



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Aid of Western Missouri

August 2-6, 2010

Case Service Report/Case Management System Review

Recipient No. 526010

I. EXECUTIVE SUMMARY

Finding 1: LAWMO's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Finding 2: LAWMO's intake procedures and case management system support the program's compliance related requirements.

Finding 3: LAWMO 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 does not exceed 125% of the Federal Poverty Guidelines ("FPG"). However, some sampled cases evidenced non-compliance with the documentation requirements for group applicants as required by 45 CFR § 1611.6.

Finding 4: LAWMO 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: LAWMO is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

Finding 6: LAWMO is in compliance with the retainer requirements of 45 CFR § 1611.9.

Finding 7: LAWMO is in 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: LAWMO is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: LAWMO's application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.) with a few exceptions.

Finding 11: LAWMO is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3.

Finding 12: Sample cases evidenced 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 review of LAWMO's accounting and financial records indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). However, the Donor Notification letter does not fully comply with the requirements of 45 CFR § 1610.5.

Finding 16: LAWMO 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. LAWMO is in compliance with 45 CFR § 1614.4(3)(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities. LAWMO is also in compliance with 45 CFR § 1614.4(3)(e)(ii) which is designed to ensure that programs shall maintain contracts on file which sets forth payment systems, hourly rates, and maximum allowable fees. In addition, LAWMO is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 17: LAWMO is in 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.

Finding 18: LAWMO is in compliance with 45 CFR Part 1635 (Timekeeping requirements). However, two (2) cases reviewed disclosed no time recorded.

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

Finding 20: Bank reconciliations for May and June 2010 were reviewed for all bank accounts and were found to be performed timely, accurately, and with corresponding approvals.

Finding 21: LAWMO has an Accounting Manual that is adequately documented and generally complies with the requirements of the 1997 Accounting Guide for LSC Recipients ("AGLSCR").

Finding 22: LAWMO has good segregation of duties and internal controls. However, to strengthen the bank reconciliations procedures the Executive Director should receive and open the bank statements received by mail. A limited review of the payroll system and controls were found to be adequate. LAWMO utilizes ADP as their payroll processing entity and compares timesheets and timekeeping records randomly to verify time reported.

Finding 23: A limited review of payables disclosed no exceptions and support documents were properly stamped as paid with corresponding signatures of approval.

Finding 24: LAWMO gives salary advances for emergencies to be repaid within four (4) pay periods.

Finding 25: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 26: 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 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 30: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 31: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 32: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 33: 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)).

II. BACKGROUND OF REVIEW

On August 2 through 6, 2010, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Legal Aid of Western Missouri ("LAWMO"). 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 six (6) attorneys and one (1) fiscal analyst. Three (3) of the attorneys were OCE staff members; the remaining three (3) attorneys were consultants.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that LAWMO has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LAWMO for compliance with 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); 45 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 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 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' fees²); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 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 LAWMO's upper and middle management, staff attorneys, and support staff. LAWMO'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, pulled files on-site, 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 450 case

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

² 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. 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.

files which included 84 targeted files. Three hundred sixty-one (361) of the files reviewed were closed cases while 89 were open cases.

LAWMO has been providing essential legal services to low-income citizens since 1964. LAWMO staff attorneys, paralegals, and volunteers assist over 20,000 people each year with problems that seriously affect their ability to provide for themselves and their families.

Since its establishment as a not-for-profit organization, LAWMO has maintained and followed the same mission: to provide the highest quality legal services to individuals, families and groups faced with economic barriers in obtaining civil legal representation. Services are available to those living below the poverty level in a 40 county area in western Missouri. However, due to limited funding, LAWMO sets strict priorities for the type of cases it can accept. Priority is given to cases involving housing, employment, domestic abuse, immigration, consumer problems and public benefits. LAWMO does not accept fee-generating cases. Clients are not charged attorney fees but are required to pay court costs and filing fees when applicable.

In addition to individual casework, LAWMO's staff attorneys and paralegals maintain special projects designed to concentrate services in areas of particular concern to the client community. Taking advantage of the benefits of centralization and specialization, these projects increase the impact of LAWMO services on the problems common to each and enable the organization to ultimately serve more clients.

In its 2008 submission to LSC, LAWMO reported 6,037 closed cases and in 2009 LAWMO reported 5,967 closed cases. LAWMO's 2008 self-inspection certification revealed a 3.0% error rate in CSR reporting. There were no cases excluded as a result of the case review done prior to the self-inspection. Cases were problematic in the following areas: evidence of actual legal assistance rendered to the client was not in the file, non-telephone cases which lacked a citizenship attestation or documentation of alien eligibility, and counsel and advice or limited action cases opened prior to 10/07 and not falling under the exception 3.3 (a)(ii) of the 2008 CSR Handbook.

LAWMO's 2009 self-inspection certification revealed a 5.9% error rate in reporting. There were no cases excluded as a result of the case review done prior to the self-inspection. Cases were problematic in the following areas: evidence of actual legal assistance rendered to the client was not in the file, non-telephone cases which lacked a citizenship attestation or documentation of alien eligibility, and counsel and advice or limited action cases opened prior to 10/08 and not falling under the exception 3.3 (a)(ii) of the 2008 CSR Handbook.

By letter dated May 28, 2010, OCE requested that LAWMO 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 (2) sets of lists be compiled - one (1) for cases handled by

LAWMO staff and the other for cases handled through LAWMO's PAI component. LAWMO 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. LAWMO was requested to promptly notify OCE, 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 which the team would review during the on-site visit. The sample was created proportionately among 2008, 2009, 2010 closed cases, and open cases, as well as a proportionate distribution of cases from all of LAWMO's offices. 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. Additional cases were pulled on-site.

LAWMO and LSC agreed to an access protocol whereby LAWMO provided case lists substituting unique client identifiers for client's first names and first initial of last names. LAWMO agreed to provide OCE access to client financial and citizenship/alien eligibility information, with the client's name intact, in those instances where such information has been disclosed to an unprivileged third party. Further, LAWMO notified OCE of its intent to use intermediaries during the on-site review. The case review was conducted through the use of LAWMO staff as intermediary, matched one-to-one to the members of the CSR/CMS review team. During the review, OCE was afforded access to financial eligibility information, citizenship/alien eligibility documentation, retainer agreements, pleadings and court orders. As well, LAWMO engaged OCE in discussing both the nature of the client's legal problem and the level of legal assistance provided. Pursuant to the OCE and LAWMO agreement of June 28, 2010, LAWMO 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.³ LAWMO's management and staff cooperated fully in the course of the review process. As discussed more fully below, LAWMO was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as managing attorneys in the branch offices and the Executive Director in the main office.

At the conclusion of the visit, OCE conducted an exit conference during which LAWMO was made aware of the areas in which a pattern of non-compliance was found. OCE cited instances of non-compliance in the areas of 45 CFR § 1627.2(b)(1) (Subgrants and membership fees or dues), CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided), 45 CFR § 1610.5 (Notification), and 45 CFR Part 1635 (Timekeeping requirements). LAWMO was informed that they would receive a Draft Report ("DR") that would include all of OCE's findings and they would have 30 days to submit comments.

³ 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.

LAWMO was provided a DR and given an opportunity to comment. After an extension of time was granted for LAWMO to comment, to and including November 22, 2010, LAWMO's comments were received on November 18, 2010. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an appendix.

III. FINDINGS

Finding 1: LAWMO's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Recipients are required to utilize 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.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LAWMO's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, *see* Closed 2009 Case No. 0900000066 (opening date in file is January 19, 2009), but ACMS indicated an opening date of January 19, 2008.

LAWMO provided no comments to this Finding.

Finding 2: LAWMO's intake procedures and case management system support the program's compliance related requirements.

Kansas City-Central Office

Intake is conducted at the Kansas City-Central Office from 8:30 a.m. to 4:00 p.m., closing between 12:00 p.m. and 1:00 p.m. for lunch (the switchboard remains open). There are two (2) intake specialists on staff with 16 paralegals responsible for intake. Due to the volume of traffic both on the telephone and in person at this office, prospective applicants are briefly screened by the switchboard operators to confirm that they are in the appropriate county and that their legal issue is within the LAWMO's priorities. Once these two (2) factors are confirmed, walk-in applicants are taken into an intake room and telephone applicants are informed that an intake specialist will call them back if one is not immediately available.

Intake and eligibility screening is conducted in two (2) steps. First, the intake specialist records all pertinent intake and eligibility information and the intake is transferred to a paralegal in the appropriate division related to the applicant's legal problem. After the intake specialist records all of the necessary information, and unless the applicant has an emergency and needs immediate legal assistance, the applicant is informed by the intake specialist that a paralegal will contact him/her regarding their application. If a paralegal is available, a walk-in applicant may be seen that same day. For all applicants, the intake specialist records intake and eligibility information in LAWMO's ACMS.

The intake specialist begins by recording the applicant's name. Immediately after recording the applicant's name, the intake specialist checks LAWMO's internal notes system, Zasu, to ensure that the applicant has not already applied regarding the same legal issue and to prevent duplicates. Intake specialists do not conduct conflicts checks at this time. Income and asset eligibility information is then recorded, followed by questions regarding factors as outlined in 45 CFR § 1611.5. These questions are standard as the system prompts the intake specialist to ask a series of specific questions from the computerized questionnaire when an applicant's income appears to be above 125% of the Federal Poverty Guidelines ("FPG"), including income and asset prospects. If an applicant's income is clearly over 200% of the FPG, the intake specialist will inform the applicant of their ineligibility.

Next, the opposing party information will be recorded, if applicable, followed by general contact information, housing status, data related to ethnicity, marital status, and disability. Finally, citizenship/alien eligibility information is recorded, and if a walk-in applicant indicates that they are a United States citizen, then a citizenship attestation is completed at that time. If the applicant is not a United States citizen, then any documents related to alien eligibility status are copied and related information is recorded. Intake specialists generally do not make eligibility determinations based on the information provided. In accordance with this policy, conflicts checks and final determinations based on income/asset information and alien eligibility status is made by the paralegal or supervising attorney. After the intake specialist completes the initial intake, the application is transferred to a paralegal in the appropriate legal division.

Once the application reaches the paralegal, he/she reviews the information provided and conducts a conflicts check, if necessary, before calling or meeting with the applicant. The paralegal re-verifies the information recorded by the intake specialist, including the amount and source of any prospective income (intake specialist simply records what exists). Citizenship/alien eligibility questions are also addressed with the case handler referring to a checklist and preprinted script of questions. If there remains any question regarding eligibility, all case handlers inform the managing attorney of the Kansas City-West Office who manages the immigration and migrant services divisions. For applicants who are ineligible due to a conflict or alien status, the case handler will draft a rejection letter for approval. If an applicant appears to be ineligible because of income or assets, the applicant is informed by the paralegal and the applicant is also informed that the final decision will be made by a supervising attorney.

Case review meetings are conducted once a week with paralegals and attorneys in attendance. Paralegals present applications with a brief description of the legal issue and the attorneys decide which cases to accept and which cases to reject. For applicants who are eligible for services, but LAWMO nevertheless decides not to accept for full representation, the attorneys dictate advice letters for the paralegals to draft. The supervising attorney reviews, edits, and signs these advice letters. Applicants who are found ineligible for services receive rejection letters signed by the supervising attorney. If the case has been accepted for full representation, the paralegal will forward the information to the division's secretary who prepares a case file and sends the client an acceptance packet which includes a retainer and citizenship attestation or request for alien eligibility documentation (if initial application was via telephone).

There were no defaults noted in LAWMO's ACMS with respect to citizenship, income, and asset information. The paralegal interviewed was generally aware of the authorized exceptions to income ceiling, waiver of assets, alien eligibility, and Program Letter 06-02, Violence Against Women Act 2006 Amendments, however the supervising attorney made the final determination regarding eligibility and case acceptance with respect to these factors.

Joplin Office

Intake is conducted from 9:00 a.m. to 4:00 p.m., closing between 11:30 a.m. and 1:00 p.m. for lunch. The intake practices and procedures in the Joplin Office were substantially identical to those in the Kansas City-Central Office, except there is one (1) intake specialist on staff who completes intake with one (1) paralegal serving as back-up. The managing attorney at the Joplin Office typically reviews applications for representation once per day and makes the final determination regarding the cases to accept.

The intake specialist interviewed was generally aware of the authorized exceptions to income ceiling, waiver of assets, alien eligibility, and Program Letter 06-02, Violence Against Women Act 2006 Amendments, however the supervising attorney made the final determination regarding eligibility and case acceptance with respect to these factors. Preliminary conflicts checks are conducted by the intake specialist in the Joplin Office during the intake interview before potentially sensitive information is recorded.

Warrensburg Office

Intake is conducted from 9:00 a.m. to 4:00 p.m., closing between 11:30 a.m. and 1:00 p.m. for lunch. The intake practices and procedures in the Warrensburg Office were substantially identical to those in the Kansas City-Central Office, except that all staff is responsible for intake. The Warrensburg Office consists of four (4) attorneys, three (3) paralegals, and one (1) part-time paralegal. Whenever possible, applicants are diverted to a case handler in the division they are seeking assistance from. The managing attorney at the Warrensburg Office typically reviews applications for representation within one to three days and makes the final determination regarding which cases should be accepted.

The paralegal interviewed was generally aware of exceptions to asset and income limits, alien eligibility, and Program Letter 06-02, Violence Against Women Act 2006 Amendments, however the supervising attorney made the final determination of eligibility with respect to these factors. The paralegal interviewed in the Warrensburg Office conducted conflicts checks during the intake interview before potentially sensitive information was recorded.

Kansas City-West Office

Immigration and Migrant Services:

The managing attorney responsible for immigration and migrant services at the Kansas City-West office was interviewed regarding the intake practices and procedures utilized in this specific service area. Intake is conducted from 8:30 a.m. to 5:00 p.m. however, if the managing attorney is not available, an appointment is made for intake to be conducted at another time.

The intake procedures related to immigration and migrant services were generally equivalent to those employed in all other offices, except that the managing attorney was solely responsible for conducting this intake and the intake is completed by hand. Although intakes are not computerized, the questions asked are the same because the written intake form is exactly the same form the computerized intake is printed onto once completed.

The managing attorney interviews applicants immediately if she is available, but generally an appointment is scheduled. Due to difficulties many applicants in this demographic have with travel to the Kansas City-West Office, the managing attorney is very open to meeting applicants at outreach sites and usually makes case acceptance determinations immediately after intake is completed, as many applicants do not have fixed addresses and are not literate.

Procedurally, applicants are immediately screened for resident status eligibility. If an applicant falls within a group eligible for representation, then an intake form is completed with the managing attorney. If intake is completed and the case is accepted for representation, the managing attorney forwards the written intake to the Kansas City-Central Office where it is entered into the ACMS. Conflicts checks are generally not needed with this subject matter, however the managing attorney can call and request that the Central Office run a conflicts check if the need arises.

Immigration and Migrant Outreach

Immigration outreach is conducted approximately seven (7) times per year. Migrant outreach occurs every Monday at the Immaculate Conception Church in Lexington, MO. The main task during outreach is to identify attendees' issues and assist them with accessing various programs depending on eligibility. Migrant activists, including LAWMO volunteers and paralegals, conduct outreach and provide legal information related to identified issues. Additionally, representatives from government programs may attend outreach sessions to facilitate the eligibility determination and acceptance process. Eligibility is assessed for programs such as Expedited Migrant Food Stamps, Department of Labor Food Voucher Program, Migrant Eligibility for Migrant Health Services, and Migrant Education Language Learners, although this list is not exhaustive.

St. Joseph Office

The St. Joseph office conducts intake by telephone as well as walk-ins. The primary intake person also performs duties as a receptionist and has 14 years experience. She indicated that it takes approximately 3-5 minutes to conduct an intake and if a call comes in while she is on the telephone with another person or helping a walk-in intake, she will place the second call on hold, indicating she will get right back with them. On rare occasions it might take longer to get back with the individual and she will get a call back number. The intake worker indicated that she has an extensive notebook set up by LAWMO with closing information, as well as detailed intake procedures. She was familiar with the CSR Handbook and knew that it could be accessed online and indicated it was also contained in the notebook provided by LAWMO.

The information is collected on a LAWMO Case Form which is identical to the intake forms from the Central Office. The information is first collected on a photocopy of the form so that multiple copies of the form will not be wasted should there be corrections prior to the full intake being completed. The first information recorded is to determine whether or not the legal matter is within LAWMO's priorities and if so, the applicant's name and date of birth, as well as information concerning the adverse party is recorded. At that point a conflicts check is conducted through the ACMS. If the applicant is not conflicted out, the intake worker will then proceed to ask for the information on the case form in the same order as it appears. Should there be a conflict, the applicant is informed that they will not be represented and a letter is sent indicating the same.

The next information collected is citizenship/alien eligibility. If the applicant is a U.S. Citizen, and intake is by telephone, the form is checked to reflect that status. If the applicant is a walk-in, they are asked to sign a citizenship attestation before leaving. If the applicant is an eligible alien, alien eligibility is determined. If the applicant is a domestic violence victim, the intake worker is aware of the exception allowing representation of illegal aliens.

When the intake worker screens for income, she inquires of the applicant's employment status, and if the applicant is employed she make inquiry of their hourly wage and the average number of hours worked. She also asks if the employment is temporary or permanent. If the applicant is unemployed she asks what their income was at their last employment and how long they have been unemployed. Also, if unemployed she makes inquires concerning income prospects and whether or not they expect to be employed in the near future. Should the applicant's income fall between 125% and 200% of the FPG, the intake worker will ascertain whether or not any of the factors outlined in 45 CFR § 1611.5 are applicable, and if so, it is indicated on the case form. The office managing attorney signs off on the 45 CFR § 1611.5 factors. The intake worker will then inquire about assets and has a list that she goes through from the LAWMO notebook as well as a drop down box on the ACMS. The only default in the system is that if assets are left blank they automatically default to \$9,999.00. Once the intake form is completed and all eligibility questions have been asked, the applicant is advised that they should be hearing from an attorney-usually within 24 hours. The information that was entered on the form is then entered in the ACMS. The case form is then distributed to the particular unit that would be responsible for handling the case (i.e. housing, consumer, public benefits, etc.). The attorney will then review the information and call the client at his/her first convenience. The only exception to this is if its an emergency and in that case the intake worker ensures that the attorney is aware that there is an emergency deadline pending and the attorney calls the client back immediately to determine if and what type of legal services they will be providing.

Once the advocate has spoken with the applicant, the case will be opened and this is usually done by the advocate or sometimes the intake person will open. If LAWMO intends to provide additional extended legal services, a letter and retainer agreement that also incorporates citizenship attestation or eligible alien status is sent to the client. In cases where there will be extended representation offered, those cases are not opened until such time as those forms are returned. Once they are returned and fully executed, the case will be opened. If the applicant is a walk-in intake, they are required to sign a citizenship attestation and retainer or alien eligibility determination is made prior to leaving the office. There is no regularly scheduled outreach outside of the St. Joseph office. However, on occasion if intakes are conducted outside of the

office, the intake person will call the office for the conflicts checks prior to completing intake and providing service. Once the advocate brings the intake form back to the office, it is then entered into the ACMS and goes through the same process thereafter as a telephone or walk-in. The intake personnel indicated that she has not had a group intake to deal with for many years. She indicated should someone inquire about legal services for a group that she would ask the managing attorney for assistance in determining eligibility and would access the regulations concerning group eligibility.

The advocates close their own cases by completing a closing memorandum and forwarding same to the managing attorney for his approval. After the managing attorney reviews the closing memorandum, it is then given to the intake person who enters the information into the ACMS to close the case.

LAWMO's intake procedures and case management system generally support the program's compliance related requirements.

Comments to the DR stated that the correct spelling of the ACMS is Zasu as opposed to Sazu. The name has been corrected in this Final Report.

Finding 3: LAWMO 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 does not exceed 125% of the Federal Poverty Guidelines ("FPG"). However, some sampled cases evidenced non-compliance with the documentation requirements for group applicants as required by 45 CFR § 1611.6.

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.⁴ *See* 45 CFR § 1611.3(c)(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 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, CSR Handbook (2008 Ed.), § 5.3.

⁴ 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.

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.

LAWMO’s eligibility policy includes authorized exceptions to the annual income ceiling. The annual income ceiling for individuals and household served by LAWMO using LSC funds is 125% of the Federal Poverty Guidelines (“FPG”) as published annually in the Federal Register by LSC in Appendix A to 45 CFR Part 1611. LAWMO’s policy requires that if an applicant’s income is above 125% of the FPG, but does not exceed 200% of the FPG, LAWMO must record the basis of its decision to provide assistance and shall record the specific 45 CFR Part 1611 exceptions or factors relied on to make the determination.

For each group case reported to LSC, recipients are required to collect information that reasonably demonstrates that the group meets the eligibility criteria set forth in 45 CFR § 1611.6. *See also*, CSR Handbook (2008 Ed.), fn. 20.

Group case analysis prior to the 2005 amendment of 45 CFR Part 1611

The following cases must be analyzed pursuant to 45 CFR § 1611.5 (3)(c) (1983): Case Nos. 9625002900 (Open 1996); 0404000300 (Open 2004); 9405000024 (Open 1994); 9805000005 (Open 1998); 98005000022 (Open 1998); and 9705000008 (Open 1997).

Prior to the amendment of 45 CFR Part 1611, the regulation provided that “a recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining funds to retain counsel.” *See* 45 CFR § 1611.5 (3)(c) (1983).

45 CFR Part 1611 did not explicitly require recipients to document how a group meets the primary composed of the requirement. In an Office of Legal Affairs “OLA” opinion on February 24, 1982, OLA stated that a recipient “must determine if the group itself is eligible” by determining if “at least 50% of the group members” are eligible. OLA did not instruct the recipient to make such a determination on a person-by-person basis. Rather, OLA stated “that [s]ince application of tests [for group eligibility] requires the exercise of judgment, there are no hard fast rules.” Similarly on January 20, 1982, OLA stated that “group eligibility determinations are a case-by-case determination that must be made...based on information provided by the group client.” The recipient must collect information regarding eligibility that reasonably demonstrates that the applicant meets the eligibility requirements. In some circumstances it may be sufficient for the recipient to gather such information from the representatives of a group. In other situations, it may be impossible to determine the eligibility of a group without making individual determinations for at least a majority of the group. For

numerous years, OCE has stated to programs that to document more than half of a group's membership as eligible will effectively satisfy the regulation. Similarly, LSC has recommended that recipients test a random sample of the members for larger groups. If the sample evidence that these individuals are eligible, then eligibility for the group can be inferred.

The second test, "information showing that it lacks, and has no practical means of obtaining counsel" would require adequate investigation and information provided by the group.

LAWMO's Attorney and Paralegal Policy and Procedure Manual adopts the requirements in 45 CFR § 1611.6(a) and 45 CFR § 1611.6(b)(2). However, as a practice, LAWMO requires groups to attest to their financial eligibility in a retainer agreement the group signs before LAWMO commences representation. This practice does not satisfy the requirements of 45 CFR § 1611.5 (3)(c) (1983). Accordingly, these cases should not be reported to LSC in the CSRs and the funding source should be switched to non-LSC funded.

Group case analysis pursuant to 45 CFR Part 1611 (2005)

The following cases must be analyzed pursuant to 45 CFR § 1611.6 (2005): Case Nos. 0700005827 (Open 2008); 0904000187 (Open 2009); 0904000188 (Open 2009); 904000189 (Open, 2009); 0904000190 (Open, 2009); and 0904000314 (Open 2009).

The revised regulation, at 45 CFR § 1611.6 Representation of groups, provides, in pertinent part:

- (a) A recipient may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either: (1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or (2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity. (b)(1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either: (i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or (ii) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.
- (2) A recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.
- (c) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by a recipient, regardless of the source of

funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

LAWMO's practice in determining group eligibility is not in compliance with 45 CFR § 1611.6 in that they do not incorporate the requirements pursuant to 45 CFR § 1611.6(b)(1), as stated above.

LAWMO's Attorney and Paralegal Policy and Procedure Manual adopts the requirements in 45 CFR § 1611.6(a) and 45 CFR § 1611.6(b)(2). However, as a practice, LAWMO requires groups to attest to their financial eligibility in a retainer agreement the group signs before LAWMO commences representation. Although the cases contained signed attestations in accordance with LAWMO's Attorney and Paralegal Policy and Procedure Manual and notations on the case intake sheets as to income and asset amounts, the cases did not contain any additional information or notations showing how the program determined the group met the requirements pursuant to 45 CFR § 1611.6(b)(1)(i) or 45 CFR § 1611.6(b)(1)(ii). Accordingly, LAWMO's manner of determining financial eligibility for groups is not sufficient and is not in compliance with the regulation and LAWMO must either: (1) make eligibility determinations consistent with 45 CFR § 1611.6 and 45 CFR § 1611.7 for those groups cases identified above; or (2) switch the funding source to non-LSC funded and not report those cases to LSC in the CSRs.

All the individual-applicants sampled cases reviewed evidenced that the applicants were screened for income eligibility. Sampled cases reviewed for applicants whose income exceeded 125% of the FPG evidenced that the applicant had authorized exceptions.

Comments to the DR stated that LAWMO disagrees with this finding as it relates to the group eligibility analysis prior to the 2005 amendment of 45 CFR Part 1611. In regard to cases handled by LAWMO before the amendment, LAWMO obtained a written certification from an officer of the group stating that "two thirds of the members of the client organization...have personal incomes below the federal poverty level, that the group has no funds to hire a lawyer, and that the requested services benefit low-income people", according to comments to the DR. Further comments to the DR stated that LAWMO believes that obtaining a statement from an officer of the group should be sufficient.

OCE is not persuaded by this argument. Although 45 CFR Part 1611 did not explicitly require recipients to document how a group meets the primary composed of the requirement, in an LSC Office of Legal Affairs ("OLA") opinion on February 24, 1982, OLA stated that a recipient "must determine if the group itself is eligible" by determining if "at least 50% of the group members" are eligible. The recipient must collect information regarding eligibility that reasonably demonstrates that the applicant meets the eligibility requirements. In some circumstances it may be sufficient for the recipient to gather such information from the representatives of a group. In other situations, it may be impossible to determine the eligibility of a group without making individual determinations for at least a majority of the group. For numerous years, OCE has stated to programs that to document more than half of a group's membership as eligible will effectively satisfy the regulation. Similarly, LSC has recommended that recipients test a random sample of the members for larger groups. If the sample evidence that these individuals are eligible, then eligibility for the group can be inferred. As far as LAWMO's group eligibility documentation goes, it does not go far enough. Accordingly, these

cases should not be reported to LSC in the CSRs and the funding source should be switched to non-LSC funded. LAWMO must provide evidence to OCE within thirty (30) days from the date of release of this Final Report that this corrective action has been implemented.

Additional comments to the DR stated that LAWMO also disagrees with the group eligibility analysis as it relates to the current regulation, 45 CFR Part 1611 (2005). Further LAWMO comments stated that although the regulations provided some guidance as to what information a program should collect to comply, they leave a substantial amount of discretion to individual programs as to how to determine that a potential group client satisfies the regulatory requirements for eligibility. LAWMO believes that a signed written statement from an officer of the group should be sufficient to comply, according to comments to the DR.

Again, OCE is not persuaded by this argument. 45 CFR § 1611.6(b)(2) requires that a recipient collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth in the regulation. As a practice, LAWMO requires groups to attest to their financial eligibility in a retainer agreement the group signs before LAWMO commences representation. Although the cases contained signed attestations, in accordance with LAWMO's Attorney and Paralegal Policy and Procedure Manual and notations on the case intake sheets as to income and asset amounts, the cases did not contain any additional information or notations showing how the program determined the group met the requirements pursuant to 45 CFR § 1611.6(b)(1)(i) or 45 CFR § 1611.6(b)(1)(ii). Accordingly, LAWMO's manner of determining financial eligibility for groups is not sufficient and is not in compliance with the regulation and LAWMO must either: (1) make eligibility determinations consistent with 45 CFR § 1611.6 and 45 CFR § 1611.7 for those groups cases identified above; or (2) switch the funding source to non-LSC funded and not report those cases to LSC in the CSRs.

LAWMO must provide evidence to OCE within thirty (30) days from the date of release of this Final Report that option one or option two has been implemented.

Finding 4: LAWMO 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.

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.⁵ *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).

⁵ 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.

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 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.

The policy approved by the LAWMO Board of Directors in 2009 establishes the asset ceiling at \$8,000. Exempt from consideration is the applicant's principal residence; vehicles used by the applicant or household members for transportation; assets used in producing income; and all other assets which are exempt from attachment under state or federal law.

Sampled cases reviewed revealed that LAWMO maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by the revised 45 CFR §§ 1611.3(c) and (d)⁶ CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

LAWMO provided no comment to this Finding.

Finding 5: LAWMO is in 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. *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

⁶ The revised 45 CFR § 1611.2 defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms "liquid" and "non-liquid" have been eliminated.

whose child had been battered or subjected to such cruelty.⁷ 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.

LAWMO is in compliance with 45 CFR Part 1626, and all cases reviewed requiring citizenship/alien eligibility documentation contained them. However, one case which was opened on March 3, 1992 involving services beyond brief services did not obtain the required citizenship documentation until May 26, 2009. In addition, all immigration cases reviewed were in compliance with 45 CFR § 1626.7.

LAWMO provided no comment to this Finding.

Finding 6: LAWMO is in compliance with the retainer requirements of 45 CFR § 1611.9.

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.⁸ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LAWMO is in compliance with the requirements of 45 CFR § 1611.9. However, open Case Nos. 0700002989 and 0903000370 failed to identify the nature of the services to be provided.

Comments to the DR stated that in LAWMO's CSR refresher training, they will remind staff of the need to identify the nature of the services to be provided in each retainer.

⁷ *See* Kennedy Amendment at 45 CFR § 1626.4.

⁸ 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.

Finding 7: LAWMO is in 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).

Cases reviewed indicated that LAWMO is in compliance with the requirements of 45 CFR Part 1636.

LAWMO provided no comment 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, LAWMO provided LSC with a list of its priorities. The priorities are stated as “preserving families, maintaining, enhancing and protecting income and economic stability, providing housing and meeting related housing needs, low-income neighborhood preservation, providing safety, security and well-being, improving outcomes for children, assisting populations with special vulnerabilities, protecting individuals rights, delivering legal services and providing advice, brief service and referral.”

LAWMO is in compliance with 45 CFR Part 1620. None of the sampled cases reviewed revealed cases that were outside of LAWMO’s priorities.

LAWMO provided no comment to this Finding.

Finding 9: LAWMO is in 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.

LAWMO is in substantial compliance with the CSR Handbook (2001 Ed.), ¶ 5.1(c) and the CSR Handbook (2008 Ed.), § 5.6. However, *see* Closed 2008 Case No. 0802000545 containing no description of the legal assistance provided; Closed 2008 Case Nos. 0700006128, 0700005555 and 0800002653 where the files lacked sufficient evidence that legal advice, as opposed to legal information was provided during a pro se divorce class; and Closed 2010 Case Nos. 0900006152 and 1000000239 lacking a description of the legal assistance provided.

These cases and ones that are similar to them are not CSR reportable.

Comments to the DR stated that in LAWMO’s CSR refresher training, they will remind staff of the need for each client file to reflect the legal assistance that LAWMO has provided to the client.

Finding 10: LAWMO’s application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), with a few exceptions.

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 files reviewed demonstrated that LAWMO’s application of the CSR case closing categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and

IX, CSR Handbook (2008 Ed.), with a few exceptions.

See Closed 2008 Case Nos. 0700005520 closed with a closing code of “negotiated settlement without litigation” when the more appropriate closing code would have been “limited action”; 0801001012 closed with a closing code of “brief service” when the more appropriate closing code would have been “counsel and advice”; and 0802000021 closed with a closing code of “negotiated settlement with litigation” when the more appropriate closing code would have been “contested court decision.”

See also Closed 2009 Case No. 09-0636 closed with a closing code of “other”, when the more appropriate closing code would have been “extensive service;” and Closed 2010 Case Nos. 1000000924 closed with a closing code of “extensive service” when the more appropriate closing code would have been “counsel and advice”; 1000002994 closed with a closing code of “counsel and advice” when the more appropriate closing code would have been “limited action”; 10-002-000360 closed with a closing code of “extensive service” when the more appropriate closing code would have been “uncontested court decision”; 1000000934 closed with a closing code of “extensive service” when the more appropriate closing code would have been “counsel and advice”; 1000000659 closed with a closing code of “counsel and advice” when the more appropriate closing code would have been “limited action”; 1001000127 closed with a closing code of “extensive service” when the more appropriate closing code would have been “limited action”; 1001000133 closed with a closing code of “extensive service” when the more appropriate closing code would have been “negotiated settlement with litigation”; 0902001032 closed with a closing code of “extensive service” when the more appropriate closing code would have been “uncontested court decisions; 0902001097 closed with a closing code of “extensive service” when the more appropriate closing code would have been “negotiated settlement with litigation”; and 0902001074 closed with a closing code of “extensive service” when the more appropriate closing code would have been “negotiated settlement with litigation.”

The Migrant unit at LAWMO closes numerous cases with closing codes of “B” (Limited Action). The sampled cases contained documentation to warrant a closing code of “counsel and advice”, but did not adequately contain documentation to warrant a closing code of “limited action.” After discussions with the managing attorney for the unit, it was clear that LAWMO provided “limited action” services for these clients. The need for a more detailed description of the legal assistance provided in these cases was discussed with the Executive Director and the managing attorney of the unit. *See* Closed 2008 Case Nos. 0823000103 and 0823000286 and Closed 2009 Case Nos. 0923000128 and 0923000248.

Comments to the DR stated that in LAWMO’s CSR refresher training, they will clarify the distinctions between the categories of case service provided and make sure that their staff is entering the proper case closing codes when they close files. Further comments to the DR stated that LAWMO has already developed a system for their Migrant Farmworker Project to make sure that the facts supporting the level of service provided are clearly in the file.

Finding 11: LAWMO is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3.

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, brief service, or a referral 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, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).⁹ 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).

LAWMO is in substantial compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a), however there were four (4) staff case files that were not closed in a timely manner and one (1) dormant case.

Those cases closed in 2010 or remaining open with no recent activity should be closed administratively. The following case files, and those similar to them, should not have been or should not be reported to LSC in LAWMO's CSR data submission and should be closed administratively. Examples include: Case Nos. 0401001016 (which was opened on October 7, 2004 and closed June 27, 2007). The case was de-selected April 8, 2010; 05230000331 (which was opened on November 20, 2005, and closed on December 1, 2008). All activity ceased in this case file in the year 2007 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; 0804000037 (which was opened on February 4, 2008 and closed on April 16, 2010). All activity ceased in this case file in the year 2009 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; and 0701000056 (which was opened on January 10, 2007 and remains open). All activity ceased in this case file in the year 2009 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed.

LAWMO must take corrective action and review all open cases to identify those that cannot be timely closed. Those cases identified as dormant should be closed in such a manner that they are not reported to LSC in a current or future CSR submission.

⁹ The time limitation of the 2001 Handbook that a brief service 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).

Comments to the DR stated that in LAWMO's CSR refresher course, they will review the requirements for timely case closing and make sure that their staff is complying with those requirements. Further comments to the DR stated that LAWMO has closed and de-selected File No. 0701000056.

Finding 12: Sample cases evidenced 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.

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.

LAWMO is in compliance with the requirements of the CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

LAWMO provided no comment to this Finding.

Finding 13: Sampled cases 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 interviews with staff indicate, that LAWMO is not involved in such activity. Discussions with the Executive Director also indicated that LAWMO is not involved in these prohibited activities.

A review of accounting records and documents and interviews with staff for the period of January 2009 through June 2010 disclosed that LAWMO has not expended any grant funds, or used personnel or equipment on any prohibited activities in violation of 45 CFR § 1608.3(b).

LAWMO provided no comment 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).

None of the sampled cases reviewed involved legal assistance with respect to a fee-generating case. Discussions with the Executive Director also indicated that LAWMO is not involved in any fee-generating cases.

LAWMO provided no comment to this Finding.

Finding 15: A review of LAWMO's accounting and financial records indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). However, the Donor Notification letter does not fully comply with 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).

From a limited review of the chart of accounts and detailed general ledger (“G/L”) for specific G/L accounts for 2009 through 2010, observations of the physical locations of all offices, and interviews with staff and management, LAWMO does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

A review of the “donor notification” letter revealed that LAWMO does not conform to the requirements of 45 CFR § 1610.5(a) that donors should be notified of the prohibitions and conditions which apply to the LSC funds. LAWMO must take corrective action and add the appropriate language to comply with the regulation. This language was provided to LAWMO during the on-site review.

Comments to the DR stated that LAWMO provides the following notice to all of their donors: “Because Legal Aid of Western Missouri receives funding through the Legal Services Corporation, we are required to notify all funders, including private donors, that we will not engage in advocacy activities prohibited by the LSC Act or LSC appropriation riders.” LAWMO believes that this notice is in compliance with the applicable LSC regulations, according to comments to the DR. Further comments stated that during the OCE visit, OCE provided alternative language and LAWMO will begin using the alternative language immediately.

Finding 16: LAWMO 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. LAWMO is in compliance with 45 CFR § 1614.4(3)(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities. LAWMO is also in compliance with 45 CFR § 1614.4(3)(e)(ii) which is designed to ensure that programs shall maintain contracts on file which sets forth payment systems, hourly rates, and maximum allowable fees. In addition, LAWMO is in 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.

The Audited Financial Statement (“AFS”) for calendar year ending December 31, 2009 reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). PAI expenditures of \$264,737 or 14% of LAWMO’s total basic field grant of \$1,893,514 was reported, complying with the 12.5% requirement. The review of the spread sheet allocating PAI staff salary for the calendar year ending December 31, 2009 disclosed that LAWMO correctly allocates the salaries of attorneys and paralegals, based on actual time as required by 45 CFR § 1614.3(a)(i)(i), supported by time records. Non-personnel cost are being allocated on the basis of reasonable operating data in compliance with 45 CFR § 1614.3(e)(1)(i).

Several costs allocated to PAI including payments to private contract attorneys were reviewed and were found to be related to PAI activities, fully documented and approved. The review of the contracts with the private contract attorneys indicated that LAWMO is in compliance with the requirements of 45 CFR § 1614.3(e)(1)(ii) which requires programs to maintain contracts on file setting forth payment systems, hourly rates, and maximum allowable fees. OCE recommends that LAWMO revise their contracts by including the following two paragraphs:

- 45 CFR Part 1600: This contract is conditioned upon the attorney or law firm that the dollar amount of the contract or total payments derived from this contract is less than 50% of the attorney or law firm projected annual professional income; and
- 45 CFR § 1627.2(b)(1): This contract is on the condition that if payments are expected to exceed \$25,000 in a year, attorneys or law firm will engage in a subgrant agreement that will require LSC’s approval.

At the inception of its PAI Program in 1982, the LAWMO Board of Trustees selected a pro bono or volunteer attorney model. A small compensated, or contract component, was later added throughout a 40 county service area to handle cases beyond LAWMO’s capacity with current staff or cases of a specialized nature. The 2010 Private Attorney Involvement Plan essentially continues this model. Funds are used to employ staff to review and refer cases to private attorneys and to reimburse for out-of-pocket expenses of volunteer attorneys, as well as to pay for professional malpractice insurance coverage for the volunteer attorneys. In Kansas City, due to the high volume of cases referred to the Volunteer Attorney Project (“VAP”), LAWMO has two (2) full-time staff members to oversee LAWMO’s PAI program.

Volunteer Attorney Projects

For 27 years VAP has provided service to the community. The program served 64 clients in its first year. In 2010, private volunteer attorneys and attorneys working for substantially reduced fees will donate approximately 4,140 hours of legal services to approximately 510 clients throughout LAWMO’s 40 county service area. The bulk of these cases involve subject matter in which the private bar has the same or greater expertise than that of LAWMO staff. These cases

include: consumer law and bankruptcy; residential real estate matters, foreclosure and landlord/tenant issues, tax issues, family law cases, and issues of guardianship.

Most of the cases referred to VAP require services which go beyond advice to the client. Because of the telephone screening systems used by LAWMO offices, advice is often given by telephone at the time of the intake, or after intake, so that generally only cases needing more extensive representation are accepted and referred to VAP.

A total of 96 "rural" attorneys have agreed to participate on panels in the service areas of the LAWMO Warrensburg, Joplin and St. Joseph offices. In 2009, these attorneys closed 89 cases, which represented a total contribution of approximately 230 donated hours. An additional 68 clients were represented by private attorneys who were partially compensated and who contributed approximately 615 hours.

In the Kansas City metropolitan area, the VAP panel is composed of 940 individual attorneys, nine (9) law firms and five (5) corporate counsel offices. In 2010, this panel will contribute approximately 3,200 total hours of volunteer time.

The Pro Se Project

The Pro Se Project is an attempt to meet the need for routine divorces which LAWMO could not otherwise handle because they do not involve domestic violence and are, therefore, not high priority cases. Applicants needing simple divorces are invited to attend training on how to represent themselves in a divorce. At the training, a volunteer attorney assists clients in preparing a pre-assembled packet of divorce filings. There are two (2) to three (3) classes taught each month by several different private attorneys with expertise in family law. Classes are conducted in Jackson County and Clay County in the Kansas City area and also in Buchanan, Johnson and Jasper Counties. During 2009, this program assisted more than eighty (80) individuals. Also, in 2009 the Kansas City office began offering classes on Saturdays to address the needs of those unable to attend weekday classes.

A second special project is VAP's work at senior nutrition centers. Since 1986, Kansas City VAP attorneys have regularly visited nutrition sites for the elderly in various locations throughout the inner city. These are sites funded by the Area Agency on Aging which provide low-cost meals and fellowship to persons over 60 years of age. VAP attorneys continue to visit nutrition sites monthly or as requested by each center. Through this project approximately 18 individuals received direct legal services in 2009, while more than 220 seniors received information concerning their legal rights through specialized presentations.

VAP, in conjunction with the local children's hospital in Kansas City, created a project in 1993 which provides legal assistance in obtaining Powers of Attorney and Guardianships over minor children. "Project Consent," as it has been named, was developed to assist adults who have physical custody of minors due to absentee parents and who need legal authority to consent to medical treatment, among other things, for the minors. In 2009, 60 families received assistance through this project.

The Urban Core Estate Planning Project (“UCEP”) began operation with 14 volunteers in 2007. UCEP was developed to provide basic estate planning services to senior citizen property owners living in low-income neighborhoods. The primary focus of the project was to help the homeowners properly convey their homes to their intended beneficiaries. By providing these services, the goal is to reduce the number of homes that pass intestate each year. Because of the clouds on title for these houses, the next generation of home owners cannot obtain loans to fund repairs on the houses and cannot sell the houses. Thus, when senior homeowners in the urban core die intestate, their houses often, ultimately, are literally abandoned and become blight in urban neighborhoods. UCEP volunteers also provide assistance for low-income seniors in obtaining wills, medical directives, and powers of attorney. In 2009, a total of 25 clients have received assistance through UCEP.

In 2009, the law firms of Polsinelli Shughart PC, Husch Blackwell Sanders LLP, Levy & Craig PC, Sonnenschein Nath Rosenthal LLP, and Stinson Morrison Hecker LLP started a new project in which they represent local Community Development Corporations that have received \$7.2 million in federal funding to repair abandoned and foreclosed properties in Kansas City. The law firms have handled contract negotiation, regulatory interpretation and other issues to make sure that the agencies can use the funding effectively to improve Kansas City's urban core. VAP's Homeless Outreach Program is named The Zenas Project. A group of lawyers from the local Christian Legal Society agreed to provide pro bono counsel, advice and representation to residents of one of the city's larger homeless shelters, City Union Mission. In 2009, the team of volunteers expanded their outreach to include Hope Faith Ministries, another shelter for those who are homeless. Attorneys visit the shelters on a monthly basis. Volunteers help project clients secure long-term, stable housing by identifying the legal issues that are causing the project participants to be homeless and then assisting the clients with those issues. For example, a volunteer might assist a client in obtaining income assistance through SSI. Volunteers may also assist the clients with other civil legal matters. Participants who interview the clients decide whether they want to keep the case or refer it to VAP for assignment to another attorney.

Compensated Component

In the Joplin office, four (4) private attorneys, experienced and knowledgeable in case matters handled by that office, have contracted with LAWMO at a reduced fee rate to handle overflow cases from the office.

LAWMO contracts with other private attorneys on a reduced fee basis from time to time to fill gaps left by staff turnover. These contracts are for short, temporary periods until adequate replacement staff have been hired, and most cases handled involve family law issues. In 2002, the Warrensburg office began contracting with a panel of experienced private attorneys, located in relatively remote portions of LAWMO's service area, at a reduced fee rate to make short appearances in court, which avoids the need of staff to travel long distances. LAWMO is not involved in any joint ventures with another LSC program in carrying out this Private Attorney Involvement plan.

Intake and case acceptance procedures for PAI cases are consistent with LAWMO practices because all PAI cases are first screened by LAWMO staff and determined to be within stated priorities before being referred to a volunteer or contract attorney. The program relies upon the representations of participating attorneys that they have the skills, expertise, and substantive experience to competently handle cases assigned. Ordinarily, cases are assigned, according to the nature of the legal problems involved, to those attorneys who have indicated a willingness to handle cases of that nature. To maintain current information regarding the volunteer's interest, an updated questionnaire is distributed biennially. Private volunteer attorneys have access to LAWMO resources, including LAWMO's library, Westlaw, reduced fee stenographic and expert witness services, and backup by LAWMO staff.

Once a case is accepted and a determination made that it be referred to VAP, the case and required statistical information is entered into the ACMS indicating a VAP referral has been made. VAP then receives the original file and all pertinent documents. All information is then entered into the VAP computer system. Changes in client phone numbers and addresses are made as they become known.

The VAP coordinator arranges for each case to be assigned to a volunteer attorney considering the following factors: agreement to take a specific type of case, special language skills, geographic location, availability for appointments and number and difficulty of cases already assigned to that attorney. Immediately after the case has been assigned to an attorney, that attorney will be provided with an initial case information form and a copy of the entire case file. The initial case information form must be returned within 15 days. If the form is not received by the 15th day after the case is placed, the coordinator will contact the attorney assigned to the case to follow-up on any initial contact. If contact with the client has been made, the attorney will then be sent closing forms. These include a reimbursement for expense form, an attorney satisfaction form and the case closure form. All these forms are to be completed and returned to the VAP offices as soon as a case has been closed. However, if a client has failed to make contact with the assigned attorney within the 15 days allowed, the coordinator will attempt to contact the client by phone. If these attempts fail, a letter will be sent to the client requesting that the client contact the VAP office within 10 days and informing the client that if no contact is made the case will be closed. If the client does not respond to this letter within the 10 days allowed, the coordinator will contact the attorney to inquire if any contact has been made with his/her office. If the attorney has not heard from the client, the case will be closed.

After placing each case, a copy of the case referral information form is filed in an alphabetized folder. Each case name, together with the assigned attorney's name, is kept on a log sheet that allows easy follow-up within 15 days of initial placement. There is also a daily tickler file for tracking client responses due and/or attorney responses due. Both of these follow-up systems are checked daily. The client is sent a letter explaining the VAP program, providing the attorney's name and telephone number, and enclosing the retainer agreement to be signed and returned. Before the case is assigned, LAWMO staff will have noted deadlines which are approaching and other problems likely to be encountered.

All cases are reviewed monthly by the coordinator unless the attorney has requested otherwise or the case is such that a follow-up that frequently is not required. Those cases needing specific

updates due to court actions, filing deadlines or suggested completion dates will be flagged by the coordinator to follow-up with the assigned attorney. If an attorney cannot be reached by phone to request a written update, the coordinator will send a follow-up request in writing. If there is no response by the following month's review date, the coordinator will then pass the case to the VAP Director who will make other follow-up efforts.

Each month, the VAP coordinator runs a computer printout of all opened and closed cases. These are compared to the LAWMO printouts of VAP cases shown as opened and closed. Any discrepancies in the two (2) printouts are brought to the attention of the LAWMO computer supervisor and adjustments are made. Once the attorney has completed representation of the VAP client, the closing forms mentioned above are filled out and returned to the VAP office. If an attorney has told the VAP coordinator that a case has been completed but has failed to return the forms, the coordinator will contact the attorney every 15 days until the forms are returned to VAP and the statistical information is recorded, as well as entered, into the VAP computer system. The file is closed only after all closing forms and information regarding the case has been obtained. Each closed VAP case is reviewed first by LAWMO's VAP staff, then by the Executive Director, and finally by the managing or supervising attorney of the office or unit which referred the case.

LAWMO has set up a separate PAI revenue account which totals 12.5% of LSC's Basic Field grant for the year. Each PAI expense is allocated monthly to this account. Direct expenses, such as the salary of LAWMO's VAP staff and time spent on PAI activities by other staff, are posted directly to the PAI account based upon hours recorded on timesheets. Office-wide or program-wide expenses are allocated to the PAI account based upon a formula reflecting the percentage that PAI related staff salaries bear to total office or program salaries as applicable. Fees paid to any private attorneys will be less than 50% of the prevailing market rate. The market rate, which is in excess of \$100 per hour, has been determined by a survey of area law firms, large and small, and supported by a professional opinion of the president of the Kansas City Metropolitan Bar Association.

LAWMO is presently using and will continue in 2010 to use written client satisfaction surveys in its PAI program. Participating attorneys are also surveyed for their input on cases handled, the need for training, and the program in general. Attorneys are also asked on the questionnaire to indicate their preference for CLE training. No revolving litigation fund for the payment of attorneys' fees will be used.

All PAI cases reviewed were in compliance with 45 CFR Part 1614, LSC Act and LSC regulations and there was very good oversight and follow-up provided.

Comments to the DR stated that LAWMO added the two (2) recommended paragraphs to their PAI contracts immediately when they received the suggestion from OCE. Having investigated the issue further, and as discussed below, LAWMO plans on changing the language of the second provision to read as follows (changes are italicized).

This contract is *made* on the condition that if payments are expected to exceed \$25,000 in a year, *and if LAWMO will use LSC funds to pay for services under the contract,*

attorneys or the law firm will engage in a subgrant agreement that will require LSC's approval.

Finding 17: LAWMO is in 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.

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 review of accounting records and detailed general ledger documents for 2008, 2009 and 2010 through June, disclosed that LAWMO is in compliance with 45 CFR § 1627.4(a). All non-mandatory dues and fees are being paid with non-LSC funds.

Comments to the DR stated that LAWMO is in agreement that they are in compliance with 45 CFR § 1627.4.

Finding 18: LAWMO is in compliance with 45 CFR Part 1635 (Timekeeping requirements). However, two (2) cases reviewed disclosed no time recorded.

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 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.

A review of 10 advocates timekeeping records selected from all of LAWMO's offices for the pay period ending June 30, 2010 disclosed that all sampled records were electronically and contemporaneously kept. The time spent on each case, matter or supporting activity was recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

Interviews with the Program Administrator and Program Accountant disclosed that there are no part-time case handlers working for an organization that engages in restricted activities in compliance with 45 CFR § 1635.3(d).

A review of 15 cases against the time reported by the attorneys to verify that the time spent on the case was reasonable, disclosed that in two (2) cases reviewed, (*See* Case Nos. 1001000139 and 1001000152), the attorneys neglected to report their time in the timekeeping system. The remaining 13 cases reviewed confirmed that the time reported was reasonable. LAWMO must take corrective action and inform staff of the requirements of 45 CFR Part 1635 regarding reporting of time in the timekeeping system and make sure it is being implemented.

Comments to the DR stated that LAWMO will de-select Case Nos. 1001000139 and 1001000152 and, in LAWMO's CSR refresher course, they will re-iterate the importance of maintaining contemporaneous time records for all files and will make sure that this is being done.

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

Except as provided by LSC regulations, recipients may 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. The

¹¹ LSC further determined that it will not take enforcement action 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. As well, the regulatory provisions regarding 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. *See* LSC Program Letter 10-1 (February 18, 2010)

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).

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. 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.¹¹

None of the sampled cases reviewed contained a prayer for attorneys’ fees. A review of LAWMO’s fiscal records and the 2009 Audited Financial Statement as well as an interview with the LAWMO accountant and Executive Director evidenced compliance with 45 CFR Part 1642.

LAWMO provided no comments to this Finding.

Finding 20: Bank reconciliations for May and June 2010 were reviewed for all bank accounts and were found to be performed timely, accurately, and with corresponding approvals.

The bank reconciliations for the operating client trust and investments accounts for May and June 2010 were reviewed and found to be reconciled timely, including bank statement balances to the General Ledger with the corresponding approvals.

LAWMO provided no comments to this Finding.

Finding 21: LAWMO has an Accounting Manual that is adequately documented and generally complies with the requirements of the 1997 Accounting Guide for LSC Recipients (“AGLSCR”).

A cursory review of the Accounting Manual disclosed that it complies with the requirements of the AGLSCR.

LAWMO provided no comments to this Finding.

Finding 22: LAWMO has good segregation of duties and internal controls. However, to strengthen the bank reconciliations procedures the Executive Director should receive and open the bank statements received by mail. A limited review of the payroll system and

controls were found to be adequate. LAWMO utilizes ADP as their payroll processing entity and compares timesheets and timekeeping records randomly to verify time reported.

A review of the internal controls and the review of payments disclosed that LAWMO has good segregation of duties, internal controls and define procedures through their Accounting Manual. However, the review disclosed that the Program Accountant has many functions dealing with the bank reconciliations, which includes opening bank statement mail, preparing monthly bank reconciliations, and reconciling bank statement balances to the General Ledger. LSC recommends segregation of duties by having the Executive Director open the bank statements that arrive by mail to strengthen internal controls.

The review of several time sheets against timekeeping records disclosed that records are in agreement. A review of agreement and procedures with the ADP payroll processing firm and the controls within LAWMO disclosed that there is adequate control with payroll. ADP will automatically withdraw funds from LAWMO's Money Market account the day before the pay date. The funds that are withdrawn are based on the payroll reports that were just generated. The amounts actually withdrawn from the Money Market accounts are reconciled with the bank statement the following month. A limited review of the Money Market account payroll transactions and the bank statements disclosed no exceptions.

Additional documentation from ADP is expected to be received by LAWMO and should be forwarded to LSC in order to verify that ADP controls and their procedures are adequate to safeguard LAWMO and LSC resources.

Comments to the DR stated that LAWMO immediately implemented the OCE team's recommendation that the Executive Director open all bank statements and will continue to do this. Additionally, as noted in the comments, LAWMO has provided OCE with a copy of ADP's certificate of liability insurance as requested via e-mail on September 1, 2010.

Finding 23: A limited review of payables disclosed no exceptions and support documents were properly stamped as paid, with corresponding signatures of approval.

A limited review of payables including debit card usage and payments for 2009 and through June 2010 disclosed adequate supporting documentation with corresponding approvals. LAWMO adequately and consistently stamps as paid all support documents to avoid duplicate payments.

LAWMO provided no comments to this Finding.

Finding 24: LAWMO gives salary advances for emergencies to be repaid within four (4) pay periods.

A limited review of salary advances for 2010 disclosed that they are minimal and are being deducted within the following four (4) pay periods, and the review did not disclose any outstanding advances beyond the authorized period.

LAWMO provided no comments to this Finding.

Finding 25: 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 cases and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also indicated that LAWMO is not involved in this prohibited activity.

LAWMO provided no comments to this Finding.

Finding 26: 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 cases reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also indicated that LAWMO is not involved in this prohibited activity.

LAWMO provided no comments to this Finding.

Finding 27: 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 also 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).¹²

None of the sampled cases reviewed involved initiation or participation in a class action. Discussions with the Executive Director also indicated that LAWMO is not involved in this prohibited activity.

LAWMO provided no comments to this Finding.

Finding 28: 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.

None of the sampled cases reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also indicated that LAWMO is not involved in this prohibited activity.

LAWMO provided no comments to this Finding.

Finding 29: 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.

¹² 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 cases reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also indicated that LAWMO is not involved in this prohibited activity.

LAWMO provided no comments to this Finding.

Finding 30: 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 cases reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also indicated that LAWMO is not involved in this prohibited activity.

LAWMO provided no comments to this Finding.

Finding 31: 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.¹³ This restriction has been contained in all subsequent appropriations acts.¹⁴ 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 cases, including documentation such as community education materials and program literature, indicated program involvement in such activity. Discussions with the Executive Director also indicated that LAWMO is not involved in this prohibited activity.

LAWMO provided no comments to this Finding.

¹³ *See* Section 504(a)(18).

¹⁴ *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).

Finding 32: 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 LSC funds may 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 cases reviewed involved such activity. Discussions with the Executive Director also indicated that LAWMO is not involved in these prohibited activities.

LAWMO provided no comments to this Finding.

Finding 33: 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 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 cases reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that LAWMO 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.

LAWMO provided no comments to this Finding.

IV. RECOMMENDATIONS¹⁵

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

1. Provide staff training on the CSR case closing codes;

Comments to the DR stated that LAWMO will provide training on all of the CSR issues raised in the DR in January 2011.

2. Revise their private contracts with attorneys by including the following two paragraphs;

45 CFR Part 1600: This contract is conditioned upon the attorney or law firm that the dollar amount of the contract or total payments derived from this contract is less than 50% of the attorney or law firm projected annual professional income; and

45 CFR § 1627.2(b)(1): This contract is on the condition that if payments are expected to exceed \$25,000 in a year, attorneys or law firm will engage in a subgrant agreement that will require LSC's advance approval.

Comments to the DR stated that LAWMO has already changed their private attorney contracts to include the suggested language, except LAWMO has made it clear that subgrant agreements are not required in situations in which the work is not funded by the Corporation.

¹⁵ 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, LAWMO is required to take the following corrective actions:

1. Ensure that cases are closed in a timely manner in compliance with CSR Handbook (2008 Ed.), § 5.6 and make sure open cases are not dormant by providing follow-up and oversight. Further, ensure that all cases identified in this Draft Report that were not timely closed or dormant be de-selected from future CSR submissions;

Comments to the DR stated that LAWMO will ensure that all cases are closed in a timely manner in compliance with CSR Handbook § 5.6. LAWMO will do this by having all closed cases reviewed by the case handler's supervising attorney and by de-selecting all cases that are not timely closed, according to comments to the DR. Further comments to the DR stated that LAWMO will also have a CSR re-fresher training for all staff to be certain that they are aware of this requirement. Finally, all cases that were identified in the DR as not being timely closed or dormant will be de-selected from future CSR submissions.

2. Ensure that the legal assistance provided is documented in the cases and that those cases identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, a review of all cases at the time of closing is necessary;

Comments to the DR stated that LAWMO will ensure that the legal assistance provided in each case is documented in the case file by having all closed cases reviewed by the case handler's supervising attorney and by de-selecting all cases in which legal assistance is not properly documented in the file or by supplementing the file to correctly reflect the legal assistance that was provided to the client. Further comments to the DR stated that LAWMO will also have a CSR re-fresher training for all staff to be certain that they are aware of this requirement. Finally, all cases that were identified in the DR as not reflecting the legal assistance that was provided to the client will be de-selected from future CSR submissions, according to comments to the DR.

3. Ensure compliance with group eligibility requirements pursuant to 45 CFR § 1611.5(3)(c) (1983) for those group cases opened prior to 2005 and pursuant to 45 CFR § 1611.6 (2005) for those group cases opened after 2005 identified in this DR or shift funding source to non-LSC funded for these cases and exclude them from the CSRs;

Comments to the DR stated that LAWMO is working with OCE to prepare a group eligibility worksheet that will be used to determine client eligibility for all future group cases. LAWMO will use the worksheet for all future cases and will not accept a group representation case, unless the group is eligible and the qualification is documented in the group eligibility worksheet, according to comments to the DR.

LAWMO must provide evidence to OCE within thirty (30) days from the date of release of this Final Report that this corrective action has been implemented.

4. Ensure compliance with the requirements of 45 CFR § 1610.5 “donor notification” by notifying donors of the prohibitions and conditions which apply to LSC funds;

Comments to the DR stated that LAWMO will ensure continued compliance with the requirements of 45 CFR § 1610.5 “donor notification” by notifying all donors of \$250 or more of the prohibitions and conditions which apply to LSC funds. For all donations LAWMO receives in the future, they will use the language suggested by OCE staff to accomplish this, according to comments to the DR.

5. Ensure timekeeping requirements are followed pursuant to 45 CFR Part 1635;

Comments to the DR stated that LAWMO will ensure timekeeping requirements are followed pursuant to 45 CFR Part 1635 and that this another issue which will be covered in their CSR refresher training.

6. Ensure that the Migrant cases are contain adequate documentation of legal assistance;

Comments to the DR stated that LAWMO will ensure that Migrant cases contain adequate documentation of the legal assistance provided. LAWMO will create and implement a system to assure that the level of service performed in these cases is properly reflected in the file, according to comments to the DR.

7. Ensure that the Executive Director receives and opens the bank statements received by mail; and

Comments to the DR stated that LAWMO’s Executive Director will continue to receive and open LAWMO’s bank statements.

8. Ensure that the additional documentation concerning the Money Market account payroll transactions which will be provided from ADP be forwarded to LSC in order to verify that ADP controls and procedures are adequate to safeguard LAWMO and LSC resources.

Comments to the DR stated that OCE has been provided with the additional requested information pertaining to ADP.

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Gregg Lombardi
Executive Director



November 18, 2010

Darilo A. Cardona, Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW, 3rd Floor
Washington, D.C. 20007

Re: CSR/CMS Visit Recipient No. 526010

Dear Mr. Cardona:

I am writing in response to your letter of October 6, enclosing the Draft Report for the August 2-6 on-site Case Service Report/Case Management System review of Legal Aid of Western Missouri. I very much appreciate the opportunity to comment on the Draft Report.

Before I get to the substance of my comments, I want to let you know how much I appreciate the professionalism with which Joseph Green and his staff conducted their inspection. As I mentioned in our phone call, Mr. Green and his staff were thorough and diligent. They conducted an aggressive review of our files to make sure that we are complying with all applicable federal law and regulations and that we are using the taxpayers' money well. I did not, on the other hand, feel that they were trying to catch minor or insignificant errors. I believe that they sincerely wanted their investigation to result in Legal Aid of Western Missouri being a better legal services program.

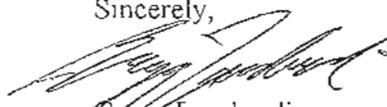
As discussed below, we agree with the vast majority of the team's comments and are taking prompt action to make sure that we are in full compliance with all applicable laws. Although there are a number of areas in which I respectfully disagree with the team's findings, I am confident that we can work through those disagreements. Our intent and goal is to be in compliance and if there is any area in which we are not in compliance, we will take prompt action to correct it.



I would also note that we have already started changing our practices to adopt many of the OCE team's recommendations. Indeed, we started making the changes even before the team had left Kansas City. We very much appreciate the team's feedback.

My comments on the Draft Report are attached.

Sincerely,



Gregg Lombardi

GLA

**Comments on Draft Report of the Legal Services Corporation
Office of Compliance and Enforcement CSR/CMS Review of
Legal Aid of Western Missouri on August 2-6, 2010**

Legal Aid of Western Missouri ("LAWMO") is in full agreement with the following OCE findings contained in the Draft Report: Findings 1, 2¹, 4-14, 16, 18-33.

We have the following additional comments in regard to these findings:

Finding 6: In our CSR refresher training (discussed below), we will remind staff of the need to identify the nature of the services to be provided in each retainer agreement;

Finding 9: In our CSR refresher training, we will remind staff of the need for each client file to reflect legal assistance that we have provided to the client;

Finding 10: In our CSR refresher training, we will clarify the distinctions between the categories of case service provided and make sure that our staff is entering the proper case closing codes when they close files. We are moving forward with a system for our Migrant Farmworker Project to make sure that the facts supporting the level of service provided are clearly reflected in the file;

Finding 11: In our CSR refresher course we will review the requirements for timely case closing and make sure that our staff is complying with those requirements. We have closed and de-select file no. 0701000056;

Finding 16: In this finding, OCE recommends that we add two paragraphs to our PAI contracts. We made that addition immediately when we received the suggestion from OCE. Having investigated the issue further, and as discussed below, we plan on changing the language of the second provision to read as follows (changes are italicized):

This contract is *made* on the condition that if payments are expected to exceed \$25,000 in a year, *and if LAWMO will use LSC funds to pay for services under the contract*, attorneys or the law firm will engage in a subgrant agreement that will require LSC's approval.

Finding 18: We will de-select Case Nos. 1001000139 and 1001000152. In our CSR refresher course, we will re-iterate the importance of maintaining contemporaneous time records for all files and will make sure that this is being done;

¹ Note that computerized case management system is "Zasu", not "Sazu" as stated in the next to last line of the draft report on page 7.

Finding 22: We have already implemented the OCE team's recommendation that I, as Executive Director, open all bank statements. We will continue to do this. The OCE team asked that we provide them with a copy of ADP's certificate of liability insurance. We provided that to Mr. Lopez-Silvero, via e-mail on September 1, 2010.

Points on which LAWMO Respectfully Disagrees with the Draft Report

I respectfully disagree with the following OCE findings contained in the Draft Report:

Finding 3: We agree with the OCE team's finding about our tracking of income eligibility for individual clients (finding that we are in compliance). The team found, however, for group cases, both prior to the 2005 amendment of the regulations and subsequent to the amendment, that LAWMO had not complied with the regulatory requirements for demonstrating that our group clients qualify for representation. We respectfully disagree with these findings.

First, in regard to cases handled by LAWMO before the amendment, for each of these cases we obtained a written certification from an officer of the group stating:

[T]wo thirds of the members of the client organization... have personal incomes below the federal poverty level, that the group has no funds to hire a lawyer, and that the requested services benefit low-income people.

The draft report is clear that the applicable federal regulations at the time did not contain specific direction on what information a program was required to gather to substantiate that a group was eligible for representation. We believe that obtaining a statement from an officer of the group should be sufficient. Indeed, if the group's financial condition had been an issue in litigation, the testimony of an officer of the group would be admissible in court to prove up that fact. We believe that the same should hold true with our documenting of group eligibility.

The same analysis applies for group cases taken by LAWMO after the 2005 amendment. Although the regulations provided some guidance as to what information a program should collect to comply, they leave a substantial amount of discretion to individual programs as to how to determine that a potential group client satisfies the regulatory requirements for eligibility. We believe that a signed, written statement from an officer of the group should be sufficient to comply.

Shortly after the site visit, the LSC team provided LAWMO with a Group Eligibility Worksheet. For the most part, we believe that the information requested in the Group Eligibility Worksheet is appropriate and consistent with the applicable regulatory requirements. The only changes we propose to make in the form are to change "assets" to "cash assets not dedicated to clients services" and to eliminate the "liabilities" line immediately below that. We believe that assets that are not liquid or that are dedicated to client service (like a building) are not indicative of a group's ability to hire an attorney. The same holds true for liabilities. For all future group cases, we will use the OCE team's form with these changes. We do not believe, however, that we should have a finding against us on this issue. Prior to OCE's site visit, we believe that the applicable regulations gave individual programs substantial discretion in determining the appropriate information to gather to prove group client's eligibility and we respectfully believe that we have complied with the applicable regulation.

Finding 15: The OCE team found that LAWMO has failed to provide donors to our organization with proper notice of the prohibitions and conditions which apply to their donations, pursuant to 45 CFR 1610.5. We, however, provide the following notice to all of our donors: "Because Legal Aid of Western Missouri receives funding through the Legal Services Corporation, we are required to notify all funders, including private donors, that we will not engage in advocacy activities prohibited by the LSC Act or LSC appropriation riders." We believe that this notice is in compliance with the applicable LSC regulations. During the OCE visit, Mr. Green provided us with alternative language. We do not object to using the alternative language and will begin doing so immediately; and,

Finding 17: We are in agreement with the finding that LAWMO is in compliance with 45 CFR 1627.4. We respectfully disagree, however, with the finding that we have not properly requested LSC approval for subgrants under 45 CFR 1627. 45 CFR 1627.2(b)(2) defines "subgrants" as: "any transfer of Corporation funds from a recipient." The PAI contracts discussed in Finding 17 are funded solely with non-LSC funds. Accordingly, the subgrant approval requirements of 45 CFR 1627 do not apply to these contracts. We have had a follow-up discussion Alberto Lopez-Silvero of OCE, who agrees with our interpretation of the regulation. Accordingly, we do not currently have any plans to seek LSC approval of this contract for 2011.

Recommendations

We have the following response to the OCE team's recommendations:

Recommendation 1: We will provide a staff training on all of the CSR issues raised in the draft report in January 2011; and,

Recommendation 2: We have already changed our private attorney contracts to include the suggested language, except we have made it clear that subgrant agreements are not required in situations in which the work is not funded by the Corporation.

Required Corrective Actions

We are taking the following actions in regard to the required corrective actions referred to in the Draft Report:

Action 1: LAWMO will ensure that all cases are closed in a timely manner in compliance with CSR Handbook Section 5.6. We will do this by having all closed cases reviewed by the case handler's supervising attorney and by de-selecting all cases that are not timely closed. We will also have a CSR re-fresher training for all staff to be certain that they are aware of this requirement. All cases that were identified in the Draft Report as not being timely closed or dormant will be de-selected from future CSR submissions;

Action 2: LAWMO will ensure that the legal assistance provided in each case is documented in the case file. We will do this by having all closed cases reviewed by the case handler's supervising attorney and by de-selecting all cases in which legal assistance is not properly documented in the file or by supplementing the file to correctly reflect the legal assistance that was provided to the client. We will also have a CSR re-fresher training for all staff to be certain that they are aware of this requirement. All cases that were identified in the Draft Report as not reflecting the legal assistance that was provided to the client will be de-selected from future CSR submissions;

Action 3: We are working with OCE to prepare a group eligibility worksheet that will be used to determine client eligibility for all future group cases. We will use the worksheet for all future cases and will not accept a group representation case, unless the group is eligible and the qualification is documented in the group eligibility worksheet.

Action 4: LAWMO will ensure compliance with 45 CFR 1627.2 by submitting subgrant agreements to LSC for advance approval if the payments to individual private attorneys or law firms, which are to be paid with LSC funds are anticipated to be above \$25,000 per calendar year. To date, we have not entered into any such contracts and do not anticipate doing so in the foreseeable future;

Action 5: LAWMO will ensure continued compliance with the requirements of 45 CFR 1610.5 "donor notification" by notifying all donors of \$250 or more of the prohibitions and conditions which apply to LSC funds. For all donations we receive in the future we will use the language suggested by OCE staff to accomplish this;

Action 6: LAWMO will ensure timekeeping requirements are followed pursuant to 45 CFR 1635. This is an issue that we will cover in our CSR refresher training;

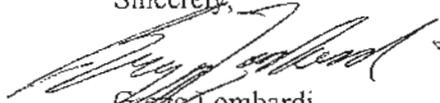
Action 7: LAWMO will ensure that Migrant cases contain adequate documentation of the legal assistance provided. We will create and implement a system to assure that the level of service performed in these cases is properly reflected in the file;

Action 8: LAWMO's Executive Director will continue to receive and open LAWMO's bank statements that we receive by mail; and,

Action 9: We have already provided OCE with the additional requested information about ADP.

We very much appreciate the work that OCE staff put into their on-site inspection of Legal Aid of Western Missouri and the Draft Report that you have prepared. If you have any questions about any of the above, please give me a call.

Sincerely,



Gregg Lombardi
Executive Director

GLA