

PRIORITY-SETTING

Part I: Planning and Priority-Setting

“Priority-setting” by recipients of LSC funds is best thought of as a procedure to bring recipients into compliance with Regulation 1620. As such, the recipient’s task is to do what the Regulation requires. LSC Regulations, rather than the needs of the recipient, drive the priority-setting procedure.

“Planning”—an activity that looks like priority-setting, but is really quite different—is a more flexible way to address a much broader range of critical program issues. The differences between planning and priority-setting are shown in Table 1 on page 2 .

Planning is discussed in much greater detail in other documents in this series. This article describes one way to establish priorities.

Part II: LSC Requirements

The final priority-setting regulation became effective on May 21, 1997. It is nearly identical to the interim rule published in the Federal Register on August 29, 1996. The major difference is in 1620.3(c): recipients *shall* now consider the eleven factors listed in this sub-section of the regulation when establishing priorities.

The most important change made in the interim and final rule was the addition of the “emergency” category: Any case or matter, paid for by any source, that cannot be placed under one of the existing priorities is, by definition, an “emergency”. All emergencies must be documented and reported to the program’s board on a quarterly basis and to the LSC on an annual basis. It is, therefore, very much in the program’s interest to minimize the number of emergencies.

While the regulation provides guidance on the purpose, procedures, adoption, and reporting of priorities, it gives no clue about what a priority might look like. That guidance is in Program Letter 96-2 which contains the “Suggested List of Priorities for Programs” adopted by the LSC Board on May 20, 1996. The list is in the form of general statements of work to be undertaken. (For examples, see “Sample Statement of Program Priorities” on page 4).

Before the LSC Board issued its set of suggested priorities, virtually all LSC recipients used substantive area priorities, such as “housing”, “domestic relations” and “consumer”. Since LSC Board’s action, many recipients have begun to use general statements of work to be undertaken. A number of

Table 1: Differences Between Planning and Priority-setting

	Priority-setting	Planning
Content	Cases and matters to be undertaken by the recipient, as required in 1620.3(a)	Vision (program purpose, values and long-term goal) and strategies for market standing (eg., winning competitions for funds), innovation, productivity, financial and physical resources, staff performance and development, and public responsibility.
Factors taken into account	Eleven factors, listed in Section 1620.3(c) “shall be considered in establishing priorities.”	Anything that affects the program’s ability to execute its strategies.
Timing	<p><u>Intermittent:</u></p> <p>Establishing priorities, including appraisal of the needs of eligible clients: as stated in 1620.5(a), priorities must be set “periodically”, depending on four factors listed in 1620.5(b). Most programs establish priorities every 3-5 years.</p> <p>Annual review: every year, as required in 1620.5(a).</p>	<p><u>Continuous:</u></p> <p>Planning is always underway, as is action. When a sense that something is not right emerges, or when an unexpected opportunity occurs, a group comes together to think creatively about what might be done. When they have a good idea, they take action.</p>
Participants	<p>Establishing priorities, including appraisal of the needs of eligible clients: all significant segments of the client population, recipient employees, governing board members, the private bar, and “other interested persons”, as required in 1620.3(b).</p> <p>Annual review: Governing body</p>	Any group the program chooses, but the list in 1620.3(b) is a good place to start. To borrow from Alan Houseman (1), others that might participate include key judicial personnel; law school representatives; leaders of the organized bar; other providers of civil legal services (local and statewide); representatives of key non-legal providers; members of the civic, educational and business communities; and state or local funders.
Form	Priorities must be written, as required in 1620.3(a)	May be implicit (in the minds, souls and guts of participants) or written.

programs adopted the LSC Board's suggested priorities exactly as written. Others adopted priorities similar to those suggested by the LSC, or adopted the LSC priorities but then supplemented them with a subset of priorities called "emphases", "preferences", or "work to be done".

The Request for Proposals issued by the LSC for FY1998 (2) unambiguously states that programs that choose to use substantive area priorities may continue to do so. This article, however, recommends that all recipients adopt priorities in the form of general statements of work to be undertaken.

Table 2 shows some of the differences between the "old priorities" (before September 29, 1996) and the "new priorities" under the final regulation.

Table 2: Differences Between Old and New Priorities

Old Priorities	New Priorities
Often, a list of substantive areas, such as "housing", "family law", "health", etc..	<i>Either.</i> 1. Broad statements that will be readily recognized by the public as desirable ends, such as "preserving the home", "maintaining economic stability", or "improving outcomes for children". <i>Or</i> 2. A list of substantive areas, such as "housing", "family law", "health", etc..
Allocated program resources (always, staff; sometimes, litigation support and other funds) to substantive areas.	A boundary around all of a program's cases and matters. <i>Very few</i> cases or matters should fall outside the priorities.
Ranked in order of importance	Unranked
As narrow as possible	So broad that a few phrases or a simple list of substantive areas can contain all of the program's cases and matters.
Staff often accepted cases or engaged in matters that were not "priorities"; no documentation of exceptions from the priorities required.	All cases and matters that are not priorities are "emergencies" that must be documented and reported to the program's board and the LSC.
Tight link between results of needs appraisal and priorities.	Understanding community needs is still very important, but 10 other factors <i>shall</i> be considered when priorities are set.

LSC's Suggested Priorities

I see the following in the LSC's "Suggested List of Priorities for Programs": 1) statements that the public will readily accept as desirable ends; 2) few verbs—these are mostly phrases, not sentences; and 3) broad statements that can include many, and many different kinds of, cases and matters. If this pattern is used, a few priorities should be sufficient for even the largest program.

The case for writing priorities in the form of "general statements of work to be undertaken":

1. More compelling. Work to be done priorities give a much better sense of what your program actually does. A priority such as "housing" tells your board, staff, clients and funders nothing; "preserving the home" is much more evocative.
2. Fewer emergencies. Taking a compelling consumer case if "consumer" is not one of your subject matter priorities means you will have to report an emergency. Virtually all cases and matters can be accommodated under one of the LSC's suggested priorities, and many cases and matters can be placed under several of the LSC priorities.
3. Why not take the LSC's suggestion? After all, you are asking them to pay for part of your program for the next three years.

Part III: A Priority-Setting Procedure

The procedure described in the rest of this article consists of three processes: appraising needs, determining cases and matters, and documenting the program's decisions. The procedure describes steps for producing either substantive area or general statement of work priorities.

Approach

A needs appraisal is a required part of priority-setting, although it does not have to be done each time a recipient reviews its priorities (4).

The relevant language is (5):

"The procedures adopted [by the program's board of directors to guide the priority-setting process] must include an effective appraisal of the needs of eligible clients in the geographical area served... , and their relative importance, based on information received from potential or current eligible clients solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient's employees, governing body members, the private bar, and

Sample Statement of Program Priorities

Cases or matters to which the staff of (insert program name) will limit its commitment of time shall be determined by the following priorities. These priorities are based on the most recent legal needs appraisal conducted by (insert program name), and are reviewed and, if necessary, revised annually by its Board of Directors.

Program Component	Priorities
All Components	The Delivery of Legal Services (3) Advice, Brief Service and Referral
Basic Field Component	Maintaining, Enhancing and Protecting Income and Economic Stability Preservation of Housing and Related Housing Needs Maintaining and Enhancing Economic Stability Improving Outcomes for Children Safety, Stability and Well Being
Migrant Component	Populations with Special Vulnerabilities Maintaining and Enhancing Economic Stability Improving Outcomes for Children Safety, Security and Well Being
Native American Component	Tribal Sovereignty Indian Status Issues/Civil and Individual Rights Maintaining and Enhancing Economic Stability Improving Outcomes for Children Safety, Security and Health Care Improved Housing

Adopted by the board of directors of (insert program name) on (date).

other interested persons. The appraisal should address the need for outreach, training of the recipient's employees, and support services”.

Given such specific language, you would expect that the needs appraisal would play a major role in determining priorities. But the next sub-paragraph in the regulation (6) states that the needs appraisal is only one of eleven factors that *shall* be taken into account when establishing priorities.

When priorities are a list of substantive areas, needs appraisal consists of activities intended to find substantive issues that ought to be priorities. Two processes are used: 1) *counting*, in which the most frequently occurring substantive issues become the priorities, and 2) *valuing*, in which a judgment about the importance of substantive issues is used to set priorities.

The methods used to appraise needs vary. Many programs use surveys of potential or actual clients, judges, social service agencies, private attorneys, etc.. Using surveys to appraise needs works: ultimately, the survey results lead to priorities. Unfortunately, most surveys are fatally flawed: they collect information from a far-from-randomly selected group, so the survey results are unreliable.

Further, too many programs rely on simple counting to determine importance: most respondents to the survey said “x” was the most important need, so “x” becomes the highest priority. There is too little dialogue with eligible clients, program staff, members of the board, the private bar, and other interested persons about what is important. And too little recognition that counting alone reflects the past rather than illuminates the future, and obscures the links between issues. Consider, for example, the following:

In the late 1970's, the LSC provided funds to new programs as soon as they were created. This meant that many programs accumulated substantial cash balances before they hired staff and began delivering services.

The Legal Services Corporation of Alabama (LSCA) used its cash to conduct an appraisal of client needs. A survey form was drafted by a professional polling firm. Survey takers were dispatched throughout the state—to even the most remote rural areas—to interview adults in low income households. The result was a first class job of identifying and counting legal needs.

The most frequently reported problem, by a very large margin, was difficulty in paying utility bills. The fourth or fifth most frequently reported problem was lingering, informal discrimination that kept minorities out of county jobs, which, in rural areas, paid the highest wages.

In a few areas, LSCA also conducted meetings of eligible clients to discuss program priorities. Most of these meetings occurred before survey re-

sults were available. But the meeting in Selma was scheduled after the survey was completed. The question then became: should participants be shown survey results at the beginning of the meeting, or after they had developed their own list of priorities? After some discussion, it was decided that participants would first discuss and rank their priorities, and then be shown the survey results.

The Selma meeting was very well attended. Representation from the rural counties was particularly strong. After about 5 hours of discussion, participants finished their list of priorities. Job discrimination ranked first. Help with utility bills ranked fourth or fifth—the exact reverse of the survey results.

So we asked the group: How do you account for the difference between your priorities and the survey? After a brief interval, a gentleman in the back of the room raised his hand, rose slowly, and said: “If we had decent jobs, we could pay our utility bills.”

That is why dialogue with the client community and others, rather than mere counting, is the essence of priority-setting.

Using the suggested LSC priorities presents a more complicated situation: What, exactly, is a “needs appraisal” in this context? That is, what information would enable a program to say that “improved housing” should be a priority while “better outcomes for children” should not? To me, at least, it is not clear how one might go about generating a list of needs that would directly produce such broad statements. So priority-setting is no longer a one-step process. Instead, four steps are now required:

Step 1: Appraise needs.

Step 2: Use needs, and nine of the factors in 1620.3 (c.) to determine cases and matters that will be undertaken in the next year.

Step 3: Use cases and matters to set priorities.

Step 4: Document and report priorities.

Step 1: Appraise Needs

The regulation requires an “effective [identification] of the needs of eligible clients in the geographical areas served by the recipient” and an “[appraisal] of [the] relative importance [of the needs].”

Identifying Needs: Needs can be identified in two ways: a survey, or focus groups. Either option, done by a professional, is expensive—around \$10,000 for focus groups (7), and even more for a good survey. Costs of either approach can be reduced by using volunteer technical assistance, by turning it into a class project at a local university, or by sharing costs with other agencies. Programs can also learn to do an adequate survey or conduct effective

focus groups. The technology is not difficult, but the devil is definitely in the details.

Assuming you do not have the money for a good survey or focus groups, and do not want to learn to do effective needs identification, you have three choices:

- 1) a survey or focus groups using an unrepresentative group that is at least drawn from the area served; or
- 2) a survey based on a representative sample that is not local; or
- 3) a local representative survey or focus groups conducted by another agency containing information that permits legal needs to be teased out.

Clearly, the last option is the best alternative, so the first step in any needs identification should be to determine if some other local agency has a useful survey or has conducted effective focus groups. I'd start with the United Way.

If an adequate survey or focus group report cannot be found, then I would not settle for a survey or focus group using an unrepresentative sample. Instead, I would choose the second alternative: a survey of a representative sample that is not local. To be specific, I would use either the ABA Legal Needs Study, or one of the state surveys of legal needs, even if the state survey had to be borrowed from a neighboring state.

The ABA Legal Needs Study (8) is a superb piece of work that explores every dimension of legal need: not simply what needs exist, but what poor people do when they have a legal need, how satisfied they are with their own actions, and how they obtain the assistance of an attorney, if any. It exists in five versions: the national survey and its accompanying reports; and surveys and reports for Massachusetts, Pennsylvania, Georgia and Florida. If your program is close to Massachusetts, Pennsylvania or Georgia, (or to one of the states that commissioned a survey from the Spangenberg Group) I'd use one of those reports; otherwise, I'd use the national survey, even though it is far removed from any area served.

Appraising Needs. In my opinion, the heart of needs appraisal is not collecting information, but appraising that information. A group assembled by the LSC in 1981 to review priority-setting procedures concluded that the key event in any priority-setting was "face-to-face dialogue" between clients, staff, board members and others about what the information collected *means*. I still agree with this finding. Unless you propose to set priorities by counting alone, it is dialogue about the survey data or focus group reports that will yield the best insights into what your program should do.

A group assembled to discuss needs should be as representative of the eligible population as possible. Some members of the group should be eligible clients, drawn from each of the areas served. Attention should also be given

to ensuring that members of each of the major racial or ethnic groups in the area are present. Attention should also be given to the ages of client representatives: some should be elders, but some should also be able to speak for children, who, in many parts of the country, are the single largest group of poor people.

The group should also include program staff and board members; representatives of the private bar, especially those whose practice includes serving poor people; and what the regulation calls “other interested persons” which to me means leaders in low income neighborhoods and communities, whether they are poor or not.

I’d build the group’s dialogue around the following questions:

For each specific need (9):

- a) Is this an issue in our community? (An especially relevant question if a state or national survey was used to identify needs).
- b) How is this need linked to other needs? (Often, needs tell you nothing more than that people are poor. For example, inability to pay utility bills may tell you something about your local utility or it may tell you that people don’t have money, which you knew already. The question then is, *why* don’t people have money? No jobs? Inadequate service from the welfare department? Too high prices in neighborhood stores?)
- c) What category does this need belong in? (For example, landlord-tenant disputes might be classified as a housing problem, a neighborhood stability problem, or even a children’s problem, in the sense that high turnover in housing means high turnover in schools).
- d) Once the categories are set: What is the relative importance of each of these clusters of needs?

The results of the discussion should be recorded in a dated memo to the staff and board. The title of the memo should be “Needs Appraisal”. The memo should document: 1) Participants, with particular emphasis on number and role of low income persons, program employees, governing board members, the private bar, and other interested persons; 2) procedures, including methods used for identification of needs and appraisal of needs, dates of key events, and minutes or notes from any meetings; and 3) the results of the needs appraisal.

Step 2: Determine Cases and Matters

The next step is to convert needs into cases and matters. Here I would again use a small group—either the same group as appraised needs, or a committee of staff and board members. The group's task is straightforward, if not simple: to use 10 of the factors (10) in Sub-part 1620.3(c.) to determine cases and matters to be handled by the program in the 3-5 years. My suggestion is to approach this task in the following order:

Services, outreach and support:

- a) Availability of legal services from others: What cases and matters do we expect other providers to undertake over the 3-5 years? Taking this into account, and given our needs appraisal, what cases and matters should we undertake?
- b) Will we provide the same services throughout the area served, or different services in different areas?
- c) Summary: Taking into account all providers, who will be served?
- d) What outreach will be required to reach underserved groups or groups with special legal problems? Who will perform this task?
- e) Is our staff, and staff in other providers, able to handle the cases and matters we have decided should be undertaken? If not, what training will be required? What support services? Who will provide training and support, and at what cost to us?
- f) Do we like what we have done so far? If not, go back and make revisions before proceeding to the next step.

Effectiveness, cost and efficiency:

- a) If we and other providers do what we have planned, what changes will we see in the lives of poor people? Are we satisfied that, if we achieve these results, we will be making good use of legal resources and processes?
- b) Is there evidence that providers are complementing each other's efforts?
- c) Given the resources we expect to receive next year, are we reasonably likely to be able to do the work we have assigned ourselves?
- d) Looking at the whole proposed set of tasks, are we "efficient and economical"?

Final decision: do we agree that these are the cases and matters we should undertake in the next year?

When done, prepare a memo for the board and staff describing the cases and matters which the program will handle, and those that program expects others to handle. Call this memo "Work to be Done", "Program Emphases" or "Program Preferences". Do not call it "Program Priorities".

Step 3: Use Cases and Matters to Set Priorities

If the program's choice is to use substantive area priorities, three steps are required to set priorities:

- 1) Assemble a list of general substantive area priorities (housing, health, etc.). Many programs use the list in the CSR reports, but watch out for "Other", which is sometimes the area with the most reported cases, but does not belong in a list of priorities.
- 2) Place each case or matter from the "Work To Be Done" memo under one of the headings.
- 3) Review the list of priorities to be sure that every case or matter the program intends to work on can be associated with one of the priorities. Modify the list of priorities (not the list of cases and matters) until everything can be accommodated. Otherwise, you will be reporting many "emergencies".

If the program's choice is to use the LSC suggested list of priorities or something similar:

- 1) Starting with the LSC's "Suggested List of Priorities for Programs", find the smallest number of priorities that encompass all of the cases and matters that the program is likely to undertake next year. Write new priorities if you need to.
- 2) Conduct the same kind of review as above to ensure that the program will not have any emergencies.

I suggest that all programs using the LSC suggested priorities adopt "*The delivery of legal services*" as a program priority. This priority properly holds many cases and matters that would otherwise appear under every program priority. See Program Letter 96-2 for an explanation of what could be included in this priority. Note that John Tull's explanation focuses on activities that are directly related to cases and matters: screening, intake, community legal education, pro se representation, and involving the private bar, law schools, and other organizations in serving clients. Strictly speaking, priorities are for *cases* and *matters* only. All other activities such as fund-raising, redesign of delivery, day-to-day management and administration, etc., are what the LSC calls "support activities". Support activities are a very important part of your program, but do not belong in a list of program priorities.

The task of picking priorities could be done by the same group that determined work to be done, or it could be done as a staff recommendation to the board of directors.

The board should then discuss and adopt the priorities. If the program chooses to use something similar to the LSC suggested priorities, see the

Sample Set of Priorities (page 4) for the form that should be used. The board discussion will be much easier if board members first read and discuss the “Work to be Done” memo. Make sure that adoption of priorities is documented in the minutes of the board meeting.

Step 4: Document and Report Priorities

Next, go back to the “Work to be Done” memo. Revise the memo to incorporate any changes made by the board when it discussed work to be done or adopted the priorities. Then restate the work to be done in terms that will enable receptionists, intake workers, paralegals and attorneys to understand which cases will be accepted and matters will be undertaken, and which will not. Call this memo “Cases and Matters Acceptance Policy”. Do not call it “Program Priorities”.

Programs are required to submit an annual report to the LSC on their priority-setting process (11). In any year in which a needs appraisal was conducted and priorities set , I’d do the following:

- Prepare a report summarizing the steps taken to review priorities, with dates for each major step. Document steps taken to ensure effective participation of clients. Attach a copy of the priorities resolution adopted by your board. Describe any changes in priorities made as a result of the priority-setting process.
- Based on your experiences during the just completed process, prepare a timetable for a future appraisal of needs and evaluation of priorities (12), and describe what you will do the next time to ensure effective participation by clients.
- Attach a cover letter to the LSC indicating that the attached report is the annual report required under 1620.7 (c.), and send the report to the LSC.

Finally....

There’s more to the revised Part 1620 than just priority setting. You also need a procedure for identifying, documenting and reporting emergencies. Read the revised regulation for details on these required steps.

Notes

(1) Alan Houseman, *Comprehensive, Integrated Statewide System for the Provision of Civil Legal Assistance*, obtainable from the Project for Equal Justice, NLADA, 1625 K St NW, Washington, DC 20006.

(2) See Legal Services Corporation, *Request for Proposals for the Provision of Civil Legal Services (FY1998)*.

(3) This priority covers all activities related to “the nature or method of delivery of legal services” including making maximum use of technology, and involvement of the private bar and other legal resources. See the LSC’s “Suggested List of Priorities for Programs”, page 11.

(4) Requirement: see Section 1620.3 (b). Timing: not specifically addressed. The language in 1620.7 (c.) (annual report to the Corporation) suggests that, while priorities must be review annually, a needs appraisal does not be conducted as part of every review.

(5) Section 1620.3 (b)

(6) Section 1620.3 (c.)

(7) San Fernando Valley Legal Services (818/896-5211) used a professional to conduct its focus groups.

(8) Several reports on the survey have been issued. The two that are most relevant to needs appraisal are 1) *Legal Needs Among Low Income Households*: Findings from the Comprehensive Legal Needs Survey. Institute for Survey Research for the Consortium on Legal Services and the Public, January, 1994. And 2) *Agenda for Access: The American People and Civil Justice*. Final Report on the Implication of the Comprehensive Legal Needs Study. Prepared by Albert H. Cantrell for the Consortium on Legal Services and the Public, April, 1996.

(9) If you are using the ABA Survey, see Appendix E, “Glossary” in *Low Income Needs* for a list of specific needs, in understandable language.

(10) The 11th factor is the list of needs from the needs appraisal. That step was completed in Stage 1.

(11) See 1620.7 (c.).

(12) Priorities must be evaluated annually. The language in 1620.7 (c.) suggests that needs do not have to be appraised annually.

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