Configuration Proposal

Each grantee-plaintiff[1] submits for review by the Legal Services Corporation ("LSC") the following proposal designed to satisfy LSC's program integrity regulations, while respecting the First Amendment protection afforded to grantees and donors to utilize their non-LSC funds free from "undue burdens" imposed by the government.

1. **Legal separation:** Each grantee-plaintiff (the "LSC grantee affiliates") seeks permission to establish a legally separate, separately incorporated affiliate (occasionally referred to in this memorandum as the "non-LSC grantee affiliate") to receive and administer funds received from sources other than LSC. The non-LSC grantee affiliate will be authorized to provide all forms of legal representation to clients consistent with its mission. The LSC grantee affiliate will restrict its activities to forms of representation permitted by the LSC Act and LSC appropriations bills.

2. **Easily distinguishable names:** The non-LSC grantee affiliate will be named in a manner that conveys its separate legal, financial and programmatic status.

3. **Separate Boards of Directors:** The two affiliates will maintain separate governing structures, including separate Boards of Directors. The membership of the non-LSC grantee affiliate Board of Directors may consist of some or all of the persons who sit on the LSC grantee Board of Directors.

4. **Non-subsidization:** The two affiliates will ensure that LSC funds do not subsidize activities that the LSC Act or LSC appropriations bills bar LSC from funding. The actual economic cost of all other activities will be borne by the non-LSC grantee affiliate, unless LSC explicitly permits the LSC grantee to use non-LSC funds for those purposes. The two affiliates will adopt and utilize accounting procedures to ensure that each affiliate bears a fair and accurate proportionate share of all fixed and variable expenses incurred during the joint operation of the affiliates.

   The accounting procedures that both affiliates will follow to ensure

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[1]The phrase "grantee plaintiffs" includes the current grantees Legal Services for New York City and South Brooklyn Legal Services, each of which receives support from LSC, as well as substantial support from private and other government donors. The phrase "grantee plaintiffs" also includes the former grantee Farmworker Legal Services of New York, which now receives all of its support from private and other government donors, and which submits this proposal with the understanding that, if it is approved, or if the Court rules that LSC must permit the operation of this configuration, it will be eligible to re-apply for LSC funding.

that LSC funds do not subsidize activities that the LSC Act or LSC appropriations bills bar LSC from funding will include the following established procedures:[2]

a) All procedures that the LSC grantee plaintiffs currently utilize to satisfy LSC's accounting regulation, which requires LSC grantees to ensure that "[n]o funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with" certain specified activities. 45 C.F.R. § 1612.10.

b) All procedures that the LSC grantee plaintiffs currently utilize to satisfy LSC's cost allocation regulation, which permits LSC grant recipients to allocate costs to their LSC grant only if they can demonstrate that the cost is "[i]n compliance with" the appropriations and LSC Act restrictions on grantee activities, and only if the costs benefit the grant. 45 C.F.R. § 1630.3(a)(4), (c).

5. **Employee timekeeping measures:** All legal personnel employed by either affiliate and spending any time on LSC-funded activities will maintain time records of their activities to ensure that accurate summaries of their activities are readily available in order to ensure that LSC funds are not expended for activities that the LSC Act or LSC appropriations bills bar LSC from funding. The records will be sufficient to satisfy LSC's timekeeping regulation, which requires that "[t]ime records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient." 45 C.F.R. § 1635.3(b). In accordance with LSC regulations, for accounting purposes employee time may be allocated based on personnel activity reports, which are prepared monthly, and which contain a reasonable, after-the-fact estimate of the distribution of the activities of each compensated employee whose time is charged directly to an LSC grant. 45 C.F.R. § 1630.3(d).

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[2] LSC has already found these procedures to be adequate to ensure that LSC funds are not used to pay for certain non-LSC funded activities that are currently performed in the same offices and with the same personnel as are utilized to perform LSC-funded activities. *See* 62 Fed. Reg. 68219, 68221-68222 (Dec. 31, 1997) (acknowledging that the procedures mandated by the cost allocation regulation permit LSC grantees to account for both direct costs, such as attorney time, and indirect costs, such as a proportion of the cost of renting space used to serve clients under the LSC grant, so as to ensure that the LSC grant is charged for only those activities attributable to it); 45 C.F.R. § 1612.10 (requiring LSC grantees to use accounting procedures adequate to ensure that "[n]o funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with" certain specified activities).

6. **Signage and Disclaimers:** The two affiliates will ensure that clients, judges, government officials and the general public are informed that the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any of the activities of the non-LSC grantee affiliate. Notification will include the prominent display of the separate names of the affiliates, including separate letterheads, business cards, and litigation backs. It will also include prominently displayed signage on the front doors, in the waiting areas, in conference rooms, and in attorney offices explaining that the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any activities of the non-LSC grantee affiliate. A written explanation will be made available to all persons entering the premises of the program explaining that the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any activities of the non-LSC grantee affiliate. Letters will be filed with courts, agencies and government officials that routinely come into contact with either affiliate explaining that the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any activities of the non-LSC grantee affiliate. Contacts with the media will specify whether the activity in question is funded by LSC, and will explain the affiliates are separate, independent non-profit corporations, and that LSC neither endorses nor funds any activities of the non-LSC grantee affiliate.

7. **Equipment:** The two affiliates will share equipment, such as telephone lines, computers, case management systems, libraries, legal research facilities, office furnishings, printers, fax machines, and web sites. Each affiliate will bear its fair and accurate share of the costs attributed to any shared equipment, pursuant to the accounting procedures described in paragraph 4. Notices and disclaimers will be displayed making it clear that the non-LSC grantee affiliate is not expending LSC funds in connection with activities that the LSC Act or LSC appropriations bills bar LSC from funding, pursuant to the signage and disclaimer measures described in paragraph 6.

8. **Physical premises:** The two affiliates may operate in the same physical premises. The affiliates will utilize the accounting measures described in paragraph 4 above to allocate the cost of rental or ownership between the two affiliates in a fair and accurate manner that reflects usage.

9. **Employee time:** The two affiliates may share legal, support and supervisory personnel (including an Executive Director, who may direct both programs), who may work part-time for each affiliate. Pursuant to the accounting procedures described in paragraph 4, and the time records described in paragraph 5, the cost of personnel will be allocated between the LSC grantee affiliate and the non-LSC grantee affiliate in strict compliance with the nature of the activities undertaken. No activity that the LSC appropriations bills bar LSC grantees from performing

will be allocated to the LSC grantee. No employee may engage in activities barred by the LSC restrictions during time paid for with LSC funding.

10. **Intake:** The two affiliates may share a common intake and allocation mechanism to refer clients and cases between the two affiliates at the commencement of any representation, and as the representation proceeds. The affiliates will ensure that the LSC grantee does not bear more than its fair share of the intake and allocation mechanism in accordance with usage.