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PROGRAM LETTER 99-3

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TO: All LSC Program Directors

FROM: Danilo Cardona, Acting Vice President for Programs

DATE: July 14, 1999

SUBJECT: Documentation of Asset Determinations and Citizenship/Alien Eligibility

The purpose of this Program Letter is to remind all recipients of Legal Services Corporation (“LSC” or the “Corporation”) funding that asset determinations for each applicant for legal assistance must be documented as part of the recipient’s eligibility determination, that a written citizenship attestation is required for each citizen who applies in person for legal assistance, and documentation of eligible alien status is required of all non-citizens who apply in person for legal assistance. These actions are required in order to ensure compliance with the LSC Act and regulations, and to ensure the accuracy and reliability of information provided in Case Service Reports to LSC and the United States Congress.

LSC’s management has discovered through on-site reviews, audits by the General Accounting Office, and discussions with recipients regarding the Case Service Reporting Self-Inspection Procedure that, while many recipients make appropriate inquiry regarding an applicant’s assets, neither such inquiry nor the applicant’s responses are consistently documented. Moreover, it has come to our attention that citizenship/alien eligibility documentation is absent in many instances of brief advice and consultation provided to persons applying, in person, for legal assistance. Although the extent of this oversight is unknown, all recipients are reminded to document the asset determination for each applicant for legal assistance. In addition, recipients are reminded that citizenship attestations, or documentation of alien eligibility as appropriate, are required of each applicant for legal assistance who appears in person, as well as any client who receives

continuous representation. All such documentation is to be preserved and maintained in the client's file.¹

LSC regulations and program instructions require that recipients document and preserve asset information obtained from each applicant for legal assistance. Recipients are required to adopt a simple form to obtain information to determine eligibility, and preserve the information so obtained. 45 CFR 1611.7(a). There is nothing in the regulations to suggest that the use of the term "eligibility" is limited to income. Rather, the regulations establish that the information which recipients must obtain in order to determine financial eligibility includes both income and asset information. Accordingly, consistent with 45 CFR 1611.6(c), recipients are instructed to identify and document all of the liquid and non-liquid assets of all persons who are resident members of a family unit, as provided by each recipient's asset guidelines established pursuant to 45 CFR 1611.6. Such assets may include, but are not limited to, savings, checking accounts, real property (except that the recipient may exclude the client's principal residence), personal property (except that the reasonable equity value in essential work related equipment of the applicant or a member of the family unit may be excluded if the owner is attempting to produce income consistent with the fair market value of such equipment), stocks, bonds, investments, etc.

Regarding the documentation requirements relative to citizenship/alien eligibility, LSC regulations require that all applicants for legal assistance who claim to be citizens attest, in writing, that they are citizens. 45 CFR 1626.6(a). Consistent, with the supplementary information published in connection with Part 1626, until such time as LSC provides a standard attestation form, recipients should continue to use their current attestation forms. *See*, Fed. Reg. Vol. 62, No. 79, page 19,412 (April 21, 1997). All such citizenship attestations are to be preserved and maintained in the client's file.

LSC regulations also require that aliens seeking legal assistance submit appropriate documents to verify eligibility. 45 CFR 1626.7(a). Documents appropriate to verify alien eligibility are identified in the appendix to Part 1626. Where it is permissible to copy such documents, such copies are to be preserved and maintained in the applicant/client's file. In other instances, where it is impermissible to copy the documentation verifying eligibility, a description of the document, containing the name of the issuing agency, the date of issuance, and relevant form numbers, is to be maintained, in lieu of a copy of the document, in the client's file.

The only exceptions to the citizenship attestation/alien eligibility documentation requirements discussed *supra* are for those instances where the only LSC funded legal assistance provided by the recipient is advice or brief service by telephone, which does not include continuous

¹ Recipients are further reminded that pursuant to 42 USC § 2996g(b), the Corporation requires that closed client files be retained for five years. If the law in your state permits the retention of closed client files for a period of less than five years, recipients are instructed to follow the Corporation's five-year retention period. If the law of your state requires retention for a period of time longer than five years, then recipients should follow the law of their state.

representation, and persons who receive only intake or referral services. In other words, where the only contact between the recipient and the applicant for legal assistance is by telephone, and the LSC funded legal assistance provided by the recipient does not exceed advice or brief service, the documentation requirements set forth at 45 CFR 1626.6(a) and 1626.7(a) are inapplicable. Nonetheless, LSC requires that recipients make appropriate inquiry of each and every telephone applicant and record such inquiry and response(s). All such documentation should be maintained in the client file.

In those instances where an ineligible alien seeks legal assistance, recipients may complete intake and either reject the applicant or refer the applicant to a private attorney (other than a participating PAI attorney), a non-LSC funded legal services provider, or a non-legal organization that provides immigration assistance. Since such applicants are not “eligible clients”, as defined by 45 CFR 1600.1, and the recipient cannot accept the request for legal assistance, the documentation requirements set forth at 45 CFR 1626.6(a) and 1626.7(a) are inapplicable.

Thank you for your anticipated cooperation. Should you have any questions, please feel free to contact my office.