



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Services Corporation of Delaware, Inc.
Compliance Review
December 10-13, 2013

Recipient No. 308010

LSC Compliance Review Team

Kia Ashley, LSC Program Counsel (Team Leader)
Curtis Goffe, LSC Program Counsel
Tamara Gustave, LSC Program Counsel
Mark Watts, LSC Fiscal Compliance Analyst
Thomas Enright, LSC Fiscal Compliance Analyst
Olivia Farrar, LSC Temporary Employee

I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that, with limited exceptions, LSCD's automated case management system ("ACMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

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

Finding 3: Sampled cases evidenced that, with one (1) exception, LSCD complies with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines ("FPG"). Additionally, LSCD's revised income eligibility policy is compliant with CFR Part 1611.

Finding 4: Sampled cases evidenced that LSCD complies with the asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. LSCD's revised asset eligibility policy is compliant with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e).

Finding 5: LSCD is in compliance with the screening requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). However, as there were several case files reviewed that contained citizenship attestations that were not dated, LSCD is in substantial compliance with the documentation requirements of 45 Part 1612. LSCD's revised policy is in compliance with 45 CFR Part 1626.

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

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). LSCD's revised policy is compliant with 45 CFR Part 1636.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). LSCD's revised policy on priorities is compliant with 45 CFR Part 1620.

Finding 9: Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced substantial compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011) (Case closure categories).

Finding 11: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.

Finding 13: Review of LSCD's policies and the list of attorneys who have engaged in the outside practice of law, as well as interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, revealed that LSCD is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). LSCD's revised outside practice of law policy is also in compliance with 45 CFR Part 1604.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). Additionally, LSCD's revised policy on fee-generating cases is in compliance with 45 CFR Part 1609.

Finding 16: Review of LSCD's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities. A limited review of fiscal documents and staff interviews evidenced non-compliance with the requirements of 45 CFR § 1610.5(a) (Notification).

Finding 17: LSCD is in compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases. LSCD is in substantial 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.

Finding 18: LSCD 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. LSCD's revised policy on subgrants is also in compliance with 45 CFR Part 1627.

Finding 19: LSCD is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 20: Sampled cases evidenced compliance with the requirements of former 45 CFR Part 1642 (Attorneys' fees).

Finding 21: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). LSCD's revised policy is in compliance with the requirements of 45 CFR Part 1612.

Finding 22: 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 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions). LSCD's revised policy is in compliance with the requirements of 45 CFR Part 1617.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting). LSCD's revised policy is in compliance with the requirements of 45 CFR Part 1632.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings). LSCD's revised policy is compliant with 45 CFR Part 1633.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation). LSCD's revised policy on solicitation is compliant with 45 CFR Part 1638.

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 30: LSCD is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information); however, one (1) slight revision was recommended.

Finding 32: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).

Finding 33: Based upon an interview conducted with the Chairman of the LSCD's Board of Directors and a limited review of Board meeting minutes, LSCD's Finance Committee fulfills its responsibilities as outlined in the LSC Accounting Guide for LSC Recipients (2010 Ed.).

Finding 34: A limited review was conducted of LSCD's bank accounts for the months of September and October of 2011, 2012, and 2013, which disclosed that LSCD has adequate policies and procedures, including proper internal controls, over bank reconciliations, payroll processes, fixed assets, and petty cash procedures. A limited review of LSCD's electronic banking processes was conducted that revealed a need for documented processes.

Finding 35: Review of the Segregation of Duties Worksheet, a matrix of internal controls, and interviews with the employees who perform financial functions disclosed that adequate segregation of duties has been achieved by LSCD.

Finding 36: A limited review of fiscal documents and interviews with staff revealed that LSCD is in compliance with the requirements of 45 CFR Part 1628 (Recipient fund balances), as LSCD ended the 2011 and 2012 fiscal years by fully expending LSC funds. However, the review revealed that LSCD's fund balance may be understated because LSCD included grant funds received, and expenditures incurred, from a Technology Initiative Grant received from Idaho Legal Services.

Finding 37: A limited review of fiscal documents, and interviews with LSCD staff, demonstrated that LSCD is in compliance with the requirements of 45 CFR Part 1629 (Bonding of recipients), as LSCD carries adequate fidelity bond insurance coverage on employees handling cash.

Finding 38: A limited review of LSCD's fiscal documents, and interviews with staff, revealed that LSCD is in compliance with the requirements of 45 CFR § 1630.12 (Derivative income), as interest income resulting from an activity supported in whole or in part with LSC funds was allocated to the fund in which the LSC grant was recorded, in the same proportion to the LSC grant. However, LSCD, with Board approval, must establish written policies and procedures describing how derivative income is allocated for each type of derivative income. Additionally, LSCD's cost allocation policy must be more defined.

II. BACKGROUND OF REVIEW

During the week of December 10-13, 2013, staff of the Office of Compliance and Enforcement (“OCE”) conducted a Compliance Review at the Legal Services Corporation of Delaware, Inc. (“LSCD”). The purpose of the visit was to assess the program’s compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team of three (3) attorneys, two (2) fiscal analysts, and one (1) temporary employee.

The on-site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that LSCD has correctly implemented the 2008 CSR Handbook, as amended 2011. Specifically, the review team assessed LSCD for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1614 (Private attorney involvement)¹; 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); former 45 CFR Part 1642 (Attorneys’ fees)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LSCD’s upper and middle management, staff attorneys, and support staff. LSCD’s case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, case file review was conducted. The sample case review period was from January 1, 2011 through September 30, 2013. Case file review relied upon randomly selected files as well as targeted and pulled 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 selected 440 cases to review on-site, which included 55 targeted files. All of the selected cases were reviewed.

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

² On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant visit, LSC’s review and enforcement of this regulation was therefore only for the period prior to December 16, 2009.

LSCD currently provides legal services to eligible clients in Kent, New Castle, and Sussex counties. LSCD provides client services at two (2) offices located in the cities of Wilmington and Dover. LSCD's central office is located in Wilmington, Delaware.

LSCD's Basic Field Grant for 2013 was \$592,875.00. LSCD's Basic Field Grant in 2012 was \$585,642.00; in 2011, it was \$686,244.00. In its 2011 submission to LSC, LSCD reported 1,427 closed cases, of which 82.6% were closed as limited service cases, and 17.1% were closed as extended service cases. In its 2012 submission, the program reported 1,249 closed cases, of which 82.2% were closed as limited service cases, and 17.8% were closed as extended service cases. LSCD's 2011 self-inspection certification revealed a 0.10% error rate in CSR reporting; LSCD's 2012 self-inspection certification revealed a 0.10% error rate in CSR reporting. The excepted case in the 2011 self-inspection submission was a case where the file did not contain the client's asset information. The excepted case in the 2012 self-inspection submission was a case where the file did not contain evidence of legal advice.

By letter dated September 6, 2013, OCE requested that LSCD provide a list of all cases reported to LSC in its 2011 CSR data submission (closed 2011 cases), a list of all cases closed in 2012 (closed 2012 cases), a list of all cases opened on or after January 1, 2013 and closed on or before September 30, 2013 (closed 2013 cases), and a list of all cases which remained open as of September 30, 2013 (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 LSCD staff and the other for cases handled through LSCD's PAI component. LSCD 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* protocol (January 5, 2004). LSCD was requested to notify OCE promptly, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on-site visit. The sample was developed proportionately among 2011, 2012, and 2013 closed, and open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LSCD agreement of November 25, 2013, LSCD 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

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.

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

At the conclusion of the visit, on December 13, 2013, OCE conducted an exit conference during which LSCD was provided with OCE's initial findings and was made aware of the areas in which compliance issues were found. OCE noted compliance or substantial compliance in the following areas: 45 CFR Part 1611 (Financial eligibility policies); 45 CFR § 1611.9 (Retainer agreements); CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided); 45 CFR § 1626.6 (Verification of citizenship); and CSR Handbook (2008 Ed., as amended 2011), Chapters VIII and IX (Case closure categories).

By letter dated February 28, 2014, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions. LSCD was asked to review the DR and provide written comments. On March 13, 2014, LSCD requested, and received, an extension of the due date for their response to the DR. LSCD was then granted an additional extension of the due date for their response to the DR. Pursuant to the extension, LSCD agreed to submit its response to the DR on or before June 16, 2014. By letter dated June 12, 2014, LSCD submitted its comments to the DR. OCE has carefully considered LSCD's comments and has either accepted and incorporated them within the body of the report, or responded accordingly. LSCD's comments, in their entirety, are attached to this Final Report.

III. FINDINGS

Finding 1: Sampled cases evidenced that, with limited exceptions, LSCD's automated case management system ("ACMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Recipients are required to utilize an 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 (2008 Ed., as amended 2011), § 3.1.

LSCD uses Legal Files Case Management System ("Legal Files") as its ACMS. Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LSCD's ACMS is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, a limited number of case files reviewed contained a case number in the physical case file that differed from the case numbers in the case lists provided by LSCD prior to the on-site review. *See* Open Case No. 11E-000061 (the case file number in the physical file was 11E-000062); Open Case No. 13E-000198 (the case file number in the physical file was 13E-000199); Closed 2013 Case No. 11E-000167 (the case file number in the physical file was 11E-000168); and Closed 2012 Case No. 12E-000205 (the case file number in the physical file was 12E-000207). The case review

intermediary could not explain why these discrepancies existed. The DR directed that LSCD should determine the reason for the case number inconsistencies when generating case lists, as it may produce problems with locating or tracking cases.

Recommendation:

The DR recommended that LSCD determine why case numbers in the above-referenced physical case files did not match the case numbers contained in the case lists generated by LSCD for the on-site review, and ensure that its ACMS generates case numbers that correspond to case numbers contained in the physical case files.

In its response to the DR, LSCD indicated that its case management system provides accurate case lists and that the discrepancies found during the on-site review were the result of having to import LSCD case lists that are housed in a Legalfiles database to a Microsoft Excel spreadsheet. The importing of case lists from Legalfiles to Microsoft Excel resulted in some case numbers being increased by one (1) or two (2) numbers. Additionally, LSCD indicated that this reason had been explained during the review. As LSCD does not use Microsoft Excel to generate its case lists, and an adequate reason for the discrepancies was provided, LSC does not anticipate any future case number inconsistencies.

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

The intake procedures of both LSCD offices were assessed by interviewing the primary intake staff and LSCD staff attorneys in order to ascertain LSCD's compliance in relation to the intake process. The interviews revealed that intake procedures performed by the intake staff generally support the program's compliance related requirements with respect to obtaining written citizenship attestations, performing conflict and duplicate checks during the intake process, inquiring as to an applicant's reasonable income prospects, and considering all authorized exceptions and factors when screening an applicant for income eligibility.

Walk-in and Telephone Intake

Intake is conducted primarily via telephone, with applicants calling the intake phone number associated with the Wilmington office. As a result, the majority of LSCD's telephone intake is conducted by the Wilmington intake staff. Walk-ins do occasionally occur in both the Wilmington and the Dover offices and, in those instances, intake staff will conduct an in-person intake screening. Telephone and walk-in intake is operated Monday through Friday from 8:30 a.m. to 5:00 p.m. Each day, a staff attorney from the Wilmington and Delaware offices is assigned by the Executive Director as the responsible attorney for all cases opened that day by the intake staff. The intake telephone system is staffed at all times by at least two (2) intake staff members, and the responsible LSCD staff attorney provides legal assistance to intake telephone callers when necessary. Intake staff answers calls, or meets with applicants, in the order requests for assistance are received. Intake staff first pre-screens the caller for case type/priorities, conflicts, duplicates, and income/asset eligibility. After pre-screening, intake staff screens for

eligibility and enters the applicant's information into Legal Files. Intake staff also enters the following information directly into Legal Files: the applicant's and the adverse party's name and address; the applicant's household size; the household income and assets; and the applicant's citizenship or eligible alien verification. Review of the ACMS revealed no defaults in the essential categories. After entering eligibility information, intake staff will briefly interview the applicant to obtain information concerning the nature of the legal problem. If intake staff is uncertain as to the eligibility of an applicant, a note is made in the critical ACMS field and the case is transferred to the responsible staff attorney for further review.

If the applicant meets the basic eligibility criteria from the initial intake screening, the call is transferred to an intake paralegal for follow-up screening. The intake paralegal verifies the information gathered by the initial intake screening, and then asks follow-up questions related to financial eligibility and to the applicant's legal issue (*e.g.*, upcoming court dates, verification of household size, etc.). This follow-up information is recorded by the paralegal in Legal Files and if the applicant is deemed eligible for services, the paralegal accepts the case and transfers it to the attorney responsible for that day's cases. As stated above, cases are assigned to LSCD attorneys on a rotating basis in each office, with the attorney assigned to a particular day being responsible for all cases that are opened on that day. The assigned attorney is also responsible for designating a case as a PAI or staff case, for performing all of the legal work on the case if it is a staff case, for communicating with the PAI Coordinator and PAI attorney if it is designated a PAI case, and for closing the case when it is completed. If the case is designated as a PAI case, the referral is approved by the Executive Director but the case remains on the staff attorney's case list for monitoring purposes. The PAI Coordinator will also monitor the referred PAI case list to ensure that all referred cases are timely matched with a volunteer attorney. If the applicant is ineligible for services and insists on speaking with an attorney, the staff attorney will inform the applicant of their ineligibility and attempt to refer the applicant to an applicable social service program for assistance.

After the intake is completed, intake staff will schedule an appointment for the applicant to meet with the LSCD staff attorney assigned for that day or transfer the call to that staff attorney to provide brief legal assistance, when appropriate. The staff attorney assigned to the case reviews the intake to ensure that all of information needed for LSC compliance is recorded. The staff attorney also provides advice and brief services by telephone when appropriate, and will provide extended services when necessary. LSCD's practice is to obtain written citizenship/alien documentation and retainer agreements for all extended service cases.

Intake staff interviewed indicated that they do not conduct group eligibility determinations, pursuant to the requirements of 45 CFR §§ 1611.6 and 1611.7, as all of the applicants who are screened for eligibility are individual applicants, and they have never had a recent occasion to screen a group applicant.

On-site review of the intake system indicated that intake staff is consistent in their use of the ACMS to conduct income and asset eligibility screenings, collect demographic information, perform conflict checks, verify citizenship, and store electronic reporting data. Intake staff demonstrated familiarity with program priorities and the citizenship and alien eligibility requirements of 45 CFR Part 1626. Case acceptance is done by intake paralegals on an

individual basis; case acceptance or rejection is communicated to an applicant via telephone and/or written letter. Staff attorneys generally close their cases the same day advice is provided, and the client is mailed a closing letter.

Cases are reviewed at closing and at the end of every year by LSCD's Litigation Director, who reviews them for financial eligibility and legal accuracy. Errors are located and corrected during this process. Oversight of the supervision of compliance related activities is performed by a senior attorney and LSCD's Executive Assistant, who perform quarterly quality control checks of compliance activities by generating ACMS reports for citizenship, closing codes, duplicates, income and asset amounts, timeliness, funding codes, and data entry mistakes. If a discrepancy is discovered, the file is reviewed and the error corrected.

Reasonable Income Prospects Screening: Pursuant to the requirements of 45 CFR § 1611.7(a) (1), all intake staff interviewed reported that proper inquiry is made into the reasonable income prospects of applicants. The specific question for reasonable income prospects is asked during the intake screening process by intake staff and the applicant's response is recorded in the notes section of the ACMS.

Citizenship and Eligible Alien Status Screening: All intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. Intake staff reported that they verify citizenship status during intake screening and, when necessary, request documentation of eligible alien status.

Prior to the compliance visit, LSCD utilized a citizenship attestation that did not have a date line tied to the applicant's signature. While on-site, it was recommended that LSCD utilize an attestation that was compliant with the requirements of 45 CFR § 1626.6 and CSR Handbook (2008 Ed., as amended 2011), § 5.5. Upon discussions with the Executive Director, LSCD's citizenship attestation was revised to read: "I hereby certify that I am a citizen of the United States. Signature: _____ Print Name: _____ Date: _____." The revised intake document was reviewed during the visit and met with approval. During the compliance visit, the Executive Director indicated that the approved form would replace the previously used citizenship attestation effective immediately, and that intake staff would receive instructions regarding use of the new form.

Intake staff interviewed demonstrated an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments ("VAWA"), with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien.

Income Screening: All intake staff expressed an understanding that an applicant will be considered eligible if the applicant's income is under 125% of the Federal Poverty Guidelines ("FPG"). Additionally, intake staff indicated that, pursuant to 45 CFR § 1611.5(a)(4), if an applicant's income was between 125% and 200% of the FPG, authorized exceptions and factors could be applied that may render the applicant eligible for services. Lastly, intake staff understood that, in certain instances, when an applicant's income exceeded 200% of the FPG, the applicant may still be eligible for services if the requirements of 45 CFR § 1611.5(a) are met.

Asset Screening: Interviews revealed that intake staff is familiar with the categories of assets that could be excluded by LSCD, as well as the asset ceiling amounts. Additionally, intake staff indicated an understanding of all of the assets that could be excluded from the total asset calculation per LSCD's policy.

Conflicts: When an LSCD intake paralegal encounters a potential conflict of interest, the file is given to an LSCD attorney to make a determination. If the attorney decides that a conflict exists, the case is rejected and the applicant is notified that their case cannot be accepted, due to a conflict of interest.

Outreach: The DR noted that LSCD does not conduct any outreach or operate any clinics. In its response to the DR, LSCD indicated that it does conduct outreach but did not provide a listing of outreach activities it conducts or participates in. LSCD is requested to provide a listing of all regular outreach conducted, as well as an explanation of the intake process(es) for each, and copies of related intake forms within 30 days of the release of this Final Report.

There are no recommendations or required corrective actions.

LSCD's responses concerning this Finding have been incorporated *supra*.

Finding 3: Sampled cases evidenced that, with one (1) exception, LSCD complies with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines ("FPG"). Additionally, LSCD's revised income eligibility policy is compliant with CFR Part 1611.

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) and CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines ("FPG") and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

⁴ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 4.3.

LSCD substantially complies with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. There was one (1) case reviewed that did not contain the eligibility documentation required by 45 CFR § 1611.4 and CSR Handbook (2008 Ed., as amended 2011), § 5.3. *See* Closed 2012 Case No. 10E-002206. Case review revealed that the client’s income was 171.6% of the FPG, which exceeded LSCD’s income guidelines, and LSC funding was applied. At the time of case review, there was no income waiver in the file and no documentation of application of any over-income factors listed in 45 CFR § 1611.5. As such, the file should not have been included in the 2012 CSR data submission or charged to LSC funds.

While on-site, it was noted that LSCD’s financial eligibility policy was not fully compliant with 45 CFR Part 1611. The LSCD policy that was provided for review in advance of the visit was prepared based, in part, on the prior version of 45 CFR Part 1611. As such, it did not incorporate the requirement of 45 CFR § 1611.7(a)(1), that the income prospects of all applicants be checked prior to determining financial eligibility. Additionally, the policy did not contain instructions to document the existence of authorized over-income factors that may be applied when an applicant’s income is between 125% and 200%, or exceeds 200%, of the FPG, pursuant to 45 CFR § 1611.5, or correctly cite to assets that would be considered exempt from being included in an applicant’s asset calculation, pursuant to 45 CFR § 1611.3(d)(1). The policy also did not contain a group eligibility policy, as required by 45 CFR § 1611.6. Pursuant to on-site discussions with the Executive Director regarding LSCD’s financial eligibility policy, the policy was revised to reflect all of the above-referenced recommendations. The revised policy was reviewed during the visit and determined to be compliant with the requirements of 45 CFR Part 1611. The revised policy was scheduled to be approved by the Board at the next Board meeting in March 2014, and LSCD was asked to forward the approved policy to OCE.

There were no recommendations or corrective actions required, other than to submit evidence of Board approval of the revised policy.

In its response to the DR, LSCD noted that it was pleased that only one (1) reviewed case, in a sample of almost 12% of the cases closed by LSCD over a three (3) year period, did not contain the documentation required by 45 CFR § 1611.4 and CSR Handbook (2008 Ed., as amended 2011), § 5.3, and believes this is “illustrative of the systems in place at LSCD and the exemplary way in which these systems are used...” It also stated that its financial eligibility policy was updated as requested in the DR and a copy of the revised policy was included with LSCD’s comments.

Finding 4: Sampled cases evidenced that LSCD complies with the asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. LSCD’s revised asset eligibility policy is compliant with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e).

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 (2008 Ed., as amended 2011), § 5.4.

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

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

All case files reviewed contained the documentation to comply with the requirements of 45 CFR § 1611.3(d)(2).

The LSCD asset policy that was provided for review in advance of the visit indicated that the following would not be considered assets and would be exempt from all asset calculations:

1. The applicant’s principal residence
2. Assets used in producing income
3. Motor vehicles used for transportation
4. Household goods
5. Personal belongings with a fair market value of less than \$25,000.00
6. Pension or retirement plan funds including all such plans defined by 10 Del. C. § 4915
7. Burial plots

The list of excludable assets found in 45 CFR § 1611.3(d)(1) is an exhaustive list and cannot be supplemented. As such, while on-site, LSCD was advised to revise the exempt asset list in its

⁵ A numerical total value must be recorded, even if it is zero or below the recipient’s guidelines. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

financial eligibility policy to include only those items listed in 45 CFR § 1611.3(d)(1). Additionally, it was relayed that if an asset was deemed excludable pursuant to it being exempt from attachment per a State and/or Federal law, the policy should reflect the specific assets that are exempt, along with a recitation of whether State and/or Federal law authorizes the exemption.

Pursuant to on-site discussions with the Executive Director regarding LSCD's financial eligibility policy, the policy was revised during the visit to reflect all of the above-referenced recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR § 1611.3(d)(1) and (e). The revised policy was scheduled to be approved by the Board at the next Board meeting in March 2014, and LSCD was asked to forward the approved policy to OCE.

There were no recommendations or corrective actions required, other than to submit evidence of Board approval of the revised policy.

In its response to the DR, LSCD stated that it believed that LSCD's prior policy regarding exempt assets was compliant with 45 CFR § 1611.3(d)(2). However, LSCD noted that the policy was revised to include citations to relevant state law exemption statutes when exempting assets not listed in 45 CFR § 1611.3(d)(2) and such policy was approved by LSCD's Board on March 25, 2014.

Finding 5: LSCD is in compliance with the screening requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). However, as there were several case files reviewed that contained citizenship attestations that were not dated, LSCD is in substantial compliance with the documentation requirements of 45 Part 1612. LSCD's revised policy is in compliance with 45 CFR Part 1626.

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 (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁶ Although non-LSC funded legal

⁶ *See* Kennedy Amendment at 45 CFR § 1626.4.

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.

Case files reviewed, with few exceptions, evidenced proper intake screening for citizenship/alien eligibility, and all cases reviewed contained the requisite 45 CFR Part 1626 documentation. *See* Closed 2012 Case No. 12E-001202. The ACMS indicated that this case was opened July 6, 2012, closed August 27, 2012, and assigned closing code "G," Negotiated Settlement with Litigation. Case review indicated that the client's eligible citizenship status was verified on the telephone and that the client never came to LSCD's offices. However, as the client's legal matter required continuous representation, the client should have attested in writing as to his/her legal citizenship status as required by 45 CFR § 1626.6(a); and CSR Handbook (2008 Ed., as amended 2011), § 5.5. *See also* Open Case No. 13E-000663. The ACMS indicated that this case was opened April 23, 2013. Case review indicated that intake screening was conducted with the client's citizenship status verified on the telephone. The client was sent a citizenship attestation and retainer agreement on December 6, 2013 but, at the time of case review, neither executed documents were in the case file. The case notes indicated that LSCD attended mediation with the client on July 3, 2013 and September 18, 2013. As such, the client should have attested in writing as to eligible citizenship status, with the attestation being placed in the case file, because LSCD had in-person contact with client and the representation has extended beyond brief advice and consultation.

In its response to the DR, LSCD indicated that, with respect to Open Case No. 13E-000663, it believes that the case reviewer misunderstood LSCD's involvement in the case. It explained that, although a staff attorney attended the mediation sessions, the attorney was not attending the mediation on the client's behalf, but was there to "provide general assistance, *pro se* education, assist the housing counselors, and be available to accept referrals." The response further indicated that the client was represented by a certified housing counselor and LSCD did not agree to represent the client beyond advice and consultation until after the mediation sessions had commenced. It was at that time that the citizenship attestation and retainer were sent to the client to be signed and returned.

While LSCD did not agree to represent the client until after the mediation had occurred, it still should have obtained a signed citizenship attestation from the client during the first in-person contact between the client and an LSCD staff member, pursuant to the requirements of 45 CFR Part 1626 and the CSR Handbook (2008 Ed., as amended 2011), § 5.5.

As noted *supra*, the attestation utilized by LSCD prior to the on-site visit was not compliant with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5, in that it did not have a date line accompanying the signature line. As a result, attestations in some of the cases reviewed were not dated by the applicant. *See* Closed 2013 Case Nos. 11E-02254, 12E-000867, 11E-000479, and 12E-001122. This was discussed with the Executive Director during the visit

and the citizenship attestation form was corrected prior to the exit conference to conform to the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5.

The citizenship/alien eligibility policy that was provided by LSCD for review in advance of the visit indicated that LSCD could provide services to eligible aliens, but did not list all of the categories of eligibility, or the documentation required to be reviewed in order to determine eligibility. While on-site, it was recommended that the policy be revised to include the alien eligibility categories and enumerate those items that must be reviewed prior to rendering legal assistance, pursuant to 45 CFR §§ 1626.3, 1626.4, 1626.5, 1626.7, 1626.10, and 1626.11. Additionally, the policy provided in advance of the visit did not list and define all pertinent terms referenced in the regulation. While on-site, it was recommended that the policy be revised to reflect all of the above-referenced changes.

Pursuant to on-site discussion with the Executive Director, the policy was revised to include the alien eligibility categories, enumerate those items that must be reviewed prior to rendering legal assistance, provide the most recent language of the regulation, and list and define all pertinent terms referenced in the regulation. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1626.

Recommendation:

The DR recommended that, pursuant to the requirements of 45 CFR Part 1626, LSCD staff be provided with periodic training regarding proper execution of citizenship attestations prior to providing applicants with legal assistance.

In its response to the DR, LSCD indicated that it obtains citizenship attestations as required.

Required Corrective Action:

The DR required LSCD to ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, where appropriate.

In its response to the DR, LSCD indicated that it obtains citizenship attestations as required. LSCD further stated that, previously, it was their practice to have a joint citizenship attestation and authorization for release of records signed and dated by the client. When LSCD decided to separate the forms into two (2) documents, the date line did not transfer to the citizenship attestation. LSCD's comments, and review of the revised citizenship attestation form, reaffirmed that the attestation form has been modified to correct the error.

This Required Corrective Action has been sufficiently addressed and is therefore closed.

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

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC. Case files reviewed indicated that LSCD is in substantial compliance with the requirements of 45 CFR § 1611.9. There were two (2) cases reviewed that did not contain a retainer agreement when required, or contained an untimely executed agreement. *See* Closed 2012 Case No. 12E-001090 (The ACMS indicated that this case was opened June 19, 2012, closed November 15, 2012, and assigned closing code "G," Negotiated Settlement with Litigation. At the time of case review, the case file lacked an executed retainer agreement. Pursuant to 45 CFR § 1611.9(a), the case file should have contained an executed retainer agreement due to LSCD's provision of extended services to the client); *see also* Open Case No. 13E-001514 (The ACMS indicated that this case was opened September 24, 2013. According to the case notes, LSCD filed a court pleading on behalf of the client on October 17, 2013, and attended a meeting representing the client on November 15, 2013. The retainer agreement in the file was untimely executed, as it was dated December 7, 2013, which was approximately three (3) months after the case was opened. Pursuant to 45 CFR § 1611.9(a), the retainer agreement should have been executed at the start of legal representation or as soon thereafter as practicable.).

Recommendation:

The DR recommended that LSCD review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file.

Additionally, the DR recommended that LSCD staff be provided with periodic training regarding 45 CFR § 1611.9.

In its response to the DR, LSCD noted that it generally appropriately obtains retainer agreements and that its regular training includes discussions of this requirement.

⁷ 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: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). LSCD's revised policy is compliant with 45 CFR Part 1636.

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).

Case files reviewed indicated that LSCD is compliant with the requirements of 45 CFR Part 1636. All case files reviewed contained a statement of fact, where required.

The LSCD policy provided for review in advance of the visit did not indicate that, pursuant to 45 CFR § 1636.2(a)(1), a separate notice may be provided to a defendant identifying the plaintiff(s), in lieu of identifying each plaintiff in a filed complaint. It also did not indicate that 45 CFR Part 1636 notices are applicable to certain private attorney involvement cases. It was recommended that the policy be revised to reflect those provisions.

Pursuant to on-site discussions with the Executive Director regarding LSCD's statements of fact policy, the policy was revised during the visit to reflect all of the above-referenced recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1636.

There are no recommendations or required corrective actions.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). LSCD's revised policy on priorities is compliant with 45 CFR Part 1620.

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, OCE was provided a list of LSCD's priorities. At that time, LSCD identified the following types of cases as within their priorities: bankruptcy, consumer cases/consumer finance, private landlord-tenant, public benefits, student loan cases, advice and referral,

community education presentation, operating *pro se* clinics, development of written materials, pamphlets and brochures, preparing desk manuals, and PAI recruitment.

Sampled case files reviewed evidenced that LSCD is in compliance with 45 CFR Part 1620. All case files reviewed were within LSCD's priorities.

Under 45 CFR § 1620.6, certain LSCD staff members are required to sign simple agreements acknowledging, among other things, that they have read and are familiar with the definition of "emergency cases." However, at the time of the review, LSCD's statement of acknowledgement did not reference this requirement. The policy also did not indicate that LSCD's priorities would be established on an annual basis, as required by 45 CFR § 1620.5, or detail the priority reporting requirements outlined in 45 CFR § 1620.7.

While on-site, it was recommended that the policy be revised to incorporate the above-referenced provisions. Pursuant to on-site discussions with the Executive Director regarding LSCD's policy on priorities, the policy was revised on-site to reflect all of the above-referenced recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1620. The revised policy was scheduled to be approved by the Board at the next Board meeting in March 2014, and in the DR LSCD was asked to forward the approved policy to OCE.

The DR contained no recommendations or corrective actions, other than for LSCD to submit evidence of Board approval of the revised policy.

In its response to the DR, LSCD indicated that its priorities were not listed correctly in the DR. At the time of the on-site visit, OCE was provided with a priorities policy for review that appeared to be outdated; clarification of LSCD's priorities was sought because many of the priorities listed in the provided policy did not reference a specific type of law (*e.g.*, developing written materials, preparing desk manuals, etc.). Pursuant to LSCD's comments to the DR, the priorities have been revised to reflect those listed in the policy that was provided.

In its response to the DR, LSCD also stated that the DR indicated that LSCD's priority policy did not require staff to sign a statement acknowledging LSCD's priority and case acceptance policy. This is not what was meant to be conveyed in the DR. At the time of the on-site visit, OCE was provided with the aforementioned priorities policy for review that contained instructions on how to accept emergency and non-priority cases. However, the signed simple agreements acknowledging, among other things, that LSCD staff had read and are familiar with the definition of "emergency cases" (as required under 45 CFR § 1620.6) did not reference this requirement. As such, during the on-site review, it was recommended that the policy be revised to include that information, as well as other information included in the regulation that was not incorporated into LSCD's policy. This Report has been modified to take LSCD's comments into consideration.

LSCD also commented that it does not read 45 CFR Part 1620 to require that "there be a policy that there be an annual review of priorities (*sic*)..." With regard to an annual review of priorities, 45 CFR § 1620.5 states that "priorities shall be set periodically and shall be reviewed by the governing body of the recipient annually or more frequently..." Additionally, in order to

achieve compliance with 45 CFR § 1620.5, 45 CFR § 1620.3 states that a recipient must “...adopt procedures for establishing priorities...” and “...must adopt a written statement of priorities, pursuant to those procedures...” As such, in order to reflect the requirements of 45 CFR Part 1620, OCE advocates that, as a best practice, a priorities policy should include the requirement to review established priorities annually or on a more frequent basis.

In its comments to the DR, LSCD indicated that the policy was revised pursuant to the on-site recommendations and was approved by LSCD’s Board on March 25, 2014. A copy of the updated policy was provided with those comments. As such, no further action is required.

Finding 9: Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 5.6.

Case files reviewed indicated that LSCD is in compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6. All cases reviewed contained evidence of the legal assistance provided.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 10: Sampled cases evidenced substantial compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011) (Case closure categories).

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 (2008 Ed., as amended 2011), § 6.1.

The files reviewed demonstrated that LSCD's application of the CSR case closing categories is substantially compliant with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). With a few exceptions, all cases reviewed utilized the correct closing code. *See* 2012 Closed Case No. E12-000015. The ACMS indicated that this case was opened January 3, 2012, closed January 17, 2012, and assigned closing code "G," Negotiated Settlement with Litigation. Case review indicated that an LSCD staff attorney sent a letter to the client's creditor explaining that the client is judgment proof, but did not enter an appearance as the client's counsel in the court case. According to the case notes, the case was ultimately dismissed by the creditor. Therefore, closing code "B," Limited Action, would be the more accurate closing code, as the case notes evidenced that LSCD took limited action on behalf of this client. *See* CSR Handbook (2008 Ed., as amended 2011), § 8.3, which states that closing code "G," should be reserved for cases where the program enters its appearance before a court as counsel of record or cases in which the settlement was reached prior to the program's entry of counsel of record provided that the program was actually representing the client in negotiations and provided that there is documentation of the settlement in the case. *See also* Open Case No. 13E-001504.⁸ The ACMS indicated that this case was opened September 20, 2013, closed November 14, 2013, and assigned closing code "B," Limited Action. According to the case notes, LSCD entered its appearance and filed an Answer on October 7, 2013. The intermediary indicated that the client paid the full reinstatement amount and that the Plaintiff filed a Stipulation of Dismissal on November 13, 2013. Therefore, pursuant to CSR Handbook (2008 Ed., as amended 2011), § 8.3, the more accurate closing code would be "L," Extensive Service, as there was a voluntary dismissal entered in the case. *See also* 2011 Closed Case No. 09E-001634. The ACMS indicated that this case was opened September 14, 2009, closed May 6, 2011, and assigned closing code "K," Other. Review of the case notes indicated that this case should have been closed under closing code "I(a)," Uncontested Court Decision, as this case concerned a court action where there was no opposition filed to the relief requested by the moving party.

Recommendation:

The DR recommended that LSCD conduct periodic staff training to ensure proper application of the CSR case closure categories.

In its response to the DR, LSCD stated it was pleased with this Finding and indicated that the finding represented the "extraordinary level of compliance [that] should be something about which LSCD should be complimented." The response also noted that LSCD conducts periodic training concerning the use of appropriate CSR case closure categories.

⁸ This case was also cited in Finding No. 6.

Finding 11: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

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 or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a).⁹ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook, as amended 2011) should be reported as having been closed in the grant 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 (2008 Ed., as amended 2011), § 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).

Sampled cases reviewed evidenced that LSCD is in compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3. All case files reviewed were active or timely closed.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 3.2.

When a recipient provides more than one (1) 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 (2008 Ed., as amended 2011), § 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

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., as amended 2011), § 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).

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 (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 6.4.

Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 13: Review of LSCD’s policies and the list of attorneys who have engaged in the outside practice of law, as well as interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD’s Board of Directors, revealed that LSCD is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). LSCD’s revised outside practice of law policy is also in compliance with 45 CFR Part 1604.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients’ full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in *pro bono* legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

During the compliance visit, LSCD indicated that it did not have any attorneys who engaged in the outside practice of law. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD’s Board revealed that LSCD is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

The LSCD outside practice of law policy provided for review in advance of the visit was created, in part, based on a prior version of the regulation. As such, there were many outdated provisions that have since been changed or revised in the current regulation. For example, the policy provided for review did not indicate that, pursuant to 45 CFR § 1604.4, in order to permit outside practice of law, the Executive Director must first determine that the representation is consistent with the attorney’s responsibilities to LSCD’s clients. As such, it was recommended that the pertinent sentence should be rewritten as such: “The Executive Director may permit a full-time staff attorney to engage in the outside practice of law only if the Executive Director determines that the representation is consistent with the attorney’s responsibilities to LSCD’s clients and...”

Additionally, the policy did not provide instances where compensation for outside practice of law was permissible. The section regarding compensation was advised to be re-written as follows:

An attorney is not permitted to receive any compensation for the outside practice of law except in the case of a court appointment, consistent with

this policy, or in the case where an attorney is newly employed and has a professional responsibility to close cases from a previous law practice and does so on their own time, as expeditiously as possible.

The provided policy also did not include a section that discussed court appointments. This was discussed with the Executive Director during the visit and it was relayed that, if LSCD wanted to allow attorneys to accept court appointments, this section should be written as follows:

Full-time attorneys are permitted to accept court appointments if the Executive Director determines that:

- a.) Such appointment is consistent with LSCD's primary responsibility to provide legal assistance to eligible clients in civil matters;
- b.) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and
- c.) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to LSCD any compensation received.

It is permissible for a full-time attorney to identify LSCD as his or her employer when engaged in representation to a court appointment.

If, under applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide *pro bono* legal assistance in addition to the attorney's work on behalf of LSCD's clients, then such legal assistance shall be treated in the same manner as court appointments pursuant to this policy, provided that the activities are not otherwise prohibited by the LSC Act, applicable appropriations law, or LSC regulations.

In the alternative, it was relayed that, if LSCD did not wish to permit attorneys to accept court appointments, this section could be written as follows:

Under no circumstances may any LSCD full-time attorney accept a non-mandated court appointment.

Pursuant to on-site discussions with the Executive Director, the policy was revised during the visit to incorporate all of the above-mentioned recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1604.

There are no recommendations or required corrective actions.

Finding 14: 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.

During the compliance visit, LSCD's written policy concerning the requirements of 45 CFR Part 1608 was reviewed. The policy was found to be compliant and conforming to the requirements contained in 45 CFR Part 1608. A limited review of various accounting documents (*e.g.*, cash receipts register, cash disbursement journal, various general ledger expense accounts, vendor list, etc.) and supporting documentation for the period of January 1, 2011 through September 30, 2013, as well as interviews with LSCD's Bookkeeper and Executive Director, disclosed that LSCD does not appear to have expended any grant funds, or used personnel or equipment, in prohibited political activities in violation of 45 CFR §§ 1608.3(b) and 1608.4(b).

A review of LSCD's financial records, including its cash receipts and cash disbursements journals, for the first six (6) months of 2011 and 2013, and last six (6) months of 2012, indicated that LSCD did not receive, collect, or disburse any funds to or from any partisan organizations. Additionally, a cursory review of LSCD's master vendor list showed no signs of vendor names pertaining to any partisan organizations. Furthermore, LSCD's 990 tax returns for 2011 and 2012 indicated that LSCD had no direct or indirect involvement in any political party activities on behalf of, or in opposition to, candidates for public office. An examination of attorney time records showed no signs of attorneys participating in prohibited political activities. Observations made while in the main office, and limited review of LSCD's webpage, showed no signs of literature, material or posters that would be considered a violation of LSC's regulations.

According to interviews with the Executive Director, LSCD's employees have not intentionally supported or promoted LSCD with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office. This is supported by LSCD's written policy, which contains elements similar to those outlined in LSC's policies and procedures relating to complying with the requirements of 45 CFR Part 1608. Also, according to the Executive Director, this policy is reinforced to staff through orientations. The review further revealed that LSCD's Board of Directors has certified compliance with 45 CFR § 1610.8(b) by executing annual program integrity letters.

A comprehensive review of LSCD's pamphlets, brochures, flyers, etc. was conducted during the on-site visit. Review of the above-referenced materials revealed that all collected information was found to be free of any prohibited political message, expression, symbol, image, or allusion, and in compliance with 45 CFR Part 1608.

Sampled files reviewed, interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, indicated that LSCD is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). Additionally, LSCD's revised policy on fee-generating cases is in compliance with 45 CFR Part 1609.

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).

Review of LSCD's documented fee-generating case forms prepared by program attorneys evidenced permissible acceptance of possible fee-generating cases by LSCD. The forms indicated that LSCD is permitted to accept possible fee-generating cases after a determination is made that the program, as well as the applicant, is unable to find an attorney to accept such cases.

A review of LSCD's 2012 audited financial statements and 2013 interim financial statements (as of September 30 year-to-date), indicated that LSCD did not receive or collect attorneys' fees for those years. However, an analysis of the cash receipts journal and general ledger indicated that LSCD did receive or collect attorneys' fees from various cases in the amount of \$500.00 in 2011, and \$1,095.00 in 2013, and that these attorneys' fees were indeed reported on the audited financial statements not as attorneys' fees, but as grants and contributions. An examination of the time records of the attorney who worked on the 2011 case indicated that the attorneys' fees were not fairly allocated. This attorney spent 14.82 hours working on the case (2.58 hours in 2009, 7.21 hours in 2010, and 5.03 hours in 2011), and charged his time to LSCD's LSC fund account. As such, it appears that the \$500.00 received in attorneys' fees from this case should have been remitted to the LSC fund account in 2011. It was recommended during the on-site review that in 2013, and going forward, LSCD should consult with its Independent Public

Accountant and/or Bookkeeper in establishing a line item category on its audited financial statements specifically designated for the receipt or collection of attorneys' fees. LSCD was also directed to allocate or transfer to the LSC fund \$500.00 from its non-LSC funds, for the receipt of attorneys' fees that were previously reported as grants and contributions.

Further review of LSCD records relating to the collection of attorneys' fees indicated that while LSCD has a written policy and procedures relating to the allocation process for attorneys' fees, as noted above, the policy is not consistently followed. As such, it was recommended during the review that LSCD develop internal controls to ensure that the procedures outlined in LSCD's attorneys' fees policy are adhered to in all cases.

The LSCD policy provided for review in advance of the visit did not state the accounting requirements for receipt of attorneys' fees, or the procedure for accepting client reimbursement, pursuant to 45 CFR §§ 1609.4 and 1609.5. Pursuant to on-site discussions with the Executive Director regarding LSCD's policy on fee-generating cases, the policy was revised during the visit to reflect all of the above-referenced recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1609. The Executive Director has implemented the revised the policy pursuant to on-site recommendations.

Sampled files reviewed, interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, and review of the recipient's policies and fiscal records, evidenced compliance with the case reporting requirements of 45 CFR Part 1609.

Recommendation:

The DR recommended that in 2013, and going forward, LSCD consult with its Independent Public Accountant and/or Bookkeeper, for the purpose of establishing a line item category on its audited financial statements specifically designated for the receipt or collection of attorneys' fees.

The DR also recommended that LSCD develop internal controls to ensure that the procedures outlined in LSCD's attorneys' fees policy are adhered to in all cases.

In its response to the DR, LSCD stated that the \$500.00 in attorneys' fees were listed as attorneys' fees in LSCD's accounting records but were not specifically broken out as a separate line item because LSCD's audit report does not have the same level of detail as LSCD's accounting records. It further indicated that, going forward, attorneys' fees will be reported as a separate line item in its audit report.

Required Corrective Action:

The DR required LSCD to allocate or transfer to its LSC fund \$500.00 from its non-LSC funds, for the receipt or collection of attorneys' fees in the above-referenced 2011 case that were previously reported as grants and contributions.

In its response to the DR, LSCD indicated that “in the Audit Report for 2013, the \$500.00 has been re-allocated to LSC funds.” While the Audited Financial Statements for 2013 shows a transaction in the amount of \$500.00 from LSCD’s non-LSC funds to its LSC funds, there is no notation indicating that the transaction was effectuated in order to credit the account for the collection of attorneys’ fees in the above-referenced 2011 case.

As such, in order to close out this Required Corrective Action, LSCD is asked to please provide a copy of the approved journal entry and a copy of the general ledger page, showing the transfer of \$500.00 from LSCD’s non-LSC fund to its LSC fund account for the designated accounts (*i.e.*, from contributions to attorneys’ fees) within 30 days from the receipt of this Final Report.

Finding 16: Review of LSCD’s accounting and financial records, observations of the physical locations of program field offices, and interviews with staff evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities. A limited review of fiscal documents and staff interviews evidenced non-compliance with the requirements of 45 CFR § 1610.5(a) (Notification).

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).

A limited review of LSCD's policies and procedures and fiscal activities identified no instance where non-LSC funds were used for any purpose prohibited by the LSC Act. Also, review of financial records, including cash receipts and cash disbursement journals, during the review period identified no inappropriate transfers of LSC funds, as defined in 45 CFR § 1610.7, or expenditures, as defined in 45 CFR § 1610.4, from the use of LSC or non-LSC funds. Moreover, LSCD's cost allocation methodology for direct costs is based on costs allocated to a particular grant to the degree that costs were incurred to achieve the objectives of the grant. The review also revealed that costs that are fund specific are allocated directly to the relevant funding source(s) at the transaction level when entered into the accounting system.

LSCD utilizes Quickbooks accounting software in its financial operations, which is comprised of several modules. The general ledger module is a multi-fund, multi-fiscal period, double-entry fund accounting system that has the capability of providing fund based accounting and/or cost accounting. LSCD uses the double-entry method for recording all transactions and the chart of accounts, including funding codes, has been designed so that funds received from sources other than LSC are accounted for as separate and distinct receipts and disbursements in a manner directed by 45 CFR § 1610.9. However, a review of LSCD's funding codes indicated that LSCD reported several transactions using the LSC funding code when, the transactions should have been reported using a separate funding code. Review of LSCD's fiscal records revealed that, in 2010, LSCD was awarded a contract in the amount of \$7,000.00 from Idaho Legal Services ("ILS"), an LSC recipient, to perform non-programmatic activity related to a Technology Initiative Grant that ILS had received from LSC. Further review indicated that ILS made two (2) payments to LSCD pursuant to the contract in the amounts of \$3,500.00 in 2011, and \$3,500.00

in 2013. In each instance, payment from Idaho Legal Services was recorded in LSCD's LSC Basic Field Fund account. However, these transactions are separate and distinct from LSC's Basic Field Grant funding and should have been recorded using a separate and distinct funding code. As a result, LSCD must report all transactions using the proper funding code and each funding code must have a designated classification. Also, LSCD was asked to provide LSC with a revised funding code list that, at a minimum, included a funding code for the revenue and expenses related to the payments it received from ILS.

In addition, review of LSCD's general ledger and audited financial statements indicated that LSCD revenue and expenses were not reported in order of importance. Revenue and expenses are typically reported and presented in order of importance on the general ledger and audited financial statements for clarity and ease of reference. As such, during the on-site visit, it was recommended that LSCD consult with its Independent Public Accountant and/or Bookkeeper in order to re-arrange the order of expenses that are reported and presented on LSCD's general ledger and audited financial statements.

Pursuant to 45 CFR § 1610.5(a), no recipient may accept funds equaling or exceeding \$250.00 from any source other than the LSC, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds. Review of LSCD's fiscal records revealed that LSCD solicits contributions for funding through on-line contribution efforts, mail inserts, funding applications, and fundraising efforts directed to public or private individuals, grants, contracts, foundations, law firms, and other organizations. Review of LSCD's webpage, grants, contracts, and fundraising material indicated that LSCD does not always include language in its solicitations informing contributors of the restrictions imposed by LSC's regulations on how their contributions can be used, as required by 45 CFR § 1610.5. In one (1) instance, LSCD has a contractual agreement with two (2) other organizations, collectively known as the Combined Campaign for Justice, to conduct fundraising activities. The funds received from these solicitation efforts are then fairly allocated among the three (3) organizations based on a negotiated percentage (once the administrative fees have been paid). In the second instance, LSCD solicits for funds through its webpage, by referring a possible contributor or donor to the Combined Campaign for Justice's webpage, but does not notify the potential funding source of LSC funding restrictions. In the last instance, LSCD applied for, and received a grant from Idaho Legal Services Corporation, but failed to include in its solicitation information regarding the restrictions on how the funds can be used.

All three (3) instances were discussed with the Executive Director during the visit and he conveyed that he interpreted 45 CFR § 1610.5 to be inapplicable to the above-referenced solicitations and/or funding source update letters because providing the information would be redundant, as the sources are later informed of the funding restrictions. The Executive Director further indicated that in the case of the Combined Campaign for Justice solicitations, no one (1) denomination of money can be associated with a single contributor since all the contributions are pooled. Additionally, the Executive Director indicated that advance communication of the funding restrictions may be unnecessary in instances where the funding source is an LSC recipient. Although it may appear redundant, LSCD was advised to include on all of its solicitations including, but not limited to, on-line donations, grants, contracts, and fundraising material, language informing contributors of the restrictions imposed by LSC's regulations.

In addition, a small sample of other funders randomly selected from LSCD's 2011 and 2012 audited financial statements, and 2013 grants and contributions, indicated that LSCD did not always provide or send out written notification (*i.e.*, funding source update letters) to all funding sources of \$250.00 or more.

Recommendations:

The DR recommended that LSCD consult with its Independent Public Accountant and/or Bookkeeper in order to re-arrange the order of expenses that are reported and presented on LSCD's general ledger and audited financial statements.

In its response to the DR, LSCD indicated that the order of expenses used by its auditor is to list the largest expenses first and to list all remaining expenses alphabetically. LSCD further indicated that its order of presentation is a "generally accepted and rational practice [and] there is no reason to make a change to the order of presentation." Although OCE recommends that LSCD reconsider how expenses are reported and presented in the general ledger and audited financial statements, the determination as to the order in which expenses are reported and presented is a judgment call between LSCD and its auditor.

The DR recommended that LSCD develop procedures designed to separately account for the revenue and expenses related to its contract with ILS and ensure that said revenue and expenses are separately reported in LSCD's general ledger and audited financial statements.

In its response to the DR, LSCD indicated that the TIG contract has been given a separate classification and that the TIG funds have been placed in that classification. The response further indicated that LSCD "developed a columnar presentation to capture income and expenses for all significant revenue sources, including TIG [that] has been accomplished in both the QuickBooks database and the Audit Report."

Required Corrective Actions:

Pursuant to the requirements of the LSC Accounting Guide for LSC Recipients (2010 Ed.), §§ 2-1.1 and 2-1.2, the DR requested LSCD to report all transactions using the proper funding code and ensure that each funding code has a designated classification.

The DR further instructed LSCD to provide LSC with a revised funding code list that, at a minimum, includes a funding code for the revenue and expenses related to the TIG funds received from Idaho Legal Services.

In its response to the DR, LSCD indicated that "the TIG referred to in the report has been given a separate classification and the revenue from this grant has been placed in that classification." As noted above, the response further indicated that LSCD "developed a columnar presentation to capture income and expenses for all significant revenue sources, including TIG [that] has been accomplished in both the QuickBooks database and the Audit Report." LSCD's comments to the DR included a revised class code list that includes "TIG Grant" as a class.

Pursuant to the requirements of 45 CFR § 1610.5(a), the DR also required LSCD to ensure that language notifying potential contributors of \$250.00 or more of the restrictions imposed by LSC's regulations have been added to LSCD's webpage, contracts, grants, and all fundraising material.

Additionally, for grants and other funding sources to which LSCD applies for or solicits funding from (that are equal to or greater than \$250.00), the DR instructed LSCD that the notice of the restrictions referred to in 45 CFR § 1610.5(a) should be given during the course of the solicitation or application and, when notice of the restrictions is not able to be provided in advance, a thank-you letter, which includes the notification, should be sent upon receipt of the funds.

In its response to the DR, LSCD indicated that it includes in all grant applications and acceptance of donations, language informing the funding source of LSC restrictions. Moving forward, LSCD also indicated that it will be their practice to inform all funding sources, including funding sources that are LSC recipients, of the restrictions referred to in 45 CFR § 1610.5(a).

Based upon OCE's review of LSCD's comments, it has been determined that the Required Corrective Actions discussed above have been sufficiently addressed and are therefore closed.

Finding 17: LSCD is in compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases. LSCD is in substantial 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.

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

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

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

LSCD's audited financial statements evidenced that LSCD exceeded 12.5% of its annual Basic Field Grant's PAI requirement during the review period, primarily by utilizing LSC funding. However, LSCD's audited financial statements failed to disclose, or separately report, the amount spent on private (contract) attorneys in the delivery of legal assistance to eligible clients. As a result, during the on-site review it was recommended that for 2013, and going forward, LSCD's audited financial statements separately report the individual expense categories by natural line item that identifies the accounts used in the receipt of grant funds related to PAI activities.

A random sampling of four (4) advocate time records evidenced that time allocated to PAI, by staff attorneys and paralegals, is substantiated by actual performance. In addition, a random sampling of five (5) private (contract) attorneys' invoices evidenced that time allocated to PAI, by the private attorneys, was substantiated by the terms and conditions outlined in their contractual agreements. However, a review of at least four (4) contracts disclosed improper execution, as these contracts were not signed or dated by all parties. During the on-site review, LSCD indicated that they could produce copies of the properly executed versions of these contracts. While on-site, OCE asked to review these documents. By email on July 14, 2014, an additional request was made for LSCD to provide copies of the above-referenced executed PAI contracts, however fully executed documents have not been provided.

Review of LSCD's fiscal records revealed that both advocate and private (contract) attorneys' time charged to PAI is reviewed and approved by the PAI Coordinator and Executive Director, and supported by case documentation, timesheets, and/or invoices. However, a review of several invoices submitted by two (2) private (contract) attorneys indicated the following deficiencies: (1) some private (contract) attorneys wait until year-end to submit billing invoices and (2) some invoices are processed and paid without direct approval and authorization from the PAI Coordinator and/or the Executive Director. In its response to the DR, LSCD indicated that the Executive Director reviews all invoices for payment, including bills from PAI attorneys. The response also indicated concerns over the phrasing in the preceding paragraph. The language in this Final Report has been revised to reflect those concerns.

Further review indicated that LSCD utilizes two (2) staff members (a PAI Coordinator and an assistant to the PAI Coordinator), who are not attorneys or paralegals, for PAI-related activities; however, the allocation of their time on these activities may not be based on reasonable and/or current operating data. The PAI Coordinator handles all of the geographic regions served by LSCD. The Coordinator is supported by the assistant who handles PAI administrative matters;

however, the PAI Coordinator handles oversight for all of LSCD's PAI cases. The Executive Director supervises the PAI Coordinator as well as the assistant.

Review of LSCD's accounting systems and records, and discussions with the Executive Director, revealed that LSCD did not have a written methodology explaining how allocated PAI amounts were calculated, nor had LSCD conducted a survey relating to the market rate for private attorneys. However, once informed of this matter during the review, the Executive Director provided a written methodology and conducted a market survey using several current private (contract) attorneys. Based on OCE's review of this written methodology related to PAI, LSCD must revise its PAI methodology to be more defined and incorporate not only the methodology for attorneys and paralegals, but all time and/or costs related to the PAI effort to fully capture the amount of LSCD's PAI expenditures.

The method recommended by LSC to calculate the total costs LSCD allocates to the PAI effort in the future is as follows:

1. Multiply total actual hours (per timekeeping records) worked by each staff on PAI activities by the staff member's hourly rate. The resulting total is the amount of staff salary expended on PAI activities;
2. Conduct periodic time studies to determine a reasonable percentage of time for the two (2) staff members who spend time involved in PAI activities. Multiply that percentage of time by their salaries to arrive at a total staff amount expended on PAI activities;
3. Determine the fringe benefits related to the salaries as a result of the calculations stated above;
4. Allocate a percentage for indirect costs by dividing the total salaries dedicated to the PAI effort by total LSCD salaries. (This is just one of the allocation methods that could be used, other methods are included in 45 CFR § 1630.3(f) allocation of indirect costs.);
5. Include all direct costs allocated to the PAI effort (for example: reduced fees paid to PAI (contract) attorneys); and
6. The result of all the above calculations is the program's total PAI costs. Dividing that total by LSCD's Basic Field Grant results in the percent of LSC funds (or their equivalent) which have been dedicated to the PAI effort.

All of the calculations should be clearly documented so that the program can demonstrate how the calculated totals were reached.

LSCD's PAI component consists of a network of individual attorneys who accept cases on a reduced-fee basis. The majority of LSCD's PAI cases primarily deal with bankruptcy petitions and related filings. Given the specialization of LSCD's PAI attorneys in bankruptcy matters, these cases appear to have a high success rate and are efficiently prosecuted and closed in a timely manner.

Intake Process: The intake process for a PAI case is identical to the intake process for a staff case, which was discussed herein in Finding 2 *supra*. Once a case is referred to the PAI department, it is assigned to the PAI Coordinator who reviews the intake for accuracy, to ensure that all of the critical fields are complete (income, assets, citizenship screening), and to ensure

that there is sufficient information concerning the applicant, the adverse party, and the nature of the case. The PAI Coordinator will then contact the applicant and conduct an interview to determine suitability for referral to a private attorney.

Referral Process: If the applicant is accepted for referral to a private attorney for services, cases are placed by the Coordinator via telephone calls and email. Cases usually can be placed by the Coordinator within five (5) days of being accepted for services. Once the Coordinator confirms that an attorney is available, the Coordinator sends a referral packet to the attorney, which includes a referral letter, client documents, and a completed intake sheet. If, despite repeated attempts, a case is unable to be placed with a private attorney, the Coordinator will contact the applicant to let them know that their case cannot be placed, and refer the applicant to an appropriate agency, when applicable.

Once a case has been accepted by a participating private attorney, the client is sent an introduction letter explaining the process and the PAI arrangement, as well as a citizenship attestation, if they were not screened in person. Once the introductory letter has gone out, the PAI Coordinator will follow-up with the attorney and the client to ensure that the case is progressing. If the client does not contact the private attorney and does not respond to the Coordinator's attempts to obtain a status update, the Coordinator will determine if any assistance was provided and will close the case using the applicable closing code if it was. The case will be de-selected if no assistance was provided. If assistance was provided, the case will be closed as a staff or PAI case, depending upon which case handler provided the legal assistance. If the private attorney fails to remain in contact with the client, every effort will be made to secure another private attorney for the client.

Oversight: Once a case has been placed within the PAI component, the case is routinely monitored by the Coordinator, as well as the staff attorney who designated the case as a PAI case, for status updates. On a quarterly basis, the Coordinator sends out a detailed progress report update to every PAI attorney that includes a list of all cases assigned to the attorney. When requesting status updates, the PAI Coordinator and/or the staff attorney will telephone or email the private attorney to obtain the status of the case. They may also contact the client to determine the status of the case. The Coordinator interviewed indicated that if she is unable to determine the status of the case, the case will be closed based upon the information in the file. Once the Coordinator has determined that a case should be closed, either due to inactivity or case closure, she will obtain the necessary details to determine the proper closing code.

Once the final closing information is obtained, the PAI Coordinator will enter the case information into the ACMS, request an invoice from the private attorney for services rendered if one has not yet been received, review and ready the case for closing, assign a closing code, prepare a closing letter for the client, and close the case in the ACMS. Upon closing the case, the PAI Coordinator or the PAI assistant will forward the private attorney's invoice to LSCD's Bookkeeper for payment, and will follow up with the attorney to ensure that payment was received. The PAI files are reviewed by the Litigation Director at the end of the year for accuracy.

As noted above, there were reviewed PAI cases where the citizenship attestation was signed, but not dated. *See* Closed 2013 Case Nos. 11E-02254, 12E-000867, 11E-000479, and 12E-001122.¹⁰ As noted *supra*, this was discussed with the Executive Director during the visit and the citizenship attestation form was corrected prior to the exit conference to conform to the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5.

In its response to the DR, LSCD indicated that the description in the DR of the “PAI process” contained numerous errors and omissions. The Final Report has been revised to reflect the areas LSCD specifically noted as incorrect. However, LSCD’s comments noted that there were a number of inaccuracies, not germane to the findings, which it did not wish to document in its response.

Recommendations:

The DR recommended that for 2013, and going forward, LSCD’s audited financial statements separately report the individual expense categories by natural line item that identifies the accounts used in the receipt of grant funds related to PAI activities.

In its response to the DR, LSCD indicated that, moving forward, its independent auditor’s order report will separately report individual expense categories and confirmed that this action has been taken in the “Audit report for the period ending 12-31-2013.”

The DR recommended that LSCD encourage contract attorneys to submit invoices in a timely manner so that expenses can be submitted for payment and reported in the general ledger in the accounting period the expenses were incurred.

In its response to the DR, LSCD commented that, at several times throughout the duration of a case, the PAI Coordinator sends a request to the assigned private attorney for their most recent invoice and, despite making numerous requests, some private attorneys will not send in their bills until the end of the year. LSCD further indicated that the attorneys’ failure to promptly send in their invoices is not due to any inaction on the part of LSCD, as it makes repeated requests for the bills.

Required Corrective Actions:

The DR instructed LSCD to ensure that all PAI contracts, including the above-referenced four (4) contracts, are properly executed and approved by all parties.

In its response to the DR, LSCD indicated that all of the above-referenced PAI contracts were signed and dated by all parties, but did not include a copy of the signed contract with its comments. As noted above, a request was made for copies of the properly executed PAI contracts, during the on-site review and an additional request was made by email on July 14, 2014, for LSCD to provide copies of the above-referenced executed PAI contracts.

The DR required LSCD to ensure that all PAI invoices are properly authorized for payment and also instructed LSCD to revise its PAI methodology to be more defined and incorporate not only

¹⁰ These cases were also cited in Finding No. 5 above.

the methodology for attorneys and paralegals, but all time and/or costs related to the PAI effort to fully capture the amount of LSCD's PAI expenditures. The method recommended to calculate the total costs LSCD allocates to the PAI effort is outlined above.

In its response to the DR, LSCD indicated that the Executive Director reviews all invoices for payment, including bills from PAI attorneys. However, when OCE reviewed its work papers, including the sample of 12 invoices/statements from a PAI contract attorney with the initials "V.H.", that review found that LSCD failed to get proper authorization prior to authorizing each of the 12 the invoices for payment. LSCD's response further indicated that "the method for calculating the total PAI costs to be allocated to the PAI efforts ...is exactly as the recommendation contained in the report." The comments stated that this methodology is documented on a spreadsheet that is provided to LSCD's auditor. However, as noted below, based on information provided by LSCD, OCE believes the methodology being utilized is not the same as outlined above and requires modification.

During the on-site review, LSCD provided its PAI methodology, which consisted of the following sentences: "PAI cost methodology is calculated by a ratio of salaries spent on PAI matters, divided by total program salary. The resulting percentage is then applied to the other costs for allocation to PAI expenses." At the exit conference, and during the review, the need to document a more detailed PAI methodology that identified allocation of indirect and direct costs was discussed. On July 17, 2014, the Executive Director provided OCE with a copy of the spreadsheet provided to LSCD's auditor documenting PAI expenses. OCE explained in an email, dated July 17, 2014, that LSCD's methodology needs to be more defined because its current methodology captures or allocates a portion of all costs, both direct and indirect, to PAI. OCE further explained that, as indicated in the DR, the methodology should fully capture only the amount of expenditures related to the PAI effort.

In response to the July 17, 2014 email, the Executive Director provided an explanation of LSCD's PAI methodology, but did not revise the program's PAI methodology pursuant to the above-referenced recommendations. Specifically, the other costs (*e.g.*, training and travel) stated in the PAI methodology provided by LSCD must be specific, or related, to the PAI activities even if the cost is *de minimus*. According to information provided by LSCD, the overwhelming bulk of travel and training costs are for continuing legal education seminars, for education in the very substantive legal areas in which their PAI attorneys provide representation. However, training and travel costs for LSCD staff attorneys are not related to LSCD's PAI attorneys. If LSCD is asserting that the travel and training received by its staff attorneys are related to its PAI activities, then its methodology should be written in a way that establishes such a nexus. Currently, LSCD's PAI methodology does not make that connection. As stated during the on-site review, when LSCD staff attorneys engage in PAI activities by working with, co-counseling with, and/or mentoring PAI attorneys, such interaction directly benefits the PAI program. However, some of the PAI costs allocated by LSCD under its current methodology are related solely to LSCD's staff attorneys and not PAI attorneys. Under 45 CFR § 1614.3(e)(1)(i), the program must accurately identify and account for all of its administrative, overhead, staff, and support costs as they relate to PAI.

In order to close out this Required Corrective Action, LSCD must change its methodology to reflect that costs attributable to travel and training of LSCD staff members should be excluded

from the PAI calculation if such costs are not directly related to PAI. Please provide the revision to LSCD's written methodology within 30 days of the release of this Final Report.

Finding 18: LSCD 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. LSCD's revised policy on subgrants is also in compliance with 45 CFR Part 1627.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.¹¹ Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000.00 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2).

All subgrants must be in writing and must be approved by LSC. In requesting approval, recipients are required to disclose the terms and conditions of the subgrant and the amount of funds to be transferred. Additionally, LSC approval is required for a substantial change in the work program of a subgrant, or an increase or decrease in funding of more than 10%. Minor changes of work program, or changes in funding less than 10% do not require LSC approval, but LSC must be notified in writing. *See* 45 CFR §§ 1627.3(a)(1) and (b)(3).

Subgrants may not be for a period longer than one year, and all funds remaining at the end of the grant period are considered part of the recipient's fund balance. All subgrants must provide for their orderly termination or suspension, and must provide for the same oversight rights for LSC with respect to subrecipients as apply to recipients. Recipients are responsible for ensuring that subrecipients comply with LSC's financial and audit requirements. It is also the responsibility of the recipient to ensure the proper expenditure of, accounting for, and audit of the transferred funds. *See* 45 CFR §§ 1627.3(b)(1), (b)(2), (c), and (e).

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, except that payment of membership fees or dues mandated by a governmental organization to engage in a profession is permitted. *See* 45 CFR § 1627.4. Nor may recipients may make contributions or gifts of LSC funds. *See* 45 CFR § 1627.5. Recipients must have written policies and procedures to guide staff in complying with 45 CFR Part 1627 and shall maintain records sufficient to document the recipient's compliance with 45 CFR Part 1627. *See* 45 CFR § 1627.8.

¹¹ Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

A review of LSCD's financial records, including its 2012 audited financial statements and subgrant approval requests, indicated that LSCD has no LSC approved subgrants or non-LSC subgrants. Moreover, LSCD's 1099-Miscellaneous Income Statements were examined to assess if any PAI private (contract) attorneys received payments of more than \$25,000.00. From that examination, it was determined that no contract attorney was paid more than \$25,000.00 in 2011, 2012, or as of September 30, 2013 year-to-date, where LSC funds were used.

Review of LSCD's audited financial statements, and various invoices indicated that LSCD used LSC funds to pay mandated fees or dues, and used non-LSC funds to pay for mandated and non-mandated fees or dues. In each instance, these payments were allowable and were made in accordance with 45 CFR § 1627.4(a) and (b). Currently, LSCD includes payments made related to membership fees or dues on their audited financial statements under the line item "Other Direct Costs." During the review, it was recommended that LSCD report payments made for mandated and non-mandated fees or dues as its own line item expense under "Membership Fees or Dues."

The policy provided for review in advance of the visit indicated that all membership dues were to be paid in accordance with LSC regulation. However, it did not provide the purpose, definitions, subgrant requirements, restrictions regarding contributions, or limitations when transferring funds to other recipients, pursuant to 45 CFR §§ 1627.1, 1627.2, 1627.3, 1627.4, 1627.5, 1627.6, and 1627.7. As such, it was recommended that the policy be revised to incorporate these components of the regulation. Pursuant to discussions with the Executive Director, the policy was revised on-site to incorporate the above-referenced changes. The revised policy was provided for review and was determined to be compliant with the requirements of 45 CFR Part 1627.

Recommendation:

The DR recommended that LSCD report payments made for mandated and non-mandated fees or dues as its own line item expense under the heading "Membership Fees or Dues."

The response indicated that, moving forward, the LSCD audit report will have a separate line item for dues and fees, and that the audit report for the year ending December 31, 2013 contains separate dues and fees line items.

Finding 19: LSCD is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

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.

LSCD utilizes Legal Files as their electronic timekeeping system. This system has the capacity to allocate and/or capture time worked or charged using LSC and non-LSC funding codes/sources. While on-site, a cross section of seven (7) advocates' timekeeping records from a selected sample, representing two (2) different pay periods, from each year under review, evidenced that timekeeping records are contemporaneously created, account for time by date, and are in increments not greater than one-quarter of an hour, in accordance with 45 CFR § 1635.3(b)(1). Sample cases selected were compared to the time reported by the advocates on their timekeeping reports. Each record of time spent for cases contained a unique client name or case number. The amount of time reported in connection with the specific activity appeared to be reasonable. A review was conducted of 14 actual case files against their corresponding timekeeping records to determine the accuracy of the time reported as compared to the amount of work performed as disclosed in the case file. The timekeeping review revealed that it is customary for LSCD advocates to contemporaneously include a comprehensive summary of the work performed when entering the time spent on a case into Legal Files.

Further review of the timekeeping system evidenced that the system is able to aggregate time record information on both closed and pending cases by legal problem type, consistent with the provisions of 45 CFR § 1635.3(c). With regard to LSCD's compliance with certifications regarding part-time employees and restricted activities, interviews with the Executive Director revealed that LSCD does not employ any attorneys or paralegals who work part-time for another organization that engages in restricted activities. Therefore, signed certifications pursuant to 45 CFR § 1635.3(d) are not required.

There are no recommendations or required corrective actions.

Finding 20: Sampled cases evidenced compliance with the requirements of former 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the

recipient. *See* 45 CFR § 1642.3.¹² However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).¹³

Review of LSCD's financial records, including its audited and interim financial statements, cash receipts journal, and supporting documentation, indicated that no attorneys' fees were received or collected during the review period, from cases opened prior to December 16, 2009. However, as noted *supra*, an analysis of the cash receipts journal and general ledger indicated that LSCD did receive or collect attorneys' fees from various cases in the amount of \$500.00 in 2011, and \$1,095.00 in 2013, and that these attorneys' fees were indeed reported on the audited financial statements not as attorneys' fees, but as grants and contributions. As such, as stated above, it was recommended during the on-site review that in 2013, and going forward, LSCD should consult with its Independent Public Accountant and/or Bookkeeper, in establishing a line item category on its audited financial statements specifically designated for the receipt or collection of attorneys' fees. LSCD was also directed to allocate or transfer to the LSC fund \$500.00 from its non-LSC funds, for the receipt of attorneys' fees that were previously reported as grants and contributions.

The sampled files reviewed did not contain a prayer for attorneys' fees. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors further collaborated this finding.

There are recommendations or required corrective actions, other than those noted in Finding No. 15.

In its response to the DR, LSCD did not make any additional comments other than those provided in response to Finding 15 *supra*.

Finding 21: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). LSCD's revised policy is in compliance with the requirements of 45 CFR Part 1612.

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,

¹² The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

¹³ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

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.

An examination of LSCD's financial records for the review period, including its semi-annual legislative reports, time records, general ledger, audited financial statements, and 990 tax returns, evidenced no participation by LSCD's staff in any legislative and rulemaking activities. Additionally, none of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, further collaborated this finding.

The LSCD policy on legislative and administrative advocacy that was provided for review in advance of the on-site visit did not include definitions of the pertinent terms used throughout the regulation, or list all of the permissible activities, pursuant to 45 CFR §§ 1612.1, 1612.5, and 1612.9(b)(1) and (2). Pursuant to discussions with the Executive Director, the policy was revised to incorporate all of the above-referenced recommendations. The revised policy was reviewed on-site and determined to be in compliance with the requirements of 45 CFR Part 1612.

There are no recommendations or corrective actions required.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

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

None of the sampled files reviewed involved using LSC funds to provide legal assistance with respect to a criminal proceeding, or funds from any source to collaterally attack a criminal conviction. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, also confirmed that LSCD is not involved in this prohibited activity.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions). LSCD's revised policy is in compliance with the requirements of 45 CFR Part 1617.

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁴

The LSCD policy that was provided for review in advance of the visit did not indicate that it is permissible to provide legal assistance to an individual who is seeking to withdraw from, or opt out of, a class in a class action matter. While on-site, it was recommended that the policy be revised to reflect the above-referenced provision. Pursuant to on-site discussions with the Executive Director, the policy was revised to reflect the permissible activities, pursuant to 45 CFR § 1617.2(b)(2). The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1617. The revised policy is scheduled to be approved by the Board at the next Board meeting in March 2014, at which time the approved policy should be forwarded to OCE.

None of the sampled files reviewed involved initiation or participation in a class action. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD’s Board of Directors, and review of the recipient’s policies and fiscal records, also confirmed that LSCD is not involved in this prohibited activity.

In its response to the DR, LSCD asserted that the description of LSCD’s class actions policy in the DR was incorrect. At the time of the on-site review, the class action policy presented for review was outdated and appeared to have been drafted sometime in 1996 or 1997, as one policy provision referenced an effective date of January 1, 1997. Pursuant to on-site discussions with the Executive Director regarding changes to the regulation after 1996, revisions to the policy were recommended in order to remove provisions no longer in effect and to include provisions that were added subsequent to 1996 (*e.g.*, LSCD’s prior policy’s definition of initiating or participating in a class action stated that such participation included assisting a client who seeks to withdraw from a class, when the current regulation specifically allows for this type of representation). *See* 45 CFR § 1617.2(b). The changes made to the regulation since 1996 were discussed with the Executive Director during the on-site review and the policy was revised to incorporate the regulation’s current language. The revised policy was reviewed at the conclusion of the on-site visit and was deemed compliant.

There are no recommendations or required corrective actions.

¹⁴ 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).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting). LSCD's revised policy is in compliance with the requirements of 45 CFR Part 1632.

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.

The LSCD policy that was provided for review in advance of the visit did not provide a current definition for redistricting, pursuant to 45 CFR § 1632.2, and did not list all of the restrictions relating to redistricting actions, as identified in 45 CFR § 1632.3. This was discussed with the Executive Director and, pursuant to those discussions, the policy was revised on-site to incorporate all of the above-referenced recommendations. The revised policy was reviewed and determined to be in compliance with 45 CFR Part 1632.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, and review of the recipient's policies and fiscal records, also confirmed that LSCD is not involved in this prohibited activity.

There are no recommendations or required corrective actions.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings). LSCD's revised policy is in compliance with 45 CFR Part 1633.

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 of other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

The LSCD policy that was provided for review in advance of the visit did not indicate that it is impermissible to represent any individual that has been charged with, or convicted of, manufacture of a controlled substance or possession with the intent to distribute a controlled substance, pursuant to 45 CFR § 1633.3(a). While on-site, the Executive Director was advised that the policy should be revised to reflect that prohibition. Pursuant to on-site discussions with the Executive Director, the policy was revised to reflect the necessary change. The revised policy was reviewed and determined to be in compliance with 45 CFR Part 1633. The revised policy is scheduled to be approved by the Board at the next Board meeting in March 2014, at which time the approved policy should be forwarded to OCE.

None of the sampled files reviewed involved defense of any such eviction proceeding. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, also confirmed that LSCD is not involved in this prohibited activity.

There are no recommendations or required corrective actions.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

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

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, and review of the recipient's policies also confirmed that LSCD is not involved in this prohibited activity.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation). LSCD's revised policy is in compliance with 45 CFR Part 1638.

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.¹⁵ This restriction has been contained in all subsequent appropriations acts.¹⁶ This 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."

The LSCD policy that was provided for review in advance of the visit did not list all of the permissible activities that do not violate the regulation, as outlined in 45 CFR § 1638.4. While on-site, the review team advised LSCD that the policy should be revised to reflect all permissible activities. Pursuant to on-site discussions with the Executive Director, the policy was revised

¹⁵ *See* Section 504(a)(18).

¹⁶ *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).

during the visit to reflect the necessary change. The revised policy was reviewed and determined to be in compliance with the requirements of 45 CFR Part 1638.

None of the sampled files, nor documentation reviewed, such as community education materials and program literature, indicated program involvement in such activity. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, and review of the recipient's policies and fiscal records, also confirmed that LSCD is not involved in this prohibited activity.

There are no recommendations or required corrective actions.

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

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

None of the sampled files reviewed involved such activity. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, and review of the recipient's policies also confirmed that LSCD is not involved in this prohibited activity.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 29: 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 files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews with the Executive Director, one (1) staff attorney, and the Chairperson of LSCD's Board of Directors, and review of the recipient's policies further evidenced and confirmed that LSCD was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 30: LSCD is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

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

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information); however, one (1) slight revision was recommended.

In accordance with 45 CFR Part 1644, recipients are directed to disclose certain information to the public and to LSC on cases filed in court by the recipient's attorneys. 45 CFR Part 1644 applies in the following instances:

- a. To actions filed on behalf of plaintiffs or petitioners who are clients of the recipient;
- b. Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient is not the attorney of record in the case below and the recipient's client is the appellant;
- c. To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and
- d. To cases filed pursuant to subgrants under 45 CFR Part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under 45 CFR Part 1614. *See* 45 CFR § 1644.3

The LSCD policy on case disclosure that was provided for review in advance of the visit did not state the applicability of the regulation, as recited in 45 CFR § 1644.3. While on-site, it was recommended that the policy be revised to incorporate all of the missing information. Pursuant to on-site discussions with the Executive Director, the policy was revised during the visit to reflect the necessary changes. The revised policy was reviewed and determined to be in compliance with the requirements of 45 CFR Part 1644.

In its response to the DR, LSCD stated that the case disclosure policy provided for review during the on-site visit contained all of the requisite language of the regulation with the exception of the policy's applicability to subgrants, as LSCD does not have subgrants. While LSCD may not currently have subgrants, the applicability of the regulation to subgrants should be recited in the policy in the event that LSCD either becomes a subrecipient, or enters into a subgrant relationship. As LSCD made the required changes during the on-site review, no further action is necessary.

There are no recommendations or required corrective actions.

Finding 32: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform). LSCD's revised policy is in compliance with 45 CFR Part 1638.

Except as provided in 45 CFR §§ 1639.4 and 1639.5, recipients may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. 45 CFR § 1639.6 requires recipients to adopt written policies and procedures to guide its staff in complying with 45 CFR Part 1639.

The LSCD policy on welfare reform that was provided for review in advance of the visit did not indicate that it is impermissible to lobby or engage in any form of advocacy before legislative or administrative bodies through grassroots efforts involving pending or proposed legislation in an effort to reform a Federal or State welfare system, pursuant to 45 CFR § 1639.3(c). While on-site, LSCD was advised that the above-referenced provisions should be included in the policy. Pursuant to on-site discussions with the Executive Director, the policy was revised to reflect the necessary changes. The revised policy was met with approval and is in compliance with the requirements of 45 CFR Part 1639.

In its response to the DR, LSCD stated that the only language missing from the policy provided for review during the on-site visit was the phrase “through grass roots efforts.” However, this is incorrect. The following prohibition was not included in the LSCD policy provided for review during the on-site visit “lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system.” As such, in order to ensure compliance, it was recommended that the policy be revised to include all prohibitions relating to welfare reform. As LSCD made the required changes during the on-site review, no further action is necessary.

There are no recommendations or required corrective actions.

Finding 33: Based upon an interview conducted with the Chairman of the LSCD’s Board of Directors and a limited review of Board meeting minutes, LSCD’s Finance Committee fulfills its responsibilities as outlined in the LSC Accounting Guide for LSC Recipients (2010 Ed.).

An interview with the Chairman of LSCD’s Board concerning the responsibilities of the Financial Oversight Committees, as outlined in LSC’s Accounting Guide for LSC Recipients (2010 Edition), as well as review of the minutes from a sample of LSCD’s Board meetings, revealed that the Board is actively involved in fiscal oversight. The Board has one (1) member who is considered a financial expert by LSCD, due to his involvement in local businesses and his legal practice in estates and trusts. Additionally, LSCD has a Finance Committee that provides assistance to the Board in fulfilling its fiduciary responsibilities and duties, in accordance with LSC’s regulations and requirements, relating to accounting and reporting practices by accomplishing the following:

- Guiding the process of selecting LSCD’s auditor and recommending the selection of a particular auditor to the full Board;
- Meeting with the auditor for an exit conference at the completion of each audit;
- Reviewing the expenditure budget in detail and recommending approval to the full Board;
- Maintaining communications between the Board and the auditor and meeting with the auditor to discuss and/or inquire about audit reports, financial statements, and the effectiveness of LSCD’s management of accounting and financial functions;
- Hiring the auditor and setting the auditor’s compensation;
- Overseeing the auditor’s activities;
- Setting rules and processes for complaints concerning:
 - a) Accounting practices
 - b) Internal control practices;
- Instituting any changes necessary to ensure proper oversight and control of funds;
- Reviewing LSCD’s IRS 990 for completeness, accuracy, and on-time filing;
- Reviewing and approving LSCD’s annual budget;
- Reviewing monthly management reports (including statements of cash on hand with the Executive Director);

- Coordinating Board training on financial matters; and
- Ensuring that LSCD's operations are conducted and managed in a manner that emphasizes ethical and honest behavior, compliance with applicable laws, regulations and policies, effective management of LSCD's resources and risks, and accountability of persons within the organization.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 34: A limited review was conducted of LSCD's bank accounts for the months of September and October of 2011, 2012, and 2013, which disclosed that LSCD has adequate policies and procedures, including proper internal controls, over bank reconciliations, payroll processes, fixed assets, and petty cash procedures. A limited review of LSCD's electronic banking processes was conducted that revealed a need for documented processes.

A review of LSCD's bank reconciliations for its operating accounts, business accounts, and client trust accounts for September and October 2011, 2012, and 2013, disclosed that the accounts were in compliance with LSCD's accounting manual and in general compliance with the LSC Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.1 (d) and Appendix VII-I.

Client trust fund account transactions were reviewed for the month of September 2013. One (1) receipt of funds was reviewed and two (2) disbursements were reviewed and all were found to be in compliance with LSCD's accounting manual and the requirements outlined in the LSC Accounting Guide for LSC Recipients (2010 Ed.), Appendix V. Additionally, it was noted that the client trust fund amount agreed with the client liability account amount for the month of September 2013.

Review of three (3) cash receipts from LSCD's checking account and client trust account for the months of September and October of 2013 disclosed that they were in compliance with LSCD's accounting manual and the LSC Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII, § H.

Review of 16 cash disbursements from LSCD's checking account for the months of September and October 2013 disclosed that they were in compliance with LSCD's accounting manual and the LSC Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII, §§ G and G-1.

A limited review of LSCD's employee expense reports, which included the Executive Director's expense reports, disclosed that there are proper policies, procedures, and internal controls surrounding the review and approval of expense reports. The review of disbursements, which included a review of 14 expense reports, revealed that the Executive Director's expense reports are reviewed and approved by the Chairman of the Board, and all other employees' expense reports are reviewed and approved by the Executive Director. The review of expense reports indicated that all expenses appeared reasonable and necessary, were supported by receipts, were

properly reviewed and approved, and were in accordance with LSCD's accounting manual and LSC's Accounting Guide for LSC Recipients (2010 Ed.).

Interviews with the Executive Director and LSCD's Bookkeeper revealed that LSCD does not issue payroll advances. Additionally, review of the chart of accounts and the general ledger disclosed that LSCD did not have an account set up for the purpose of providing payroll advances.

A limited review was conducted of travel advance transactions, which disclosed that LSCD has proper accounting procedures and internal controls surrounding the advances. There were very few travel advances made in 2011, 2012, and 2013; therefore, a review of one (1) recent travel advance was considered a sufficient review. A travel advance, dated October 29, 2013, was reviewed, wherein an advance was requested by the employee and documented. The advance was approved by the Executive Director, recorded on an expense report in the proper receivable account, and disbursed properly.

A limited review of LSCD's fixed asset records disclosed that the policies and procedures surrounding its fixed assets in its accounting manual complies with LSC's requirements and are adhered to. Review of the fixed asset ledger and observations of the fixed assets disclosed that LSCD has assigned identification tags to assets that exceed \$1,000.00, as required by LSC's Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII, § C.3, in order to easily identify all records relating to the fixed asset. Additionally, the review revealed that LSCD has properly recorded its fixed assets properly in its fixed asset ledger, and takes an annual physical inventory of its fixed assets.

A review was conducted of LSCD's petty cash account and it was determined that the accounting procedures surrounding it were in compliance with LSCD's accounting manual and with LSC's requirements. Interviews with the Bookkeeper revealed that physical control of the petty cash is maintained by the Executive Assistant to the Executive Director and impromptu counts are made of the petty cash account by the Bookkeeper on a periodic basis. The petty cash account reimbursements for the month of December 2012 were reviewed during the visit. The review revealed that the disbursements were matched with proper receipts and the reviewed reimbursement underwent the normal cash disbursement process, where the imprest amount of \$200.00 was reconciled in the general ledger petty cash account.

LSCD's Bookkeeper, due to the small staff at LSCD, prepares the bank reconciliations, as well as performing all bookkeeping duties. However, the Executive Director performs such internal controls as reviewing the processed checks for agreement with the check register as to number, date, payee and amount; reviewing check endorsements; matching bank deposits to bank statements; and reconciling the bank statements to the general ledger. The Executive Director's performance of internal control procedures mitigates the weakness of the Bookkeeper's involvement in the reconciliation process. Interviews with the Chairman of LSCD's Board indicated that the Board is aware of potential internal control risks due to only having one (1) Bookkeeper, and that the Executive Director is performing many internal control procedures to address those risks. The Chairman further indicated that the Board has accepted this risk

A limited review was conducted of LSCD's payroll records, which consisted of reviewing a sampling of employee time cards and tracing the times recorded to the payroll report from LSCD's payroll system, Automatic Data Processing ("ADP"). The review revealed that the payroll procedures are in compliance with LSCD's accounting manual and LSC's internal control requirements. A review was made of both exempt and non-exempt employees' time sheets for the months of October and November of 2013. The time sheets were signed by the employees, checked by the timekeeper, approved by the Executive Director, and paired with the semi-monthly payroll reports generated by ADP. Based upon this limited review, it appears that LSCD's payroll is properly accounted for and payroll processing internal controls are sufficient to comply with the LSC Accounting Guide for LSC Recipients (2010 Ed.).

Interviews with the Bookkeeper and the Executive Director revealed that LSCD does not utilize corporate credit cards (*e.g.*, Visa, MasterCard, etc.) to purchase items on behalf of LSCD. Review of the cash disbursements and the general ledger further indicated that LSCD does not have or make use of corporate credit cards. LSCD does have a Staples credit card that can only be used at Staples to purchase office supplies and also has a direct billing account at Staples, where purchases are made on behalf of LSCD's account and LSCD is invoiced for those goods. A limited review was made of the Staples credit card and the Staples direct billing account, which disclosed that the accounting procedures and internal controls are sufficient to comply with the LSC Accounting Guide for LSC Recipients (2010 Ed.).

Review of LSCD's electronic banking records revealed that LSCD's electronic funds transfers consist of remitting funds into its bank account from funding sources, paying certain vendors, transferring funds from its investment account to its operating account, and processing electronic payments of its payroll. A sampling of these transactions was reviewed for September and October of 2013. Interviews with the Bookkeeper revealed that LSCD's electronic transfer policy requires that two (2) individuals be involved to complete the authorization process. The authorization process consists of the Bookkeeper noting which electronic disbursement and transfers are to be made, and the Executive Director initiating the electronic funds transfers. Interviews with the Bookkeeper and Executive Director revealed that there are no documented policies and procedures concerning this process. LSC's Accounting Guide for LSC Recipients (2010 Edition), § 3.5.15 (Electronic Banking) requires that the policies and procedures concerning electronic banking be documented in the recipient's policies.

Recommendation:

Due to the limited fiscal staff, the DR recommended that LSCD bank statements be reconciled monthly by a person who has no access to cash, is not a check signer, and has no bookkeeping duties. Additionally, the reconciliation should be reviewed and approved by a responsible individual and documented by a signature and date, which will ensure that all adjustments to the general ledger due to the reconciliation will be properly recorded. Specific internal controls recommended by LSC are as follows:

- A reconciliation that includes a comparison of checks to the check register as to number, date, payee, and amount;
- Examination of signatures and endorsements;

- Examination of voided checks;
- Accounting for serial numbers of checks;
- Comparison of dates and amounts of deposits as shown by the cash receipts records to the bank statements;
- Test-check of details shown on copies of deposit slips obtained directly from the banks against the details in the cash receipts records;
- Ensuring proper entries are made for voided checks;
- Reconciling the bank statement with the respective general ledger cash account;
- Investigation and resolution of checks outstanding for more than six (6) months; and
- Ensuring that bank statements are delivered unopened to the person preparing the reconciliation.

In its response to the DR, LSCD stated that it has five (5) staff members involved in deposit transactions and that “it is not feasible to add another position to accounting duties and given the already strong internal controls already in place, it is not feasible to assign another person to perform reconciliations.”

Required Corrective Action:

The DR instructed LSCD to document all processes and procedures relating to electronic banking pursuant to the LSC Accounting Guide for LSC Recipients (2010 Ed.), § 3.5.15; it was further recommended that these procedures be documented in LSCD’s accounting manual.

In its response to the DR, LSCD commented that it “will add a policy to its accounting manual regarding electronic banking.”

In order to close out this Required Corrective Action, LSCD is asked to provide to OCE a copy of the policy that will be added to LSCD’s accounting manual regarding electronic banking within 30 days of the release of this Final Report.

Finding 35: Review of the Segregation of Duties Worksheet, a matrix of internal controls, and interviews with the employees who perform financial functions, disclosed that adequate segregation of duties has been achieved by LSCD.

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

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined

as a process effected by an entity's governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* Chapter 3 of the LSC Accounting Guide for LSC Recipients (2010 Ed.).

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

Review of the Internal Segregation of Duties Worksheet, a matrix of internal controls submitted by LSCD to LSC, and completed by LSCD's Executive Director, disclosed that an adequate segregation of duties has been achieved by LSCD in most instances. As discussed in Finding No. 34 above, there are areas where, due to having only one (1) Bookkeeper on the financial staff, the Executive Director must perform certain internal control procedures to mitigate a lack of strong segregation of duties. As noted *supra*, the Chairman of LSCD's Board expressed an understanding that there are internal control risks due to only having one (1) Bookkeeper and that the Executive Director was performing many internal control procedures to address those risks. The Chairman also stated that the Board was willing to have a certain degree of internal control risk, as the Board believes that the benefit of employing additional financial staff to reduce the risk is not worth the cost at this time.

LSCD has mitigating controls in place due to employing only one (1) part-time Bookkeeper. The overall mitigating controls are that all checks must be manually signed by two (2) employees and the Executive Director approves all purchases orders. Also, the Executive Director has a hands-on approach to fiscal processes and is actively involved in supervising the accounting of transactions at LSCD.

There are no recommendations or required corrective actions.

In its response to the DR, LSCD did not comment on this Finding.

Finding 36: A limited review of fiscal documents and interviews with staff revealed that LSCD is in compliance with the requirements of 45 CFR Part 1628 (Recipient fund balances), as LSCD ended the 2011 and 2012 fiscal years by fully expending LSC funds. However, the review revealed that LSCD's fund balance may be understated because LSCD included grant funds received, and expenditures incurred, from a Technology Initiative Grant received from Idaho Legal Services.

The purpose of 45 CFR Part 1628 is to set out LSC's policies and procedures applicable to recipient fund balances. LSC's fund balance policies are "...intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance." See 45 CFR § 1628.1

A review of LSCD's audited financial statements indicated that LSCD ended the 2011 and 2012 fiscal years with fund balances of \$0 and \$0, respectively. For both years, LSCD fully expended LSC's grant funds. As a result, LSCD complied with the fund balance requirements outlined in LSC's regulation 45 CFR Part 1628. However, LSCD's 2011 and 2013 fund balances may be incorrectly stated because LSCD included in those balances grant funds (revenue and expenditures) from Idaho Legal Services, relating to the above-referenced 2011 Technology Initiative Grant that resulted in payments to LSCD of \$3,500.00 in 2011, and \$3,500.00 in 2013. According to the LSC Accounting Guide for LSC Recipients (2010 Ed.), § 2-4.2, LSC grant funds must be separately reported. Although the funds received from Idaho Legal Services are from a LSC recipient, they are not considered to be funds received from LSC, the Corporation. Review of LSCD's 2012 fund balance revealed that it was correctly reported to LSC.

Required Corrective Action:

The DR required LSCD to provide a supporting schedule for 2011 that separately reports or accounts for the LSC Basic Field Grant funds (revenue and expenses) and excludes the Idaho Legal Services Technology Initiative Grant revenue and expenses.

In its response to the DR, LSCD included a 2011 Profit and Loss by Class schedule that did not include the Idaho Legal Services Technology Initiative Grant revenue and expenses as a line item.

The DR also required LSCD to ensure that, for 2013 and forward, LSC grant support and expenditures are separately reported in its general ledger and audited financial statements.

With respect to separately reporting LSC's grant support and expenditures in LSCD's general ledger and audited financial statements, for 2013 and subsequent years, LSCD stated that "going forward, this is being done." A review of LSCD's 2013 audit confirmed the required separate reporting.

Both of these Required Corrective Actions have been sufficiently addressed and are therefore closed.

Finding 37: A limited review of fiscal documents, and interviews with LSCD staff, demonstrated that LSCD is in compliance with the requirements of 45 CFR Part 1629 (Bonding of recipients), as LSCD carries adequate fidelity bond insurance coverage on employees handling cash.

Pursuant to 45 CFR Part 1629, recipients are required to carry fidelity bond coverage at a minimum level of at least 10 percent (10%) of the program's annualized LSC funding level from

the previous fiscal year, or of the initial grant or contract, if the program is a new grantee or contractor. No coverage carried pursuant to this regulation shall be at a level less than \$50,000.00. *See* 45 CFR § 1629.1.

According to LSCD's financial records, including its 2012 grant award letter and audited financial statements, LSCD was awarded, and received, Basic Field Grant funds totaling \$585,642.00 in 2012. Review of LSCD's current employee dishonesty policy indicated that LSCD exceeded the minimum fidelity bond coverage level by carrying bond coverage in the amount of \$75,000.00, which is well above the requirements outlined in the LSC Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.13, and 45 CFR § 1629.1.

There are no recommendations or corrective actions required.

In its response to the DR, LSCD did not comment on this Finding.

Finding 38: A limited review of LSCD's fiscal documents, and interviews with staff, revealed that LSCD is in compliance with the requirements of 45 CFR § 1630.12 (Derivative income), as interest income resulting from an activity supported in whole or in part with LSC funds was allocated to the fund in which the LSC grant was recorded, in the same proportion to the LSC grant. However, LSCD, with Board approval, must establish written policies and procedures describing how derivative income is allocated for each type of derivative income. Additionally, LSCD's cost allocation policy must be more defined.

Pursuant to the requirements of 45 CFR § 1630.12, derivative income resulting from an activity supported in whole or in part with funds provided by LSC shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity.

Review of LSCD's financial records, including its 2012 audited financial statement, September 30, 2013 interim financial statement, cash receipts journal, and supporting documentation, indicated that LSCD received interest income from investments and/or other banking sources totaling \$1,066.00 in 2011, \$429.00 in 2012, and \$800.78 in 2013. An examination of LSCD's policies showed no signs of a formal policy indicating how interest income should be allocated. Although LSCD allocates 100% of interest income to the LSC fund account, LSCD must establish formal written policies and procedures describing how derivative income is allocated for each type of derivative income (i.e. interest, rental, etc.), when or if applicable, pursuant to the LSC Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII (Accounting Procedures and Internal Controls), (A) General, Line Item No. 12. Further review of LSCD's audited financial statements evidenced that LSCD received funding from both grants and contributions. Although these funding sources (or levels) represent an almost 50-50 split between LSC and non-LSC funds, LSCD's cost allocation policy should be more defined and descriptive in explaining how expenditures are allocated between indirect or common costs.

LSCD's current cost allocation methodology allows the Executive Director, on a periodic basis, to determine the allocation of costs and expenses between different funding sources. Since this allocation methodology employed by LSCD can vary or change from period to period, it is

impossible to assess how costs are allocated by specific line item expenses in a particular period. Each line item expense must be clearly documented as to how costs are allocated between funding sources.

Required Corrective Actions:

The DR requested LSCD to establish formal written policies and procedures describing how derivative income is allocated for each type of derivative income (*i.e.*, interest, rental, etc.), when applicable, pursuant to the LSC Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII (Accounting Procedures and Internal Controls), (A) General, Line Item No. 12 and 45 CFR § 1630.12.

In its response to the DR, LSCD indicated that the following language would be added to its accounting manual: “interest income (and any other derivative income, if any) will be allocated based upon net asset balances as of the most recent audit date.”

In order to close out this Required Corrective Action, please provide the complete section of LSCD’s accounting manual concerning allocation of derivative income within 30 days of the release of this Final Report. It is recommended that the added section be reviewed by LSCD’s Board of Directors.

The DR further asked LSCD to revise its cost allocation policy to be more defined and grant specific with respect to identifying how expenditures are allocated between indirect or common costs, in order to comply with the requirements outlined in the LSC Accounting Guide for LSC Recipients (2010 Ed.), § 2-3.2 (Cost Allocation) and 45 CFR § 1630.3(e).

In its response to the DR, LSCD provided a Cost Allocation policy that addressed, among other things, cost allocations by funding source. However, this Cost Allocation policy does not address the cost allocation methodologies (*e.g.*, square footage, usage, hours, FTE’s, etc.) used in allocating costs by natural line item expense (*e.g.*, travel, office supplies, insurance, telephone, rent, utilities, etc.).

In order to close out this Required Corrective Action, please provide a Cost Allocation policy that identifies the cost allocation methodologies used to allocate costs by line item expenses within 30 days from the receipt of this Final Report.

IV. RECOMMENDATIONS¹⁷

¹⁷ 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.

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

1. LSCD determine why case numbers in the physical case files referenced in Finding No. 1 did not match the case numbers contained in the case lists generated by LSCD for the on-site review, and ensure that its ACMS generates case numbers that correspond to case numbers contained in the physical case files. (Finding 1)

In its response to the DR, LSCD indicated that its case management system provides accurate case lists and that the discrepancies found during the on-site review were the result of having to import LSCD case lists that are housed in a Legalfiles database to a Microsoft Excel spreadsheet. The importing of case lists from Legalfiles to Microsoft Excel resulted in some case numbers being increased by one (1) or two (2) numbers. As LSCD does not use Microsoft Excel to generate its case lists, it does not anticipate any future case number inconsistencies.

2. Pursuant to the requirements of 45 CFR Part 1626, LSCD staff be provided with periodic training regarding proper execution of citizenship attestations prior to providing applicants with legal assistance. (Finding 5)

In its response to the DR, LSCD indicated that it obtains citizenship attestations as required.

3. LSCD review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file. (Finding 6)
4. LSCD staff be provided with periodic training regarding 45 CFR § 1611.9. (Finding 6)

In its response to the DR regarding Recommendations Nos. 3 and 4, LSCD noted that it generally appropriately obtains retainers and its regular training includes discussion of this requirement.

5. LSCD conduct periodic staff training to ensure proper application of the CSR case closure categories. (Finding 10)

In its response to the DR, LSCD stated that it conducts periodic training concerning the use of appropriate CSR case closure categories.

6. In 2013, and going forward, LSCD consult with its Independent Public Accountant and/or Bookkeeper, for the purpose of establishing a line item category on its audited financial statements specifically designated for the receipt or collection of attorneys' fees. (Finding 15)
7. LSCD develop internal controls to ensure that the procedures outlined in LSCD's attorneys' fees policy are adhered to in all cases. (Finding 15)

In its response to the DR regarding Recommendation Nos. 6 and 7, LSCD stated that the \$500.00 in attorneys' fees were listed as attorneys' fees in LSCD's accounting records but were not specifically broken out as a separate line item because LSCD's audit report does not have the same level of detail as LSCD's accounting records. It further indicated that, going forward, attorneys' fees will be reported as a separate line item in its audit report.

8. LSCD consult with its Independent Public Accountant and/or Bookkeeper in order to rearrange the order of expenses that are reported and presented on LSCD's general ledger and audited financial statements. (Finding 16)

In its response to the DR, LSCD indicated that the order of expenses used by its auditor is to list the largest expenses first and to list all remaining expenses alphabetically. LSCD further indicated that its order of presentation is a "generally accepted and rational practice [and] there is no reason to make a change to the order of presentation." Although OCE recommends that LSCD reconsider how expenses are reported and presented in the general ledger and audited financial statements, the determination as to the order in which expenses are reported and presented is a judgment call between LSCD and its auditor.

9. For 2013, and going forward, LSCD's audited financial statements separately report the individual expense categories by natural line item that identifies the accounts used in the receipt of grant funds related to PAI activities. (Finding 17)

In its response to the DR, LSCD indicated that, moving forward, its independent auditor's report will separately report individual expense categories and confirmed that this action has been taken in the "[a]udit report for the period ending 12-31-2013."

10. LSCD encourage contract attorneys to submit invoices in a timely manner so that expenses can be submitted for payment and reported in the general ledger in the accounting period the expenses were incurred. (Finding 17)

In its response to the DR, LSCD commented that, at several times throughout the duration of a case, the PAI Coordinator sends a request to the assigned private attorney for their most recent invoice and despite making numerous requests, some private attorneys will not send in their bills until the end of the year. LSCD further indicated that the attorneys' failure to promptly send in their invoices is not due to any inaction on the part of LSCD, as it makes repeated requests for the bills.

11. LSCD use the method described in Finding No. 17 to calculate the total costs LSCD allocates to the PAI effort. (Finding 17)

In its response to the DR, LSCD stated that the methodology described in Finding 17 is documented on a spreadsheet that is provided to LSCD's auditor for the purpose of calculating LSCD's PAI costs.

12. LSCD report payments made for mandated and non-mandated fees or dues as its own line item expense under the heading "Membership Fees or Dues." (Finding 18)

In its response to the DR, LSCD asserted that membership dues are not paid with LSC funds and that LSCD's financial records contain a separate line item for dues. The response further indicated that moving forward, the audit report will have a separate line item for dues and fees, and that the audit report for the year ending December 31, 2013 contains separate dues and fees line items.

13. Due to the limited fiscal staff, bank statements be reconciled monthly by a person who has no access to cash, is not a check signer, and has no bookkeeping duties. Additionally, the reconciliation should be reviewed and approved by a responsible individual and documented by a signature and date, which will ensure that all adjustments to the general ledger due to the reconciliation will be properly recorded. (Finding 34)

Specific internal controls recommended by LSC are described in Finding No. 34.

In its response to the DR, LSCD stated that it has five (5) staff members involved in deposit transactions and that "it is not feasible to add another position to accounting duties and given the already strong internal controls already in place, it is not feasible to assign another person to perform reconciliations."

14. LSCD document all processes and procedures relating to electronic banking in LSCD's accounting manual. (Finding 34)

In its response to the DR, LSCD commented that it "will add a policy to its accounting manual regarding electronic banking."

15. LSCD develop procedures designed to separately account for the Idaho Legal Services Technology Initiative Grant revenue and expenses and ensure that said revenue and expenses are separately reported in LSCD's general ledger and audited financial statements. (Finding 16)

In its response to the DR, LSCD included a 2011 Profit and Loss by Class schedule that did not include the Idaho Legal Services Technology Initiative Grant revenue and expenses as a line item. With respect to separately reporting LSC's grant support and expenditures in LSCD's general ledger and audited financial statements, for 2013 and subsequent years, LSCD stated that "going forward, this is being done."

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, LSCD was required to take the following corrective actions:

1. Ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, where appropriate. (Finding 5)

In its response to the DR, LSCD indicated that it obtains citizenship attestations as required. LSCD further stated that previously, it was their practice to have a joint citizenship attestation and authorization for release of records signed and dated by the client. When it decided to separate the forms into two (2) documents, the date line did not transfer to the citizenship attestation. LSCD's comments, and review of the revised citizenship attestation form, reaffirmed that the attestation form has been modified to correct the error.

This Required Corrective Action has been sufficiently addressed and is therefore closed.

2. Allocate or transfer to its LSC fund \$500.00 from its non-LSC funds, for the receipt or collection of attorneys' fees in the above-referenced 2011 case that were previously reported as grants and contributions. Evidence of such should be submitted to OCE. (Finding 15)

In its response to the DR, LSCD indicated that "in the Audit Report for 2013, the \$500.00 has been re-allocated to LSC funds."

While the Audit Report for 2013 shows a transaction in the amount of \$500.00 from LSCD's non-LSC funds to its LSC funds, there is no notation indicating whether the transaction was effectuated in order to credit the account for the collection of attorneys' fees in the above-referenced 2011 case.

As such, in order to close out this Required Corrective Action, LSCD is asked to please provide a copy of the approved journal entry and a copy of the general ledger page, showing the transfer of \$500.00 from LSCD's non-LSC fund to its LSC fund account for the designated accounts (*i.e.*, from contributions to attorneys' fees) within 30 days from the release of this Final Report.

3. Pursuant to the requirements of the LSC Accounting Guide for LSC Recipients (2010 Ed.), §§ 2-1.1, and 2-1.2, report all transactions using the proper funding code and ensure that each funding code has a designated classification. (Finding 16)
4. LSCD must provide a revised funding code list that, at a minimum, includes a funding code for the revenue and expenses related to the Technology Initiative Grant received from Idaho Legal Services. (Finding 16)

In its response to the DR regarding Required Corrective Action Nos. 3 and 4, LSCD indicated that "the TIG referred to in the report has been given a separate classification and the revenue from this grant has been placed in that classification." As noted above, the response further indicated that LSCD "developed a columnar presentation to capture income and expenses for all significant revenue sources, including TIG [that] has been accomplished in both the QuickBooks database and the Audit Report." LSCD's comments to the DR included a revised class code list that includes "TIG Grant" as a class. Upon review of the Audit Report for 2013, it was determined that this transaction was completed.

Required Corrective Actions 3 and 4 have been sufficiently addressed and are therefore closed.

5. Pursuant to the requirements of 45 CFR § 1610.5(a), ensure that language notifying potential contributors of \$250.00 or more of the restrictions imposed by LSC's regulations have been added to LSCD's webpage, contracts, grants, and all fundraising material. (Finding 16)
6. For grants and other funding sources to which LSCD applies for or solicits funding from (that are equal to or greater than \$250.00), the notice of the restrictions referred to in 45 CFR § 1610.5(a) should be given by LSCD during the course of the solicitation or application and, when notice of the restrictions is not able to be provided in advance, a thank-you letter, which includes the notification, should be sent upon receipt of the funds. (Finding 16)

In its response to the DR, LSCD indicated that it includes in all grant applications and acceptance of donations, language informing the funding source of LSC restrictions. Moving forward, LSCD also indicated that it will be their practice to inform all funding sources, including funding sources that are LSC recipients, of the restrictions referred to in 45 CFR § 1610.5(a).

Required Corrective Actions 5 and 6 have been sufficiently addressed and are therefore closed.

7. Ensure that all PAI contracts, including the above-referenced four (4) contracts, are properly executed and approved by all parties. (Finding 17)

In its response to the DR, LSCD indicated that all of the above-referenced PAI contracts were signed and dated by all parties, but did not include a copy of the signed contract with its comments. During the on-site review, a request was made for copies of properly executed PAI contracts. On July 14, 2014, an additional request was made to the Executive Director, by electronic mail, for copies of the above-referenced executed PAI contracts.

In order to close out this Required Corrective Action, please provide signed and dated copies of the above-referenced PAI contracts within 30 days from the release of this Final Report.

8. Ensure that all PAI invoices are processed and paid with proper authorization. (Finding 17)
9. Revise its PAI methodology to be more defined and incorporate not only the methodology for attorneys and paralegals, but all time and/or costs related to the PAI effort in order to fully capture the amount of LSCD's PAI expenditures. (Finding 17)

In its response to the DR, LSCD indicated that the Executive Director reviews all invoices for payment, including bills from PAI attorneys. However, a repeated review of the sample of 12 invoices/statements from a PAI contract attorney with the initials "V.H." revealed that LSCD failed to get proper authorization prior to authorizing the invoices for payment. LSCD's response further indicated that "the method for calculating the total PAI costs to be allocated to the PAI efforts...is exactly as the recommendation contained in the report." The comments stated that this methodology is documented on a spreadsheet that is provided to LSCD's auditor.

During the on-site review, LSCD provided its PAI methodology, which consisted of the following sentences: "PAI cost methodology is calculated by a ratio of salaries spent on PAI matters, divided by total program salary. The resulting percentage is then applied to the other costs for allocation to PAI expenses." At the exit conference, and during the review, the need to document a more detailed PAI methodology that identified allocation of indirect and direct costs was discussed. On July 17, 2014, the Executive Director provided a copy of the spreadsheet provided to LSCD's auditor that documented PAI expenses. At that time, it was explained in an email, dated July 17, 2014, that LSCD's methodology needs to be more defined because its current methodology captures or allocates a portion of all costs, both direct and indirect, to PAI. It was further explained that, as indicated in the DR, the methodology should fully capture only the amount of PAI expenditures related to the PAI effort.

In order to close out this Required Corrective Action, LSCD must change its methodology to reflect that costs attributable to travel and training for LSCD staff should be excluded from the PAI calculation if such costs are not directly related to PAI. Please provide the revision to LSCD's written methodology within 30 days from the release of this Final Report. Additionally, LSCD is reminded to follow the procedures contained in the Purchasing and Cash Disbursements section of its accounting manual with regards to properly approving invoices for payment.

10. Document all processes and procedures relating to electronic banking pursuant to the LSC Accounting Guide for LSC Recipients (2010 Ed.), § 3.5.15. (Finding 34)

In its response to the DR, LSCD commented that it "will add a policy to its accounting manual regarding electronic banking."

In order to close out this Required Corrective Action, please provide a copy of the policy that will be added to LSCD's accounting manual regarding electronic banking within 30 days from the release of this Final Report.

11. Provide a supporting schedule for 2011 that separately reports or accounts for the LSC Basic Field Grant funds (revenue and expenses) and excludes the Idaho Legal Services Technology Initiative Grant revenue and expenses. With respect to 2013, and going forward, LSCD must ensure that LSC's grant support and expenditures are separately reported in its general ledger and audited financial statements. (Finding 36)

In its response to the DR, LSCD included a 2011 Profit and Loss by Class schedule that did not include the Idaho Legal Services Technology Initiative Grant revenue and expenses as a line item. With respect to separately reporting LSC's grant support and expenditures in LSCD's general ledger and audited financial statements, for 2013 and subsequent years, LSCD stated that "going forward, this is being done." LSCD's 2013 audit reflects the required separate reporting.

This Required Corrective Action has been sufficiently addressed and is therefore closed.

12. Establish formal written policies and procedures describing how derivative income is allocated for each type of derivative income (*i.e.*, interest, rental, etc.), when applicable, pursuant to the LSC Accounting Guide for LSC Recipients (2010 Ed.), § 1-7.3 (Responsibilities of the Financial Oversight Committee or Committees), Appendix VII (Accounting Procedures and Internal Controls), (A) General, Line Item No. 12, and 45 CFR § 1630.12. (Finding 38)

In its response to the DR, LSCD indicated that the following language would be added to its accounting manual: "interest income (and any other derivative income, if any) will be allocated based upon net asset balances as of the most recent audit date."

In order to close out this Required Corrective Action, LSCD is asked to provide the completed the section of LSCD's accounting manual concerning allocation of derivative income within 30 days from the release of this Final Report. It is recommended that the added section be reviewed by LSCD's Board of Directors.

13. LSCD must revise its cost allocation policy to be more defined and grant specific with respect to identifying how expenditures are allocated between indirect or common costs, in order to comply with the requirements outlined in the LSC Accounting Guide for LSC Recipients (2010 Ed.), § 2-3.2 (Cost Allocation) and 45 CFR § 1630.3(e). (Finding 38)

In its response to the DR, LSCD provided a Cost Allocation policy that addressed, among other things, cost allocations by funding source. However, this Cost Allocation policy does not address the cost allocation methodologies (*e.g.*, square footage, usage, hours, FTE's, etc.) used in allocating costs by natural line item expense (*e.g.*, travel, office supplies, insurance, telephone, rent, utilities, etc.).

In order to close out this Required Corrective Action, LSCD is asked to provide a Cost Allocation policy that identifies the cost allocation methodologies used to allocate costs by line item expenses within 30 days from the release of this Final Report.



LEGAL SERVICES CORPORATION OF DELAWARE, INC.

100 WEST 10TH STREET

SUITE 203

WILMINGTON, DELAWARE 19801

TELEPHONE (302) 575-0408

TELECOPY (302) 575-0478

WRITER'S EXTENSION - 102
E-MAIL - DOUGCANFIELD@LSCD.COM

June 12, 2014

Lora M. Rath, Esq.
Director, Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW, 3rd Floor
Washington, DC 20007-3522

Re: Compliance Review Visit, Recipient Number 308010

Dear Ms. Rath:

This letter is in response to your letter of February 28, 2014 and the Draft Report of the Compliance Review of December 10-13, 2013. This letter includes comments to the Draft Report. I appreciate the extensions of time to respond to the draft report, which you graciously provided.

Finding 1: Our case management system correctly provides case lists. The problem arose due to the format in which OCE required that we provide case lists. We were required to provide case lists in Microsoft Excel with specific parameters required. We do not generally run case lists in Excel. The problem arose when exporting our normal case lists from our Legalfiles database to Excel and then using the required formatting and ordering. For some (unknown) reason, for a small number of cases, the case number changed. This was brought to the attention of the team leader, however apparently this issue was not relayed to the particular reviewer. Regardless, since LSCD does not use Excel to generate case lists, there is no problem with our case lists matching the numbers of our physical files.

Finding 2 : There are some misunderstandings of our procedures contained in the draft report. For instance, when discussing the PAI procedure, left out is the review by the Executive Director, approving PAI referrals. Also, when the case is referred to a PAI attorney, the case remains on the staff attorney's case list and the staff attorney is still responsible for monitoring the cases, although the PAI Coordinator does also monitor the case, so that there is (intentional) redundancy built into the system. There were also some incorrect statements in the draft report, such as that paralegals make conflict of interest determinations (they may point out possible

conflicts to attorneys, but the final determination is made by an attorney), or that LSCD does not conduct any outreach.

Finding Three: The case review findings detailed in this finding are illustrative of the systems in place at LSCD and the exemplary way in which these systems are used, and LSCD staff should be complimented on their success. A total of almost 12% of all cases for 3 years were selected for review by OCE. If a similar proportion of cases were selected for review at the Legal Aid Foundation of Chicago that would amount to over 5200 cases. From such a large sample size of almost 12%, to have only 1 case where income information was incomplete (the case was under the 200% limit, the waiver was simply missing) shows an extraordinary effort is being made by LSCD and its staff to comply with the regulatory requirements and these efforts and positive results should be acknowledged.

Our written waiver form, (which must be signed to allow for provision of services to people with incomes between 125% and 200% of the FPG) is part of our policies and clearly indicates requirements for the gathering of information of "over-income" factors. Also, as recognized, LSCD does in fact check for income prospects of applicants. There is no requirement that this be included in the recipient's written policy - just that the inquiry be made, which in fact LSCD does. However to simplify matters, we have updated our policies as requested in the draft report. A copy is enclosed herewith. A discussion of the assets will be addressed in the response to Finding 4.

Finding 4: With respect to assets which would be exempt from asset calculations, under the LSCD policy, it should be noted that all of the assets listed in the policy were included from the exhaustive list contained in 45 CFR section 1611.3 (d)(1). That code section simply states that a recipient may exclude "other assets which are exempt from attachment under State or Federal law." LSCD's policy specifically does this. There is no requirement in the regulation that there be a specific citation to a state statute in the policy. Therefore LSCD's policy was fully compliant with regulation. However, for simplicity, the policy was revised to include citations to the relevant state law exemption statutes.

Finding 5: With respect to citizenship attestations, as noted, LSCD obtains citizenship attestations as required. In the one instance cited, case number 13E - 000663, the reviewer apparently misunderstood the nature of our involvement in the case. When the case was originally opened, we were evaluating it to determine whether or not we would provide representation beyond the provision of advice or brief services. The client was being assisted by a HUD certified housing counselor who appeared with the client at the mediation sessions. Although an attorney from our office attends all of the mediation sessions to provide general assistance, community and pro se education, as well as assisting the housing counselors and to be available to accept referrals. At the specific mediation sessions mentioned in the report, we were not attending those mediations on behalf of our client, who was already being assisted at those mediation sessions by the housing counselor. It was only later that we determined it was necessary for us to assist in a manner beside the provision of advice and at that point in time,

when such a determination was made, and it was appropriate, we then sent to the citizenship attestation form and the retainer to the client.

With respect to a placing the date on the citizenship attestation form, it had long been our practice to have a joint citizenship form and authorization for the release of records which was dated when signed. Relatively recently, we decided to separate those two forms. However, when we physically changed the forms, the date line remained only on the authorization form and it was inadvertently not transferred and repeated on the citizenship attestation form. That error has since been corrected. The policy has been revised as recommended in the report. Inasmuch as there was no requirement in the regulation for board approval, the Executive Director changed the policy.

Finding 6: As is noted in the report, LSCD generally appropriately obtains retainers. Of the three cases mentioned, in one, the case closing checklist indicates that there was a signed retainer in the file. However at the time of the review, the retainer was missing and had been apparently been misplaced. In one of the other cases, 13E-000727, the reviewer apparently misunderstood our role with regard to mediation meetings. We did not represent nor attend the mediation conference in May, 2013 on behalf of the client. Rather, one of our attorneys, who was already at the mediation session for the purpose of providing general information and guidance to housing counselors and homeowners, was approached by the client at the mediation session. After speaking with the potential client, who was inquiring about our services, that potential client was instructed to call our office for intake and possible representation. Thereafter, we investigated the client's case to see if we would handle it, and, after obtaining information and documentation, agreed that we would represent the client, helping her with her modification and possible bankruptcy. It was not until the time of the preparation of the retainer that we agreed to represent the client, and after receiving a signed retainer we went ahead and filed a bankruptcy on her behalf. Therefore, the timing of obtaining the signed retainer was appropriate.

A part of our regular training of our staff includes discussions regarding obtaining retainer agreements.

Finding Seven: As noted in the report, the policy was revised during the OCE visit. As the regulation does not require board approval, the policy was put in place by the Executive Director.

Finding Eight: It appears that a portion of this section of the report may have erroneously been written due to a cut and paste error, and contains some information which is clearly incorrect and appears may have come from a report regarding another legal services organization. For instance, the priorities listed for LSCD do not contain the priorities that LSCD has in place. Also the language in the report indicated that LSCD's policy did not require staff to sign a written agreement acknowledging LSCD's priority and emergency case acceptance policy. That is simply factually incorrect. The following is language directly taken from the LSCD priorities

policy:

IT IS FURTHER RESOLVED, that no cases and matters other than those covered by the above priorities may be handled except in an emergency situation. Emergencies include where there is an immediate need for legal action to protect the client's rights, or where there is a significant threat to the health and safety to the potential client and no other legal help is available, or where unforeseen circumstances exist, which were not anticipated at the time that the priorities were set, such as a natural disaster.

The procedure which must be followed in any case taken on an emergency basis, which is outside of the priorities, is that approval must be obtained from the Executive Director as soon as possible after the case is accepted. Documentation must be placed in the file indicating the reason that the case was taken....

RESOLVED, **that all case handler staff shall sign an agreement that they have read and are familiar with the priorities and emergency policy of LSCD, and that they will not undertake any case or matter not within the priorities, except under the emergency policy set forth above.** (Emphasis supplied).

Also, there is no requirement under section 1620.5, that there be a policy that there be an annual review of priorities, simply a requirement that the priorities are to be reviewed at least annually, which LSCD has done at least annually.

Despite the fact that our policy was already in substantial compliance with regulation, as requested, we did make revisions to our policy and which were approved at our Board of Directors meeting on March 25, 2014. A copy is enclosed herewith.

Finding 10: The results contained in this Finding are indicative of the exemplary compliance that LSCD exhibits. After reviewing approximately 12% of all cases closed by LSCD over a three-year period, there were only three cases that had minor closing code issues. As a matter of fact of the three cases cited two of them were instances where LSCD, gave itself less "credit" than it should have. This extraordinary level of compliance should be something about which LSCD should be complimented.

As part of our periodic staff training, we conduct training regarding the use of appropriate CSR case closure categories.

Finding 13: As noted in the report the policy has been revised as recommended in the report at the time of the visit. Inasmuch as there is no requirement in the regulation for board approval, the Executive Director changed the policy.

Finding 15: As noted in the report the policy has been revised as recommended in the report at the time of the visit. Inasmuch as there is no requirement in the regulation for board approval, the Executive Director changed the policy.

The \$500 in attorney's fees was in fact listed as attorneys fees in LSCD's accounting records. However, they were not specifically broken out as a separate line item in the audit report due to the fact that the audit report does not have the same level of detail as do LSCD's accounting records. Going forward, the attorneys fees will be broken out as a separate line item in the audit report. Furthermore, with respect to the \$500 in attorneys fees, those were intended to be allocated to the LSC funds; however, due to a clerical error with regard to a drop-down field it was not. This has been changed. In the Audit Report for 2013, the \$500 has been re-allocated to LSC funds.

Finding 16: The TIG grant referred to in the report has been given a separate classification and the revenue from this grant has been placed in that classification. We designated a columnar presentation to capture income and expenses for all significant revenue sources, including TIG. This has been accomplished in both the QuickBooks database and the Audit Report.

With respect to the order of reporting of revenue and expenses in our audit report, the order which has been used by our auditor is to list personnel expenses as the first expenses, inasmuch as they are the largest expense. Other expenses are then listed alphabetically. This is a generally accepted practice utilized by accountants. It should be noted that in the "Accounting Guide for LSC Recipients (2010 edition)" there is an example of the Statement of Functional Expenses. In that example, personnel expenses are listed first and then other expenses appear to be listed randomly with no apparent order either alphabetically or in terms of order of importance. In the audit report prepared by our independent auditor the ordering of expenses at least has a rational basis and one that is generally accepted, as opposed to the example in the Accounting Guide which appears to have had no rationale for the order whatsoever. Because the order of presentation is a generally accepted and rational practice, there is no reason to make a change to the order of presentation.

With respect to notifications to funders, LSC puts the following in grant applications, or sends it as a document when it receives donations:

As a condition of the funding it receives from the Legal Services Corporation, LSCD is restricted from engaging in certain activities in all of its legal work, including work supported by other funding sources. LSCD may not expend any funds for any activity prohibited by the Legal Services Corporation Act, 42 U.S.C. §2996 et seq., or by Public Law 104-134. We would be happy to provide a copy of these laws or other information upon request. These restrictions essentially preclude LSCD from engaging in various activities that many people have viewed as being inappropriate for a publicly funded organization, such as certain types of lobbying, abortion rights litigation, and prison condition litigation. Since LSCD is prevented from engaging in these types of activities,

funding sources, and even critics of funding sources, can be assured that the activities of LSCD will be limited to those activities in which almost all people can agree that a publicly funded legal services program should be involved - the provision of legal services, such as normally provided by a small law firm, dealing with the day-to-day legal problems of their clients. As such, LSCD has been, and will be to be performing representation in the "meat and potatoes" activities provided by most private law firms, without the concern that it is advancing its own ideological agenda, supported by public funding. LSCD continues to work in the same fashion as almost any other small law firm, the only differences being the poverty of its clients, and the lack of a fee to be paid.

In the circumstances mentioned in the report, it was not done, as recognized in the report. Our interpretation was that 45 CFR §1610.5 was not applicable in those instances. For instance, the funding received from Idaho Legal Services was viewed as being funding whose source was the Corporation, such that no notification would be required. It frankly never occurred to us, that if it was not viewed as funding from the Corporation, that any notification would be required. To think that one recipient of LSC funding would have to notify another recipient of LSC funding, that the funding which was received from LSC would have LSC restrictions apply is clearly form over function. However, we have now done so.

We have enclosed herewith a revised class code list.

Finding 17: LSCD's financial books clearly break out the amount spent on a private (contract) attorneys. However the audit report prepared by the independent auditor does not provide the same level of detail as do LSCD's financial books. Going forward the independent auditors order report will also break out this amount and has done so in the Audit report for the period ending 12-31-2013.

All of the contracts with private attorneys were signed and dated by all parties. Some of those contracts were signed in duplicate, which under applicable contract law is allowable and appropriate. Apparently the reviewer did not see the duplicate signature pages.

With respect to review and payment of private (contract) attorneys, the report contains some highly significant errors. First, the PAI coordinator sends out quarterly a detailed request for progress and updates, to each PAI attorney, which includes a list of each and every case assigned to that PAI attorney. The request asks for a status update for each case which is being handled by that PAI attorney, and, significantly, with regard to the report, requests that the PAI attorney promptly send a bill for each case that the PAI attorney is handling, including a bill for work in progress for those cases that are still ongoing. Furthermore, in addition to these quarterly requests the individual staff attorneys who have the PAI case assigned to them also contact the PAI attorney for status updates and request that bills be sent. Despite these numerous requests some of the PAI attorneys do not send in their bills until the end of the year. However this is not

due to any inaction on the part of LSCD, who repeatedly make requests that bills be sent in regularly. With respect to the processing and paying of invoices, the Executive Director reviews ALL invoices for payment, not just bills from PAI attorneys. Inasmuch as LSCD diligently makes sure that all invoices, including all invoices from PAI attorneys, are reviewed and approved by the Executive Director prior to payment, LSCD is extremely dismayed to see the suggestion that there is some "convenience in processing practice" in not having the Executive Director review and approve invoices.

The method for calculating the total PAI costs to be allocated to the PAI efforts, utilized by LSCD, is exactly as the recommendation contained in the report. They are documented on a spreadsheet which is provided to the auditor.

The description in the report of the PAI process contains numerous errors and omissions. This may be due, in part, to the reviewer's unfamiliarity with the PAI process, as demonstrated by the reviewer's uncertainty about the PAI program parameters when conducting the review. Since these are not germane to any findings and the space that would be required to address all of them, given the number of inaccuracies contained in the description of our process, we will just note that the inaccuracies are there and we will not address them all of them here.

Finding 18: Payments made to the Supreme Court of Delaware do not meet the definition of membership dues or fees contained in 45 CFR §1627. Membership dues or fees are paid with non-LSC funds. In the financial books and records of LSCD there is a separate line item for dues. The audit report from the independent auditor does not have the same level of detail as do the books and records of LSCD, so did not have dues as a separate line item. However going forward, the audit report will have a separate line item for dues and fees and the Audit Report for the year ending 12-31-2013 has these separate line items broken out.

As noted in the report, the policy was revised at the time of the visit. Inasmuch as the regulation does not require governing body approval the policy was approved by the Executive Director.

Finding 19: The report discusses an example where time represented on one advocate's time records indicated a Saturday or Sunday date when the actual date worked was a Friday and/or Monday, and the reviewer felt that this indicated that the time did not match the date worked. What actually occurred was that the attorney indicated in the case management system case files that the letters that were written in the three cases which were reviewed were physically mailed on a Monday; however the time slips corresponding with the actual composition of those letters denoted occurred on a Sunday date. This was factually accurate. Since the mail does not go out on Sunday, the attorney dated the letters for Monday, which was the actual date that the envelopes would be run through the postage meter and be placed in outgoing mail. Our attorneys, all too often, work on Saturdays, Sundays and holidays. Apparently the reviewer did not recognize this occurrence and erroneously believed that there was an inconsistency with regard to the timing of the work and the time listed in the time slip for that work. Therefore,

there was absolutely no inaccuracy or inconsistency with regard to the date upon which the work was performed and the date of the time slips.

Finding 20: This has been addressed in response to finding 15.

Finding 21: As noted in the report the policy was revised at the time of the visit. Inasmuch as the regulation does not require governing body approval the policy was approved by the Executive Director.

Finding 23: Once again the characterization of the current LSCD policy contained in the report is incorrect and is likely as a result of an erroneous cut-and-paste from another program's visit report. All of the language mentioned in the report is contained in LSCD's current policy and therefore no changes are required and there is nothing to be changed.

Finding 24: As noted in the report, the policy was revised at the time of the visit. Inasmuch as the regulation does not require governing body approval the policy was approved by the Executive Director.

Finding 25: LSCD has had in place a policy regarding the prohibition against representing a person who has been charged or has been convicted of illegal sale, manufacture or distribution of a controlled substance. The only thing that was not included in the policy was the phrase "possession with intent to distribute." As noted in the report, the policy was revised at the time of the visit. Inasmuch as the regulation does not require governing body approval the policy was approved by the Executive Director.

Finding 27: As noted in the report the policy was revised at the time of the visit. Inasmuch as the regulation does not require governing body approval the policy was approved by the Executive Director.

Finding 31: The policy which LSCD had in place and was provided for review recited all requirements of CFR §1644.3, other than its applicability to subgrants, of which LSCD has none. As noted in the report the policy was revised at the time of the visit. Inasmuch as the regulation does not require governing body approval the policy was approved by the Executive Director.

Finding 32: In the policy provided for review, the phrase "through grassroots efforts" was not included. As noted in the report, the policy was revised at the time of the visit. Inasmuch as the regulation does not require governing body approval the policy was approved by the Executive Director.

Finding 34: LSCD will add a policy to its accounting manual regarding electronic banking. LSCD already has 5 staff members involved in each deposit transaction, one-third of its entire

staff. It is not feasible to add another position to accounting duties and given the already strong internal controls already in place, it is not feasible to assign another person to perform reconciliations.

Finding 36: Please see attached. Going forward, this is being done.

Finding 38: Derivative Income - the following language will be added to our Accounting Manual:

“Interest income (and any other derivative income, if any) will be allocated based upon net asset balances as of the most recent audit date”

Allocations - Please see attached.

I just wanted to say that we benefitted greatly from the visit by the OCE staff and we learned a great deal which will allow us to continue with and improve upon our already high level of compliance and internal controls.

Sincerely,

A handwritten signature in blue ink that reads "Douglas B. Canfield". The signature is written in a cursive style with a large, looping initial "D".

Douglas B. Canfield
Executive Director

Enclosures

ELIGIBILITY

Eligibility for legal assistance from Legal Services Corporation of Delaware requires a determination that (1) applicant is financially eligible for LSCD's services; (2) the legal problem falls within the priorities as approved by the LSCD Board of Directors and (3) representation of the client would not create a conflict of interest for LSCD under applicable provisions of the Code of Professional Conduct.

The Legal Services Act, 42 U.S.C. 2996 et seq., as implemented in the Code of Federal Regulations, 45 C.F.R. 1600 et seq., establishes specific criteria regarding client eligibility, intake and case representation. A copy of the Legal Services Regulations is provided to each new employee and is available to each office of Legal Services Corporation of Delaware. In the event of a conflict between LSC regulations and any portion of this policy manual, LSC regulations govern.

Financial Eligibility

A. Definitions

1. **"Income"** means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household.

Total cash receipts include:

- a. Wages and salaries before any deductions;
- b. Income from self-employment after deductions for business or farm expenses;
- c. Regular payments from governmental programs for low income persons or persons with disabilities;
- d. Social security payments;
- e. Unemployment insurance benefits;
- f. Worker's compensation;
- g. Strike benefits from union funds;
- h. Veterans benefits;
- i. Training stipends;
- j. Alimony or spousal maintenance;
- k. Child support payments;
- l. Military family allotments;
- m. Public or private employee pension benefits;
- n. Regular insurance or annuity payments;
- o. Income from dividends, interest, rents, royalties or from estates and trust;
- p. Any other regular or recurring sources of financial support that are currently and actually available to the applicant.

It does not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank or investment; tax refunds; gifts compensation or one-time payments for injuries sustained; other non-cash benefits; nor the first \$2,000 per year of trust income or other distributions received by Native Americans from their tribe.

2. **“Assets”** under 45 C.F.R. 1611.2(d) are those over which the individual seeking assistance has direct and unfettered access, without having to obtain the consent or cooperation of another person over whom the individual does not have control, and who does not in fact consent or cooperate. Absence of control and access will be presumed in spousal abuse cases. Assets are those which can be readily converted at fair market value to cash in the possession of the individual seeking legal assistance prior to the time that individual needs legal assistance. Net assets, after subtracting all expenses of conversion, including applicable taxes, are those to be considered.

A. Manner of Determining Financial Eligibility

1. Income

An applicant must meet the following financial guidelines to be eligible for LSCD's services. The maximum annual income level of LSCD clients is set forth in the attached tables. Pursuant to 45 C.F.R.1611.7 (a) (1), LSCD staff shall make reasonable inquiry regarding sources of income, income prospects, and assets. If there is substantial reason to doubt the accuracy of financial information provided by an applicant for services, appropriate inquiry shall be made to verify information, consistent with the development of an effective attorney-client relationship.

Information furnished to LSCD by an applicant for service or client to establish financial eligibility shall not be disclosed to any person who is not employed by LSCD in a manner that permits identification of the client, without the express written consent of the client, subject to conditions outlined in the Legal Services Corporation regulations set forth in Grant Assurances Numbers 10, 11, and 12, Section 509(h), P.C. 104-134, 110 Stat. 1321 (1996), and protocol regarding access to information in grant recipients' files (January 5, 2004).

The maximum annual household income limit for LSC purposes is 125% of the Federal Poverty Guidelines for the year as approved by the Board of Directors. Legal assistance may be provided to an applicant whose annual household income exceeds the LSC limits, if it is supported by other funding and the applicant meets the criteria of the other funding source. An applicant whose gross income is between 125% and 200% of the federal poverty guidelines may be provided legal assistance under the following conditions:

- a) Consistent with the LSCD's policies and this part, LSCD may determine an applicant whose income exceeds LSCD's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed LSCD's applicable asset ceiling established pursuant to 45 C.F.R. §1611.3 (d)(1);
- b) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount;
 - i. The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or
 - ii. The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities.

- c) The applicant's income does not exceed 200% of the applicable Federal Poverty guidelines amount and LSCD has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household;
- i. Current income should take into account seasonal variations and other fluctuations in the applicant's annual income;
 - ii. Unreimbursed medical expenses and medical insurance premiums;
 - iii. Fixed debts and obligations;
 - iv. Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
 - v. Non-medical expenses associated with age or disability;
 - vi. Current taxes; or
 - vii. Other significant factors that LSCD has determined affect the applicant's ability to afford legal assistance.

In assessing the income and assets of an applicant who is a victim of domestic violence, only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence shall be considered. Assets held by the alleged perpetrator of the domestic violence that are jointly owned by the applicant with the alleged perpetrator or those jointly owned by any of the household's members with the alleged perpetrator shall not be included in the assessment of the applicant's assets.

If an applicant's income exceeds 200% of Federal Poverty Guidelines for the year as approved by the Board of Directors, legal assistance may be provided to an applicant seeking assistance to maintain benefits provided by a governmental program for low income individuals or families, or dependent upon the information received by the Executive Director or his/her designee, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income that is committed to medical or nursing home expenses the applicant would otherwise be financially eligible for services.

1. Assets

Assets which are to be considered in determining eligibility are those the applicant has access to and can be readily converted to cash. Only the equity value of the assets is to be considered. Certain assets are exempt. These include:

1. The applicant's principal residence (*see* 45 CFR § 1611.3(d)(1));
2. Vehicles used for transportation (*see* 45 CFR § 1611.3(d)(1));
3. Assets used in producing income (*see* 45 CFR § 1611.3(d)(1));
4. Personal property including, but not limited to, bank accounts, household goods and furnishings, money owed to applicant, security deposits up to \$25,000. (10 Del. C. §4914(b))
5. Any Personal Property - Head of family (must have more than one person in household to qualify as head of family) up to \$500. (10 Del. C. §4903);
6. Bibles, Books, Pictures, church pew, burial plot, clothes. (10 Del. C. §4902(a))
7. Tools of Trade necessary for employment up to \$15,000. (10 Del. C. §4914(c)(2));

8. Retirement plans, pensions, and rollover contributions (9 Del. C. §4316, 10 Del. C. §4915, 11 Del. C. §8803, 16 Del. C. §6653, and 29 Del. C. §5503) School equipment (*see* State Revised Statutes § 33-1127);

The maximum allowable in assets is \$5,000 for the applicant, \$8,000 for 2 people and \$1500 in assets for each additional person. The net value of all real property that is not the applicant's primary residence is presumed to be readily convertible to cash and must be taken into consideration in determining the applicant's eligibility.

If the applicant's income is derived solely from either TANF, Supplemental Security Income (SSI) or the entire household is eligible for Supplemental Nutrition Assistance Program no further information need be gathered regarding the household's assets and is considered automatically asset eligible.

Exceptions

The Executive Director or designee may grant waivers of the assets ceiling in unusual circumstances. When the Executive Director or designee grants a waiver, the decision shall be documented and included in the client's file. The program will develop procedures, consistent with the attorney-client privilege and requirements of the Code of Professional Responsibility, to maintain records of the number of clients served because of a waiver and the factual bases for the decisions to grant said waivers.

If an eligible client becomes ineligible through a change in the client's financial circumstances, LSCD shall take steps, consistent with the professional responsibility of the attorney representing the client, to discontinue representation. Such representation shall be discontinued only if the change in financial circumstances is likely to place the client in a position to afford private legal assistance. Withdrawal from representation will only occur pursuant to the Code of Professional Responsibility and, when applicable, pursuant to court rule. This paragraph only applies to clients whose continued representation is supported by LSC Funds. If an advocate desires to continue representation of a client whose representation was originally supported by LSC Funds and who now is ineligible to be represented with those Funds, written permission must be secured from the Executive Director.

If an eligible client becomes ineligible through a change in the client's status (i.e., becomes incarcerated, changes alienage category), the client's advocate, in consultation with the Litigation Director, shall take steps consistent with applicable rules of professional responsibility and any court involved, to withdraw, LSCD shall continue its representation while continuing reasonable efforts to obtain substitute counsel.

1. Group Representation

LSCD may provide assistance to a group, corporation, association or other entity if the entity provided information showing that it lacks, and has no practical means of obtaining funds to retain private counsel and:

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 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.

In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by LSC regulation §1611.6, LSCD will consider the resources available to the group, including the group's income and income prospects, assets and obligations and either:

1. 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
2. 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 related to such activity of the group.

LSCD shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria above. The eligibility requirements apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by LSCD, regardless of the source or funds supporting the assistance, must be otherwise permissible under applicable law and regulations.


Secretary

Date: 3/25/14

PRIORITIES IN USE OF RESOURCES PROCEDURE

WHEREAS the Board of Directors of Legal Services Corporation of Delaware, Inc., ("LSCD") desires to assure compliance with 45 C.F.R. §1620 and to establish policy pursuant to this Section,

THEREFORE, be it resolved that the procedures to be used, and the procedures that have been used in the past for the establishment of priorities for Legal Services Corporation of Delaware, Inc., are as follows:

Definitions.

(a) A *case* is a form of program service in which an attorney or paralegal of LSCD provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual Private Attorney Involvement (PAI) cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

Establishing priorities.

(a) The governing body of LSCD must adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which may be undertaken by the recipient.

(b) The procedures adopted must include an effective appraisal of the needs of eligible clients in the geographic area served by LSCD, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from LSCD's employees, governing body members, the private bar, and other interested persons. The appraisal should address the need for outreach, training of LSCD's employees, and support services.

(c) The following factors shall be among those considered by LSCD in establishing priorities:

- (1) The suggested priorities promulgated by the Legal Services Corporation;
- (2) The appraisal described in paragraph(b) of this section;

(3) The population of eligible clients in the geographic areas served by LSCD, including all

significant segments of that population with special legal problems or special difficulties of access to legal services;

- (4) The resources of LSCD;
- (5) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;
- (6) The availability of other sources of training, support, and outreach services;
- (7) The relative importance of particular legal problems to the individual clients of LSCD;
- (8) The susceptibility of particular problems to solution through legal processes;
- (9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served;
- (10) Whether legal efforts will result in efficient and economic delivery of legal services; and
- (11) Whether there is a need to establish different priorities in different parts of LSCD's service area.

Establishing policies and procedures for emergencies.

The governing body of a recipient shall adopt written policies and procedures to guide the recipient in undertaking emergency cases or matters not within the recipient's established priorities. Emergencies include those nonpriority cases or matters that require immediate legal action to:

- (a) Secure or preserve the necessities of life,
- (b) Protect against or eliminate a significant risk to the health or safety of the client or immediate family members, or
- (c) Address other significant legal issues that arise because of new and unforeseen circumstances.

Annual review.

(a) Priorities shall be set periodically and shall be reviewed by the governing body of LSCD annually or more frequently if LSCD has accepted a significant number of emergency cases outside of its priorities.

(b) The following factors should be among those considered in determining whether LSCD's priorities should be changed:

- (1) The extent to which the objectives of LSCD's priorities have been accomplished;
- (2) Changes in the resources of LSCD;
- (3) Changes in the size, distribution, or needs of the eligible client population; and
- (4) The volume of non-priority emergency cases or matters in a particular legal area since priorities were last reviewed.

Signed written agreement.

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by LSCD which indicates that the signatory:

- (a) Has read and is familiar with the priorities of LSCD;
- (b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and

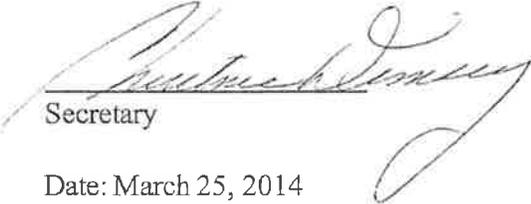
(c) Will not undertake any case or matter for LSCD that is not a priority or an emergency.

Reporting.

(a) LSCD shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) LSCD shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that were not within LSCD's priorities.

(c) LSCD shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority setting; and any changes in priorities.


Secretary

Date: March 25, 2014

Legal Services Corporation of Delaware, Inc.
Profit & Loss by Class

January through December 2011

4:15 PM
06/12/14

Accrual Basis

	DE State Housing Authority	Domestic Violence (VAWA)	Donations	IOLTA	LSC	TIG Grant	Unclassified	TOTAL
Income								
Attorney Fees	0.00	0.00	0.00	0.00	500.00	0.00	0.00	500.00
Donations	0.00	0.00	143,262.76	0.00	0.00	0.00	0.00	143,262.76
Grants	53,985.00	0.00	0.00	125,000.00	0.00	3,500.00	0.00	862,739.00
Interest Income	0.00	0.00	0.00	0.00	1,065.46	0.00	0.00	1,065.46
Misc Revenue	0.00	0.00	-20.00	0.00	0.00	0.00	0.00	1,020.00
Total Income	53,985.00	0.00	143,262.76	125,000.00	688,610.46	3,500.00	0.00	1,014,388.22
Expense								
401 (K)	2,550.03	0.00	16,384.83	8,250.05	17,988.12	0.00	0.00	45,183.03
401 K Administrative	30.00	0.00	70.00	50.01	350.03	0.00	0.00	500.04
Advertising	6.35	0.00	14.84	10.80	74.20	0.00	0.00	105.00
Any Licensing/Registration Fee	36.30	0.00	64.70	60.50	448.50	0.00	0.00	630.00
Business Taxes	600.00	0.00	1,400.00	1,000.00	7,000.00	0.00	0.00	10,000.00
Delaware Empl Training Fund	5.31	0.00	12.39	8.85	61.95	0.00	0.00	88.51
Depreciation Expense	12.35	0.00	28.77	20.55	143.86	0.00	0.00	205.51
Dues	85.25	0.00	0.00	0.00	7,815.88	0.00	0.00	7,815.86
Equipment Rental	408.17	0.00	1,827.08	0.00	0.00	0.00	0.00	3,230.00
FICA Expense	1,278.80	0.00	592.45	680.33	4,762.28	0.00	0.00	6,803.23
Insurance - Malpractice	319.20	0.00	10,965.74	6,132.67	28,453.83	0.00	0.00	46,851.94
Insurance - Workmens comp/sairto	181.94	0.00	745.80	532.00	3,724.00	0.00	0.00	5,320.00
Insurance - Health/Life	684.91	0.00	447.85	319.80	1,800.30	0.00	0.00	2,760.00
HSA - Employer Contribution	4,673.15	0.00	1,621.43	2,158.17	7,167.18	0.00	0.00	11,581.70
Insurance - Health/Life - Other	5,366.06	0.00	19,156.05	14,531.83	73,307.97	0.00	0.00	111,608.10
Total Insurance - Health/Life	127.74	0.00	20,777.48	16,710.10	80,415.16	0.00	0.00	123,270.80
Insurance - Business	350.36	0.00	298.06	212.90	1,450.30	0.00	0.00	2,120.00
Law Library Expense	6.43	0.00	910.90	650.63	4,554.44	0.00	0.00	6,506.33
Litigation Expense	8.70	0.00	46.47	23.42	103.57	0.00	0.00	179.88
Maintenance	305.00	0.00	20.30	101.50	1,015.00	0.00	0.00	1,450.00
Maintenance Contracts	16.72	0.00	503.55	1,804.28	6,329.89	0.00	0.00	8,042.71
Miscellaneous	395.68	0.00	39.00	30.86	202.02	0.00	0.00	286.60
Office Supplies	44.06	0.00	923.82	1,659.80	3,619.11	0.00	0.00	6,536.71
Office/Computer Expense	162.47	0.00	102.81	73.43	514.03	0.00	0.00	734.33
Computer Software	77.40	0.00	379.11	270.80	1,685.54	0.00	0.00	2,707.92
Office/Comp Equip Under \$5000	283.93	0.00	24.79	59.78	227.87	0.00	0.00	2,927.45
Office/Computer Expense - Other	0.00	0.00	506.71	404.02	2,637.54	0.00	0.00	6,386.70
Total Office/Computer Expense	0.00	0.00	0.00	0.00	8,037.80	0.00	0.00	8,037.80
PAI Contracts	0.00	0.00	0.00	0.00	22,520.53	0.00	0.00	22,520.53
PAI Travel	163.28	0.00	380.96	286.87	1,978.89	0.00	0.00	3,058.33
PAI Contracts - Other	232.44	0.00	465.16	334.11	2,473.75	0.00	0.00	2,920.10
Total PAI Contracts	220.65	0.00	846.12	620.98	4,452.64	0.00	0.00	3,541.06
Printing and Reproduction	1,108.82	0.00	2,587.40	3,848.02	10,257.74	0.00	0.00	3,895.19
Professional Fees	3,191.11	0.00	7,445.96	5,316.57	37,036.86	0.00	0.00	19,481.25
Rent	4,509.18	0.00	10,521.42	7,515.30	48,702.75	0.00	0.00	52,895.19
Salaries - Clerical	25,208.45	0.00	56,008.57	51,255.40	309,789.62	4,462.00	0.00	73,711.15
Salaries - Legal	5,234.00	0.00	12,212.62	10,723.39	53,044.40	0.00	0.00	44,223.04
State Unemployment Expense	267.60	0.00	484.43	346.02	3,409.62	0.00	0.00	4,447.67
Subscriptions	54.20	0.00	219.80	157.00	1,099.00	0.00	0.00	1,570.00
Telephone/Cable/Internet	1,083.25	0.00	2,411.02	3,722.21	10,055.23	0.00	0.00	17,221.71
Training Costs	128.76	0.00	300.44	214.60	1,502.20	0.00	0.00	2,146.00
Travel Expense	58.38	0.00	145.11	101.77	712.27	0.00	0.00	1,017.53
Staff travel in state	264.82	0.00	618.14	441.53	3,060.67	0.00	0.00	4,415.26
Total Travel Expense	323.30	0.00	763.25	543.30	3,602.94	0.00	0.00	5,432.79
Utilities	155.06	0.00	315.12	225.07	1,575.60	0.00	0.00	2,250.85
Total Expense	53,999.86	0.00	150,778.04	125,009.53	688,316.17	7,000.00	0.00	1,025,105.60
Net Income	-4.86	0.00	-7,495.28	-9.53	492.29	-3,500.00	0.00	-10,518.38

Class

Attorney Fees
DE State Housing Authority
Domestic Violence (VAWA)
Donations
Interest
IOLTA
IRS
LSC
Mortgage Foreclosure Grant
Pro Se Bankruptcy
TIG Grant

COST ALLOCATION

Legal Services Corporation provides the base funding to Legal Services of Delaware. Other funding sources leverage LSC funds to expand services and maximize the use of LSC dollars.

If there are direct and determinable costs for a specific grant, which costs are allocated specifically by the funding source, these costs will be allocated first, pursuant to the funding source allocations.

With respect to allocation of costs for other grants, or other non-specifically allocated costs, on a periodic basis, the Executive Director will determine the allocation of costs and expenses between different funding sources. The allocation methodology to be employed on a periodic basis will be based upon a number of factors, including funding received during an accounting period, and the allocation will be that which best represents an equitable sharing of expenses across funding sources, and each grant should bear its fair share of expenses.

Costs are managed on a total agency basis. Since the majority of LSCD's funding sources do not restrict funding by budgeted line item, the agency has the flexibility to use funding in the most efficient manner.