

## Memorandum

**To:** All Legal Services Corporation Program Directors

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

**Date:** December 8, 1997

**Ref:** **Recordkeeping Requirements**

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During 1997, the Legal Services Corporation (“LSC or Corporation”) Board of Directors published 16 regulations in final form. Ten of these regulations contain a requirement that a recipient maintain written policies and or procedures to guide staff in complying with the regulations. Further, six regulations require that recipients maintain, in addition to policies and or procedures, certain records which are not specified in the regulations.

This memorandum is to inform you that, pursuant to 42 U.S.C. 2996g(b), the Corporation is hereby prescribing effective January 30, 1998, certain specific recordkeeping, as described in the attached requirements and forms. All records outlined in the attachments to this memorandum must be retained for five years. The recordkeeping requirements are mandatory. The recipients must either use the attached forms or other forms approved by your auditor. If auditor approved forms are used, they must include all categories of information as set forth in the attached forms, as all information on the attached forms is mandatory. Further, recipients are reminded of the Corporation’s authority to solicit additional information relevant to oversight, and therefore, LSC may request documentation beyond that outlined in the attachments.

Pursuant to 42 U.S.C. 2996g(b), the Corporation is hereby prescribing that closed client files also be retained for five years. If the law of your State requires the retention of closed client files for a period of less than five years, you are to follow the Corporation’s five year retention period. If the law of your state requires more than five years, then you should follow the law of your state.

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Further, the Corporation reminds recipients that in 1996, the LSC's 1996 Appropriations Act Pub-L-104-134, 110 Stat.1321 (April 26, 1996), required LSC recipients to make available a wide range of records to any independent auditor or monitor receiving Federal funds who is conducting auditing or monitoring, including any auditor or monitor of the Corporation. This requirement has been continued in subsequent appropriations acts and is currently in force. Thus, all documentation and forms pertaining to the attached recordkeeping requirements should be made available to Corporation staff, and to any authorized auditor or monitor.

Thank you for your immediate attention to these requirements.

## 45 C.F.R. § 1609.4

### **Recordkeeping**

1. Pursuant to 45 C.F.R. § 1609.4, the recipients should maintain written policies and procedures to guide staff in complying with 45 C.F.R. Part 1609.
2. If the recipient relies on § 1609.3(b)(2), relating to consultation with the private bar, to accept a fee-generating case without first attempting referral, the recipient shall maintain:
  - (a) A memorandum containing the names of appropriate representatives of the private bar with whom the recipient has discussed fee-generating cases and the bases on which the recipient has concluded that private attorneys in its service area do not accept, or do not accept without prepayment of a fee, particular types of fee-generating case; and
  - (b) A list of the types of such fee-generating cases that private attorneys do not accept.
3. Recipients shall establish a recordkeeping system which includes appropriate documentation in individual case files or elsewhere that indicates the basis for taking each fee-generating case not included in paragraph 2 above, including records that:
  - (a) indicate the date when a referral was rejected by the lawyer's referral service; or
  - (b) indicate the names of two private attorneys who rejected the referral; or
  - (c) indicate that neither the lawyer referral service nor two named private attorneys would consider the referral without prepayment of a consultation fee; or
  - (d) indicate that the recipient's executive director, or designee, has determined that the case cannot be referred to the private bar because one of the following circumstances exist including documentation:
    - (i) that past attempts to refer similar cases have generally been futile; or
    - (ii) describing the emergency circumstance that compelled the recipient to take immediate action before referral could be made of a fee-generating case; or
    - (iii) that recovery of damages was not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.
4. As part of its recordkeeping system, the recipient shall maintain a separate file that identifies and summarizes each instance in which a fee-generating case, other than cases accepted under § 1609.3(b)(2) (paragraph 2. above), was accepted. (A copy of LSC's form should be used as the summary.)
5. For court-appointed cases that would otherwise be considered to be fee-generating, recipients should include in the client's file or in a central file copies of the court order directing that the recipient or employee of the recipient provide representation in the case and a copy of the statute or court rule that permits such appointment. If the appointment was made orally or was subject to an unwritten practice, the recipient should include an appropriate written description of the appointment or practice.

**FORM**

# 45 C.F.R. § 1609.4

**(Case number or name of case which has been filed in court or other public forum)**

This case is a fee generating case. If the case were undertaken on behalf of an eligible client by an attorney in private practice, there would be reasonable expectation that the case could result in a fee for legal services from an award:

- (1) to a client \_\_\_\_\_ ; or
- (2) from public funds \_\_\_\_\_ ; or
- (3) from the opposing party \_\_\_\_\_ 1609.2(a)

Although, if undertaken by an attorney in private practice, there would be a reasonable expectation that the case could result in a fee for legal services, this is not a fee-generating case because a court appointed the Name of the Program or its employee to provide representation in this case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction \_\_\_\_\_. [see below]

**A. Representation is provided in this fee-generating case because:**

- (1) the case been rejected by the local lawyer referral service Name of referral service, or by two private attorneys Names of attorneys on date \_\_\_\_\_ ; or
- (2) neither the referral service Name of referral service, nor two private attorneys Names of attorneys will consider the case without payment of a consultation fee \_\_\_\_\_ 1609.3(a)

(This section needs to be addressed only if there are no checks in the prior section)

**B. Representation was provided in this fee-generating case without first attempting to refer the case because:**

- (1) the eligible client is seeking only statutory benefits as defined by § 1609.3(b)(1) \_\_\_\_\_ ; or
- (2) The director has determined that referral of the case to the private bar is not possible because:
  - (i) documented attempts to refer similar cases in the past generally have been futile \_\_\_\_\_ ; or
  - (ii) emergency circumstances compel immediate action before referral can be made, but the client has been advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time \_\_\_\_\_ ; or
  - (iii) recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorney's fees are not likely to be available \_\_\_\_\_

Name of Principal Advocate: \_\_\_\_\_ Date completed: \_\_\_\_\_

This form should be used each time the recipient takes a fee generating case and should capture the reason why the case was taken.

## 45 C.F.R. § 1612.10

### Recordkeeping

Pursuant to 45 C.F.R. § 1612.10, recipients shall maintain the following documents:

1. Policies and procedures to guide its staff in complying with the requirements of 45 C.F.R. Part 1612.
2. Written requests from a governmental agency or official, elected official, legislative body, committee, or member thereof made to an employee, or to a recipient to:
  - testify orally or in writing;
  - provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation;
  - participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 8561, et, seq, or comparable State or local laws.

And copies of any written responses.

3. Copies of semi-annual reports describing legislative and rulemaking activities conducted pursuant to § 1612.6.
4. If the recipient supports or conducts a training program, the recipient shall maintain a complete set of any training materials, including handouts and the training agenda.<sup>1</sup>
5. In accordance with § 1612.10(b), separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.
6. On an annual basis, the recipient shall maintain a list for the auditor of the registered lobbyists employed by the program.

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<sup>1</sup> Supporting a training does not include paying a fee to attend a training put on by others.

**SEMI-ANNUAL REPORT ON LEGISLATIVE AND RULEMAKING  
ACTIVITIES CONDUCTED PURSUANT TO 45 C.F.R. § 1612.6**

**Instructions:** *This report must be submitted to the Legal Services Corporation on or before July 31 of each year for activity that occurred between January 1 and June 30 of that year, and on or before January 31 of each year for activity that occurred between July 1 and December 31 of the prior year. The report is required to be submitted even if the recipient did not engage in any reportable activity during the particular reporting period. In such a situation, the recipient should enter "No activity under § 1612.6."*

*For each activity undertaken by the recipient during the reporting period, the recipient should indicate the type of activity, the provision of §1612.6 under which the activity was conducted, and the date(s) or period(s) of time when the activity was conducted. A copy of § 1612.6 is attached to this form for reference. Recipients should also include a brief description of the activity OR attach a copy of written materials from the recipient's files that indicates the nature of the activity (e.g., copy of written testimony or written comments submitted in response to the request or notice of rulemaking). Examples of appropriate report entries are:*

**Recipient Name and Number:** \_\_\_\_\_  
**Reporting Period:** \_\_\_\_\_

<u>Type of Activity</u>	<u>Section of 1612.6.</u>	<u>Date(s)</u>
<u>Testimony</u> <i>Description: Testimony attached</i>	<u>§1612.6(a)(1)</u>	<u>April 26, 1997</u>

<u>Type of Activity</u>	<u>Section of 1612.6</u>	<u>Date(s)</u>
<u>Comment in public rulemaking</u> <i>Description: Oral comments during public hearing on State Attorney General's child support enforcement regulations</i>	<u>§1612.6(e)</u>	<u>Sept. 15, 1997</u>

<u>Type of Activity</u>	<u>Section of 1612.6</u>	<u>Date(s)</u>
<u>Communication w/ State legislator</u> <i>Description: Meetings with State Sen. John Smith re: filing fee surcharge bill to fund legal services programs in this State.</i>	<u>§1612.6(f)</u>	<u>Jan.-Mar., 1997</u>

RECIPIENTS MAY ATTACH ADDITIONAL COPIES OF FORMS AS NEEDED.

**SEMI-ANNUAL REPORT ON LEGISLATIVE AND RULEMAKING  
ACTIVITIES CONDUCTED PURSUANT TO 45 C.F.R. § 1612.6**

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

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

Recipient Period: \_\_\_\_\_

<u>Type of Activity</u>	<u>Section of 1612.6</u>	<u>Date(s)</u>
_____	_____	_____

**Description:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<u>Type of Activity</u>	<u>Section of 1612.6</u>	<u>Date(s)</u>
_____	_____	_____

**Description:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<u>Type if Activity</u>	<u>Section of 1612.6</u>	<u>Date(s)</u>
_____	_____	_____

**Description:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<u>Type of Activity</u>	<u>Section of 1612.6</u>	<u>Date(s)</u>
_____	_____	_____

**Description:** \_\_\_\_\_  
\_\_\_\_\_

**45 C.F.R. § 1617.4**

## **Recordkeeping**

1. Pursuant to 45 C.F.R. § 1617.4, the recipient shall maintain written policies and procedures to guide its staff in complying with 45 C.F.R. Part 1617.
2. Maintain a list of class action cases where the recipient or recipient attorney is attorney of record and is involved in non-adversarial activities. Such list should contain the following information:
  - case name;
  - court; and
  - status of the case, including description of the non-adversarial activities.

## **45 C.F.R. § 1620.7**

### **Recordkeeping**

Pursuant to 45 C.F.R. § 1620.7, the recipient shall maintain of the following:

1. Policies and procedures pertaining to 45 C.F.R. Part 1620, including:
  - (a) written procedures adopted by the governing body for establishing priorities for the use of LSC and non-LSC resources;
  - (b) written policies and procedures adopted by the governing body to guide the recipient in undertaking emergency cases or matters not within the recipient's established priorities.
2. Board minutes indicating the annual review of priorities by the Board of Directors and copies of any written documents accompanying the review.
3. Written statement of priorities adopted by the governing body.
4. Annual report summarizing the review of priorities detailing the information outlined in §1620.7(c).
5. Signed written agreements by all staff who handle cases or matters, or are authorized to make decisions about case acceptance. This agreement must indicate that the signatory: has read and is familiar with the priorities of the recipient; has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and will not undertake any case or matter for the recipient that is not a priority or an emergency.
6. Board minutes or written documents indicating that quarterly reports were sent or presented to the recipient's governing body on all emergency cases or matters undertaken that were not within the recipient's priorities, and indicating that the quarterly reports included a rationale for undertaking each such case or matter and copies of any written documents accompanying the reports.
7. Annual report to the Legal Services Corporation on all emergency cases or matters undertaken that were not within the recipient's priorities.

**ANNUAL REPORT OF NON-PRIORITY CASES**  
**Pursuant to 45 C.F.R. § 1620.7(b)<sup>2</sup>**

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

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

Total Number of emergency non-priority cases opened: \_\_\_\_\_

Total Number of emergency non-priority matters opened: \_\_\_\_\_

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
<sup>2</sup> Report due on January 31, for the prior year,

## **45 C.F.R. § 1626.12**

### **Recordkeeping**

1. Pursuant to 45 C.F.R. § 1626.12, the recipient shall maintain written policies and procedures to guide its staff in complying with 45 C.F.R. Part 1626. The recipient shall maintain records sufficient to document the recipient's compliance with Part 1626.
2. Unless the only service that is provided is brief advice and telephone consultation, the recipient shall maintain in each client's file copies of the documents required by this regulation to determine citizenship or eligible alien status. If the client is a citizen at a minimum, this requires a signed citizenship attestation form maintained in each client's file for verification of citizenship. If the recipient has reason to doubt that the client is a U.S. citizen, then documentation that citizenship was verified in accordance with § 1626.6(b) shall be maintained in the client's file. If the client is not a U.S. citizen, then documentation shall exist in the client's file supporting a determination of eligible alien status.
3. Where compliance with §§ 1626.6 or 1626.7 is delayed because of emergency circumstances under § 1626.8, the recipient shall include in the client's file written documentation that details the nature of the emergency.

## **45 C.F.R. § 1627.8**

### **Recordkeeping Subgrants and Membership Fees or Dues**

Pursuant to 45 C.F.R. § 1627.8, the recipient shall maintain written policies and procedures to guide its staff in complying with 45 C.F.R. Part 1627.

## 45 C.F.R. § 1633.4

### Recordkeeping

1. Pursuant to 45 C.F.R. § 1633.4, the recipient shall maintain written policies and procedures to guide its staff in complying with 45 C.F.R. Part 1633.
2. Maintain a list of all cases which involve an eviction from public housing and there is an allegation of drug sale, distribution or manufacture, or possession with intent to sell or distribute.
3. In each clients file for such cases, maintain documentation which demonstrates why the representation is permissible.

# **FORM**

**(Please include in each case file involving these issues)**

## **45 C.F.R. § 1633.4**

**(REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS**

**CASE NO. \_\_\_\_\_**

This case involves an allegation of drug sale, distribution or manufacture, or possession with intent to sell or distribute. However, representation is permissible because:

1. This case involves a client who is neither currently charged with, nor has been convicted of either: the illegal sale, distribution or manufacture of a controlled substance, or with the possession of a controlled substance with the intent to sell or distribute it; or
2. The housing authority in the eviction proceeding does not allege that the illegal drug activity for which the client is charged or convicted threatens the health or safety of other tenants or employees of the housing authority.

## **45 C.F.R. § 1636.5**

### **Recordkeeping Client Identity and Statement of Facts**

1. Pursuant to 45 C.F.R. § 1636.5, the recipient shall maintain written policies and procedures to guide its staff in complying with 45 C.F.R. Part 1636.
2. In each case where the recipient (1) files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant or (2) engages in pre-complaint settlement negotiations, the recipient shall maintain in each client's case file the statement(s) of facts prepared prior to the initiation of litigation or pre-complaint negotiations in accordance with 45 C.F.R. Part 1636.
3. In each case where the recipient (1) files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, but does not identify the plaintiff(s) by name in the complaint or in a separate notice to the defendant against whom the complaint is filed, or (2) participates in pre-litigation settlement negotiations, but does not identify the plaintiff(s) it represents to prospective defendants, the recipient shall maintain in each such client's file, documentation indicating the reason, under § 1636.2(a)(1), that such identification was not made.
4. If, consistent with § 1636.2, preparation and/or signing of the statement of facts is delayed because of an emergency, the recipient also shall maintain in the case file a statement of the nature of the emergency.

## 45 C.F.R. § 1637.5

### **Recordkeeping Representation of Prisoners**

1. Pursuant to 45 C.F.R. § 1637.5, the recipient shall maintain written policies and procedures to guide its staff in complying with 45 C.F.R. Part 1637 .
2. Maintain a list of cases in which the recipient is representing incarcerated clients, in litigation or administrative proceedings challenging the conditions of incarceration.
3. In each case where the recipient has knowledge that a person whom the recipient is representing in civil litigation has become incarcerated after the litigation commenced, the recipient shall include in the client's file, either:
  - (a) Documentation evidencing the date of the recipient's notification of the client's incarceration, and the recipient's efforts to withdraw from the litigation; or
  - (b) A statement detailing the reason(s) why the recipient anticipates that the period of incarceration is likely to be brief and the litigation is likely to continue beyond the period of incarceration.

## **45 C.F.R. § 1642.6**

### **Recordkeeping Attorneys' Fees**

1. Pursuant to 45 C.F.R. § 1642.6, the recipient shall maintain written policies and procedures to guide its staff in complying with 45 C.F.R. Part 1642.
2. For each case in which a recipient receives an award of attorneys' fees as defined in §1642.2, the recipient shall include in the accounting records documentation indicating that the case was filed prior to April 26, 1996.
3. In accordance with § 1642.2(b)(1), for each case in which a recipient receives compensation for representation in a case where the recipient or an employee of a recipient has been appointed to provide the representation pursuant to a statute or court rule or practice of equal applicability to all attorneys in the jurisdiction, the recipients shall include in the client's file copies of the court order directing that the recipient or employee of the recipient provide representation in the case and a copy of the statute or court rule that permits such appointment. If the appointment was made orally or was subject to an unwritten practice, the recipient should include an appropriate written description of the appointment or practice, as the case may be.
4. In accordance with § 1642.2(b)(4), for each case in which a recipient receives reimbursement for out-of-pocket costs and expenses that come out of the client's recovery of damages or statutory benefits, the recipient shall include in the client's file or elsewhere a copy of the retainer agreement or other document indicating that the client has agreed to reimburse the recipient for such costs and expenses.
5. As part of its recordkeeping system, the recipient shall maintain a separate file that identifies all attorneys' fees received.