



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Aid Society of Eastern Virginia
Case Service Report/Case Management System Review
July 26-30, 2010

Recipient No. 447026

I. EXECUTIVE SUMMARY

Finding 1: LASEVA's automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, improvements are required.

Finding 2: LASEVA's intake procedures and case management system do not support the program's compliance related requirements.

Finding 3: With a few exceptions, the sampled cases evidenced that LASEVA maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines (FPG). However, LASEVA does not comply with 45 CFR § 1611.3(a).

Finding 4: Sampled cases evidenced that LASEVA maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: Sampled cases evidenced non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

Finding 6: Sampled cases evidenced non-compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced that LASEVA's application of the CSR case closure categories are substantially consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as there were two (2) case files reviewed that were dormant.

Finding 12: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 15: A limited review of LASEVA's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities. However, the donor notification letters being utilized by LASEVA do not meet the requirements of 45 CFR § 1610.5.

Finding 16: LASEVA is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, LASEVA is in non-compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 17: LASEVA's compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization could not be verified due to the current accounting system being utilized by the program. Additionally, LASEVA was not in compliance with 45 CFR § 1627.3 in 2007 and 2008.

Finding 18: LASEVA is in substantial compliance with 45 CFR Part 1635 (Timekeeping requirements).

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 29: LASEVA is not in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

Finding 30: From a limited review of LASEVA's fiscal documentation and interviews with its management, the program could further strengthen its fiscal internal control by fully implementing additional internal controls that are detailed in the Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2, and by updating their current Accounting Manual.

II. BACKGROUND OF REVIEW

During the week of July 26-30, 2010, staff of the Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) review at the Legal Aid Society of Eastern Virginia (LASEVA). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of five (5) attorneys, one (1) Barnett Fellow, one (1) management analyst, and one (1) fiscal analyst. Three (3) of the attorneys and the fiscal analyst were OCE staff members; the other two (2) attorneys and the management analyst were consultants.

The on-site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that LASEVA has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LASEVA for compliance with the regulatory requirements of 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LASEVA's upper and middle management, staff attorneys, and support staff. LASEVA's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through June 15, 2010. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 690 case files, which included some targeted files.

LASEVA provides free legal services to low income residents of Accomack, Chesapeake, Gloucester, Hampton, James City, Mathews, Middlesex, Newport News, Norfolk, Northampton, Poquoson, Portsmouth, Virginia Beach, Williamsburg, and Yorktown. In an effort to assist approximately 214,000 low income residents within its service area LASEVA has

¹ In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

partnered with the law schools at Regent University and William and Mary. LASEVA refers some of its clients to the Civil Litigation and Family Mediation Clinics at Regent and the Domestic Violence and Special Education Clinics at William and Mary. William and Mary also offers clinics in practice areas not handled by LASEVA, which include the following: Federal Tax Practice Clinic, Innocence Project Clinic, Appellate Litigation Clinic, and the Veterans Benefits Clinic.

LASEVA received grant awards from LSC in the amount of \$1,373,472 for 2008, \$1,511,526 for 2009, and \$1,632,053 for 2010. In its 2009 submission to LSC, the program reported 6,356 closed cases. LASEVA's 2009 self-inspection certification revealed a 5.44% error rate in CSR reporting. Three (3) cases were identified in which citizenship/alien eligibility was not documented; in four (4) cases evidence of legal advice was not documented; and one (1) case was a duplicate.

By letter dated May 21, 2010, OCE requested that LASEVA provide a list of all cases reported to LSC in its 2008 CSR data submission (closed 2008 cases), a list of all cases reported in its 2009 CSR data submission (closed 2009 cases), a list of all cases closed between January 1, 2010 and June 15, 2010 (closed 2010 cases), and a list of all cases which remained open as of June 15, 2010 (open cases). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LASEVA staff and the other for cases handled through LASEVA's PAI component. LASEVA was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* (January 5, 2004) protocol. LASEVA was requested to notify OCE promptly, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on-site visit. The sample was developed proportionately among 2008, 2009, and 2010 closed and 2010 open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LASEVA agreement of July 19, 2010, LASEVA staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.²

² In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

LASEVA's management and staff cooperated fully in the course of the review process. As discussed more fully below, LASEVA was made aware of compliance issues during the on-site visit. This was accomplished by informing intermediaries, as well as Managing Attorneys, and the Executive Director in the main office, of any compliance issues uncovered during case review.

At the conclusion of the visit on July 30, 2010, OCE conducted an exit conference during which LASEVA was made aware of the areas in which a pattern of non-compliance was found. With the exception of the revised citizenship attestation form, no significant distinction between 2008, 2009, and 2010 cases were found. OCE cited instances of non-compliance in the areas of execution of citizenship attestations, intake procedures, execution of retainer agreements, and 45 CFR § 1620.6. They were found in substantial compliance in the areas of automated case management system, documentation of legal advice, application of closing codes, timely case closure, duplicate case reporting, timekeeping requirements, internal control policies. LASEVA was advised that they would receive a Draft Report that would include all of OCE's findings, and that they would have 30 days to submit written comments in response. Thereafter, a Final Report would be issued that would include LASEVA's comments.

By letter dated October 5, 2010, OCE issued a Draft Report (DR) detailing its Findings, Recommendations, and Required Corrective Actions. LASEVA was asked to review the DR and provide written comments. By letter dated November 5, 2010, LASEVA submitted its comments to the DR. LASEVA has taken several corrective measures in response to the DR, which have been detailed in their comments to the DR. Furthermore, LASEVA noted one (1) exception to the Findings. OCE has carefully considered LASEVA's comments and has either accepted and incorporated them within the body of this Report or responded accordingly. LASEVA's comments, in their entirety, are attached to this Final Report.

III. FINDINGS

Finding 1: LASEVA's automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, improvements are required.

Recipients are required to utilize automated case management system (ACMS) and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2001 Ed.), ¶ 3.1 and CSR Handbook (2008 Ed.), § 3.1.

LASEVA utilizes Kemps Case Works Prime SQL version 8 as its ACMS. No defaults in essential compliance categories were identified. The ACMS has the capacity to cut and paste, as well as scan documents or outgoing letters into the electronic case file. Most staff interviewed is well-trained, record case notes directly in the ACMS, and capable of generating lists of cases open in their name. The ACMS has the capability to deselect cases from reporting to LSC through the correct use of two fields, "LSC Eligible" and/or "the X" closure code. In addition, cases which are accepted over LSC financial guidelines, primarily through one of several areas on Aging grants for senior citizens, are coded with that grant's funding source. These funding sources are excluded from the query used to generate the CSR. It is noted, however, that during case review team member identified some cases over LSC guidelines which were incorrectly coded and erroneously reported on CSRs. Further, several staff, including case handlers and managers were unable to articulate how to deselect cases from CSRs.

Although the ACMS is sufficient for LSC compliance purposes, the Eligibility Info Chart pre-programmed into the ACMS does not match the program's financial eligibility guidelines. The income chart lists household income amounts for 125% and 200% of the Federal Poverty Guidelines (FPG), allowed by regulation, but the board adopted policy only allows an upper limit of 187.5%. The ACMS asset ceiling chart is listed as \$3,000 for liquid assets with the caveat that an applicant will not be represented if liquid assets are between \$1,000 - \$3,000 and the applicant can obtain private counsel. The non-liquid asset ceiling chart is listed at \$5,000 and \$1,500 for each additional family member. The board adopted policy, although outdated, provides a liquid asset ceiling of \$4,000 for a household unit and \$6,000 if the household contains a member over 60 years or has a handicap or disability for which they receive income maintenance payments. The policy sets the non-liquid asset ceiling at \$5,000 for a household unit and \$7,500 if the household contains a member over 60 years or has a handicap or disability for which they receive income payments. The reference charts pre-programmed in the ACMS must match the board adopted financial eligibility policy. This chart should be consistent with program policies as several staff stated that they use it as a reference.

Further, the asset categories listed on the Eligibility Slip includes food stamps. It is one of the default asset categories and lists, on a single line, "FS/cash/savings/CD." Staff stated that the food stamps category was added as an asset when the program received its most recent update of the ACMS from Kemps Case Works. Staff further stated that initially food stamps was also

listed separately in the drop-down box and could be selected apart from the cash/savings/CD category. Case review identified a number of instances in which food stamps were listed as an asset either together with cash/savings/CDs or separately.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LASEVA's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, case review revealed that one (1) of LASEVA's funding sources is state Title III senior funding. LASEVA uses the Title III funding exclusively for over income senior clients.³ According to the Senior Law Center's (SLC) Managing Attorney Title III cases are not to be reported to LSC. However, the case sample evidenced a pattern in which Title III SLC cases were incorrectly included in the LSC reportable case list. All of the applicants were over income and the program's spend-down policy was not applied. An interview with SLC's Managing Attorney and review of the case sample did not provide conclusive evidence as to why the mistake occurred. It could not be ascertained as to whether the inclusion of the over income cases in the LSC reportable case list was a human or an ACMS error. Additionally, review of the case sample evidenced that in some instances, the case file was incorrectly selected as LSC or CSR Eligible in the ACMS. *See* Closed 2009 Case Nos. 30-09E-1005771, 33-09E-1003780, 40-09E-1005207, 46-09E-1002419; and 54-09E-1012047 in all instances the CSR or LSC Eligible box was selected.

In other instances, the case file was not selected as LSC or CSR eligible, however the cases were still on the CSR case list provided prior to the visit. *See* Closed 2009 Case Nos. 38-09E-0110052, 44-09E-006519, and 52-09E-1011481.

Also, a few cases were noted for inconsistent information in the ACMS and in the case file, *See* Closed 2009 Case Nos. 22-08E-1004184 the problem code given was 79 but it should be 38; 32-09E-1002303 the closing code in the file is A but the ACMS indicated "B"; 66-09E-1006382 the problem code given was 37 domestic abuse however, the majority of the advice given was regarding a landlord tenant issue; and Closed 2008 Case No. 81-08E-1004773 case notes indicate that the case was selected as a de-select case but was incorrectly reported in 2008. *See also* Open Case No. 07E-1003690 based on the information provided by the intermediary this case was opened on April 13, 2007, however the ACMS had the date of April 13, 2010 and Closed 2008 Case No. 08E-1002384 this is a closed Williamsburg case which was closed with the closing code "B" in the case file, however, the case was closed with closing code "A" in the ACMS.

LASEVA must ensure that the information entered into the ACMS is accurately recorded and is consistent with the information in the case file. Also, LASEVA must ensure that over income Title III cases are not reported to LSC. Additional training and oversight of deselection protocols is required to ensure that all staff, not just Office Managers, are aware of how to deselect a case from CSRs and that consistent procedures are used throughout the program. Further, food stamps should be removed from the ACMS as an asset and, if the program chooses to capture this information during screening, include it in the notes section so that it does not get included in the asset total.

³ Senior clients are those who are over the age of 65.

In response to the DR, LASEVA stated that, the ACMS has been modified to prevent any confusion about food stamps being considered an asset. LASEVA further stated that they have taken steps to ensure that no over-income cases shall hereafter be reported to LSC.

Finding 2: LASEVA's intake procedures and case management system do not support the program's compliance related requirements.

The majority of LASEVA's intake screening is conducted by Eligibility Paralegals in the Centralized Intake Unit (CIU), based in Norfolk. The CIU staff screens for eligibility and provides limited assistance to eligible callers and refers other cases to the branch offices. Each of LASEVA's branch offices conduct walk-in intake during business hours five days a week, and telephone intake as needed in instances that the caller is a senior citizen, has an emergency or complains about being able to get through to the CIU. All but one (1) office conducts outreach intake, to a varying degree.

Several staff responsible for conducting eligibility screening was interviewed, and written and electronic documents were reviewed for compliance.⁴ In accordance with these efforts it was found that LASEVA's intake procedures and case management system do not support the program's compliance related requirements due to several deficiencies: eligibility screening practices do not comply with the recipient's board adopted financial eligibility policy, the financial eligibility policy is outdated and does not contain some elements required by the revised 45 CFR Part 1611, screeners do not inquire about prospective income, screeners do not uniformly apply asset exclusions and are unable to articulate the asset ceiling, food stamps are recorded as an asset and included in the total asset amount, different written forms which do not mirror the ACMS screens are used for walk-in and outreach intake, three (3) offices fail to obtain citizenship attestations for walk-in applicants and two (2) offices fail to obtain citizenship attestations for outreach intake.

The root of the program's intake deficiencies is that the program's board adopted financial eligibility policy has not been revised to reflect changes to 45 CFR Part 1611, which took effect in September 2005. The date of the policy provided to LSC in the document request prior to the visit could not be determined; however, it is clear from reviewing the policy that it pre-dates the revisions to the regulation. During the visit the Executive Director confirmed that the policy provided to LSC was the program's most recent policy.

LSC regulations, at 45 CFR § 1611.3(a), state that the governing body of a recipient shall adopt financial eligibility policies consistent with the regulation and that such policies be reviewed at least once every three years. These policies are the basis from which income and asset eligibility screening procedures are developed. LASEVA's financial eligibility screening practices are

⁴ The Belle Haven Office Manager, responsible for walk-in and limited telephone intake in this office, was on vacation the week of the on-site review. Information regarding the office's intake procedures was obtained from the Staff Attorney. The Belle Haven office, otherwise known as the Eastern Shore office, is small and includes only three staff, the Office Manager, Staff Attorney, and Managing Attorney and, accordingly, the Staff Attorney appeared well-versed on in-office intake.

based upon a combination of its outdated policy and informal procedures communicated to staff through verbal or written instruction, and annual training.

Because some aspects of the revised regulation have only been informally implemented by the program, the majority of LASEVA's screening procedures are not authorized by the board of directors. For example, the policy sets its maximum income level at 125% and the upper income ceiling at 187.5% of the FPG. The program has informally implemented an upper income ceiling of 200% as allowed by the revised regulation but not implemented by the board.

Further, the board adopted policy allows for a spend-down procedure to qualify individuals whose income is between the lower and upper income ceilings. Staff subtracts amounts associated with certain categories of expenses from the applicant's gross annual income in an effort to "spend-down" the income to 125% or below. If the applicant's income can be spent-down, then such applicant is considered income-eligible. No approval is sought for such cases though the ACMS maintains both the gross and net poverty percentages. If the applicant's income cannot be spent-down, screeners seek approval from the Executive Director through e-mail. The response is cut-and-pasted into the electronic case file. The revised regulation allows a spend-down but also allows eligibility based upon the presence of qualitative and quantitative factors, regardless of the amount. The method of qualifying individuals pursuant to these procedures must be authorized by the board of directors. Though not institutionalized in board policy, the CIU provided an August 28, 2009 written document describing the waiver process. Further, the outdated policy includes the prior version of the regulation's factors that may be used to qualify an applicant whose income is between the upper and lower income levels yet staff does not utilize all of the regulatory factors and the ACMS is pre-programmed to reflect the limited set of factors (the staff do not screen for current income prospects, fixed debts and obligations, and non-medical expenses associated with age or disability). The revised regulation does not require programs to use all of the factors listed at 45 CFR § 1611.5(a)(4) but the decision to limit the factors used during this process must be reflected in the program's board adopted policy. Lastly, some inconsistency with respect to the application of the transportation expense factor was identified. Interviews reveal that some screeners allow a fixed amount of \$100 for work-related transportation expenses, and others consider \$100 to be a maximum. It is noted that case review identified cases with as much as \$1,500 in transportation expenses.

Many of the changes reflected in the revised regulation are optional and were implemented to simplify recipients' policies and screening procedures, and to allow them greater latitude in the financial screening process. Other changes reflected in the revised regulation are required and, because the policy has not been updated, are therefore not incorporated into the program's eligibility screening procedures. For example, for applicants who are victims of domestic violence, the revised regulation prohibits the inclusion of the alleged abuser's income and assets. During interviews, most screeners stated that they include the alleged abuser's income and assets if the victim resides with the alleged abuser. The screener that stated she does not include the alleged abuser's income and assets also stated that she never includes a spouse's income and assets in determining financial eligibility.

Screeners also do not accurately apply the asset exclusions set forth in the policy. The outdated policy excludes the following liquid assets: funds set aside for funeral or burial expenses not to

exceed \$3,000, or the first \$3,000 of the net cash value of insurance policies; funds in the applicant's name but legally obligated to another person; funds which are the savings or income of a minor other than the applicant; funds in an IRA, TSA, Keough, or similar retirement plan up to \$5,000 of cash value; and funds not actually available to the applicant. In terms of non-liquid assets, the policy excludes assets in which there is no equity value; one automobile per adult resident family member; the household goods and principal residence of the applicant and the land contiguous to that residence; and reasonable equity in work-related assets which are essential to the employment or self-employment of an applicant or a member of the family unit. No screener interviewed or observed ask about funeral or burial expenses, or insurance policies. Most notably, screeners gave differing answers regarding the vehicle exclusion with only one (1) correctly articulating the exclusion allowed by the policy. Accordingly, some screeners are excluding only one (1) vehicle per household and count toward the asset ceiling the value of other vehicles. It is possible that this incorrect application of the vehicle exclusion has resulted in erroneous over-asset determinations. It is noted that the revised regulation only allows limited exclusions which may not include some of those listed in the outdated policy.

During interviews no screener could accurately articulate the program's asset ceilings. Answers varied from \$1,000 to \$5,000. The board adopted policy, although outdated, provides a liquid asset ceiling of \$4,000 for a household unit, \$6,000 if the household contains a member over 60 years or who has a handicap or disability for which they receive income maintenance payments. The policy sets the non-liquid asset ceiling at \$5,000 for a household unit, \$7,500 if the household contains a member over 60 years or has a handicap or disability for which they receive income payments. The new version allows a distinction between liquid and non-liquid assets but it is not required by the revised regulation. Absent a new board approved policy, the limits set by the old policy stand.

As discussed in Finding No. 1 above, food stamps were counted as assets and included in the total asset amount. Food stamps do not meet the definition of an asset and if the program chooses to record this information during screening, it should do so in case notes. It is possible that this practice erroneously resulted in over-asset determinations.

Uniform Retainer Agreement, Statement of Facts, and Closing Memorandum forms are used throughout the program. However, three versions of citizenship attestations were identified, one which is non-compliant. The primary attestation used in the offices visited is entitled Eligibility Questionnaire. The form is in two (2) parts, the first is a citizenship attestation and the second is a status checklist for non-citizens.⁵ In addition, in many cases, clients sign the intake form printed from the ACMS which has two (2) signature lines, one (1) verifying the accuracy of the information and the other a citizenship attestation. The signature lines on these two (2) attestations are tied to the attestation statements and therefore are in compliance with the requirements of the CSR Handbook (2008 Ed.). A third attestation was identified in the written intake packet used by a paralegal in the SLC when conducting outreach intake. This version of the form is non-compliant as the signature line attests that the signatory is either a US Citizen or meets one of several other eligible alien statuses. It appears that this is a version of the current

⁵ The regulation does not contemplate an attestation of status for non-citizens. Instead 45 CFR § 1626.7 requires verification of status. This form is acceptable, however, because an applicant must also furnish a copy of status documentation.

program wide two-part form before the citizenship and eligible alien sections were separated to tie the attestation to a separate signature line. It appears as if the SLC outreach packets were not updated when the program revised its form. LASEVA must take corrective action to ensure that all citizenship attestations are compliant. The best practice is for the program to use the same form in all offices and units.

Lastly, in three (3) offices, citizenship attestations are not obtained from walk-in applicants at the time of the application and two (2) offices do not obtain citizenship attestations during outreach intake. Because most cases are intaked by the CIU, the initial screening of citizenship occurs verbally by telephone. Interviews reveal that if a caller is an eligible alien, documentation demonstrating status must be faxed to the CIU prior to completing the intake. For cases referred to local offices, staff obtains citizenship attestations during the first meeting with the client or in some instances citizenship attestation forms are mailed to the client for signature. As stated above, for these cases, eligible alien documentation has already been obtained and sent with the file. Walk-in applicants in the Williamsburg, Belle Haven, and Hampton offices are not requested to provide signed attestations at the time they apply for services. These offices use different written intake forms which do not contain a citizenship attestation and a separate attestation is not signed at that time. Further, the Williamsburg and Hampton offices conduct outreach intake using the written forms used for walk-in intakes and, similarly, attestations are not obtained during the initial contact. It is noted that the outreach intake form used for the Homeless Connect project contains a compliant attestation and accordingly attestations for these applicants are obtained in a timely manner. The walk-in and outreach applicants sign the Eligibility Questionnaire, which contains the attestation, and the printed electronic intake sheet which also has an attestation, either at first meeting with the case handler or the forms are mailed for signature and return. This practice is non-compliant with 45 CFR § 1626.6 which requires *applicants* to attest to citizenship in writing unless the only service provided to a citizen is brief advice and consultation by telephone.

In addition to the omission of a citizenship attestation on the written forms used for walk-ins to the three (3) branch offices, none of those forms or the two (2) forms used for outreach intake are as comprehensive as the electronic intake form. Accordingly, applicants for whom written intake are used, are screened in a less thorough manner than those screened with the electronic versions.

Considered in total, the program's written financial eligibility policy, and intake practice and procedures do not support the program's compliance requirements. The adoption of a financial eligibility policy that meets the requirements of the revised 45 CFR Part 1611 will resolve many of the deficiencies in the intake process. During the on-site review the Executive director indicated that he would revise LASEVA's current financial eligibility policy. LSC was sent a copy of the revision for review on August 23, 2010 and the board adopted the policy on September 16, 2010.

In addition, LASEVA must provide training on the new policy to all staff to ensure that the new requirements and procedures are understood and consistently implemented. It is recommended that the program adopt written intake procedures to give step-by-step instructions on eligibility screening. Lastly, LASEVA must ensure that walk-in and outreach applicants sign citizenship

attestations at the initial contact. In that regard, it is recommended that the program adopt a new program wide written intake form used for all in-person intake. The form should mirror the categories screened electronically and contain a compliant citizenship attestation to ensure that such are obtained in compliance with 45 CFR Part 1626.

In response to the DR, LASEVA stated that they will conduct a mandatory all-staff training on December 10, 2010 which will include training on the new eligibility policy. LASEVA further stated that the intake staff received training as a unit and as part of a training specifically for office managers, and such trainings shall continue in the future.

Finding 3: With a few exceptions, the sampled cases evidenced that LASEVA maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG). However, LASEVA does not comply with 45 CFR § 1611.3(a).

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.⁶ *See* 45 CFR § 1611.3(e)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines (FPG) and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

⁶ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

LASEVA does not comply with 45 CFR § 1611.3(a) which requires the governing body of a recipient to adopt policies consistent with Part 1611 for determining the financial eligibility of applicants and groups. Further, the governing body is required to review its financial eligibility policy at least once every three years and make adjustments as necessary. Furthermore, as discussed in Finding No. 2, LASEVA's financial eligibility policy has not been revised to reflect changes to 45 CFR Part 1611 which took effect in September 2005. Accordingly, the majority of the program's screening procedures are not authorized by the board of directors. 45 CFR §1611.3(a) requires the governing body of a recipient to adopt policies consistent with Part 1611 for determining the financial eligibility of applicants and groups. Further, the governing body is required to review its financial eligibility policy at least once every three years and make adjustments as necessary. The policy is at least five (5) years old and must be updated to reflect the revisions to 45 CFR Part 1611 and the board's intent in this regard. Following adoption, LASEVA must provide training to all staff, not just those initially involved in screening.

As stated in Finding No. 2, during the on-site review the Executive Director indicated that he would revise LASEVA's financial eligibility policy. LSC was sent a copy of the revision for review on August 23, 2010 and the board adopted the policy on September 16, 2010.

Although the board policy in effect during the review did not comply with the revised 45 CFR Part 1611, sampled cases were in compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. A few cases were noted where the client's income exceeded 125% of the FPG and no authorized exceptions were recorded in the file as required by 45 CFR § 1611.5(a). *See* Open Case No.07E-1010195 this is an open Norfolk case in which the client's income exceeded 125% of the FPG and no authorized exceptions were noted in the file; Closed 2009 Case No. 09E-1005404 this is a closed Williamsburg case in which the client's income exceeded 125% of the FPG and no authorized exceptions were noted in the file; and Open Case No. 09E-1007840; and Closed 2010 Case Nos. 10E-1003132, 10E-1001786, 10E-1000342, and 10E-1001575 these cases were over-income, without exceptions noted.

In response to the DR, LASEVA stated that they drafted a new Client Eligibility Policy and Procedure and supplied the draft to LSC's OCE on August 6, 2010. After some minor changes, LASEVA's Board of Directors adopted the new policy on September 16, 2010. It is their understanding that the new policy fully complies with the LSC Act, regulations and other applicable law.

Finding 4: Sampled cases evidenced that LASEVA maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets

except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁷ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d)(2).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in the prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

As discussed above, the LASEVA board of directors has not adopted a financial eligibility policy that complies with the revisions to 45 CFR Part 1611. Accordingly, the program's asset ceilings remain separate for liquid and non-liquid assets. Further, interviews reveal that asset screening is weak as staff do not screen in accordance with the existing policy and cannot articulate the program's asset ceilings. Lastly, staff considers food stamps to be an asset when determining asset eligibility. *See* Finding No 2.

Although screening weakness were identified, sampled case files reviewed revealed that LASEVA maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. Note that cases evidencing the inclusion of food stamps as an asset are reported in Finding No.1. A few cases had clients whose assets were over LASEVA's asset ceilings, and did not contain a documented waiver in the case file. *See* Closed 2010 Case Nos. 10E-1003132, 10E-1001786, and 10E-1000342.

See LASEVA's response to the DR as incorporated in Finding No.3.

Finding 5: Sampled cases evidenced non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility.

⁷ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

See 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. See CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5; See also, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. See CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁸ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

LASEVA has an outreach clinic in which it partners with the Regent Law School. The clinic is run by a former LASEVA employee who is now a professor at the law school. The non-written agreement between with LASEVA and Regent is that Virginia Beach public benefit cases are referred to the law school after intake is conducted at LASEVA. Third year law students co-counsel with the professor and provide service to LASEVA's clients. A review of the case sample revealed the majority of cases handled by the Regent clinic did not include a citizenship attestation. See Closed 2009 Case Nos. 09E-1009179, 09E-1009182, 09E-1008491, 09E-1009386, 09E-1009261, 09E-08E-1010851, 09E-1001201, 09E-1009432, and 09E-1000362. See also Closed 2008 Case Nos. 08E-1005396 and 08E-1006900.

Currently, unless intake is conducted at the Virginia Beach office, a PAI client referred to the Regent clinic is not asked to sign a citizenship attestation or verify their alien status. During the visit, OCE received conflicting statements regarding whether or not Regent cases are reported to LSC as PAI. LASEVA is advised that regardless of whether the Regent case files are reported to LSC, the clients that are assisted must evidence their citizenship or alien status as required by 45 CFR § 1626.6 and 45 CFR § 1626.7. As such LASEVA must ensure that all clients referred to the Regent Law School clinic include a timely executed citizenship attestation or alien documentation as required by 45 CFR Part 1626.

Also, the case sample evidenced that the SLC's outreach intake form is not compliant with the CSR Handbook (2008 Ed.), § 5.5. LASEVA conducts out reach at senior centers during which a

⁸ See Kennedy Amendment at 45 CFR § 1626.4.

paralegal utilizes an intake form that includes a citizen attestation.⁹ The CSR Handbook allows for citizenship attestations to be contained within another document provided there is a separate signature line tied only to the citizenship attestation.¹⁰ At the time of the visit, SLC's intake form did not include a separate citizenship attestation signature line as required. Each of the case sample intake sheet forms included a client's signature however, a client's signature attesting to the truth of the intake information does not suffice as a attesting to ones citizenship status.¹¹ Consequently, any SLC files that do not include a compliant attestation cannot be reported to LSC. During the on-site visit the SLC staff created a separate citizenship attestation that was used that day during out reach. According to the SLC Managing Attorney, SLC plans to revise its intake sheet to include a separate signature line as required by the CSR Handbook (2008 Ed.) § 5.5. LASEVA was advised that they should try to contact as many 2010 clients as possible to have them sign a compliant attestation. The attestations in theses cases will still be noted as untimely however, the cases will be reportable. *See* Closed 2009 Case Nos. 25-09E-1004620, 25-09E-1007646, 27-1004285, 09E-10011452, 32-09E-1002303, 33-09E-1003780, 34-09E-1005887, 35-09E-1002190, 36-09E-1007868, 41-09E-1009545, 42-09E-1009168, 44-09E-006519, 47-09E-1007273, 49-09E-1003117, 50-09E-1001232, 51-09E-1008489, and 53-09E-1001224.

Additionally, case file review revealed cases through out the program which were not compliant with the requirements of 45 CFR § 1626.6, some examples are as follows: *See* Closed 2008 Case No. 08E-1001033 the client was provided with brief service over the telephone however the box indicating that 1626 eligibility was checked was not marked; Open Case No. 07E-1006417 this case was an extended level of service and lacked the documentation required under 1626; Closed 2010 Case No. 10E-1001304 this is a closed SLC case that contained a signed citizen attestation, however, it was not dated; and Closed 2010 Case No. 10E-1004473 this is a closed SLC case in which the attorney met the client at a homeless shelter, however, no citizen attestation was obtained. *See also* Closed 2010 Case Nos. 10E-1005868, 10E-1002965, 10E-1003031, and 10E-1004522, these are closed Senior Law Center cases which contained signed and dated citizen attestation statements; however, the attestations did not comply with the requirements of CSR Handbook (2008 Ed.), § 5.5.

As such LASEVA is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). LASEVA must ensure that all case files contain citizenship attestations, where appropriate, that are signed and dated pursuant to 45 CFR Part 1626.

In response to the DR, LASEVA stated that they have taken steps to ensure compliance with 45 CFR §§ 1626.6 and 1626.7.

LASEVA further stated that "the problem stemmed from the very small amount of cases referred to the Regent Law School litigation clinic, and the clinic was not having the clients sign a citizenship attestation. It is important to note that this is a very small number of cases (Finding 5

⁹ SLC does conduct in-house intakes. In those few instances the intake information is entered directly into Kemps and the client is asked to sign the Kemps printed intake sheet which includes a separate citizenship attestation signature line.

¹⁰ *See* CSR Handbook (2008 Ed.), § 5.5.

¹¹ *See* CSR Handbook (2008 Ed.), § 5.5.

notes 9 cases to the Clinic out of the more than 6,000 closed by the program in 2009). LASEVA's Director has met with the Professor who runs the clinic and this problem has been resolved.

The other area of non-compliance noted in the draft report was the Senior Law Center's outreach paralegal at some point began using an out-dated citizenship attestation form, which did not contain the exact language required by the regulations. The paralegal was having the people sign citizenship attestations, they were just using the wrong language. LASEVA has taken corrective action and all known copies of the old form have been destroyed."

Finding 6: Sampled cases evidenced non-compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a).

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.¹² Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

The same retainer agreement form is used throughout the offices visited. Although retainers are not required for PAI cases, those that were reviewed contained agreements executed by the program. The retainer is states that the client authorizes LASEVA to, "review, advise, and possibly represent me with the following case or matter" followed by a blank line for the case handler to insert the legal problem and the nature of the legal assistance to be provided.

Sampled case review evidence several cases that either lacked a retainer agreement, contained a retainer agreement that did not identify the legal problem for which representation was sought, or where executed in an untimely manner.

See Open Case Nos. 07E-1006417 case contained a signed retainer agreement however the scope and subject matter on the agreements was blank; and 07E-1003690, case was opened on April 13, 2007 and lacked a retainer agreement. *See also* Open Case No. 10E-1003033 and Closed 2009 Case No. 09E-1006943 these cases had no retainer where one was required. *See also* Open Case Nos. 10E-1000875, 10E-1006408, and 10E-1006413 these cases had no date on their retainers; Closed 2008 Case No. 08E-1001128 retainer dated just prior to closing; Closed 2010 Case No. 06E-1003135 retainer signed 3.5 years after case opened; Closed 2010 Case No. 08E-1014049 retainer dated 9 months after case opened. *See also* Open Case Nos. 05E-1006755,

¹² However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

10E-1004472, 07E-1006379, 10E-1002848, 10E-1003177, 09E-1010867, 08E-1005713, 09E-1005072, 10E-1004497, 10E-1005859, 04E-1006535, 09E-1007591, 10E-1004638, and 06E-1009137 these cases contained a signed retainer agreement, however failed to contain a description of the scope of legal services to be provided by LASEV.

As such LASEVA is in non-compliance with the requirements of 45 CFR § 1611.9. LASEVA should ensure that the scope and subject matter on retainer agreements are completed in accordance with 45 CFR § 1611.9(a).

In response to the DR, LASEVA stated that they will address the importance of complying with this regulation at the mandatory all-staff training on December 10, 2010. LASEVA further stated that they usually conduct regulatory compliance staff meetings twice each year, and this issue will be highlighted for the next several trainings.

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a)(1) and (2).

The statement is not required in every case. It is required only when a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or when a recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

To satisfy this requirement, clients complete and sign a form which captures the legal problem. The same form is used in all offices visited. Case files reviewed indicated that LASEVA is in compliance with the requirements of 45 CFR Part 1636. A statement of fact or a verified compliant was included in all files when required.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR §

1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

Prior to the visit, LASEVA provided LSC with a list of its priorities. LASEVA is in compliance with 45 CFR Part 1620. None of the sampled files reviewed revealed legal issues that were outside of LASEVA's priorities.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

LSC regulations specifically define "case" as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a "case", reportable in the CSR data, depends, to some extent on whether the case is within the recipient's priorities and whether the recipient has provided some level of legal assistance, limited or otherwise.

If the applicant's legal problem is outside the recipient's priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

A review of SLC's senior clinic files revealed that staff does not retain copies of executed Power of Attorneys (POA). SLC has a POA form that is filled out and signed by the client at a SLC paralegal run clinic. The client is assisted in filling out the form by a SLC paralegal. The SLC paralegal assists clients without the supervision of an attorney. After the POA form is completed, the paralegal notarizes the POA and does not retain a copy. Once the paralegal returns to the office they draft a statement that they assisted the client with drafting the POA and includes any questions they answered.¹³ The files are closed with the closing code B (limited service). Although not required it is highly recommended that LASEVA keep a copy of the executed POA. The copy will provide proof that limited assistance was provided to the client in the case the drafting of a POA. Also, since an attorney is not on-site with the paralegal, it would provide a supervising attorney an opportunity to review the paralegal's work as required by the CSR Handbook (2008 Ed.), § 2.5. The CSR Handbook states that a non-attorney can provide

¹³ *See* Case Nos. 25-09E-1007646 and 27-09E-1004285.

legal assistance under the direct supervision of a licensed attorney in accordance with the rules of practice in the jurisdiction(s) where the program provides assistance. This CSR requirement is not applicable if the local jurisdiction or forum allows waiver of attorney supervision or allows legal assistance by a non-attorney under specific circumstances. In this case, LASEVA must provide documentation that allows the SLC paralegal to provide legal assistance without the supervision or oversight of an attorney. If LASEVA's local jurisdiction does provide a waiver to the CSR requirement, LASEVA should retain copies of the POA to allow a LASEVA attorney to review and supervise the paralegal works. Otherwise, a LASEVA attorney should be on-site at the clinic with the paralegal attorney to supervise the paralegal's work.

LASEVA is in substantial compliance as there were a few cases reviewed from the sample that failed to contain a description of the legal assistance provided. *See* Closed 2008 Case Nos. 08E-1003805, 08E-1009391, 14-07E-1008711; Closed 2009 Case Nos. 09E-1000806, 09E-1002303, 09E-1002703; and Closed 2010 Case Nos. 10E-10020732008 and 10E-10020000. There was no description of legal assistance provided in any of these cases.

LASEVA should ensure that each case reported to LSC contains a description of the legal assistance provided to the client

In response to the DR, LASEVA stated that they are in the process of addressing this concern. Until a final resolution is achieved, the paralegal will not go out on any outreach activities without an attorney present. LASEVA further stated that they are exploring the possibility of obtaining a portable scanner for the paralegal to use to scan the POA or other document for both retention of the document in their files and to allow for review by an attorney.

Finding 10: Sampled cases evidenced that LASEVA's application of the CSR case closure categories are substantially consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1.

The Reason Closed drop-down box on page 3 of the ACMS includes three codes in addition to the LSC mandated A through L closure codes, X = Deselected, Y = Referred to National or State Legal Services and Z = Referred to Lawyer Referral Service. Cases closed with these codes are not reported in CSRs.

The files reviewed demonstrated that LASEVA's application of the CSR case closing categories are substantially consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were a few instances of case closing code errors. Some examples of this finding are as follows.

See Closed 2010 Case Nos. 07E-1007158 this is a 2010 closed Senior Law Center case which was closed utilizing the closing code “I(c)”, appeal. There was a court decision in file; however, no appeal was ever filed in the case. Closing code “I(b)”, court decision, is the applicable closing code; 10E-1002049, this is a Senior Law Center case that was closed with the closing code, “A”, counsel and advice. In addition to advising the client, the case handler sent a letter to the creditor who was the opposing party in the case, therefore, closing code “B”, limited action, is that applicable closing code; 10E-1004179, this is a Senior Law Center case that was closed with the closing code “F”, negotiated settlement without litigation. According to the notes in the file the case handler only provided advice to the client, therefore, closing code “A”, counsel and advice, is the applicable closing code; and 10E-1002313 this is a Senior Law Center case which was closed with the closing code “F”, negotiated settlement without litigation. The client in the case was threatened with an eviction by the property manager because she mistakenly thought client’s daughter, who was a convicted felon, was also living on the premises. The case handler informed the property manager that the client’s daughter was not living there and the property manager agreed not to go forward with the eviction. Closing code “B”, limited action, is the applicable closing code. *See also* Closed 2008 Case Nos. 08E-1011033 (this is a Senior Law Center case that was closed with the closing code “I(a)”, uncontested court decision. The client sought assistance from LASEV in a garnishment case. LASEV drafted the filing documents and transferred the case to Central Virginia Legal Aid in Richmond because that is where the case would be heard which is over two hours from LASEV’s office in Norfolk. An attorney from Central Virginia Legal Aid made the appearance in court on the client’s behalf and drafted a closing letter to client when the case was closed. Each office can close the case but only at the level of service they provided. Therefore, LASEVA should close the case utilizing the closing code “B”, limited action or “L”, extensive service based on the level of service that was provided in drafting the filing documents and Central Virginia Legal Aid should close the case utilizing closing code “I (a)” or I (b) depending on whether the case was contested or not) and 07E-10100004, this is a Senior Law Center case which was closed with the closing code “L”, extensive service. The case handler assisted the client in obtaining a birth certificate by making several phone calls and writing letters. The level of assistance provided warranted that the case be closing with closing code “B”, limited action.

LASEVA should provide additional training to ensure that staff is fully trained on the CSR closing categories.

There was no response to this Finding.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as there were two (2) case file reviewed that were dormant.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, limited action, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice,

limited action, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).¹⁴ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

LASEVA is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as there were a minimal amount of files reviewed that were dormant. *See* Open Case Nos. 07E-1006417 the last date of activity on this case was on February 11, 2008; and 07E-1003690 the last date of activity on this case was on June 11, 2007. *See also* Open Case Nos. 07E-1010195 and 08E-1002384 these cases were open in 2007 and 2008. The cases were referred to the Regents University Law School Clinic and there was no evidence of legal work documented in either case. *See also* Open Case No. 05E-1005931 this case was open as of July 2010, but no work had been done since 2008.

LASEVA should ensure that all cases are timely closed by conducting periodic review of case management reports on closed cases, particularly those limited service files that remained open for an extended period of time

In response to the DR, LASEVA stated that they shall continue to monitor open cases to make sure that all files are closed in a timely manner. They further stated that of the 800 files reviewed in the audit, 2 were identified as dormant in Finding 11. LASEVA stated that they will stress to the Managing Attorneys the importance of moving forward with all cases and the Director shall also place a renewed emphasis on this subject when reviewing case handlers' files.

Finding 12: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

¹⁴ The time limitation of the 2001 Handbook that a limited action case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

When a recipient provides more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.2 and CSR Handbook (2008 Ed.), § 6.2.

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.4 and CSR Handbook (2008 Ed.), § 6.4.

LASEVA has implemented procedures to reduce the potential of duplicate cases. During interviews, screeners stated that prior to opening a case in the ACMS they search for the applicant's name in the database to determine if they are an existing or prior client. If a case is identified for the applicant that is either open, or a closed case with the same problem code and closed during the same calendar year, the screener contacts the case handler of record to obtain guidance as to whether the case should be reopened or if a new case should be created. Further, at the end of the year, the Administrator, who is responsible for generating CSRs, runs duplicate reports to identify possible duplicate cases. Each possibility is reviewed and, if necessary, duplicate cases are deselected from CSRs.

LASEVA is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. The case sample included targeted files to test possible duplicate files. The sample case disclosed no pattern of duplicate cases, two set of duplicate files was cited. *See* Closed 2009 Case Nos. 09E-100638 and 09E-1006393 in both cases client discussed a landlord tenant dealing with the same address. The later case should not have been opened. *See also* Closed 2010 Case No. 10E-1003958 this is a closed Williamsburg case which is a duplicate of Case No. 10E-1003983. The client was seeking assistance because she was fired by two (2) different employers for lying on application about a previous assault conviction. The case handler researched client's prior convictions and advised her she had no recourse against either employer since she did in fact lie on her applications).

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 13: Sampled cases and a limited review of financial records provided by LASEVA evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party

office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

Sampled files reviewed and a limited review of accounting records and documentation for the period January 1, 2007 through June 15, 2010, as well as interviews with management indicate that LASEVA is not involved in such activity.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

Sampled cases and interview with the Executive Director evidenced compliance with the requirements of 45 CFR Part 1609.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 15: A limited review of LASEVA's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities. However, the donor notification letters being utilized by LASEVA do not meet the requirements of 45 CFR § 1610.5.

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees.

Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include:

- i) the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;
- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

See 45 CFR § 1610.8(a); *see also*, OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other

forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

The donor notification letter that are currently utilized by LASEVA to notify its non-LSC funding sources of the LSC prohibitions and conditions that apply to their funds do not meet the requirements of 45 CFR §1610.5.

Furthermore, based on a limited review of the program's fiscal records, observations of the physical locations of all program field offices, and interviews with staff, LASEVA does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 16: LASEVA is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, LASEVA is in non-compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

LSC regulations require LSC recipients to devote an amount of LSC and/or non-LSC funds equal to 12.5% of its LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. This requirement is referred to as the "PAI" or private attorney involvement requirement.

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors. *See* 45 CFR §§ 1614.3(a), (b), (c), and (e)(3). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. *See* 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to

achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

Recipients are required to develop a PAI Plan and budget. *See* 45 CFR Part 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet legal needs, and the results of consultation with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. *See* 45 CFR §§ 1614.4(a) and (b).

LASEVA's PAI program consists of two (2) law school clinics, a pro bono component, and a *judicare* component.

Norfolk – The Regent University Clinic

LASEVA operates a clinic in association with the Regent University School of Law. Third-year law students, supervised by a Regent University Law Professor, provide legal assistance to clients in approximately 30 cases per year which are referred to the clinic. Cases appropriate for referral are identified by CIU staff during the normal intake process. The CIU Managing Attorney emails the case notes to the Professor, who reviews them and advises within two to three days if the clinic will accept the case. The clinic handles mostly public benefits and domestic violence cases. The CIU Office Manager tracks the referrals to the clinic.

The CIU Managing Attorney stated that two to three times per year the Professor returns the cases with a summary of the assistance provided to the client. The Managing Attorney reviews the cases, completes the program-wide Closing Memorandum, and gives them to the CIU Office Manager to close on the ACMS.

No written citizenship attestation is obtained prior to referral of these cases. Further, the clinic does not obtain citizenship attestations. These cases have been screened verbally during CIU intake but nevertheless violate 45 CFR § 1626.6(a).

In addition, oversight, required by 45 CFR § 1614.3(d)(3), is not conducted. The Administrator stated that a number of these cases are deselected from CSRs due to timeliness issues.

If LASEVA wishes to continue to report these cases as PAI, it must obtain written citizenship attestations from the clients prior to referral and implement case oversight and follow-up procedures.

Williamsburg – William and Mary Clinic

LASEVA also operates a clinic in association with the William and Mary School of Law. Similar to the Regent University Clinic, third-year law students provide legal assistance to clients under the direct supervision of an Adjunct Professor. The Williamsburg office is located in a

house owned by the College. It houses three (3) LASEVA staff and the clinic Professor. Following routine screening procedures, the Williamsburg Office Manager and Managing Attorney identify cases appropriate for referral to the clinic based upon conversations with the Professor. The referrals are not limited to specific legal problems but must appear to have the potential for closure during the semester. During 2010, the clinic has handled mostly evictions and child support cases.

The course is limited to six (6) students per semester. Students meet with the Professor in groups of two (2) and the Professor is always present when advice is provided to client. She also reviews all written documents. Each student usually has a case load of three (3) to four (4) cases. Advice is documented in the file and copies of documents are preserved.

Unlike the Regent University Clinic, these cases include citizenship attestations. They are obtained prior to referral to the William and Mary clinic.

The Professor, though housed in the Williamsburg office, does not have access to the ACMS. She tracks the cases assigned to the clinic on a log and that log is matched to an automated case list generated monthly by the Office Manager.

When cases are closed, the Professor completes the program-wide Closing Memorandum and selects the closing code. The Office Manager closes the case on the ACMS. No oversight concerns were identified.

Williamsburg – Pro Bono

The Professor also handles pro bono cases independent of the clinic. Cases are referred to her by the LASEVA PBI Coordinator located in the Hampton office. At the time of the review, she had 13 open cases. The Professor tracks her cases manually and compares them to ACMS generated lists prepared by the PBI Coordinator. Citizenship attestations are signed prior to referral. No oversight concerns were identified.

No Williamsburg pro bono cases were selected for review.

Belle Haven – No PAI

The Belle Haven office does not handle PAI. If a case appropriate for referral is identified, it is sent to the LASEVA PBI Coordinator. An example of such case would be a bankruptcy for which a Staff Attorney has met with the client, determined bankruptcy to be a viable option and the client has completed credit counseling. Such cases would be placed by the LASEVA PBI Coordinator with a judicare attorney.

Hammond - Judicare

LASEVA operates a judicare panel from the Hammond office. The PBI Coordinator and a part-time assistant, who is also a part-time assistant for staff cases and conducts staff intake, run the program. The majority of the cases handled by the panel attorneys are uncontested divorces,

bankruptcies and guardianships. Most cases are identified by CIU during intake, though they may also be identified from walk-in intake in the local offices. Following eligibility screening, CIU sends divorce applicants a Divorce Information Sheet and a citizenship attestation. The attestation is the same used for staff cases. When the documents are returned to the PBI Coordinator, she places them with an attorney.

Attorneys participating on the panel sign a contract with LASEVA and each referral is accompanied by an engagement letter for that case. Attorneys are paid a flat fee of \$200 for an uncontested divorce, \$400 for a Chapter 7 bankruptcy and \$500 for a Chapter 13 bankruptcy. For guardianship cases, attorneys are paid \$75 per hour up to a \$500 maximum. If a client withdraws or disappears during the cases, the attorney must submit time keeping as to the hours spent on the case up to that point and the attorney is paid \$75 per hour.

Upon closure, the attorney must submit the final order. The PBI Coordinator reviews the file and processes the check request through Norfolk. The part-time PAI Assistant completes the program-wide Closing Memorandum, selects the closing code and closes the case on the ACMS.

Every 60 days the Office Manager generates a list of open cases for the PBI Coordinator. If there are issues regarding the status of the case, she calls the attorney. In the past the PBI Coordinator used forms to track the status but found that attorneys rarely returned them and it was a waste of time. She stated that she has good results from calling the attorneys. She documents status information in the file. No oversight issues were identified.

No dormancy or other compliance issues were identified.

All findings regarding PAI files reviewed in the Virginia beach's Regent Law School clinic files have been discussed in the previous findings.¹⁵

OCE's review of LASEVA's PAI cost allocation policy statement and worksheets and the audited financial statements for the review period determined that the program complies with the accounting requirements of this Part. The review noted no exceptions or inconsistencies in this area.

In response to the DR, LASEVA stated that LASEVA's Executive Director has had a meeting with the Professor who runs the Regent Law School litigation clinic to resolve the issues highlighted by the OCE visit. They further stated that both LASEVA and Regent have increased oversight of these cases and there will be regular review of Regent cases by LASEVA.

¹⁵ See Finding No. 5 regarding citizenship attestations.

Finding 17: LASEVA's compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization could not be verified due to the current accounting system being utilized by the program. Additionally, LASEVA was not in compliance with 45 CFR § 1627.3 in 2007 and 2008.

LSC regulation 45 CFR § 1627.4(a) requires that:

- a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.
- b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a government organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

The program utilizes QuickBooks, which is not sophisticated enough to allow the tracking of different funding sources via a built-in funding code into the many different account numbers. The chart of accounts consists of three hundred and fifty-four accounts. The review of various sub-ledger accounts like Accounts Payable, Miscellaneous Revenue, Accounts Receivable, and Prepaid Expenses was inconclusive. In light of the absence of an LSC funding code the use versus non-use of LSC funds could not be established with certainty.

LSC was verbally assured, by the Executive Director and the Deputy Director, that no LSC funds were being used on non-mandatory membership fees and dues that would present a violation of 45 CFR § 1627.4(a). This verbal assurance could, however, not be corroborated with supporting documentation due to the limitations of QuickBooks.

For fiscal year 2009-10 the program's ratio of LSC Reported Cases to Total Cases is 94.62%, and its ratio of Matters Reportable (hours) to Total Matters (hours) is 97.99%. Based on these percentages the program plans on expending the totality of LSC funds in fiscal year 2009-10 on salaries, which will represent roughly 61.72 % of salary costs program wide.

Additionally, the review of the program's Vendor Detail for Private Attorneys for the four (4) years of the review period revealed that a PAI Attorney, in 2007 and 2008, billed \$30,596 and \$29,675 respectively for her services to the program, when the threshold is \$25,000. *See* 45 CFR § 1627.3. In accordance with the definition provided in 45 CFR § 1627.2(b)(1) the above mentioned transactions meet the definition of a subrecipient and as such LASEVA should have submitted a written request to LSC for advance approval of the above referenced transactions.

As such LASEVA was not in compliance with the requirements of 45 CFR § 1627.3 in 2007 and 2008.

In response to the DR, LASEVA stated that it has established procedures for preventing a repeat of the over-use of any individual judicare attorney. LASEVA further stated that the PAI Coordinator now tracks the numbers referred to each PAI attorney and shall cease sending new cases to an attorney who has pending cases which could put them over \$20,000 for the year.

Finding 18: LASEVA is in substantial compliance with 45 CFR Part 1635 (Timekeeping requirements).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

The review of timekeeping records of 10 advocates for the pay period ending October 30, 2008 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in substantial compliance with 45 CFR §§ 1635.3(b) and (c).

A review was conducted for 12 actual case files against their corresponding timekeeping records to determine the accuracy of the time reported when comparing to the amount of work performed as disclosed in the case file. The review disclosed that both records compare favorably.¹⁶

There are no recommendations or corrective actions required.

There was no response to this Finding.

¹⁶ A discrepancy was noted in comparing the Administrative time ledger for the month of September 2007 for one (1) of the employees for one (1) day. The Executive Director stated that this employee is tasked to go to a different location on several days during the month. He believes that this may have been one of those days, and she failed to enter her time upon her return to the office on the following day. Several other records were checked and no other discrepancies were noted.

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.¹⁷ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees.

Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).¹⁸

The sampled files reviewed did not contain a prayer for attorney fees as such LASEVA is in complaint with the requirements of 45 CFR Part 1642.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities.

There are no recommendations or corrective actions required.

¹⁷ The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

¹⁸ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

There was no response to this Finding.

Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Recipients are prohibited from using LSC funds to provide legal assistance with respect to a criminal proceeding. *See* 45 CFR § 1613.3. Nor may recipients provide legal assistance in an action in the nature of a habeas corpus seeking to collaterally attack a criminal conviction. *See* 45 CFR § 1615.1.

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁹

None of the sampled files reviewed involved initiation or participation in a class action.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Recipients may not make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting. *See* 45 CFR § 1632.3.

¹⁹ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

None of the sampled files reviewed revealed participation in litigation related to redistricting.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens the health or safety or other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files reviewed involved defense of any such eviction proceeding.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited

LSC recipients and their staff from engaging a client which it solicited.²⁰ This restriction has been contained in all subsequent appropriations acts.²¹ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: “This part is designed to ensure that recipients and their employees do not solicit clients.”

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. No may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

None of the sampled files reviewed involved such activity.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution. Additionally, Public Law 104-134, Section 504 provides that none of the funds appropriated to LSC may be used to provide

²⁰ *See* Section 504(a)(18).

²¹ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

financial assistance to any person or entity that participates in any litigation with respect to abortion.

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b) (10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that LASEVA was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 29: LASEVA is not in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

The review team requested a copy of the signed written agreements in accordance with this requirement during the visit. The Executive Director stated he did not believe staff signed such a document; however, the package of documents that new hires receive does contain the program's priorities and provides procedures for dealing with emergency situations. The Executive Director stated that he will draft a form that is compliant with the requirements of 45 CFR Part 1620 and assure that each member of his staff that falls within this requirement signs the form.

In response to the DR, LASEVA stated that they are now fully compliant with 45 CFR § 1620.6.

Finding 30: From a limited review of LASEVA' fiscal documentation and interviews with its management, the program could further strengthen its fiscal internal control by fully implementing additional internal controls that are detailed in the Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2, and by updating their current Accounting Manual.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, LSC Audit Guide for Recipients and Auditors, Accounting Guide For LSC Recipients (2010 Edition), the CSR Handbook, the LSC Property Manual and the Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity's governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations.

The Accounting Guide for LSC Recipients (AGFLR) provides guidance on all aspects of fiscal operations and the 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur.

The completed Internal Control Worksheet revealed a need for stricter internal controls in the areas of procurement, property, and client trust accounting:

Procurement: One (1) individual approves purchase orders while also verifying the accuracy of vendor invoices and maintaining control over unpaid vendor invoices. An individual other than this person should be responsible for the approval of purchase orders.

Property: One (1) individual performs all three (3) property (capital assets) functions: maintains the property inventory records, takes the annual property inventory records, and reconciles the property records to the General Ledger. These three (3) functions need to be split up and at least one (1) other individual needs to be given one (1) of these functions to take care of.

Client Trust Accounting: One (1) individual maintains client trust account records, issues receipts for monies received from clients, and prepares the monthly client trust bank statement reconciliations. This last function should be given to an individual other than this person. Also, the program should not wait until the end of the year for the auditors to reconcile client trust account balances to the General Ledger. This should be done quarterly.

Additionally, LASEVA's Accounting Manual appears to be outdated and in need of improvements. A review of the manual revealed that it lacks a chart of accounts, a travel policy, and receipts and deposits are misclassified as "Accounts Payable" when they need their own classification.

LASEVA should implement a stricter internal controls policy and update their Accounting Manual.

In response to the DR, LASEVA stated that, they are in the process of updating their accounting manual and as part of that process LASEVA is examining internal controls. LASEVA clarified that, in regards to procurement, one individual does not handle all three functions mentioned in this Finding. LASEVA stated that those roles are divided between LASEVA's Administrator and the Norfolk Office Manager. LASEVA further stated that the new accounting manual will make clear the division of roles not only regarding procurement, but also with respect to property and client trust issues identified in this Finding. LASEVA stated that they are currently in the process of updating their Accounting Manual.

IV. RECOMMENDATIONS²²

Consistent with the findings of this report, it is recommended that LASEVA:

1. Review its list of open cases and mark for rejection and exclude from the CSR data submission all dormant, inactive, and files involving ineligible applicants;

There was no direct response to this Recommendation.

2. Ensure that each case reported to LSC contains a description of the legal assistance provided to the client;

There was no direct response to this Recommendation.

3. Change the referral procedures regarding Regent Law School clinic cases and do not refer a case until a citizenship attestation has been obtain or require the law school to have clients sign the appropriate 45 CFR Part 626 documentation;

There was no direct response to this Recommendation.

4. Revise the income and asset charts programmed into the ACMS to reflect the guidelines set forth in the financial eligibility policy adopted in response to Corrective Action herein; and

There was no direct response to this Recommendation.

5. Review cases periodically to ensure that retainers are obtained as cases become more extensive than “A” or “B” closing-code cases.

There was no response to this Recommendation.

²² Items appearing in the “Recommendations” section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

By contrast, the items listed in “Required Corrective Actions” must be addressed by the program, and will be enforced by LSC.

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, LASEVA is required to take the following corrective actions:

1. Ensure that its income and asset policy is consistent with the LSC Act, regulations and other applicable law;

In response to the DR, LASEVA stated as follows: "LASEV drafted a new Client Eligibility Policy and Procedure and supplied the draft to LSC's OCE on August 6, 2010. After some minor changes, LASEV's Board of Directors adopted the new Policy on September 16, 2010. It is our understanding that the new policy does fully comply with the LSC Act, regulations and other applicable law."

2. Provide mandatory training for the full staff regarding the requirements of the financial eligibility policy adopted in response to Corrective Action No.1;

In response to the DR, LASEVA stated that they will conduct a mandatory all-staff training on December 10, 2010 which will include training on the new eligibility policy.

3. Ensure compliance with 45 CFR §§ 1626.6 and 1626.7;

In response to the DR, LASEVA stated as follows: "LASEVA has taken steps to ensure compliance with 45 CFR 1626.6 and 1626.7. The problem stemmed from the very small amount of cases referred to the Regent Law School litigation clinic, and the clinic was not having the clients sign a citizenship attestation. It is important to note that this is a very small number of cases (Finding 5 notes 9 cases to the Clinic out of the more than 6,000 closed by the program in 2009). LASEVA's Director has met with the Professor who runs the clinic and this problem has been resolved.

The other area of non-compliance noted in the draft report was the Senior Law Center's outreach paralegal at some point began using an out-dated citizenship attestation form, which did not contain the exact language required by the regulations. The paralegal was having the people sign citizenship attestations, they were just using the wrong language. LASEVA has taken corrective action and all known copies of the old form have been destroyed."

4. Ensure that all citizenship attestation statements comply with CSR Handbook (2008 Ed.);

In response to the DR, LASEVA stated "See corrective action above."

5. Ensure that all cases are timely closed by conducting periodic reviews of case management reports on closed cases, particularly those limited service files that remained open for an extended period of time;

In response to the DR, LASEVA stated as follows: "LASEV shall continue to monitor open cases to make sure that all files are closed in a timely manner. Of the 800 files reviewed in

the audit, 2 were identified as dormant in Finding 11. LASEVA shall stress to the Managing Attorneys the importance of moving forward with all cases and the Director shall also place a renewed emphasis on this subject when reviewing casehandlers' files.”

6. Ensure compliance with 45 CFR § 1620.6;

In response to the DR, LASEVA stated that they are now fully compliant with 45 CFR § 1620.6.

7. Ensure that the retainer agreements contain a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided in order to comply with 45 CFR § 1611.9(a);

In response to the DR, LASEVA stated that they will address the importance of complying with this regulation at the mandatory all staff training on December 10, 2010. LASEVA further stated that they usually conduct regulatory compliance staff meeting twice each year, and this issue will be highlighted for the next several trainings.

8. Remove food stamps as an asset in the ACMS system;

In response to the DR, LASEVA stated that the ACMS has been modified to prevent any confusion about food stamps being considered an asset.

9. Ensure that Title III over-income cases are not reported to LSC;

In response to the DR, LASEVA stated that they have taken steps to ensure that no over-income cases shall hereafter be reported to LSC.

10. Ensure that intake staff screen and document income in accordance to LASEVA eligibility policy;

In response to the DR, LASEVA stated as follows: “As noted previously, LASEVA has recently adopted new client eligibility policies and procedures. LASEVA intake staff have received training as a unit and as part of a training specifically for office managers, and such trainings shall continue in the future. Further, they will attend the mandatory all staff training which will address this issue on December 10, 2010.”

11. Implement oversight procedures for the PAI Regent University clinic cases, as required by 45 CFR § 1614.3(d)(3);

In response to the DR, LASEVA stated as follows “As mentioned above, LASEVA’s Director has had a meeting with the Professor who runs the Regent Law School litigation clinic to resolve the issues highlighted by the OCE visit. Both LASEV and Regent have increased oversight of these cases, and there will be regular review of Regent cases by LASEVA.”

12. Ensure that SLC paralegals are supervised in accordance with the CSR Handbook (2008 Ed.), § 2.5 or submit documentation which allows a waiver of such requirement;

In response to the DR, LASEVA stated as follows: "LASEVA is in the process of addressing this concern. Until a final resolution is achieved, the paralegal will not go out on any outreach activities without an attorney present. LASEVA is exploring the possibility of obtaining a portable scanner for the paralegal to use to scan the POA or other document for both retention of the document in our files and to allow for review by an attorney."

13. Ensure that stricter internal controls are implemented in the accounting process;

In response to the DR, LASEVA stated in part, LASEVA is in the process of updating our accounting manual and as part of that process LASEVA is examining internal controls. However, regarding procurement, one individual does not handle all three functions mentioned in Finding 30, those roles are divided between LASEVA's Administrator and the Norfolk Office Manager.

The response indicated that the new accounting manual will make clear the division of roles not only regarding procurement, but also with respect to Property and Client Trust issues identified in Finding 30."

14. Update the Accounting Manual; and

In response to the DR, LASEVA stated that they are currently in the process of updating their Accounting Manual.

15. Ensure that contracts to private attorneys do not exceed \$25,000. If the contract is above \$25,000 a subgrant agreement needs to be prepared and submitted to LSC for review and advance approval.

In response to the DR, LASEVA stated that they have established procedures for preventing a repeat of the over-use of any individual judicare attorney. LASEVA further stated that the PAI Coordinator now tracks the numbers referred to each PAI attorney and will cease sending new cases to an attorney who has pending cases which could put them over \$20,000 for the year.

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ADMINISTRATOR

November 5, 2010

Danilo A. Cardona, Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW, 3rd Floor
Washington, DC 20007-3522

Re: CSR/CMS Visit, Legal Aid Society of Eastern Virginia

Dear Mr. Cardona:

I am writing in response to the Draft Report, dated October 5, 2010, for the July 26-30 on site Case Service Report/Case Management System review. Section V of that Draft Report contains 15 areas for corrective actions by LASEV and LASEV has taken corrective actions in all these areas.

1. Ensure that its income and asset policy is consistent with the LSC Act, regulations and other applicable law.

LASEV drafted a new Client Eligibility Policy and Procedure and supplied the draft to LSC's OCE on August 6, 2010. After some minor changes, LASEV's Board of Directors adopted the new Policy on September 16, 2010. It is our understanding that the new policy does fully comply with the LSC Act, regulations and other applicable law.

2. Provide mandatory training for the full staff regarding the requirements of the financial eligibility policy adopted in response to Corrective Action No. 1

LASEV shall conduct a mandatory all staff training on December 10, 2010 which will include training on the new eligibility policy.



3. Ensure compliance with 45 CFR 1626.6 and 1626.7

LASEV has taken steps to ensure compliance with 45 CFR 1626.6 and 1626.7. The problem stemmed from the very small amount of cases referred to the Regent Law School litigation clinic, and the clinic was not having the clients sign a citizenship attestation. It is important to note that this is a very small number of cases (Finding 5 notes 9 cases to the Clinic out of the more than 6,000 closed by the program in 2009). LASEV's Director has met with the Professor who runs the clinic and this problem has been resolved.

The other area of non-compliance noted in the draft report was the Senior Law Center's outreach paralegal at some point began using an out-dated citizenship attestation form, which did not contain the exact language required by the regulations. The paralegal was having the people sign citizenship attestations, they were just using the wrong language. LASEV has taken corrective action and all known copies of the old form have been destroyed.

4. Ensure that all citizenship attestation statements comply with CSR Handbook

See corrective action above.

5. Ensure that all cases are timely closed by conducting periodic reviews of case management reports on closed cases, particularly those limited service files that remained open for an extended period of time

LASEV shall continue to monitor open cases to make sure that all files are closed in a timely manner. Of the 800 files reviewed in the audit, 2 were identified as dormant in Finding 11. LASEV shall stress to the Managing Attorneys the importance of moving forward with all cases and the Director shall also place a renewed emphasis on this subject when reviewing casehandlers' files.

6. Ensure compliance with 45 CFR 1620.6

LASEV is now fully compliant with 45 CFR 1620.6.

7. Ensure that the retainer agreements contain a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided in order to comply with 45 CFR 1611.9(a)

LASEV shall address the importance of complying with this regulation at the mandatory all staff training on December 10, 2010. LASEV usually conducts regulatory compliance staff meeting twice each year, and this issue will be highlighted for the next several trainings.

8. Remove food stamps as an asset in the ACMS system

The ACMS has been modified to prevent any confusion about food stamps being considered an asset.

9. Ensure that Title III over-income cases are not reported to LSC

LASEV has taken steps to ensure that no over-income cases shall hereafter be reported to LSC.

10. Ensure that intake staff screen and document income in accordance to LASEV eligibility policy

As noted previously, LASEV has recently adopted new client eligibility policies and procedures. LASEV intake staff have received training as a unit and as part of a training specifically for office managers, and such trainings shall continue in the future. Further, they will attend the mandatory all staff training which will address this issue on December 10, 2010.

11. Implement oversight procedures for the PAI Regent University clinic cases, as required by 45 CFR 1614.3(d)(3)

As mentioned above, LASEV's Director has had a meeting with the Professor who runs the Regent Law School litigation clinic to resolve the issues highlighted by the OCE visit. Both LASEV and Regent have increased oversight of these cases, and there will be regular review of Regent cases by LASEV.

12. Ensure that SLC paralegals are supervised in accordance with the CSR Handbook

LASEV is in the process of addressing this concern. Until a final resolution is achieved, the paralegal will not go out on any outreach activities without an attorney present. LASEV is exploring the possibility of obtaining a portable scanner for the paralegal to use to scan the POA or other document for both retention of the document in our files and to allow for review by an attorney.

13. Ensure that stricter internal controls are implemented in the accounting process

LASEV is in the process of updating our accounting manual and as part of that process LASEV is examining internal controls. However, regarding procurement, one individual does not handle all three functions mentioned in Finding 30, those roles are divided between Sherry Harrison, LASEV's Administrator, and Carolyn Hill, Norfolk Office Manager.

The new accounting manual will make clear the division of roles not only regarding procurement, but also with respect to Property and Client Trust issues identified in Finding 30.

14. Update the Accounting Manual

LASEV is currently in the process of updating our Accounting Manual.

15. Ensure that contracts to private attorneys do not exceed \$25,000.

LASEV has established procedures from preventing a repeat of the over-use of any individual judicare attorney. The PAI Coordinator now tracks the numbers referred to each PAI attorney and shall cease sending new cases to an attorney who has cases and pending cases which could put them over \$20,000 for the year.

Mr. Danilo A. Cardona
November 5, 2010
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I believe that the above outlined corrective actions meet all concerns identified in the Required Corrective Actions section of the draft report. Please do not hesitate to contact me if you have any questions or would like any additional information.

Sincerely,

Raymond A. Hartz
Executive Director

