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MEMORANDUM

TO: All LSC Program Directors

FROM: John A. Tull, Director
Office of Program Evaluation, Analysis and Review

DATE: November 21, 1995

RE: **Disposition of LSC Fund Balances and Property Purchased with LSC Funds by Programs Which Will Not Be Recipients of LSC Funding in Grant Year 1996**

In light of pending Congressional legislation which would eliminate funding for support centers, require implementation of competition, and impose additional restrictions on the delivery of legal assistance, LSC will continue to provide guidance on issues facing the legal services community. This memorandum addresses the disposition of LSC fund balances and property owned by current recipients which will not receive LSC funding in 1996.

LSC FUND BALANCES

Generally, 45 C.F.R. Part 1628 governs the disposition of LSC fund balances which are between 10 and 25 percent of LSC support. However, 1995 LSC Grant Assurance 11 requires programs which will not be recipients of LSC funding in grant year 1996, for whatever reason, to return all fund balances in the LSC account, including derivative income from LSC-funded activities, to LSC.

LSC's policy governing excess fund balances, as set forth at 45 C.F.R. Section 1628.3(d), permits retention of excess fund balances in extraordinary circumstances. In accordance with this policy, LSC will grant waivers of 1995 Grant Assurance 11 to enable former recipients to use remaining 1995 LSC fund balances for close-out activities, including the fulfillment of professional responsibilities to existing clients in pending cases and matters.

NON-EXPENDABLE PROPERTY

Section 2(f) of the *Property Management Manual for LSC Programs* governs the retention and disposal of non-expendable property purchased in whole or in part with LSC funds. Pursuant to this Section, a program which will cease to be a recipient of LSC funds may retain non-expendable property (purchased in whole or in part with LSC funds), provided that the program continues to deliver civil legal assistance to low income people.

Disposal of Non-Expendable Property

A program which will cease to be a recipient of LSC funds, and which will no longer need non-expendable property purchased with LSC funds for civil legal assistance activities, must dispose of the property according to Section 2(f) of the *Property Management Manual*. An acceptable, even preferable, method of disposing of non-expendable property is to transfer the property to another non-profit program providing civil legal assistance to the same community or service area. This preference is consistent with Section 34(g) of OMB Circular A-110, *Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*.

Programs may also sell the non-expendable property and use the proceeds from the sale for the general purpose of delivering civil legal assistance to low-income persons. **But, if a program will simultaneously cease to be an LSC recipient in 1996 and a provider of civil legal assistance to low income people, the proceeds from the sale of the program's non-expendable property will be considered LSC derivative income and must be included in its LSC final fund balance amount.**

Accounting for Non-Expendable Property

A program not receiving LSC funding in 1996 must account for all property which was purchased in whole or in part with LSC funds and which has a current book or market value exceeding $1,000. LSC's authority to require an accounting for property derives from Section 1008(a) of the LSC Act and is consistent with Section 71(f) of OMB Circular A-110, which requires an accounting for property upon completion of a grant award. A program's existing list of inventory of non-expendable property may be submitted in lieu of this accounting. Either the accounting or the inventory list should include for each item of property:

1) a brief description of the property item;
2) the date of acquisition of the property item;
3) the total amount of funds expended to acquire the property;
4) the amount of LSC funds expended to acquire the property;
5) the current book or estimated market value of the property; and
6) if the property is to be retained, a certification that the program shall use the property in connection with the delivery of legal assistance to low-income persons.

This accounting or the inventory list must be submitted to the OPEAR Director no later than March 31, 1996.

REAL PROPERTY

The disposal of a program's real property purchased in whole or in part with LSC funds is generally subject to an agreement which the program entered into with LSC at the time of the acquisition of the property. LSC sought to preserve its reversionary interest in the real property by including clauses in the agreements which either restrict the use or control the disposal of the property in the event of cessation of LSC funding. At that juncture, LSC and programs owning real property will have mutual interests in releasing the obligations which attach to ownership of real property. For this reason, LSC will seek to achieve methods of disposal which will allow LSC to recoup its interest in the property in exchange for a release of LSC's interest in the property. Since there is no uniformity of the terms of the contracts between LSC and programs concerning the acquisition of real property, negotiations will have to be on the case-by-case basis. Please contact the Program Officer responsible for your state for additional information specifically pertinent to the situation of your program's real property.

Accounting for Real Property

Pending the separate negotiations mentioned above, programs which have used LSC funds to acquire real property, and which do not anticipate receiving LSC funding in 1996, must submit to the OPEAR Director, no later than March 31, 1996, an accounting for real property. This accounting requirement, which is in accordance with Section 71(f) of OMB-Circular A-110, applies irrespective of the existence of an agreement with LSC concerning the real property.

The accounting for real property should include:

1) the address and a brief description of the property and the date it was acquired;

2) the total amount of funds expended to acquire or improve the property, including principal and interest payments, and payments for capital improvements;

3) the amount of LSC funds expended to acquire or improve the property, including principal and interest payments, and payments for capital improvements;

4) the current assessed and estimated market values of the property;

5) the amount of outstanding debt on property;

6) a statement indicating the program's plan for disposing or retaining the property; and

7) copies of any agreements or contracts governing disposition of the property.

If you have questions concerning any section of this Memorandum, please contact Anh Tu, LSC Program Officer, at (202) 336-8946.