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MEMORANDUM

To: Program Directors

From: John A. Tull, Director *John A. Tull*
Office of Program Evaluation, Analysis & Review

Subject: Subgrant Agreements for 1996: Requests for Approval

Date: December 11, 1995

This memorandum is to provide guidance for submission of 1996 subgrant agreements for LSC approval. Although 45 C.F.R. Part 1627 still governs the subgrant process, LSC has had to make certain practical adjustments so that the subgrant process will fit with the new Congressional requirement that LSC's 1996 grants be awarded on a competitive basis (the Conference Report, which is likely to be vetoed, specifies April 1, 1996 as the beginning of competitive grants). This memorandum outlines the adjusted schedule and reiterates LSC's intention to give programs maximum flexibility in the subgrant process. Another purpose of the memorandum is to call programs' attention to another significant effect of likely LSC's 1996 appropriations restrictions, namely that LSC restrictions will attach not only to LSC recipients' but also subrecipients' other funding sources.

As you know, 45 C.F.R. Part 1627 requires that subgrant agreements involving LSC funds be submitted to LSC for prior, written approval.¹ The regulation allows 45 days for LSC review of proposed agreements; thus, for subgrants with a January 1, 1996 commencement date, we would normally have needed to receive your request for approval by November 17, 1995.

¹ Submission of recipient's PAI Plan does not fulfill this requirement.

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As indicated in the RFP package, LSC's approval of an applicant's application for 1996 will carry an automatic two-month (from January 1, 1996 through February 29, 1996) provisional approval of any subgrant which the applicant has described in its response to the RFP. Although recipients' funding for the first three months of 1996 will now be made as continuation of their prior year's grant (with necessary adjustment in the funding level to reflect the reduced FY 1996 appropriations level) as opposed to grants awarded as a result of competition, LSC will nonetheless extend this 2-month provisional stop-gap approval to all subgrants, regardless of whether they were included in the response to the RFP. This automatic approval is, however, conditioned on the recipient's forwarding the usual subgrant application package to LSC no later than January 15, 1996.

Before February 29, 1996, we will review each subgrant for final approval in light of the circumstances then obtaining, including the need to ensure compliance with the 1996 Congressional Appropriations restrictions. Such final approval will be for the full period of the proposed subgrant, up to one year. Such approval will, however, be contingent on the recipient's being selected as the successful bidder for the competitive grant for its service area. In other words, if a current recipient is not awarded a competitive grant, any subgrant approval which it has obtained from LSC by February 29, 1996 will not permit the continuation of the subgrant. Given these unique circumstances, recipients are strongly urged to include the modified orderly termination clause in the Subgrant Agreement Form in their subgrant so as to provide for the possible eventuality of the discontinuation of funding resulting from such competition. Moreover, you should make certain that all your subrecipients are fully aware of this clause.

There is a new paragraph J in Section III of the Subgrant Agreement Form, requiring the subrecipient to comply with all requirements of the 1996 LSC Appropriations legislation, which is expected to include significant new restrictions on program activities. The final content of the restrictions will not be definite until Congress acts in response to what has been described as a likely veto (of the Conference Report of the Appropriations legislation) by President Clinton.

It is important to note that the restrictions flow with the transfer of LSC funds. However, if a program transfers non-LSC funds to another organization, this transaction is not a subgrant governed by 45 C.F.R. Part 1627 and, consequently, it does not require LSC approval. While the program's non-LSC funds remain restricted and the transfer must only be for purposes and activities permitted under LSC's 1996 appropriations restrictions, these restrictions do not flow through to any other funds of the entity receiving such non-LSC funds.

We recognize the difficulties that the flow-through restrictions may cause many organizations that have been subrecipients in the past, especially Bar Associations. Should these provisions remain unchanged, we direct your attention to the alternative of funding Bar Associations with non-LSC funds. As you know, non-LSC funds may be used to meet a recipient's PAI requirement, provided that they are accounted for and expended in accordance with all the requirements of 45 CFR 1614. While the use of these non-LSC funds would be governed by the restrictions, they do not carry with them any flow-through restrictions on other funds of the

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receiving entity. Thus, Bar Associations receiving such non-LSC funds could continue their participation in PAI activities with such non-LSC funds without LSC restrictions attaching to their other funding sources.

With slight modifications, we will continue to use the Subgrant Agreement Forms used for 1995. Included in this package are a 1996 Subgrant Agreement Form, a Budget Form and a Subrecipient Profile Form which must accompany each request for approval of a subgrant agreement. In addition, you should ensure that an audit for the prior year's subgrant has been submitted to the Office of the Inspector General in accordance with the terms of the 1995 subgrant agreement.

To facilitate and expedite the review of your request, you are encouraged to use the Subgrant Agreement Form enclosed. If you do not use the Subgrant Agreement Form, your proposed agreement should, at a minimum, include the substance of the provisions in that form and must include the Budget Form and Subrecipient Profile Form, if it is to be approved.

Please contact Jay Brown, Program Support Specialist, at (202) 336-8828, if you have any questions concerning this matter.

Enclosures: Subgrant Agreement Form
Subrecipient Budget Form
Subrecipient Profile Form