “extraordinary circumstances” as “windfall receipts for which a recipient cannot reasonably plan, such as proceeds from the sale of property, receipt of direct payments to attorneys and collection of insurance proceeds.”

In 1995, the Corporation provided advance guidance to programs that LSC would regard the serious threat of a drastic reduction in funding for 1996 as meeting the “extraordinary circumstances” standard. Such a reduction would have a severe impact on recipients’ ability to deliver services to eligible clients and it was deemed prudent to plan for it and retain funds in order to avoid or ameliorate a drastic and abrupt reduction in service to clients.

Beginning with December 31, 1997 fund balances, LSC will no longer consider the 1996 funding cuts as an “extraordinary circumstance” justifying a waiver. To obtain a waiver of the 1997 fund balances, recipients must specify the extraordinary circumstances consistent with those described in §1628.4(b)(5). To provide guidance, here are some examples of circumstances that would justify a waiver:

- 1) windfall receipts from attorney fee awards consistent with current restrictions; insurance proceeds; sale of property and from other funding sources, for which the program could not reasonably plan;
- 2) savings from an unusually high incidence of staff attrition;
- 3) carryover of funds designated for capital purchases for which LSC’s prior approval was obtained; and

- 4) direct payments to private attorneys participating in recipient's PAI program, consistent with the provisions of §1628.3(d).

Examples of circumstances that would **not** justify a waiver:

- 1) savings from a normal level of staff attrition;
- 2) windfall receipts for which the program could reasonably have planned; e.g., windfall receipts during the first quarter of the year; and
- 3) carelessness in budgeting or allocating resources.

We intend, however, to continue to use the "advance guidance" procedure for programs that anticipate a fund balance in excess of 10% of support and have a good reason for expending the excess funds in the next fiscal year. To utilize this procedure, a program should write to LSC as far in advance of its fiscal year end as possible, describing the anticipated excess fund balance, the reasons why it is expected, and why it would be more economical and effective to expend this excess fund balance in the next fiscal year. For example, a program may be planning a substantial purchase which could be made more advantageously in the next fiscal year than in the current fiscal year, or a program may have specific reasons to expect a significant diminution of non-LSC funding in the next fiscal year and may want to save its current surplus to even out available resources.

If we agree with the program that it has justified the anticipated excess funds carryover, we will respond with an advance guidance letter stating that the program may plan for an excess fund balance up to a certain dollar amount. The program must still submit the normal fund balance waiver request after its audit has been completed. LSC will consider the advance guidance in the approval process and approve the waiver if the information submitted is consistent with the information submitted in support of the advance guidance request.

This memorandum also is to remind Program Directors who intend to submit requests for waivers of excess fund balances for the year ended December 31, 1997, to ensure that their requests are submitted within the deadline established in §1628.4. Annual audits for the year ended December 31, 1997, are due to be submitted to the Office of the Inspector General by April 30, 1998; consequently, the deadline for submission of fund balance waiver requests is May 31, 1998. LSC will waive the time requirement only under extraordinary circumstances, such as, an extension was given to the program for submission of the audit, or there was a change in program directors around the time the audit was completed.

If you have any questions concerning this memorandum, please telephone Jay Brown, Office of Program Operations, at (202) 336-8828 at your earliest convenience.