



LEGAL SERVICES CORPORATION

PROGRAM LETTER NO. 4

AUGUST 31, 1995

CRITERIA FOR STATE PLANNING RECOMMENDATIONS

On July 10, 1995, LSC asked the programs in each state to initiate a statewide planning process in conjunction with other individuals and organizations interested in the delivery of legal services. We requested that you develop a plan for the design, configuration and operation of LSC programs in the state in 1996 and future years. We will be guided by that plan in making decisions regarding funding in your state.

In our letter we listed broad issues that each plan should address and noted that we would follow with more detailed criteria. This letter sets forth those criteria and identifies whom you should contact at LSC if you have questions or seek help with your planning efforts.

The presentation of more specific criteria is not intended to suggest that there is only one planning model, nor to dictate who should participate. Not all issues will be equally important in each state, nor is there one solution to the questions raised in this letter.

Through the state planning processes, we seek plans that demonstrate a thoughtful analysis of all the issues and the participation of a variety of stakeholders (e.g., state and local bar associations, IOLTA funders, the judiciary, client groups, non-LSC funded organizations, and others with an interest in legal services).

Timetable

The Corporation recognizes that six months or more may be needed to consider these issues carefully. We hope the process mandated by the Congress ultimately allows that much time and that we can schedule decision-making to accommodate your and LSC's need for careful consideration of these issues as they arise. If we have the time, final statewide recommendations might be expected early next spring, with decisions following as part of the implementation of competition.

The appropriations bill passed by the House of Representatives, however, is much more demanding. It requires that a competitive process for all grants be developed and implemented in time for grant decisions to be made effective by January 1, 1996. As a result, LSC is likely to need state planning recommendations by November 1 of this year.

Program Letter No. 4
August 31, 1995

We know that a November 1 deadline seems impossibly short, particularly in states with complicated issues pertaining to program configuration and related matters. Because we need to anticipate the shorter period during which LSC must make grant decisions, however, we strongly urge you to strive to develop a plan and recommendations by November 1.

We recognize that concerns related to reconfiguration and possible consolidation of programs may take a year or more to address effectively. We do not expect, therefore, that states for which this is a major question will reach closure on these issues this fall. Even at an accelerated pace, LSC hopes to have the option to make interim funding decisions that would give some states and the Corporation at least a year for more studied consideration of complex planning issues, particularly in states with many programs.

Issues to be addressed

We are asking that state planning address the following broad issue areas, each of which is discussed in the following pages:

- I. **Integration of LSC-funded programs into a statewide legal services system;**
- II. **Compliance with the ABA Standards for Providers of Civil Legal Services to the Poor and the LSC Performance Criteria; particularly,**
 - **Advisability of consolidation of programs into entities of sufficient size to deliver services effectively;**
 - Appropriate consideration of efficient intake and the provision of advice and brief service;**
 - Appropriate use of technology;**
- III. **Engagement of pro bono attorneys in a broad range of activities;**
- IV. **Development of additional resources;**
- V. **Transition to the new system with a minimum of disruption to client services.**

I. Integration of LSC-funded programs into a statewide legal services system.

The statewide planning process needs to be concerned with how all organizations providing legal services to the poor, whether funded by LSC or not, will participate in delivering the services most needed by low-income persons in the state. Organizational charters and grantor restrictions often create a complex patchwork. Careful planning is needed among all providers to avoid leaving some pressing legal needs unattended. The statewide planning process should formulate recommendations for an integrated delivery system after determining the most effective application of resources in the state.

A state planning process should take into account all the potential needs of all low-income persons. State plans must include LSC-funded measures to continue to address the special delivery needs of Native American and migrant clients.

The state planning process should also ensure that within each state there is the capacity to engage in permitted representation on statewide issues. Indicia of this capacity are systems designed to train attorneys and paralegals in basic skills and substantive law developments, communicate developments in the law, prepare and update poverty law manuals, ensure that specialized or experienced staff are available to advise or co-counsel with less experienced staff, take advantage of assistance available from other entities, including organizations providing assistance at the national level.

We recognize that there are many uncertainties regarding funding and the conditions under which it will be available. The details of how the Corporation can and will allocate funds will be made available as soon as they become clear. There are a number of issues: 1) whether and how funds will be equalized; 2) how they will be allocated for specific geographic areas; 3) how they will be allocated for specific categories of clients (such as the general population, Native Americans or migrants); and 4) how specific restrictions on types of service will apply.

The Corporation expects the House appropriations bill to be clarified by the Senate bill and the subsequent conference bill. Until that time, planners should not limit their funding assumptions to any single distribution based on the House language but should, instead, consider ranges of LSC funding which may be available within the state as a whole to meet the highest priority needs for legal assistance.

The Corporation anticipates that competition for its grants will be based on proposals to provide services to the existing service areas now covered by its Basic Field programs and, in addition, to continue to serve migrant and Native American clients. Grant applicants, including current providers, will be able to propose serving one or more of the existing service areas. The

Program Letter No. 4
August 31, 1995

statewide planning process should assume that potential grantees will provide a full range of services to clients in current service areas or in combinations of those service areas.

II. Compliance with the ABA Standards for Providers of Civil Legal Services to the Poor and the LSC Performance Criteria.

The goal of the state planning process is the economical and effective delivery of high quality legal services to eligible clients within an integrated delivery system that addresses their most pressing legal needs. This is the standard which will govern decision-making in competition and against which the recommendations of the state planning process will be measured.

State planners are asked to examine each issue in this context. Guidance regarding this fundamental criterion can be found in the Legal Services Corporation Act and regulations and in the Corporation's Performance Criteria. A checklist of key issues in the performance measures is attached as Appendix A. However, the full text of the performance measures will provide the best guidance. Additional information can be found in the ABA Standards for Providers of Civil Legal Services to the Poor.

A. Advisability of consolidation of programs into entities of sufficient size to deliver services effectively.

Size is a factor which, over time, affects the capacity of programs to deliver high quality legal services economically and effectively. Very small programs, in particular, will have difficulty coping with significant funding reductions in the immediate future and static federal funding thereafter. Because of this, LSC asks state planners to consider the consolidation of smaller programs into larger entities.

However, because of the difficulty of addressing this issue in a short time frame, we do not expect final recommendations on program size by fall. LSC hopes to have the option to make interim funding decisions that would allow at least a year for more studied consideration of complex planning issues, particularly in states with many programs. We do not assume that a smaller program cannot be funded in the future. To be funded, however, each applicant must show that it can meet established standards of efficiency, effectiveness and quality.

Planning recommendations should be based on several factors related to size. First, certain administrative functions are fixed (accounting and bookkeeping, audit, grant application and administration, operation of the Board of Directors, fund raising, etc.). As a result, administrative costs of small programs often constitute a larger percentage of their budget resulting in a smaller percentage of total resources available for client service. Moreover, increased institutional presence can enhance fundraising potential (although this can be offset by the loss of a local identity).

Program Letter No. 4
August 31, 1995

Second, larger programs have opportunities that can enhance program effectiveness. Larger staffs may be able to expand priorities to take on a larger number of issues affecting clients and to address common legal problems that affect clients across county lines. There is greater flexibility to respond to staff absences and other emergencies in bigger programs. Larger programs have more flexibility to undertake broader approaches to serving clients, including community legal education, pro se clinics, and hotlines. Programs with larger staffs are better able to develop substantive expertise, to specialize and to provide regular supervision of casehandlers' work. Supervision is particularly important if the availability of support services and expertise diminishes. Larger programs are often better able to attract excellent and diverse staff and management because potential applicants are attracted by the opportunity to work with more experienced professionals and by the greater potential for career progression.

Nonetheless, there are potential losses that should be addressed in any thoughtful analysis of mergers and consolidation. Growth can be accompanied by a dilution of capacity to address local priorities and to maintain local identity. Consolidation planning should take such aspects of reconfiguration into account and, to the extent possible, build in program components which mitigate or prevent them.

We realize that assignment of labels, "very small," "small" and "large" is somewhat arbitrary. There is no hard and fast rule that below a certain size a program cannot function, or that above a certain size it will excel. Still, we have doubts that programs with a poverty population under 30,000 will be able to provide efficient, effective, high quality service. We are also concerned that programs with poverty populations under 60,000 will have a far harder time than larger entities in effectively adapting to an austere funding climate.

While reviewing the options, planners should keep in mind the following aspects of the competitive bidding process should be kept in mind:

- Applicants must bid for all the LSC-funded services to be delivered in each service area. LSC will not entertain applications for less than the full range of services, or for less than the full geographic span of a current service area.
- Unless a small program is confident that it can successfully show its capacity to function economically and effectively, its best chance of success may be to apply with another applicant for more than one service area. It will, of course, be possible for an applicant to bid alone for two or more service areas.
- LSC will be engaged in an open RFP process that invites applications from organizations that are not currently legal services providers. There is no assurance

Program Letter No. 4
August 31, 1995

therefore, that current programs or proposed merged programs will receive grant awards.

- While planning for consolidation may well extend into next year, some programs which propose to consolidate will be prepared to submit an application reflecting the change. Such an application will be reviewed as a joint application if there has been a completed merger or if the programs' boards have contracted to complete the merger on a date certain. Applicants may also submit a joint application with the commitment that they will merge if the joint application is accepted. If the joint application is successful, a grant would be awarded for each of the service areas for a period of cooperative administration pending the completion of the merger.

We recognize that the issues to be addressed are difficult ones in that they raise sensitive issues of effectiveness and suggest that programs with strong local roots might be merged into more distant entities. Nonetheless, LSC remains committed to the premise that strong community ties enhance applicants' capacity to provide effective and efficient legal services. The Corporation's criteria require that funded entities be responsive to the needs of their clients. We encourage advisory boards, proportional board representation and office by office priority setting. We know that each of you will consider this matter seriously, and will not simply support the current program configuration without taking into account the factors mentioned above.

If you have further questions or need assistance, please feel free to call the program officer for your state. They are listed in Appendix B.

B. Appropriate consideration of efficient intake and provision of advice and brief service.

The state planning process should examine how intake will be structured within the state to maximize client access, efficient service delivery, and first-rate legal assistance. State planners should consider if there are benefits to organizing intake on a statewide, regional or some other basis coordinated among providers.

Currently, intake is often seen primarily as a client's entry point to the legal services system. Methods should be examined to expand the process so that it can immediately respond to most clients' problems with the requisite advice, brief service, and referral. Thus, an intake system should accurately assess the client's legal needs, make an informed decision about how best to help that person, and provide timely and complete advice, brief service or referral, as appropriate. Clients with problems requiring more assistance should be referred promptly to case handlers or to other resources. When staffed by experienced attorneys and specialists, centralized telephone intake and service systems can improve the quantity and quality of immediate advice and brief assistance while increasing the number of full service cases that can be handled. Not all potential clients have access to a telephone, but, for many, telephone intake will be useful and economical. Programs serving large populations without telephones will need to develop other means to assure access and take advantage of the concepts outlined here.

Effective intake systems include the following:

- **Client access:** Intake is easily available to clients throughout the service area, including special populations.
- **Centralized telephone intake:** Where appropriate in light of client needs and service priorities, there is a centralized telephone intake system. Client interviews are conducted by phone, with prompt communication to the client of the decision on the level of assistance offered.
- **Specialization:** Qualified lawyers or paralegals directly provide advice or brief service to clients. Workers are skilled in substantive areas, in gathering information, and in giving assistance by telephone.
- **Referrals:** Intake workers make appropriate referrals and coordinate with other resources and providers.

Program Letter No. 4
August 31, 1995

- **Technology:** Use of appropriate technology includes case management software that enters information directly into the data base, performs conflicts checks, generates written responses, and maintains necessary statistical functions.
- **Follow-up:** Clients are sent letters confirming the action taken by the advocate along with written materials and information, as appropriate.
- **Quality assurance and review:** The intake unit is supervised by an experienced attorney who reviews the services provided. There is periodic measurement of client satisfaction, with adjustments in the system as necessary.

C. Appropriate use of technology.

Almost all programs will face reductions in program staffing. Further, restrictions on permissible advocacy activities for 1996 LSC grantees are likely. Thus, establishing the highest caliber legal services delivery system will be extremely important. Appropriate use of technology can reduce the cost and substantially enhance the quality of services. All programs should plan for and ultimately attain a minimum level of technological capacity. Of course, what is necessary and appropriate will vary from program to program, depending on the systems already in place and on how services are to be delivered.

We recognize that increasing technological capacity has a cost that will be difficult to bear at a time of sharply diminished funding. Those diminished resources, however, make it particularly important to develop long-range strategies to strengthen technological capacities that allow programs to communicate with each other, share document banks, information, data bases, and to take advantage of other efficiencies made possible by computerization.

The following areas of technology capacity should be considered:

- Computer (desktop or laptop) accessibility for all advocates and support staff, sufficient to perform assigned tasks
- Networking capacity
- Full featured word-processing
- Automated legal research capacity
- Automated case management/tracking
 - calendaring/tickler
 - conflicts checking
 - capacity to produce CSRs or other quantifiable reports
- Timekeeping

Program Letter No. 4
August 31, 1995

- Full range of communications technology
 - electronic mail within and between providers
 - telephone voice-mail
 - dial out capacity to external networks
 - electronic transfer of documents
 - toll free telephone lines
 - fax

- Spreadsheet and other financial management capacity

- Technology administration and support
 - network management
 - training/manuals
 - troubleshooting
 - hardware and software installation
 - capital budget
 - maintenance budget

III. Engagement of pro bono attorneys in a broad range of activities.

The planning process should determine how to enhance the involvement of private attorneys in the statewide delivery of legal services. The following are offered to stimulate thought on ways this goal might be achieved:

- Representation of clients by volunteers in a full spectrum of legal work, including advice and brief service, negotiation, administrative representation, simple litigation, complex and major litigation and advocacy in legislative and administrative forums.
- Involvement of private attorneys in intake systems focused on immediate consultation and advice such as centralized telephone intake and hotlines.
- Placement of law firm lawyers, paralegals and secretaries in legal services offices for extended periods.
- Establishment of "boutique" pro bono projects with a law firm or pool of firms, a bar association, or other service provider, that benefit a particular group of clients (homeless people, people with AIDS or HIV, children).
- Creation of opportunities for representation of clients in a broad range of areas in which the program provides service, -- family, consumer, administrative -- as well as those that touch on priorities where programs may not currently offer representation -- transactional, taxation, or corporate to handle issues such as economic development, employment opportunity, housing, etc.
- Involvement of corporate counsel as well as law firm attorneys and summer clerks, paralegals and other legal staff in the work of the legal services program both in and out of the program office.
- Development of joint projects with local law schools, such as ones which offer law clerks credit for working at the program, which lead to law student representation in court, and which create law school alumni pro bono programs.
- Outreach to paralegal organizations to seek volunteers to do intake, administrative cases and other legal tasks.

Program Letter No. 4
August 31, 1995

- Invitation to law firms or corporations to "adopt" a community or tenants group as its general counsel and/or "adopt" a type of case within a legal area (e.g., rent court cases) that could be referred to that firm.
- Development and implementation with a bar association of a volunteer recruitment plan.
- Provision of training manuals that not only supplement the substantive training but also orient the private bar to the procedures used in case selection and referrals.
- Development of a pool of other professionals such as court reporters, physicians and psychiatrists who can provide expertise on cases when needed.
- Use of private attorneys to run pro se classes and other clinics.
- Pioneering ways in which critical needs of a program can be met by private attorneys. Examples include: fundraising efforts, responding to "wish list" items which your office needs such as computers, fax machines, donation of space and resources for training of staff and volunteers, drafting and publishing a training manual, providing facilitators for meetings, allowing program staff attorneys to join firm training sessions on topics like legal writing and research, trial skills.
- Organization of a mentor program in which experienced volunteers are available by telephone to less knowledgeable volunteers.

IV. **Development of additional resources.**

State planners should review the funding available and develop a comprehensive strategy for leveraging LSC and non-LSC resources. Successful resource development efforts are often best implemented at the local level. State plans should, therefore, focus on models that can be replicated locally.

Consideration should be given to:

- **Coordinated resource development**, including broadening the role of IOLTA and similar funding mechanisms, increasing private bar involvement in resource development and service delivery, statewide fund raising campaigns, outreach to new constituencies such as major corporations and local businesses, etc.
- **Collaboration with other local and statewide organizations devoted to the needs of the low-income community**, including public and non-profit social service agencies, community-based organizations, educational institutions, churches, foundations, the courts, and others. New partnerships designed to leverage existing resources are possible, including:
 - joint fund raising initiatives to support collaborative projects;
 - housing legal services staff in established organizations such as social service agencies, shelters, and courts;
 - joint efforts to address major legal issues affecting legal services clients;
 - delivery models that involve the expanded use of law schools (clinics, pro bono programs, faculty, student interns), lay advocates, and other local organizations in community education, referrals, intakes, and self-help representation.
- **Resource sharing among LSC grantees** to maximize the resources of LSC-funded programs. Examples include: mergers and consolidations (see Section IIA, Criteria on consolidation); administrative cost sharing (e.g., shared development or other personnel) where mergers or consolidations are not feasible; combined equipment purchasing or leasing arrangements; pooling resources to obtain expert assistance on complicated legal issues, developments in the law and

Program Letter No. 4
August 31, 1995

training; and integrated technology that permits networking and shared use of electronic legal research capacity.

- **New revenue streams** including filing fee surcharges; fee for services contracts; new mechanisms to support the IOLTA program; and the development and marketing of publications, practice manuals, training curriculums, etc.
- **In-kind legal services and support.** Examples include: loaned associate programs in which a private firm or corporate law department places an attorney in a legal services program; post-graduate fellowship programs; full-time law student extern placements; and part-time internship programs. Opportunities for in-kind donations from local businesses of equipment, office space, furniture, and other professional services should also be considered.

V. Providing for the transition to the new system with a minimum of disruption to client services.

Some current grantees may not be refunded. In such cases, there will be a number of transition issues to be addressed. They include:

- assuring continuity as the former grantee phases out and a new grantee assumes responsibility for a service area;
- meeting the professional responsibility for clients, including making bridge funding available to a former grantee, or providing representation without LSC funding, or accepting responsibility for ongoing cases by the new grantee;
- where a competing program may result from a merger or consolidation of current grantees, addressing issues related to staffing, transfer of assets and liabilities, fund balances and related matters.

In addition, LSC's appropriation riders may prevent us from funding programs engaged in prohibited activities. This raises issues related to divestiture of cases which no longer comply with LSC requirements. There are many more questions than answers with regard to the impact of the language in the House bill, which itself is subject to revision as a result of Senate and conference committee action.

LSC is not yet in a position to speak definitively to many of the transition issues that will arise. We recognize, however, that many of the issues related to transition and continuity of service involve matters on which LSC needs to establish policy. We are identifying such issues and will follow this program letter with a more detailed one addressing issues which have been raised here. Additional communications will follow as matters develop during the coming months.

APPENDIX A
SUMMARY OF LSC
PERFORMANCE CRITERIA

The following is a summary statement of effective provider operation derived from the Legal Services Corporation Performance Criteria. It is offered to assist the planning process by providing a concise statement of model performance. For further guidance and details on the criteria, please consult the LSC Performance Criteria themselves. If you do not have a copy of this document, request one from the Program Officer assigned to your state (see Appendix B).

**Identifying and Targeting Resources
on the Most Pressing Legal Needs of the Low Income Community**

Effective providers engage in a continuous and long-term process of assessing needs, determining strategies, allocating resources, evaluating results and making adjustments as needed.

- **Determining the Most Compelling Legal Needs.** The provider identifies the core legal services to be made available, after a comprehensive assessment of the legal problems and needs of the low-income community that includes the views of those who are eligible and that takes into account the services that are provided by other entities.
- **Targeting Resources.** In making decisions about staffing, the provider considers how these decisions will affect its ability to furnish the core legal services determined to be essential, and the effect those decisions will have on its clients. The provider moves beyond traditional legal services strategies and explores new approaches and technologies, such as use of paralegals, hotlines, and advice clinics.

Engaging and Serving The Client Community

Providers are effectively involved with their clients, on both an individual and community-wide basis.

- **Recognizing Client Dignity and Sensitivity.** Providers furnish services in a way that affirms each client's individual dignity, is sensitive to particular client circumstances, including access difficulties and is responsive to each client's individual legal problems and objectives.

- **Engaging the Client Community.** Providers maintain effective outreach and communication with all significant segments of the eligible client population through contact with low-income organizations, community leaders and service agencies. This communication includes interaction on decisions concerning priorities, objectives and strategies.
- **Providing Access.** The provider facilitates access to and utilization of its services by the low income population.

Providing Effective Legal Work

Good legal representation achieves as much as is reasonably attainable for the client given the client's objectives and all the circumstances of the case. It conforms to the ABA Standards for Providers of Civil Legal Services to the Poor, to the dictates of professional ethics and to other accepted guidelines.

- **Assuring Excellent Legal Representation.** Good representation requires adequate capacity and resources to carry out the work and systems to insure that representation is carried out with maximum effectiveness. A provider has case handlers and support staff that have the necessary expertise and time to do the work assigned. Their training is sufficient and up to date. Each casehandler's work is supervised to make sure that clients are competently represented. Case handlers have access to necessary law library and research facilities as well as to appropriate equipment and technology. The provider has a litigation expense fund, an efficient intake system, effective file maintenance and third-party tickler systems. Casehandlers plan and follow a case strategy that addresses client goals, motions practice, discovery, development and refinement of case theory.
- **Efficient Development and Use of Expertise.** To insure high quality assistance to clients, a provider should assure that advocates obtain and share expert assistance on complicated legal issues, training in substantive areas for advocates, pro bono attorneys and other volunteers, practice manuals and timely information about key judicial, administrative and legislative developments affecting clients' rights, responsibilities, benefits. Providers are expected to coordinate and collaborate to promote efficiency and ensure availability.
- **Providing Other Legal Services.** In addition to direct representation, a provider assists client-eligible individuals to get help and information through other services, such as community legal education, telephone advice and hotlines, facilitation of self help activities and pro se appearances, and other activities. Where undertaken, the provider has adequate capacity and resources to carry out its work. It conducts ongoing

Program Letter No. 4
August 31, 1995

evaluations of the effectiveness of these efforts and compares their costs with the results achieved.

Maintaining Effective Administration and Governance

Providers must be managed effectively, with high quality administrative and financial systems and procedures. While not a guarantee, good leadership and strong internal operations increase the likelihood of effective services.

- **Providing Vision.** The provider's management facilitates a sense of vision, both at the executive level and at the board level, of what the provider needs to do to effectively meet its mission. This vision is shared by staff at all levels.
- **Maintaining Effective Structure.** The provider has an effective management structure, with appropriate procedures, personnel, intra-staff and staff-management communication, and an appropriate allocation of resources to administration.
- **Developing Resources.** The provider creatively expands and leverages its available resources, both financial and non-financial, by fundraising, working with the private bar and other institutions to increase services provided to the low income population.

Program Letter No. 4
August 31, 1995

APPENDIX B
LEGAL SERVICES CORPORATION
PROGRAM OFFICERS

JOHN EIDLEMAN (202/336-8860) - Maine, New Hampshire, Rhode Island, Massachusetts, Indiana, Ohio, Puerto Rico, Virgin Islands

MICHAEL GENZ (202/336-8852) - Alabama, North and South Carolina, Iowa, Virginia, Missouri and Kansas

PAT HANRAHAN (202/336-8846) - Arkansas, Kentucky, Mississippi, West Virginia, Minnesota, Nebraska

ALAN LIEBERMAN (202/336-8851) - Oklahoma, Texas, Utah, California, Nevada, Oregon, Washington, Hawaii, Guam, Micronesia

MERCERIA LUDGOOD (202/336-8848) - Georgia, Louisiana, Tennessee, Florida, North and South Dakota

KAREN SARJEANT (202/336-8849) - Wisconsin, New Mexico, Wyoming, Montana, Arizona, Idaho, Alaska, Michigan, Colorado

GERRY SINGSEN (202/336-8856) - Connecticut, Illinois, New Jersey

ANH TU (202/336-8946) - Pennsylvania, Maryland, Delaware

KATHLEEN WELCH (202/336-8862) - New York, District of Columbia, Vermont