



**FINAL REPORT**  
**LEGAL SERVICES CORPORATION**  
**Office of Compliance and Enforcement**

**The Legal Aid Society of Cleveland**  
Case Service Report/Case Management System Review  
April 16-20, 2012

Recipient No. 436050

## **I. EXECUTIVE SUMMARY**

**Finding 1:** LASC'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; however, there were several instances of missing or inconsistent information between the ACMS and the case files, and further improvement is required.

**Finding 2:** LASC's intake procedures and case management system generally support the program's compliance-related requirements. However, there were exceptions noted with respect to screening for income prospects, over-income factors, and citizenship; thus, further improvement is required.

**Finding 3:** LASC generally maintains the income eligibility documentation required by 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 Federal Poverty Guidelines. However, there were several instances where LASC failed to document that a determination of client eligibility was made in accordance with 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4). Further, some revisions to LASC's income eligibility policy are warranted to demonstrate compliance with 45 CFR Part 1611.

**Finding 4:** LASC maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. There were no exceptions noted in the sampled files; however, some revisions to LASC's asset eligibility policy are warranted.

**Finding 5:** LASC is in non-compliance with the prohibitions of 45 CFR Part 1626 (Restrictions on legal assistance to aliens) as numerous sampled files lacked the required form of documentation to evidence eligibility.

**Finding 6:** LASC is in substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

**Finding 7:** LASC is in non-compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

**Finding 8:** Sampled files and interviews evidenced compliance with the requirements of 45 CFR § 1620.3(a) and 45 CFR § 1620.4.

**Finding 9:** LASC is in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

**Finding 10:** LASC's application of the CSR case closure categories is generally consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). There were two (2) patterns of error noted in the sampled files.

**Finding 11: LASC is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timeliness of Cases).**

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

**Finding 13: Review of the recipient's policies and interviews with full-time attorneys who have engaged in the outside practice of law demonstrated that LASC is in substantial compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).**

**Finding 14: Sampled files, as well as interviews conducted with management and staff, evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).**

**Finding 15: Review of the recipient's policies and sampled files, as well as interviews conducted with members of management and staff, evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).**

**Finding 16: A review of LASC's accounting and financial records determined it is in compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

**Finding 17: LASC is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, a few exceptions were identified that require improvement.**

**Finding 18: LASC is in compliance with 45 CFR Part 1627 which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and approval of payments made to attorneys in excess of \$25,000.00. Additionally, LASC is in substantial compliance with 45 CFR § 1610.5 (Notification).**

**Finding 19: Review of the recipient's policies and sampled files, as well as a limited review of fiscal and other records, and interviews with management and staff members, evidenced that LASC is in substantial compliance with 45 CFR Part 1635 (Timekeeping requirement).**

**Finding 20: Review of the recipient's policies and sampled cases, as well as interviews with management and staff members, evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

**Finding 21: Review of the recipient's policies and sampled files, as well as a limited review of fiscal and other records, and interviews with management and staff members evidenced non-compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities), in that the Board-approved policy does not contain all required provisions.**

**Finding 22:** Sampled cases, as well as interviews with management and staff members, evidenced that LASC is in 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:** Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1617 (Class actions).

**Finding 24:** Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1632 (Redistricting).

**Finding 25:** Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

**Finding 26:** Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

**Finding 27:** Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

**Finding 28:** Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

**Finding 29:** Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in 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:** A limited review of the signed written statements evidenced that LASC is in compliance with the requirements of 45 CFR § 1620.6.

**Finding 31:** Review of the recipient's policies evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information).

**Finding 32:** A limited review of LASC's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to the

**elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.).**

## II. BACKGROUND OF REVIEW

On April 16 through 20, 2012, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at The Legal Aid Society of Cleveland ("LASC"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipient (2010 Ed.), and the Property Acquisition and Management Manual. The visit was conducted by a team of three (3) attorneys, one (1) management analyst, and two (2) fiscal analysts. Two (2) of the attorneys were OCE staff members; the remaining attorney and the management consultant were temporary employees. Both fiscal analysts were OCE staff members.

### Background of Program

LASC is a non-profit legal services organization providing free legal services to low-income and disadvantaged residents in the LSC service area known as OH-21. For 2011, LASC reported 84 staff members, 49 attorneys, 14 paralegals, and 21 other staff members. LASC is headquartered in Cleveland, Ohio and maintains offices in Elyria, Jefferson, and Painesville. Additionally, as part of its medical-legal partnership, LASC staffs outreach at Metro Health to address the non-medical barriers to health through legal advocacy. The three (3) main areas of LASC's legal practice are family, consumer, and housing law. LASC involves private attorneys in the delivery of legal services through small pro bono components in its local offices; however, the bulk of the pro bono practice appears to be conducted through the efforts of the Cleveland-based PAI Unit which operates attorney-client match programs and clinics in partnership with local courts and bar associations.

For 2012, LASC is scheduled to receive LSC funding of \$1,997,118. During 2010, LASC received LSC funding of \$2,441,175, and aggregate funding of 8,225,021. In 2011, LASC received LSC funding of \$2,343,499, and aggregate funding of \$8,019,462. During 2011, 76.4% of cases reported were closed with limited service case closure categories and 23.6% of cases closed were closed with extended service case closure categories. During 2010, 77.1% of cases reported were closed with limited service case closure categories and 22.9% of cases closed were closed with extended service case closure categories.

In 2010, LASC's adjusted self-inspection rate was 8.5%, and during 2011 the rate of error was 5.3%. The errors reported related to failure to document legal assistance provided, failure to obtain citizenship attestations when required, and failure to close limited action cases in a timely manner.

### Overview of CSR/CMS Visit

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that LASC correctly implemented the 2008 CSR Handbook, as amended in 2011. Specifically, the review team assessed LASC 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 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);<sup>1</sup> 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)<sup>2</sup>; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR 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).

In preparation for the visit, on February 14, 2012, OCE requested that LASC provide certain case lists. Case lists requested included all cases reported in its 2010 CSR data submission ("closed 2010 cases"), all cases reported in its 2011 CSR data submission ("closed 2011 cases"), all cases that had been closed between January 1, 2012 and February 15, 2012 ("closed 2012 cases"), and all cases which remained open as of February 15, 2012 ("open cases"). OCE requested that two (2) sets of lists be compiled - one (1) for cases handled by LASC staff and the other for cases handled through LASC's PAI component. OCE requested that each list 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 closure category assigned to the case, the funding code assigned to the case, and an indication of whether the case was handled by staff or by a private attorney pursuant to 45 CFR Part 1614. LASC was advised that OCE would seek access to case information 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). OCE instructed LASC 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, LASC provided the materials. OCE made an effort to create a representative sample of cases that the team would review during the visit. OCE distributed the sample proportionately among open and closed cases and among LASC's various offices. The sample consisted largely of randomly selected cases, but also included cases selected to test for compliance with those CSR instructions relative to timely closings, application of the CSR case closure categories, and duplicate reporting.

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

<sup>2</sup> 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.

## CSR/CMS Visit

During the visit, LASC cooperated fully and provided the requested materials. LASC afforded access to information in the case files through staff intermediaries. LASC maintained possession of the files and disclosed financial eligibility information, problem code information, and information concerning the general nature of the legal assistance provided to the client pursuant to the OCE and LASC agreement of February 27, 2012. Additionally, LASC displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and Part 1636 statements. OCE reviewed a sample of 424 case files during the visit; 334 were randomly selected and 90 were targeted. OCE also interviewed members of LASC's upper and middle management, fiscal personnel, staff attorneys, and support staff. OCE assessed LASC's case intake, case acceptance, case management, and case closure practices and policies in all offices for staff and PAI programs, and at a Metro Health outreach location. OCE fiscal staff reviewed LASC's compliance with the LSC grant, conducting a limited review of internal controls, prohibited political activities, fee-generating cases, the use of non-LSC funds, PAI component allocations, payment of membership dues and fees, timekeeping, attorney fees, cost standards and procedures, and other fiscal activities. A limited sampling of informational pamphlets and brochures was collected and reviewed.

## Overview of Findings

During the course of the visit, OCE attempted to advise LASC of any compliance issues as they arose. OCE notified members of LASC's upper and middle management, fiscal personnel, staff attorneys, and support staff of compliance issues identified during the review. At the conclusion of the visit, OCE held a brief exit conference during which OCE advised LASC of its preliminary findings. During the exit conference, OCE explained LASC that the findings were merely preliminary, that OCE might well make further and more detailed findings in the Draft Report, and that LASC would have 30 days to submit comments to the Draft Report. LASC was advised that a Final Report would be issued that would include LASC's comments. LASC was further advised that OCE may request additional documentation or a demonstration that the required corrective action items have been implemented.

During the exit conference, OCE advised LASC that its staff members were familiar with the LSC regulations, the CSR Handbook, and the Frequently Asked Questions disseminated by LSC. OCE further advised LASC that OCE detected limited patterns of non-compliance, concerning certain regulatory and reporting requirements. These included the failure to obtain attestations/documentation of citizenship/alien eligibility status, the failure to screen for income prospects, the reporting of LSC and non-LSC funded cases in the CSRs that exceeded LSC's income eligibility guidelines, and the failure to obtain statements of facts when required. Additionally, the sampled cases reflected a few instances of untimely closed or dormant files, some automated case management system ("ACMS") inconsistencies, lack of documentation of legal advice, retainer agreements that were not properly executed, and limited patterns of case closure category errors. With the exception of errors related to financial eligibility, all errors appeared to be the result of human error which were not corrected because of weaknesses in LASC's oversight practices and procedures. LASC advised that it would take action to reduce the incidences of human error by developing additional oversight practices. A review of LASC's

policies reflected a need for revision in order to bring them into compliance with LSC regulations.

A limited fiscal review identified some weaknesses in internal controls, timekeeping, and sending of donor notification letters, and a failure to properly allocate permissible 45 CFR Part 1612 activity to non-LSC funding sources.

Overall, LASC has implemented reasonable and effective compliance measures. However, the identified patterns of compliance errors require improvement as discussed herein.

By letter dated July 2, 2012, OCE issued a Draft Report (“DR”) detailing its findings, recommendations, and required corrective actions regarding the April 16 through 20, 2012, CSR/CMS visit.<sup>3</sup> LASC was asked to review the DR and provide written comments. By emails dated July 12, 2012, and August 10, 2012, LASC requested that the deadline to submit comments be extended. OCE granted the request and LASC submitted its comments, by email and regular mail, on August 31, 2012. LASC’s comments have been incorporated into this Final Report (“FR”), and are affixed as exhibits.

After reviewing the documentation submitted by LASC concerning the actions it has taken and the action which it is in the process of implementing, OCE has determined that LASC evidenced its commitment to achieving and maintaining high compliance standards. Additionally, LASC’s compliance efforts are geared toward developing a program-wide culture that emphasizes compliance requirements.

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<sup>3</sup> In advance of the Draft Report’s issuance, on May 19, 2012, LASC advised OCE of the steps it had taken up to that point in time to address issues raised during the exit conference. Those materials are attached to this Final Report as exhibits.

### III. FINDINGS

**Finding 1: LASC’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; however, there were several instances of missing or inconsistent information between the ACMS and the case files, and further improvement is required.**

Recipients are required to utilize ACMS and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.1.

Interviews reveal that staff is well-trained on data entry and data management of the LASC Pika™ ACMS. As required by the CSR Handbook (2008 Ed., as amended 2011), §§ 3.2, 3.3, and 3.4, LASC has implemented automatic computer generated procedures to ensure that LSC compliance-related requirements are met and that CSRs are accurate. The first is the use of 21 red flags that “pop up” and serve as warnings when required LSC compliance fields are incomplete. The second method is the use of automatic reports sent by e-mail to staff. These reports are generated either on scheduled frequency or when an issue is identified. The first report is a “Case Transfer Alert Report,” sent three (3) times per day to each staff member who has been assigned a case which identifies the cases that were assigned. This report is a critical component of oversight used by the Intake and Referral Unit Supervising Attorneys to track cases transferred to them by intake staff. It is also a critical measure to alert practice group staff when cases are transferred from the Intake and Referral Unit for possible extended representation. The second is a monthly “Missing Demographic Report” which alerts staff members assigned to a case that the case is missing demographic information. While the report is sent monthly, it identifies all cases assigned to the staff member in the current calendar year until the error is corrected. Lastly, the monthly “Case Contradictions Report” alerts staff members that errors were identified in one (1) or more of the fields critical to compliance and database integrity in the current month’s open assigned cases.

The use of the red flag and automated report system permits LASC to comprehensively identify and correct many critical compliance errors. However, for these measures to be effective, staff must assume the responsibility of taking action to correct the “red flagged” problems. Interviews revealed that while some staff members diligently responded to the red flags and contradiction reports, others do not. Interviews further confirmed that management does not consistently conduct compliance reviews to ensure that staff diligently responds to the red flag problems or correct other compliance-related requirements that cannot be detected by the use of a red flag.

The failure of management and staff to consistently review red-flagged items and other compliance-related information may be, in large part, the cause of the ACMS errors identified during the review. Several cases were identified that were missing information or the information between the paper file and the ACMS was consistent. For example, the sampled identified closed 2011 Case Nos. VLP-11-15862, INT-11-07951, INT-11-09485, INT-11-10414, and LP-11-08595 that were missing open dates, closed Case No. 2011NT-11-07951 that was missing advocate information, closed 2012 Case No. INT-12-02245, that was found to have inconsistent

open date information, closed 2011 Case Nos. INT-11-02471 and INT-11-03246 that was found to have inconsistent closing code or closing date information, and closed 2010 Case No. CUY-08-14187 that was found to have inconsistent staff/PAI designation information.

The review revealed that LASC's ACMS is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, as almost every ACMS inconsistency found during case review appeared to be a result of human error that could have been avoided by a review of Case Contradiction Reports or by a comparison of the paper file to the ACMS, some improvement is required. As a result, LASC, on May 3 and May 11, 2012, instructed its staff that everyone was expected to ensure compliance-related information was complete and correct by using the automated reports more frequently, and by correcting the red flags. In addition, LASC committed to enhancing its ACMS compliance page and developing additional protocols and procedures.

As a corrective action, LASC was directed to submit, with its comments to the Draft Report, copies of the additional protocols and procedures it has developed to ensure that information necessary for the effective management of cases is accurately and timely recorded. As a recommendation, LASC could require case handlers to reconcile the information contained in files with that yielded by the ACMS at case acceptance, annual case reviews, and at case closing. Periodic, effective, and comprehensive management of cases at the time of case opening and case closure may be all that is necessary to identify and rectify the patterns of error or identify the staff members in need of targeted assistance. As an additional recommendation, LASC could program an additional red flag into its ACMS which would indicate that written citizenship attestation or alien verification documentation is required because of an applicant's in-person contact with the recipient.

In its comments to the DR, LASC noted that it had taken a number of actions designed to ensure that the ACMS information necessary for the effective management of cases is accurately and timely recorded. For example, LASC indicated that it discussed the preliminary findings detailed during the exit conference with its intake staff and management, and conducted a mandatory training for all staff on May 11, 2012. LASC reported that it instructed staff about the use and review of Case Contradiction and Missing Data Reports. Each month those reports will be distributed to case handlers and Managing Attorneys will be included so that they can insure that case handlers take the required corrective action. LASC advised LSC that it now requires staff to review open cases every six (6) months to ensure that the information in the ACMS is correct and that it is consistent with the paper file. After this review, staff is required to prepare a Memorandum to the file in order to provide assurance that the review was completed. A copy of the instruction to staff was provided to LSC along with the comments to the DR. Additionally, LASC reported is in the process of developing a new Intake Manual that will reflect changes to its policies and procedures which are required to implement the recommendations and required corrective actions detailed in the DR. LASC indicated that its new Intake Manual will incorporate a citizenship red flag system and will contain a newly developed compliance page in its ACMS that provides an additional oversight method in order to ensure that each file contains the information necessary to comply with LSC requirements. However, LASC's vendor who is performing the work has indicated that it will take considerable time to program the modifications into the ACMS and that the modifications cannot be

completed until February 28, 2013; thus, LASC indicated that the new Intake Manual cannot be completed until March 31, 2013. LASC indicated that it anticipates its Reference Guide will be completed by November 30, 2012.

Accordingly, and based upon the review of the May 3, 2012 Memorandum instruction to staff submitted with its comments to the DR, LASC has taken partial action designed to implement Required Corrective Action item 1 and must continue to take corrective action to ensure that a new Intake Manual is created and that the modifications made to its ACMS are completed. LASC must provide LSC with a copy of the new Intake Manual, the Reference Guide, templates, and screen shots of the ACMS modifications by April 30, 2013.

**Finding 2: LASC's intake procedures and case management system generally support the program's compliance-related requirements. However, there were exceptions noted with respect to screening for income prospects, over-income factors, and citizenship; thus, further improvement is required.**

The intake procedures of the main and branch offices, including the Medical-Legal Partnership outreach office located at Metro Health, were assessed by interviewing the primary Intake Specialists and Attorney and Managing Attorney staff members. The interviews revealed that intake procedures performed by staff generally support the program's compliance-related requirements. Some exceptions were noted with respect to defaults and screening for income prospects, as well as screening of assets, citizenship, and over-income factors.

In early 2011, LASC reorganized its structure to integrate intake and substantive legal work, regardless of the physical location to staff. Until that time, each local office was responsible for conducting its own intake. Each office's managers were responsible for supervising intake. In addition, case handlers were usually generalists focusing on work in the counties served by their office. The reorganization centralized intake, developed uniform procedures, and created specialty practice groups across the offices. Presently most staff are based in the Cleveland office and, except for legal secretaries, the staff in the outlying offices are assigned to a specific intake or practice group. Consistency is maintained due to written intake procedures that are available to staff on the program's intranet and also by training. A copy of these procedures was provided to OCE in advance of the review.

LASC estimates that approximately 80% of its intake is conducted by telephone through its program-wide Intake and Referral Unit; with the remaining 20% being in-person intake, primarily at the PAI Brief Advice and Referral Clinics held throughout the service area.

Five (5) citizenship attestation documents were identified and evaluated: the printed ACMS intake sheet, two (2) separate Statements of Citizenship, the Application for Legal Services completed by in-person applicants, and a statement on the Acknowledgement for Pro Se Divorce Assistance Project Participation. Each of these documents comply with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5.<sup>4</sup>

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<sup>4</sup> Additionally, paper PAI intake forms were identified and reviewed. These forms are discussed in Finding 17.

## Description of Model:

### Intake and Referral Line

The Intake and Referral Unit and the Volunteer Lawyer's Program (“VLP”) are sub-units within the Intake and Volunteer Lawyer's Program Unit. The sub-units are managed by an experienced Managing Attorney. Two (2) Supervising Attorneys manage day-to-day intake operations supervising a staff of three (3) receptionists and nine (9) Intake Specialists. Two (2) Intake Specialists are located in Elyria, one (1) of whose time is 100% intake, and another whose time is divided between intake and legal secretarial duties. Both the Jefferson and Painesville offices house an Intake Specialist who each divides their time between intake and legal secretarial duties.

Intake calls are answered by any of the Cleveland receptionists who pre-screen for eligibility, county of residence, and legal problem. Persons with criminal problems are referred to resources in the community. Callers who appear to have a priority legal issue are placed in the queue for the intake line.<sup>5</sup> Intake Specialists log into the intake queue based upon a schedule.<sup>6</sup> Calls, by order of time called, are automatically routed to the next available Intake Specialist who conducts an eligibility screening guided by the ACMS screens. Beginning with a duplicate check, intake staff obtains demographic, program-wide conflict, income, asset, over-income factors, and citizenship information. LASC staff demonstrated familiarity with program priorities.

If the caller is eligible for services, the Intake Specialist proceeds to an interactive questionnaire, prompted by the problem and sub-problem codes. Depending upon the caller's answers, branch logic leads the intake staff through a series of questions and ultimately determines the next step based upon LASC priorities, written case acceptance guidelines (provided during the review), and financial eligibility. The next step options are to reject the case, refer the case to the VLP, provide legal advice and close the case, provide legal advice and code the case as “pending for possible referral to a practice group,” or to provide legal information and close. If the logic of the questionnaire indicates that the case should be rejected, the caller is so advised and the appropriate rejection letter is sent. If legal information is deemed appropriate, the corresponding information is generated in a script format and provided verbally to the caller. The system directs intake staff to the correct information letter along with any supplemental pamphlets. Intake Specialists are permitted to sign legal information letters. If the determination is that advice should be provided, the exact script of advice is automatically produced along with the corresponding letter reiterating the advice, attachments, and case coding instructions. All advice letters must be signed by a Supervising Attorney. Advice letters generated by Intake Specialists in a branch office are sent to print in Cleveland for a Supervising Attorney's review and signature. Advice cases are either immediately closed after the letter is generated or coded as “pending” if logic deems the case appropriate for referral to a practice group. The case handler in all advice cases is considered the intake Supervising Attorney. If there is uncertainty as to the

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<sup>5</sup> The exception to this is if a caller is seeking a divorce. These callers receive a “call-back” and additional screening to determine eligibility for placement in an appropriate local office for monthly pro se divorce clinics.

<sup>6</sup> The written procedures provided in advance of the review indicate that the intake schedule takes into consideration lunch hours and staff with part-time intake hours.

next step, or the information provided by the caller is ambiguous, the Intake Specialist advises the caller that they will receive a call back, transfers the case to a Supervising Attorney, and codes the case as “open” pending further instruction.

The advice provided to the client is documented in several manners; the script of verbal advice is transferred to the case notes and the Intake Specialist indicates in a separate note below the case notes that the advice was provided to the client, and the advice letter and completed questionnaires are attached as documents to the electronic file. These documents are not routinely printed, especially if the case is closed with advice because the questionnaires alone may be up to 30 pages long. Case documentation was reviewed to ensure that the sum of the documentation demonstrated the provision of advice as defined by the CSR Handbook (2008 Ed., as amended 2011). A bankruptcy questionnaire, verbal advice as documented in case notes, an advice letter, and a sample letter to debtors from an actual random case was reviewed, along with a sample of advice letters on different topics. The review revealed that some letters independently documented legal advice as defined by the CSR Handbook (2008 Ed., as amended 2011), § 2.2, though others did not. On-site review demonstrated that in such cases, advice was evidenced through a consideration of the case notes, the advice letter, and the questionnaire.

Cases identified as appropriate for extended representation are transferred from intake according to case acceptance guidelines and distribution protocols. Cases are sent to Managing Attorneys or other experienced staff members, depending upon the practice group. While each practice group meets on a regular basis, decisions on acceptance for extended representation are made by the case handler who receives the case from intake. As described previously, staff members are notified of case transfers three (3) times per day through the “Case Transfer Alert Report” though staff members are able to easily access transfer information on demand. Except in the few instances when an applicant is screened in-person, practice group staff members are responsible for obtaining citizenship attestations or reviewing eligible alien status documentation prior to accepting the applicant for services.

### In-Person Intake

Each office, including the outreach at Metro Health locations, and the staff who operate the PAI Brief Service Advice, and Referral Clinics conduct in-person intake as necessary:

1. *Program Offices:* In Cleveland, Intake Specialists are assigned to in-person intake according to day and time. In the smaller offices, the Intake Specialist(s) is primarily responsible for in-person intake while the legal secretaries serve as back-up. In-person applicants at branch offices complete a pre-screening “Application for Legal Services,” which is a form that collects basic demographic information and contains a compliant citizenship attestation. If an applicant is not a citizen, the Intake Specialist is required to copy the eligible alien status documentation and complete the Eligible Alien Exception and VAWA Determination form. Applicants are screened in a private office. After pre-screening, the Intake Specialist conducts eligibility screening guided by the ACMS and cases are handled pursuant to the LASC protocols.

2. *Outreach Locations (Medical-Legal Partnership)*: Staff assigned to the Metro Health locations conduct intake for applicants by remote access to the ACMS/ACMS. Intake screening is guided by the ACMS; citizenship screening and intake procedures are consistent with LASC intake policy and practice protocols. It was reported that all staff assigned to Metro Health locations use the same citizenship attestation, which was reviewed and found to be compliant. There are no other paper intake forms used.
3. *PAI Brief Advice and Referral Clinics*: In-person intake is conducted by law students and staff members using a paper intake form. It is either conducted prior to the clinic by the Intake and Referral Unit, and is consistent with LASC policy and procedures, or it is conducted with a paper intake form at the Brief Advice and Referral Clinic that is not consistent with the ACMS intake screens. The screening of applicants for PAI clinics is more fully discussed in Finding 17.

#### Issues Related to Financial Eligibility Screening:

##### Defaults

LSC has determined that certain fields that are critical to eligibility (number in household, income, assets, citizenship/alien eligibility status, and LSC eligibility) may not have a default because it tends to reduce the accuracy of the data submitted. Accuracy is reduced because there is no way to tell whether staff actually made an inquiry and decision as to what should go in the field or just skipped over it, allowing the default value to be recorded.<sup>7</sup> The review identified a default in the essential category of “LSC Eligible.”<sup>8</sup> As a corrective action, LASC was directed to remove the LSC eligible default as it is in an essential category of eligibility.

In its comments to the DR, LASC agreed to remove the “LSC Eligible” default from its ACMS and stated it has requested that its vendor modify its ACMS accordingly. LASC anticipates that this ACMS modification will be completed no later than December 31, 2012.

Accordingly, LASC must continue to take corrective action designed to implement Required Corrective Action item 2, by ensuring that the planned ACMS modifications are completed. LASC must provide LSC with a screen shot of the modifications made to its “LSC Eligible” ACMS field by January 30, 2013.

##### Reasonable Inquiry Regarding Income Prospects

It was disclosed, during the on-site observations of the intake process and during interviews, that staff members do not inquire into an applicant’s reasonable income prospects as required by 45

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<sup>7</sup> See CSR Handbook (2008 Ed., as amended 2011), § 3.6.

<sup>8</sup> Accordingly, if a case is not LSC eligible because it is over the LSC financial eligibility guidelines, and funded by a non-LSC source, the LSC Eligible default must be manually unchecked by a staff person. Ineligible callers are advised according to a script and a reject letter is generated.

CFR § 1611.7(a)(1). LASC is advised that, as part of their financial eligibility screening, recipients are required to make reasonable inquiry into the income prospects of each applicant for LSC funded legal assistance pursuant to 45 CFR § 1611.7(a). Although the regulation does not define "reasonable," LSC has suggested that after inquiring into the applicant's household income, recipients could ask whether the applicant has any reason to believe that his income is likely to change significantly in the near future.<sup>9</sup> Both the inquiry and the applicant's response should be documented as part of the recipient's financial eligibility determination.<sup>10</sup> As a corrective action, LASC was directed to ensure inquiries are made into every applicant's reasonable income prospects. During the on-site visit, it was recommended that staff be provided training concerning this requirement, and that this inquiry is entered into the notes section of the ACMS. Since that time, LSC was informed that LASC instructed its staff to obtain this information in every case. LASC further agreed to conduct additional training and develop tools in ACMS to facilitate this requirement.

In its comments to the DR, LASC noted that, on May 3, 2012, it instructed staff to inquire into the reasonable income prospects of every applicant and document it in the case file. Additionally, LASC advised that it now prepares ACMS reports to determine whether staff is recording reasonable income prospect information. LASC reported that it intends to further modify its ACMS so that staff can more easily record this inquiry. LASC anticipates that this ACMS modification will be completed no later than March 31, 2013.

Accordingly, and based upon a review of the May 3, 2012 LASC Memorandum instruction to staff submitted to OCE with its comments to the DR, LASC has taken sufficient action, designed to implement Required Corrective Action item 6, to ensure inquiries into every applicant's reasonable income prospects. However, LASC must provide LSC with a screen shot of its newly implemented ACMS report and a screen shot of the ACMS modifications made relating to reasonable income prospects screening no later than April 30, 2013.

#### Authorized Exceptions to the Income

Interviews, observation of intake, and case review identified several concerns related to the application of the authorized exceptions financial eligibility policy:

- *Spend Down:* In accordance with LSC regulations, LASC has adopted authorized exceptions to its annual income ceilings, consistent with 45 CFR § 1611.5. When qualifying individuals with income between 125-200% of Federal Poverty Guidelines ("FPG"), staff members "spend down" the applicant by subtracting expenses from the applicant's gross annual income and, if the net income is at or below 125%, the applicant is determined to be eligible for LSC funded assistance. The practice of "spending down" an applicant is inconsistent with the financial eligibility policy approved by LASC's Board of Directors. This policy provides that an "applicant for legal services whose income does not exceed 200% of FPG may be eligible for legal assistance *if one (1) or more of the following factors is applicable* to the applicant or members of the applicant's household" (emphasis

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<sup>9</sup> See Office of Legal Affairs ("OLA") Advisory Opinion AO 2009-1006 (September 3, 2009).

<sup>10</sup> See 45 CFR § 1611.7(a)(1).

added).<sup>11</sup> LASC is advised that while 45 CFR § 1611.5(a) does not require recipients to adopt policies to qualify individuals whose incomes exceed 125% of the FPG, or adopt a factor analysis, LSC regulation does require programs to screen applicants in accordance with its Board-approved policy. If the policy includes a factor analysis, expense exceptions cannot be “spent down” during eligibility screenings. During the on-site review, LSC recommended that LASC address this issue by requiring staff to adhere to the factor analysis or revise its income policy as a spend down. LSC has been advised that, on May 3, 2012, LASC instructed its staff to apply its policy as written as a factor analysis. It further agreed to conduct additional training to ensure compliance with this section. As a corrective action, LASC must ensure that over-income applicants are screened in a manner consistent with its Board policy.

- Failure to Record Facts Supporting Authorized Exception Factors: As discussed in Finding 3, *infra*, cases were identified in which the “fixed debts” or “other significant factors” income justification was selected and where the intermediary reported that there was no additional information describing the factor. In addition, intake interviews disclosed that a few staff members routinely select the “other significant factors” justification for certain categories of cases without additional inquiry, i.e., cases for senior citizens. LSC regulation requires that when recipients use exceptions to justify finding an over-income applicant to be financially eligible, they must “keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.”<sup>12</sup> LSC has instructed that applicants should be screened for information specific to their circumstance and, if a significant factor is identified, it should be detailed.<sup>13</sup> LASC’s practice of recording the specific factor considered, i.e., fixed debts and other significant factors, without any further information concerning these facts, lacks clarity. During the on-site review, LASC was instructed that it must improve its documentation of facts supporting its determination of eligibility for applicants with incomes between 125-200% of the FPG and must instruct its staff to record the particular facts and factors that the program relied upon to determine eligibility.<sup>14</sup> On May 3, 2012, LSC was

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<sup>11</sup> See The Legal Aid Society of Cleveland Financial Eligibility Policy and Guidelines, I(F)(3), (October 12, 2011), which was provided in advance of the review. The exceptions authorized by the policy include current income prospects, unreimbursed medical expenses and premiums, fixed debt and obligations, dependent care, transportation, clothing, equipment necessary for employment, job training, or education, non-medical expenses associated with age or disability, current taxes, or other significant factors that affect the applicant’s ability to afford legal assistance.

<sup>12</sup> See 45 CFR § 1611.5(b)

<sup>13</sup> See OLA External Opinion EX 2001-1015 (October 22, 2001)

<sup>14</sup> By way of general guidance, if a recipient applies a factor analysis to determine eligibility, it is not necessary to record the specific dollar amount of the expense considered. However, the particular facts and factors the program relies upon to determine eligibility must be recorded. The particular fact to be recorded is a case-by-case determination (as the determination of an applicant’s eligibility is necessarily case-by-case). For example, a single box of decongestants for a cold, \$20 co-pay for a single doctor’s appointment, and \$3000 in hospital bills for a surgery and hospital stay are all unreimbursed medical expenses. While the latter certainly has a major impact on an applicant’s ability to afford legal assistance, the former may not impact the ability to afford legal assistance. Similarly, it might be enough to say that someone who comes in at 126% has day care and mortgage expenses and, considering those, the recipient found the applicant to be financially eligible; whereas if someone

informed that, LASC agreed to conduct additional training and to develop tools in its ACMS to facilitate the correct use of the income justification process.

In addition, the income justification factors listed in its written income policy do not match those in the ACMS. As a general comment, LASC's two (2)-step practice of deducting expenses and applying income justification factors does not violate LSC requirements, but it is not required and may add unnecessary time to eligibility screening. This step is not set forth in the Board-approved financial eligibility policy, though it is required by LASC's written intake manual.

In its comments to the DR, LASC noted that it has instructed staff to screen over-income applicants consistent with Board policy, thus LASC now requires staff to adhere to the factor analysis and to record the facts supporting the authorized exception factors that are contained in that policy. However, LASC did not submit documentation to evidence this training or instruction with its comments. Additionally, LASC reported that it is modifying its ACMS to improve staff's ability to obtain and record information concerning the authorized exception factors and is revising its Intake Manual to include procedures for the screening of over-income applicants consistent with Board policy. LASC anticipates that these ACMS modifications will be completed by December 31, 2012 and that the update to the Intake Manual will be completed by March 31, 2013.

Accordingly, based upon the review of the May 3, 2012 Memorandum instruction to staff submitted with its comments to the DR, LASC has taken sufficient action designed to implement Required Corrective Action items 3 and 4 in order to ensure that cases reported to LSC in the CSRs contain documentation evidencing the particular facts and factors LASC has relied upon to determine eligibility for applicants with incomes between 125-200% of the FPG, consistent with its Board-approved policy. However, LASC must provide LSC, by January 30, 2013, with documentation evidencing its instruction to staff regarding screening over-income applicants consistent with its Board-approved policy, as well as recording the facts supporting any authorized exception factors used for case acceptance. LASC must also provide LSC with a screen shot evidencing any ACMS modifications, as well as Intake Manual revisions, no later than April 30, 2013.

- *Use of Standardized Expense Amounts:* Staff members deduct a standard amount for work related gas or public transportation expenses. During the review, LASC provided a chart, which is part of its intake manual, which describes the standardized expense deductions as follows:

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comes in at 200% and has no rent or mortgage payments, but only had day care, the program might need to have some more detail to the documentation to explain how significant an expense the day care was (the child has physical disabilities and requires specialty care) such that the program found the applicant to be financially eligible.

Deductions	1 Person	2 People
Work Expense- Transportation	Drives = \$200 monthly (includes gas and insurance) (do not deduct actual insurance amount and lease/car payments)	Drives = \$300 monthly (includes gas and insurance) (do not deduct actual insurance amount and lease/car payments)
	Bus = \$85 monthly	Bus = \$170 monthly
Work Expense- Other	Actual amount deducted from pay for Union Dues /Uniforms	Actual amount deducted from pay for Union Dues / Uniforms

- Interviews disclosed that LASC instructs its staff to use deductions in cases where income is between 125-200% of the FPG, and to apply standard deductions if applicable. This practice is inconsistent with LSC regulation that requires recipients to document the basis of an eligibility determination and, in order to do this, only the actual expenses considered can be recorded. Thus, there is no authority for the application of standard expenses. During the on-site review, OCE advised LASC that there is no authority for the application of standard expenses. As a corrective action, LASC must cease this practice and revise its intake manual accordingly. LASC informed LSC, on May 3, 2012, that it would conduct additional training and develop tools in ACMS to address this issue.

In its comments to the DR, LASC noted that it no longer uses standardized expenses. Accordingly, LASC has taken sufficient action designed to implement Required Corrective Action item 3 by ensuring that there is no use of standardized expense deductions.

#### Citizenship and Eligible Alien Status Screening

As described above, practice group staff must obtain citizenship attestations or review eligible alien status documentation for most cases accepted for extended representation. Interviews and case review revealed that this important compliance requirement is not universally met. Further, interviews revealed that staff is generally unaware that the requirements of 45 CFR Part 1626 must be satisfied even when in-person contact is limited to a client dropping off paperwork.

Interviews with staff revealed that case handlers rely upon intake staff to screen for eligibility and meet compliance requirements prior to a referral to a case handler. Because the majority of

the program's intake is by telephone, it would be impractical for intake staff to obtain written Part 1626 documentation prior to a referral. It is understood that the program's goal is to focus case handler time on the performance of legal work; however there are certain requirements which must be the responsibility of case handlers due to LASC's intake system. During the on-site review, OCE recommended mandatory compliance training of all staff.

As a corrective action, the DR advised LASC that new procedures must be put in place to ensure compliance with 45 CFR Part 1626. LSC was informed that, on May 3, 2012, LASC instructed that staff must get a citizenship attestation for every client with whom there is in-person contact and in all extended service cases, even if a client simply drops off documents. LASC also agreed to include this information on its ACMS compliance page and to institute additional procedures for clients who drop off documents.

In its comments to the DR, LASC indicated that, on May 3, 2012, LASC management communicated with staff via Memorandum the importance of obtaining citizenship or eligible alien status documentation in every case and clarified that staff should obtain a citizenship attestation or alien eligibility status documentation for any case in which there is in-person contact, even when an applicant is merely dropping off documents at an office. LASC further instructed staff to review all open cases to ensure that a citizenship attestation or eligible alien status documentation was present when necessary. Additionally, LASC submitted, with its comments to the DR, a copy of its August 24, 2012 case opening procedures which requires staff to review the paper and ACMS file upon case acceptance and thereafter every six (6) months to ensure that a citizenship attestation or eligible alien status documentation has been obtained. LASC further indicated that if it determines that cases lack a citizenship attestation or eligible alien status documentation when required, LSC funds would not be charged for the costs associated with the cases and those cases would not be reported to LSC in the CSRs.

Accordingly, and as discussed in Finding 2, *supra*, LASC has taken sufficient action designed to implement Required Corrective Action item 9 to ensure that all cases contain evidence of citizenship or eligible alien status documentation and that cases lacking appropriate documentation are not included in the CSRs.

#### Asset Screening

An issue was identified with regard to asset screening. Some staff members were still applying an outdated asset ceiling of \$5,000. This ceiling was increased by the Board in October 2011. Intake protocols require Intake Specialists to consult with an intake Supervising Attorney prior to rejecting an applicant for being over-assets. Accordingly, it is unlikely that applicants have been improperly denied assistance in this regard. However, additional training is recommended.

#### Conclusion

With a few exceptions, LASC's intake procedures and case management system support the program's compliance-related requirements. However, it was disclosed that members of management and supervising staff do not review attorney cases upon closure. Interviews revealed that there is a cultural disconnect within the program between intake and case handler

staff where case handlers largely rely upon intake staff to screen for eligibility and to resolve concerns prior to a referral. Further, though the program has developed a number of reports to identify data inconsistencies, it appears many staff members do not review them and correct the issues. These factors have resulted in compliance defects, most notably the absence of citizenship attestations and documentation of eligible alien status verification, in a significant number of extended service cases as discussed further in Finding 5. As set forth above, LASC must ensure all compliance requirements are consistently met in a timely manner by implementing the corrective action items described above.

**Finding 3: LASC generally maintains the income eligibility documentation required by 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 Federal Poverty Guidelines. However, there were several instances where LASC failed to document that a determination of client eligibility was made in accordance with 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4). Further, some revisions to LASC’s income eligibility policy are warranted to demonstrate compliance with 45 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.<sup>15</sup> *See* 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), 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.

As stated in Finding 2, LASC provided its financial eligibility policy in advance of the review. In compliance with 45 CFR §§ 1611.3(c)(1), 1611.3(d)(1) and 1611.3(e), the policy sets forth

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<sup>15</sup> A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

the eligibility requirements to receive LSC funded assistance. The policy establishes an annual income ceiling of 125% of the FPG, establishes asset ceilings, and specifies that when assessing the financial eligibility of a victim of domestic violence, the program will consider only the income and assets of an applicant and will not consider assets jointly held with the perpetrator. However, the policy is not in compliance because it fails to specify "that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds." This provision is required to be part of all financial eligibility policies for LSC funded legal assistance pursuant to 45 CFR § 1611.3(b).

LSC regulations require that applicants be income eligible *and* that their assets not exceed the applicable asset ceiling (emphasis added). LASC's policy omits mention of "asset eligibility" when it sets forth its financial eligibility standards in Section I(A).<sup>16</sup>

In its comments to the DR, LASC agreed to revise its Board-approved policies to bring them into compliance with 45 CFR § 1611.3(b) and 45 CFR § 1611.4(b) by December 31, 2012.

Although LASC has indicated it will take sufficient action designed to implement Required Corrective Action item 7 by ensuring that its financial eligibility policies are consistent with 45 CFR § 1611.3(b) and 45 CFR § 1611.4(b), such actions have not yet been completed. Thus, LASC must provide LSC with a copy of its Board- approved financial eligibility policy by January 30, 2013. It is also recommended that LASC provide LSC with a draft copy of its revised financial eligibility policy for review and approval prior to its submission for Board approval.

LASC's group eligibility policy is consistent with the requirements of 45 CFR § 1611.6.<sup>17</sup> In addition, LASC has developed procedures to ensure that groups be eligible for services in compliance with 45 CFR § 1611.7(a)(2)(b) and (c). However, the review demonstrated instances in which LASC staff members failed to conduct the necessary eligibility analysis required for LSC funded assistance. Two (2) cases supported with LSC funds, closed 2010 Case Nos. 97-1436 and 98-1311 were accepted for representation without the file containing documentation concerning the financial or other socioeconomic characteristics of the persons served by the client's group. The intermediary reported that the client, a 501(c)(3) corporation, assisted tenants in low-income housing disputes, and thus it was likely that LASC could have established eligibility for the group. During the on-site review, LASC acknowledged the incomplete documentation and, later informed LSC, on May 3, 2012, that it had adopted OCE's recommendation to require management approval prior to the acceptance of group cases and that LASC management would generate and review periodic status reports throughout the duration of the case to ensure compliance.

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<sup>16</sup> See 45 CFR § 1611.4(b). LASC's policy provides that "[a]pplicants will be eligible for legal assistance provided their income is at or below 125% of the official Federal Poverty Income Guidelines (FPIG) ..." See The Legal Aid Society of Cleveland Financial Eligibility Policy and Guidelines (October 12, 2011), I (A).

<sup>16</sup> See 45 CFR § 1611.4(b).

<sup>17</sup> See The Legal Aid Society of Cleveland Financial Eligibility Policy and Guidelines (October 12, 2011), III.

In its comments to the DR, and in its May 3, 2012 Memorandum to staff submitted with those comments, LASC noted that it implemented a new practice requiring the approval of the Executive Director before a case handler undertakes representation of a group so as to ensure staff performs group eligibility consistent with LASC's Board-approved policy. Additionally, all group representation cases are now reviewed by the Executive Director and/or Deputy Director bi-annually to ensure continued compliance. Accordingly, LASC indicated that it has taken sufficient action designed to implement Required Corrective Action item 5. However, as LASC did not provide LSC with a copy of its instruction to staff regarding this new practice, LASC must provide LSC with a copy of the instruction no later than January 30, 2013.

All sampled cases contained evidence that LASC determined financial eligibility based upon a consideration of one (1) or more of financial eligibility factors for applicants whose income was between 125-200% of the FPG. However, as discussed in Finding 2, *supra*, several sampled files, such as open Case Nos. INT-12-02809, CUY-09-08038, CUY-10-03455, CUY-08-13681, INT-11-12172 and HEW-11-05101, closed 2011 Case Nos. INT-11-14642, and INT-11-12145, and closed 2010 Case Nos. CUY-09-02211, CUY-09-07825, CUY-09-03987, CUY-09-06583, and CUY-09-16228 failed to contain documentation of the specific facts considered that support the chosen factor. These case and other similar cases should not be or should not have been reported to LSC in the CSR submission or charged to LSC funds.

As discussed in Finding 2, *supra*, LASC instructed its staff to record facts supporting any 45 CFR § 1611.5 authorized exception factors that are used for case acceptance that are contained in its Board-approved financial eligibility policies, and indicated that it is modifying its ACMS to facilitate staff's ability to obtain and record information concerning the authorized exception factors. Additionally, LASC is revising its Intake Manual to include procedures for the screening of over-income applicants consistent with the Board-approved policy. LASC reported that it anticipates that the ACMS modifications will be completed by December 31, 2012, and that the revised Intake Manual will be completed by March 31, 2013. LASC did not submit documentation to evidence this training or instruction with its comments to the DR.

Accordingly, and as discussed in Finding 2, *supra*, LASC has taken sufficient action designed to implement Required Corrective Action items 3 and 4 by ensuring that cases reported to LSC in the CSRs contain documentation evidencing the particular facts and factors LASC relied upon in determining eligibility for applicants with incomes between 125-200% of the FPG consistent with its Board-approved policy. However, as stated in Finding 2, *supra*, LASC must provide LSC, by January 30, 2013, with documentation evidencing its instruction to staff regarding the screening of over-income applicants consistent with Board-approved policy. LASC must provide LSC with a screen shot of the applicable ACMS modifications, as well as a copy of its revised Intake Manual, by April 30, 2013.

The DR reported that LASC was in non-compliance with the income eligibility documentation required by 45 CFR §§ 1611.4, and 1611.6, the CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the FPG. As a corrective action, LASC was directed to ensure that all cases reported to LSC in the CSRs contain sufficient evidence of the particular facts and factors the program relies upon to determine eligibility. As further corrective actions, LASC was directed to ensure that its policy

is consistent with 45 CFR § 1611.3(b) and 45 CFR § 1611.4(b) and that it conducts eligibility screening for groups consistent with 45 CFR § 1611.6.

**Finding 4: LASC maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. There were no exceptions noted in the sampled files; however, some revisions to LASC’s asset eligibility policy are warranted.**

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-approved asset eligibility policies.<sup>18</sup> *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.

LASC’s financial eligibility policy establishes an asset ceiling at \$10,000 for an applicant. Exempt from consideration are the value of the applicant’s principal residence regardless of worth; the equity value of additional real estate to the extent it can be readily liquidated; vehicles used for transportation; less than \$200,000 of the cash value of an IRA, 401(k) or 403(b) if readily accessible; the cash value of a burial lot, educational trusts, or policies, if there is an impediment to the applicant’s access to the assets; ordinary household goods; and the reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or member of applicant’s household.<sup>19</sup> A comparison of this policy with 45 CFR Part 1611 indicates that LASC’s policies are in need of improvement as noted herein.

The exceptions in the policy of the principal residence, vehicles, and equity value of work-related equipment are permissible pursuant to 45 CFR § 1611.3(d)(1). However, it is uncertain whether less than \$200,000 of the cash value of an IRA, 401(k) or 403(b) if readily accessible,

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<sup>18</sup> 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.

<sup>19</sup> *See* The Legal Aid Society of Cleveland Financial Eligibility Policy and Guidelines (October 12, 2011), II (A).

the equity value of additional real estate to the extent it can be readily liquidated, educational trusts and policies, ordinary household goods, and the cash value of a burial lot are exempt from attachment under 45 CFR § 1611.3(d)(1).<sup>20</sup> As LSC considers the lists of excludable assets in the regulation to be exhaustive, these categories of assets are excludable only to the extent they are exempt from attachment under State or Federal law.<sup>21</sup>

Third, even if ordinary household goods are allowable under 45 CFR § 1611.3(d)(1), without a more clear definition as to the type of items that would fall under this exception, it may be very difficult for intake staff to understand what assets could or could not be included under this exception. In addition, it is LSC's intention that recipients set its asset ceiling to include the value of ordinary household goods.<sup>22</sup>

Fourth, the policy provides that, "[d]ocumentation of assets in the case management program is required for all applicants, except for those who receive benefits from a governmental program for the poor that uses an asset guideline which is less than \$10,000."<sup>23</sup> This language matches the regulation prior to its revision in 2005. However, this provision does not reflect the current expanded regulation which provides a parallel process for income screening. While LASC has not adopted the income provision, LSC's guidance is clear that the LASC Board of Directors must: "...take some identifiable action to recognize the asset test of the governmental benefit program being relied upon. This ensures that the eligibility standards of the governmental program have been carefully considered and are incorporated into the overall financial eligibility policies adopted and regularly reviewed by the recipient's governing body."<sup>24</sup>

Accordingly, when adopting this provision, the Board must identify which programs have eligibility standards consistent LASC's policy for LSC-funded cases. Case review demonstrated, and staff reported, that they routinely screen for income and assets for all applicants, and accordingly, there is no concern that LASC is improperly applying this provision.

Lastly, a minor issue was identified as it applies to asset waivers. LASC's policy grants authority to the Executive Director or designee to waive the asset ceilings in "unusual or extremely meritorious" situations.<sup>25</sup> During the revision of 45 CFR Part 1611 in 2005, the regulatory language was modified from granting the authority to waive an asset ceiling in "unusual or extremely meritorious situations" to "unusual circumstances." The language in the policy reflects the former regulation. As no interviewees could recall a case in which an asset ceiling waiver was requested, there is no concern that LASC is improperly applying the asset waiver provision. However, LASC should revise its policy to reflect the current regulatory language.

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<sup>20</sup>The exclusive list of allowable asset exceptions is provided in 45 CFR § 1611.3(d)(1), which states that "[i]n establishing asset ceilings, the recipient may exclude consideration of a household's permanent residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law."

<sup>21</sup> See 70 Fed. Reg. 45545, 45550, 45551 (Aug. 8, 2005).

<sup>22</sup> See 70 Fed. Reg. 45550 (Aug. 8, 2005).

<sup>23</sup> See The Legal Aid Society of Cleveland Financial Eligibility Policy and Guidelines (October 12, 2011), II (E).

<sup>24</sup> See 70 Fed. Reg. 45553 (Aug. 8, 2005).

<sup>25</sup> See The Legal Aid Society of Cleveland Financial Eligibility Policy and Guidelines (October 12, 2011), II (C).

By way of general advice, LASC is encouraged to read the preamble to the revised 45 CFR Part 1611, which became effective on September 7, 2005.<sup>26</sup> Other programs have found the preamble to be a very useful tool as they work to revise their intake and procedural manuals in accordance with 45 CFR Part 1611. LSC is available to review any proposed changes to LASC's Part 1611 eligibility policies prior to them being submitted for Board-approval.

LASC is in compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. However, as noted above, some revisions to its asset eligibility policy are warranted to demonstrate compliance with 45 CFR Part 1611. As a corrective action, LASC was directed to demonstrate that the categories of assets listed in its policy Section II(A)(4), (5), and (6) are exempt from attachment under State or Federal law, and ensure that its asset policy is consistent with 45 CFR §§ 1611.3(d)(2) and 1611.3(f).

In its comments to the DR, LASC agreed to revise its Board-approved financial eligibility policies by December 31, 2012 to ensure that its asset policy is consistent with 45 CFR §§ 1611.3(d)(2) and 1611.3(f).

Although LASC has indicated that it will take sufficient action designed to implement Required Corrective Action item 8 by ensuring that its financial eligibility policies are consistent with 45 CFR §§ 1611.3(d)(2) and 1611.3(f), such actions have not yet been completed. Thus, LASC must provide LSC with a copy of its revised Board-approved financial eligibility policy by January 30, 2013. It is also recommended that LASC provide LSC with a draft copy of its revised financial eligibility policy for review and approval prior to its submission for Board approval.

**Finding 5: LASC is in non-compliance with the prohibitions of 45 CFR Part 1626 (Restrictions on legal assistance to aliens) as numerous sampled files lacked the required form of documentation to evidence eligibility.**

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.

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<sup>26</sup> *See* 70 Fed. Reg. 45545 (Aug. 8, 2005).

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.<sup>27</sup> Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

The DR reported that LASC was in non-compliance with the documentation requirements of 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5. Several sampled cases, such as closed 2011 Case Nos. Cuy-09-06506, INT 11-09807, and CUY-10-16300, and 2010 Case Nos. 05E-1061136, CUY-08-00807, CUY-10-14234 all lacked evidence that LASC screened for citizenship or eligible alien status, when required. These cases were either telephone advice only cases or cases in which the applicant appeared in person for intake screenings. These files contained no indications on the telephone intake sheet or within the paper file that the applicant was screened for citizenship or eligible alien status. Additionally, other sampled cases, such as open Case No. CUY-08-06944, closed 2012 Case No. INT-11-14441, closed 2011 Case Nos. CUY-06-11666, CUY-09-01869, INT-11-08144, and CUY-10- 11871, and closed 2010 Case Nos. CUY-09-07852, LOR-10-07929, LOR-07-17391, CUY-08-09254, and CUY-05-01342<sup>28</sup> were all cases in which LASC screened for Part 1626 eligibility during the telephone intake process, but failed to obtain the required citizenship or eligible alien status documentation when the applicant appeared in person. Thus, these files demonstrate that LASC is in need of improvement both in screening for Part 1626 eligibility and obtaining the required level of documentation necessary to evidence citizenship or alien eligibility pursuant to 45 CFR Part 1626.

As discussed in Findings 1 and 2, the failure of case handler staff to accept responsibility for obtaining Part 1626 information and management's failure to implement systematic procedures for the formal review of files may have resulted in the citizenship errors identified during the review. Thus, additional training of staff and periodic management review of cases at the time of case opening and case closure may be all that is necessary to correct the patterns of error or identify staff members in need of targeted assistance.

As corrective action, LASC should:

- Ensure that all cases contain executed citizenship attestations or alien eligibility documentation, when required by 45 CFR §§ 1626.6 and 1626.7;

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<sup>27</sup> See Kennedy Amendment at 45 CFR § 1626.4.

<sup>28</sup> Additionally, closed 2011 Case No. CUY-10-05343 contained evidence of citizenship; however, the file reflected it was not timely obtained. LASC represented the client in a mediation foreclosure on July 26, 2010; however, the citizenship attestation was not executed until January 27, 2011.

- Obtain the required document or provide evidence of document review in any open case currently lacking the necessary level of documentation under Part 1626; and
- Charge the full costs of any Part 1626 exception case (in which full documentation under Part 1626 is not ultimately obtained or reviewed) to a non-LSC funding source. Such cost calculations should begin at case acceptance.
- Ensure that any cases missing the required 1626 screening and documentation are closed in such a manner that they are not included in future CSR data submission.

As discussed in Finding 2, *supra*, on May 3, 2012, LASC management communicated with staff via Memorandum the importance of obtaining citizenship or eligible alien status documentation in every case and clarified that staff should obtain a citizenship attestation or alien eligibility status documentation for any case in which there is in-person contact, even when an applicant is merely dropping off documents at an office. LASC further instructed staff to review all open cases to ensure that a citizenship attestation or eligible alien status documentation was present when necessary. Additionally, LASC submitted, with its comments to the DR, a copy of its August 24, 2012 case opening procedures which requires staff to review the paper and ACMS file upon case acceptance and thereafter every six (6) months to ensure that a citizenship attestation or eligible alien status documentation has been obtained. LASC further indicated that if it determines that cases lack a citizenship attestation or eligible alien status documentation when required, LSC funds would not be charged for the costs associated with the cases and those cases would not be reported to LSC in the CSRs.

Accordingly, and as discussed in Finding 2, *supra*, LASC has taken sufficient action designed to implement Required Corrective Action item 9 to ensure that all cases contain evidence of citizenship or eligible alien status documentation and that cases lacking appropriate documentation are not included in the CSRs.

**Finding 6: LASC is in 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.<sup>29</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

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<sup>29</sup> 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.

During the review, extended service cases were sampled to assess whether LASC was executing retainer agreements in accordance with 45 CFR § 1611.9. The review identified errors relating to the execution of these agreements, and identified files in which retainer agreements were missing when required, were not dated, and/or failed to adequately describe the subject matter and the nature of the legal services provided to the client. Sampled cases, such as open Case Nos. LG-09-14227, INT-11-03746, and CUY-06-04096, closed 2012 Case No. LOR-10-11022, closed 2011 Case Nos. CUY-09-06506, INT-11-05797, INT-11-11973, CUY-08-11459, CUY-10-16306, LOR-10-12837, INT-11-01545, INT-11-02471, and LOR-10-16522, and closed 2010 Case Nos. LOR-08-01347, LOR-07-17391, and 97-1436 failed to contain executed retainer agreements when the intermediary described a level of service which required such an agreement. Other cases, such as open Case No. INT-11-16379 and closed 2011 Case Nos. CUY-09-03271 and CUY-05-01336, contained agreements that either were not signed, not dated, or simply described the representation as “Garage Company,” and thus lacked a sufficient scope and subject matter description.

Sampled cases evidenced that, despite the errors noted above, LASC is in substantial compliance with the retainer requirements of 45 CFR § 1611.9. As many of these errors described above could have been identified and corrected during formal compliance reviews, it is recommended that LASC develop additional periodic compliance monitoring procedures to ensure the consistent and timely completion of retainer agreements and to ensure that retainer agreements are updated during the pendency of a legal case as the subject matter and nature of the legal services being provided to the client changes.

**Finding 7: LASC is in non-compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).**

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

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

Sampled cases evidenced that LASC is in non-compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of fact) as the Client Identity and statement of facts contained in closed 2012 Case No. INT-11-08894 was not signed and closed 2010 Case No. LOR-10-07929 failed to contain a statement of facts or a verified compliant, even though it was required because LASC initiated divorce proceedings on behalf of the plaintiff in the action.

As a corrective action, LASC was directed to ensure all files contain statement of facts, where required, pursuant to 45 CFR Part 1636.

In its comments to the DR, LASC indicated that, on May 3, 2012 it advised staff regarding LSC regulations concerning client identity and statement of facts. LASC stated that a section of its new ACMS compliance page will be devoted to ensuring that management reviews every case to determine whether a 45 CFR Part 1636 statement was required. Finally, LASC reported that it modified its Divorce Application to include a signature line.

Accordingly, and based upon review of the May 3, 2012 Memorandum submitted with its comments to the DR, LASC has taken sufficient action designed to implement Required Corrective Action item 10 by ensuring that all cases contain a 45 CFR Part 1636 statement when required. However, LASC must provide LSC with screen shots of the ACMS compliance page modifications no later than April 30, 2013.

**Finding 8: Sampled files and interviews evidenced compliance with the requirements of 45 CFR § 1620.3(a) and 45 CFR § 1620.4.**

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 review, LASC provided its 2008, 2009, 2010, and 2011 Priorities Policies for review.<sup>30</sup> LASC's priority goals for low-income people are to improve safety and health, promote education and economic stability, and secure and retain decent, affordable housing. Each goal lists cases and matters that LASC accepts in furtherance of the goal.

Sampled cases and interviews evidenced compliance with the requirements of 45 CFR § 1620.3(a) and 45 CFR § 1620.4.

**Finding 9: LASC is in substantial 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.

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<sup>30</sup> *See* The Legal Aid Society of Cleveland Priorities Policy (December 17, 2008). The minutes reveal that the policy was initially adopted by the Board of Directors on December 17, 2008, and reaffirmed on December 16, 2009, December 6, 2010, and December 14, 2011.

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.

The review assessed whether legal assistance was documented in the case files sampled and a pattern of error was identified. There were many instances in which the client's file was in such disarray that the documentation evidencing legal advice could only be provided after a laborious and confusing search. Additionally, there were several instances, such as open Case Nos. 03-15039281, 05-15066727, HOU-09-16092, 03-15040811, 04-15051505, CD-06-04984[05-1444DEOEX, 01-15010740FE, 05-15064769, 03-15042253, and 04-1505705, in which evidence of legal advice could not be established without input from the original case handler who was unavailable. These cases are not considered errors because these cases were not funded by LSC, the cases were deselected from the CSRs, and no prohibited or restricted activity was identified. It is important to note that many, but not all, of these files were group cases accepted by a particular case handler.

However, LASC's failure to develop internal case file documentation standards may have resulted in the few errors identified in closed 2011 staff Case Nos. INT-11-09680, INT-11-04722, and INT-11-11054, and closed 2010 staff Case No. CUY-10-14234. These sampled files had unclear file notes, allowing for uncertainty as to whether, or what, service occurred, and thus, ultimately lacked documentation of legal advice.

During the review, OCE recommended that LASC require staff to prepare opening and closing Memorandums and periodic status case summaries. It was also recommended that LASC develop electronic filing systems so that specific categories of information (case information and compliance-related information) could be scanned and stored in designated ACMS folders for easy retrieval. While the review team was on-site LASC agreed that further procedures and protocols were necessary. LSC has been provided with both the May 3 and May 12, 2012 Memorandum where LASC provided specific instructions to staff concerning file documentation, such as having staff create opening, status, and closing Memorandums, and also to implement file organization protocols for electronic and paper files. Currently, LASC is developing a protocol for naming documents and creating a standard electronic and paper filing system. Additionally, as stated in Finding 2, LASC is now requiring prior approval for the acceptance of group cases, as well as periodic summaries concerning their progress.

LASC is in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). As LASC has developed additional protocols and

practices to reduce and, hopefully, eliminate errors, no recommendations or corrective actions are required.

**Finding 10: LASC’s application of the CSR case closure categories is generally consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). There were two (2) patterns of error noted in the sampled files.**

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 review assessed whether LASC’s application of the CSR case closure categories is consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). The sampled files contained numerous examples of correctly used closing codes, including more complex case closure categories such as F-Negotiated Settlement without Litigation (“F”) and G-Negotiated Settlement with Litigation (“G”). However, the review also identified limited patterns of error.

The first pattern of error noted was the apparent misunderstanding of the “K-Other” (“K”) case closure category. The CSR Handbook requires cases be closed in the category that best reflects the level of service provided, and if a descriptive closure category is applicable then the K closure category should not be used.<sup>31</sup> There were a few cases, such as closed 2012 Case No. INT-11-02289, and closed 2010 Case Nos. LOR-09-01054, LO-09-06106, CUY-08-00870, CUY-09-09822, and CU-08-12287 in which the program employed the K closure category for cases where another case closure category more accurately described the nature of the legal services performed. These files indicate that LASC should review the use of the K closure category as LSC does not intend for this closure category to be used frequently because most common services provided to clients should fit more accurately within another case closure category. (For example, closed 2012 Case No. INT-12-02573 was closed with a K closure category when the more appropriate action would have been to close the file L-Extensive Services (“L”) because the case handler filed to withdraw from the case.)

A second noteworthy pattern of error was the underreporting of the level of service provided in various cases because several sampled files closed with A-Counsel and Advice (“A”) or B-Limited Action/Brief Services (“B”) closure codes evidenced a higher, or significantly higher, level of service. For example, a closed 2012 Case No. CUY-10-05842, a mortgage foreclosure action, was closed as an A, and should have been closed as L because the program provided continuous legal assistance to the client since 2010. There were other cases, such as closed 2010 Case No. CUY-09-12242 and closed 2012 Case No. INT-11-10598, that were closed as B, and should have been closed as L because the attorneys conducted extensive research and attended hearings on behalf of their clients who later withdrew from the court cases. Additional examples are closed 2010 Case Nos. 05E-1061136, CUY-08-00807, and 05E-19059065 (which were closed with closure category B and should have been closed with L), closed 2012 Case No. INT-

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<sup>31</sup> *See* CSR Handbook (2008 Ed.), § 8.1 fn. 41.

11-07127, closed 2011 Case Nos. INT-11-02493, LG-09-14162, and CUY-09-16275, closed 2010 Case Nos. CUY-10-15564 and LOR-07-25196 (which were closed with closure category A and should have been closed with B), closed 2011 Case No. CUY-08- 11459 (which was closed with closing category A and should have been closed with G), and closed 2010 Case No. 05E-10-61530 (which was closed with closure category B and should have been closed with H-Administrative Agency Decision (“H”)). These errors indicate that LASC should review its assignment of case closure categories in limited service cases, as it may be under-reporting the level of service provided to its clients.

The DR recommended that LASC review the application of its case closure categories to ensure the correct assignment of these categories. It further recommended that LASC provide training to staff consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011).

In its comments to the DR, LASC indicated that its management trained staff on May 11, 2012, regarding the requirements of Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011) and that it intends to conduct further trainings. Additionally, and as discussed in Finding 1, *supra*, LASC is developing a Reference Guide which will be an easily accessible reminder of appropriate case closure categories. LASC indicated that the Reference Guide will be complete by December 31, 2012, and stated that it will be designed to ensure consistent application of LSC case closure categories.

**Finding 11: LASC is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timeliness 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).<sup>32</sup> 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) 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).

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<sup>32</sup> 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).

The review assessed compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3. While most of the files that were reviewed during the visit were timely closed, there were a few exceptions noted in the sample. Examples include open Case No. CUY-08-06944 (This case was opened during 2006 and the last legal work documented in the file was in 2006, with no notations in the file of any further legal assistance needed or provided since 2006, and therefore this case is dormant), closed 2012 Case No. CUY-09-12316 (This case was opened in 2009 and the last legal work documented in the file was in 2009, with no notations in the file of any further legal assistance needed or provided since 2009, and therefore was untimely closed), closed 2011 Case Nos. CUY-07-27420 (This case was opened in 2007 and the last legal work documented in the file was in 2008, with no notations in the file of any further legal assistance needed or provided since 2008, and therefore was untimely closed), CUY-09-15826 (This case was opened in 2009 and the last legal work documented in the file was in 2009, with no notations in the file of any further legal assistance needed or provided since 2009, therefore was untimely closed), LG-07-24733 (This case was opened in 2007 and the last legal work documented in the file was in 2008, with no notations in the file of any further legal assistance needed or provided since 2008, and therefore was untimely closed), LOR-10-04437 (This case was opened in 2010 and the last legal work documented in the file was in 2010, with no notations in the file of any further legal assistance needed or provided since 2010, and therefore was untimely closed), and LOR-10-05938 (This case was opened in 2009 and the last legal work documented in the file was in 2010, with no notations in the file of any further legal assistance needed or provided since 2010, and therefore was untimely closed), and closed 2010 Case Nos. 2010 CUY-09-13785 (This case was opened in 2009 and the last legal work documented in the file was in 2009, with no notations in the file of any further legal assistance needed or provided since 2009, and therefore was untimely closed) and CUY-08-15021 (This case was opened in 2008 and the last legal work documented in the file was in 2009, with no notations in the file of any further legal assistance needed or provided since 2009, and therefore was untimely closed).

During the review, OCE advised LASC that the errors may have resulted from weaknesses in day-to-day case management oversight. LSC has been provided with the May 3 and May 12, 2012 Memorandum where LASC provided specific instructions to staff concerning the timely closing of files and now requires staff to regularly review the “Aging Case Report” to monitor cases, make appropriate notations in files concerning the reasons a file remains open, and to timely close files in the year work was concluded.

LASC is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3, as LASC has developed additional protocols and practices to reduce, and hopefully eliminate errors. No recommendations or corrective actions are required.

**Finding 12: LASC is in 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 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. LASC has implemented procedures to check for duplication when a case is entered into the case management system. Several cases were targeted to test for duplication and no duplicate cases were identified. LASC is in compliance with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 3.2.

**Finding 13: Review of the recipient’s policies and interviews with full-time attorneys who have engaged in the outside practice of law demonstrated that LASC is in substantial compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).**

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 45 CFR Part 1604, 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.

A review of the recipient’s outside practice policy and timekeeping records, as well as interviews with management and staff members, was conducted to assess compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). The review demonstrated that with a few exceptions, LASC has policies and practices in place to ensure compliance.

Prior to the CSR/CMS review, LASC provided a copy of its policies governing the outside practice of law by its’ full-time attorneys. The policy contains restrictions and procedures which substantially comport with 45 CFR Part 1604.<sup>33</sup> However, this policy fails to state that full-time attorneys may use *de minimis* amounts of LASC resources for outside practice activities necessary to carry out the attorney’s professional responsibilities as required by 45 CFR § 1604.6(a). Additionally, LASC may include court appointments pursuant to 45 CFR § 1604.7 within its list of permissible outside practice activities.

Additionally, the review of timekeeping records, as well as interviews with management and the three (3) staff members who were granted permission to engage in outside practice activities from January 1, 2010 through March 14, 2012, demonstrated that the subject matter of the cited circumstances were within the guidelines of 45 CFR § 1604.4, approval to engage in the activity

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<sup>33</sup> *See* The Legal Aid Society of Cleveland Personnel Handbook, (adopted by the LASC Board of Directors on October 23, 2009), pages 15-16.

was sought and granted by the Executive Director, *de minimis* LASC resources were used by the attorneys, and appropriate leave time was documented when required. However, an attorney staff member used LASC's office address on pleadings in relation to the outside practice case because it was the official address registered to that attorney in the state court's database. During the visit, OCE alerted upper management to this issue and the staff member immediately modified the identifying information in the outside practice case. It is recommended that LASC remind staff of this requirement whenever approval to engage in outside practice activity is granted. Based on a review of LASC's policies, as well as interviews with attorneys who engaged in the outside practice of law during the review period, LASC is in substantial compliance with the requirements of 45 CFR Part 1604. It is recommended that LASC review its policies to determine whether it should include court appointments as permissible outside practice activities pursuant to 45 CFR § 1604.7. As a corrective action, LASC was directed to include in its policy that full-time attorneys may use *de minimis* amounts of LASC resources for outside practice activities necessary to carry out the attorney's professional responsibilities pursuant to 45 CFR § 1604.6(a).

In its comments to the DR, LASC noted that it had revised its Outside Practice of Law Policy to ensure that full-time attorneys may use *de minimis* amounts of LASC resources for outside practice activities necessary to carry out the attorney's professional responsibilities, pursuant to 45 CFR § 1604.6(a). LASC further advised that the revised policy would be presented for approval at LASC's next regularly scheduled Board of Directors meeting on October 31, 2012.

Although LASC has indicated that it will take sufficient action designed to implement Required Corrective Action item 11 by ensuring that its Outside Practice of Law policy is consistent with 45 CFR § 1604.6(a), such actions have not yet been completed. Thus, LASC must provide LSC with a copy of its Board-approved policy by January 30, 2013.

**Finding 14: Sampled files, as well as interviews conducted with management and staff, 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.

A comprehensive review of LASC's pamphlets, brochures, flyers, etc. was conducted to assess compliance with 45 CFR Part 1608. The majority of the materials displayed at each office visited were informational flyers produced by the recipient, as well as newsletters, either targeted to senior citizens or fundraising. In addition, the offices also displayed pamphlets from public service and other entities, for example a Federal Trade Commission brochure on identify theft. Bulletin Boards and other depictions in the offices' public space were reviewed. The materials were found to be free of any prohibited political message, expression, symbol, image, or allusion, and in compliance with 45 CFR Part 1608.

A limited review of the vendor list, chart of accounts, cash receipts and cash disbursement journals, general ledger, staff listing, payroll register, list of candidates from the Board of elections, and LASC's personnel manual, demonstrated that from January 1, 2010 through February 28, 2012, LASC appears to have not expended LSC grant funds, personnel or equipment in prohibited political activities and that LASC is in compliance with 45 CFR § 1608.3(b).

A limited fiscal review, as well as review of sampled cases, disclosed no evidence that staff members, while engaged in legal assistance activities supported under the Act, engaged in any political activity, provided voters with transportation to the polls, or provided similar assistance in connection with an election or voter registration activity. Moreover, there was no indication that LASC received funds from any political parties or campaigns. Finally, interviews with management disclosed no evidence that LASC employees have intentionally supported or identified the Corporation with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office.

LASC is in compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities). There are no recommendations or corrective actions required.

**Finding 15: Review of the recipient's policies and sampled files, as well as interviews conducted with members of management and staff, evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).**

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two (2) private attorneys; neither the referral service nor two (2) 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 (1) 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).

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has determined that it will not take enforcement action against any recipient that filed a

claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

LASC has a written policy governing fee-generating cases.<sup>34</sup> This policy is in compliance with 45 CFR Part 1609.

None of the sampled files reviewed, as well as interviews with members of management and staff, disclosed evidence that that LASC has provided legal assistance in a fee-generating case. Accordingly, LASC is in compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). There are no recommendations or corrective actions required.

**Finding 16: A review of LASC's accounting and financial records determined it is in compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

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.

- i) 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

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<sup>34</sup> *See* The Legal Aid Society of Cleveland Policy on Fee-Generating Cases, 45 CFR 1609 (February 11, 1998). Staff members are required to complete a "Fee Generating Case Acceptance Report" for each fee-generating cases accepted.

of any one or more factors is not determinative. Factors relevant to the determination include: the existence of separate personnel;

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

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

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

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

The LASC Board of Directors has certified compliance with 45 CFR § 1610.8(b) by executing a program integrity letter on December 19, 2011.

A limited review of cash receipts journals, cash disbursements journals, chart of accounts, the vendor's list, grants, contracts, the LASC web page, the physical location of the Cleveland office, and from interviews with management, LASC does not appear to be engaged in any restricted activities which would present 45 CFR Part 1610 compliance issues.

A limited review of the cash receipt and disbursement journals for the review period identified no inappropriate transfers pursuant to 45 CFR § 1610.7, or expenditures pursuant to 45 CFR § 1610.4, by the recipient of its LSC and non-LSC funds. LASC'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. Costs that are fund-specific are allocated directly to that funding source, at the transaction level, when entered into the MIP accounting software. The

MIP general ledger module is a double-entry, multi-fund and multi-fiscal time period accounting system, which has the capability of providing fund-based accounting and/or cost accounting. LASC uses the double-entry method for recording all transactions. LASC's chart of accounts has been developed so that funds received by the recipient from sources other than the Corporation are recorded as separate and distinct receipts and disbursements in a manner that is consistent with 45 CFR § 1610.9.

A limited review of the recipient's policies and procedures and fiscal activities, as well as the review of sampled cases, disclosed no instances where non-LSC funds were used for any purpose prohibited by the LSC Act.

LASC is in compliance with the requirements of 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). There are no recommendations or corrective actions required.

**Finding 17: LASC is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, a few exceptions were identified which require improvement.**

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

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

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

all local bar associations and the Plan shall summarize their response. See 45 CFR §§ 1614.4(a) and (b).

Additionally, 45 CFR Part 1614 requires that recipients utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort, and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

### Expenditures and Allocations

The Audited Financial Statement (“AFS”) for Fiscal Year Ending December 31, 2010 reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). A limited fiscal review evidenced that LASC devoted \$305,137 or 12.7% of its LSC annualized total basic field award toward its PAI requirement and is in compliance with 45 CFR § 1614.1. A review of the spreadsheet and costs on the general ledger report, as well as timekeeping records for PAI staff salary for the calendar year ending December 31, 2010, disclosed that LASC correctly allocates the salaries of attorneys and paralegals on total workable hours. This review further demonstrated that non-personnel costs are being allocated on the basis of reasonable operating data in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i).

### Overview of the PAI Program

The PAI component, known as the Volunteer Lawyers Program (“VLP”) was assessed. In advance of the review, LASC provided a copy of VLP’s PAI Plan and budget, which is in compliance with the requirements of 45 CFR Part 1614.4(a).<sup>35</sup> Pursuant to this Plan, LASC does not contract with private attorneys for PAI purposes, but maintains a pro bono panel of private attorneys to provide legal assistance to LSC-eligible clients pursuant to 45 CFR Part 1614. During the review, LASC provided a copy of its Practices and Procedures Manual for the VLP of the Legal Aid Society of Cleveland, revised April 2012, which is the implementing document for the PAI component. The on-site review found LASC’s PAI practices consistent with its Manual.

Since 2011, as a result of reorganization, the Cleveland Office manages all of the PAI activities throughout LASC; PAI activity in the branch offices is limited to support of VLP clinics. While new attorneys have been recruited, a majority of the volunteer attorneys are from panels developed by local offices prior to the reorganization. As it is a program goal to increase recruitment, LASC sponsors free training events in exchange for acceptance of pro bono cases, LASC attends local bar and other law-related functions, and provides information about VLP programs to the community and private attorneys through presentations, material distribution, and through an on-line presence. In addition, VLP maintains pro bono liaisons with local firms and practitioner peer groups and collaborates with law firms and corporate legal departments. Private attorneys are given special recognition through awards and other events. Accordingly, LASC has developed an extensive number of contacts and appears to

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<sup>35</sup> See The Legal Aid Society of Cleveland Recipient No. 436050 2011 Plan.

work effectively within the legal community. Approximately 2,240 lawyers participate in the VLP program.<sup>36</sup>

LASC provides diverse opportunities for pro bono attorneys to volunteer, through the following service delivery methods:

- **The Attorney-Client Match Program:** This is a traditional program that matches a client with an attorney for individual representation. Typically, the match results in extended representation; however, brief advice and consultation services may be provided. The match may be between a client and an individual attorney, or the match may be with a law firm that has agreed to accept a certain number of cases in a particular practice area.
- **Brief Service, Advice, and Referral Clinics:** These are Saturday morning or evening drop in specialty or general advice clinics located in low-income neighborhoods at client or community centers. VLP works with a center or other partners, such as the judiciary, to organize and promote a clinic, which is then staffed by private pro bono attorneys participating in the VLP effort.
- **Specialty Projects:** These are projects that focus on a specific area of the law, such as the bankruptcy, expungement, tax, family, or housing law, or focus on particular vulnerable populations, such as the elderly or domestic violence victims. These projects are designed to address unmet needs of the client community by tapping into the specialized expertise in the legal community. Clients may be served by the attorney-match program or by attending a brief service clinic. Most projects have a training module.

In 2010, of the 7,756 cases reported to LSC in the CSRs, approximately 17% (1,348 cases) were PAI. In 2011, of the 7,589 cases reported to LSC in the CSRs, approximately 15% (1,154 cases) were PAI.

### *The Intake Process*

The VLP is a sub-unit within the Intake and Referral Unit. It is staffed by three (3) attorneys (two (2) staff and one (1) volunteer) and the Pro Bono Coordinator, and supervised by the Intake and VLP Unit Managing Attorney. As discussed in Finding 2, centralized intake is conducted by Intake Specialists who identify cases for the VLP based upon the written Case Acceptance Guidelines for each substantive case type. The intake process for a PAI case is identical to the intake process for a staff case. An applicant is directed to the VLP by use of the ACMS integrated case practice questionnaires and then directed to a specific PAI staff member who reviews the intake to ensure that all of the critical eligibility fields (income, assets, citizenship screening, etc.) and other information concerning the applicant (adverse party information and

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<sup>36</sup> A lawyer is considered to participate in LASC's PAI program if he has accepted a VLP case within the preceding three (3) years.

the nature of the case are complete. If the case is appropriate for PAI activity, the applicant will be interviewed, as discussed below, to determine suitability for referral, either to a private attorney or clinic placement, in either the general VLP program or within a specialty project.

### Attorney-Client Match

If an applicant is accepted for referral to a private attorney for services, whether in the general VLP program or within a specialty project, the applicant is mailed a packet of information that must be returned to LASC before referral will be attempted. The packet includes an information letter, a blank citizenship attestation form, and Statement of Consent and Understanding; and it may include a questionnaire or pro se documents to complete. Once a packet of information is returned, and/or affirmative steps are completed, the applicant is interviewed and their case is presented at the weekly PAI case acceptance meeting. If accepted, the case is placed by telephone call and/or email. Cases usually can be placed within three (3) calls placed to private attorneys. Generally, extended service cases that cannot be placed within five (5) contact attempts to private attorneys are rejected. Once the VLP confirms that an attorney is available, the private attorney is mailed a referral packet that includes the referred client's contact information, a description of their legal problem, a blank Case Status Report, and instructions on how to complete and return the form. The client is also sent an introduction letter explaining the process and the pro bono arrangement. The client is advised to contact the assigned attorney. If the client does not contact the private attorney, ceases communication with the VLP, or if the case is resolved by affirmative steps taken by the client (such as mediation) and no further assistance is required, the case will be closed. The PAI staff member will review the available information (which may be a Case Status Report Form, the court's website, and/or the file) and determine the level of assistance, if any, that was provided. The case will be excluded 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 highest level of legal service. 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. Sometimes a "no contact" closing letter will be mailed to the client if a status check reveals that the applicant has not contacted the attorney.

Once a case is placed with a private attorney, and depending on the nature of the case, it is set for a 30, 60, or 90 day status review. For example, landlord-tenant cases are scheduled for 30 days, whereas foreclosure proceedings are scheduled for 90 days or even longer. PAI staff members will review the court website and email case update requests to private attorneys on the assigned dates. As an added layer of oversight, the Managing Attorney will generate a "VLP Open Management Report" monthly for staff to review, and twice a year an "Open Aging Report" will be generated. At this time, PAI staff members are instructed to obtain status updates for all open private attorney cases. PAI staff contact private attorneys, clients, and/or check the court's website to obtain status information. If a PAI staff member is unable to find out the status of a case, that case will be closed based upon the information recorded in the file. During the pendency of a case, staff members enter notes, import Case Status Reports, and scan documents into the ACMS.

During the pendency of a case and upon closure, private attorneys are encouraged to complete a Case Status Report which documents the nature of the legal assistance provided. The form solicits information concerning the progress of an open case and the result achieved in a closed case. It also provides a check list of 10 reasons for closing the case. These reasons parallel CSR closure categories, including two (2) LSC codes no longer in use (change in eligibility status and client withdrew). Upon closure, a PAI staff member will assign a case closure category based upon information contained in a case file, court website, Case Status Report Form, and/or based upon the staff member's knowledge of the case. When appropriate, a PAI staff member may contact a private attorney in order to obtain further information. LASC does not prepare closing letters for clients or private attorneys. There is no management review or oversight of the case closure process. The Managing Attorney does not conduct annual case reviews.

### Clinic Services

The VLP clinics are either general walk-in brief advice and referral clinics or specialty pro se document preparation clinics that focus on providing self-help in a particular area of the law, such as divorce or expungement. Private attorneys provide legal assistance to clinic participants, as well as legal information, document preparation, and referral for other participants. The staff of the Cleveland VLP office organizes and operates the clinics, though local office management is involved in planning the annual clinic calendar and serves as a liaison with the local clinic sites. Participants are scheduled to attend clinics after completing an intake or can "drop in." During clinics, a written citizenship attestation is executed and eligible alien status is verified. "Drop in" applicants are screened for conflicts, and intake screening is performed by volunteer law students, or other staff members assisting with the clinic, using written PAI intake forms. The clinics use one (1) form to document both intake screening and the provision of legal assistance. This form is entitled "Brief Service, Advice, and Referral Clinic Intake and Advice Form" (the intake portion of this form is identical to the standard PAI paper intake form). PAI staff members or private attorneys review the intake forms during the clinic. During the clinics, private attorneys may identify cases appropriate for extended representation and may agree to accept cases, or clients may be matched with different private attorneys. PAI staff members make and track all referrals. After services are provided, the advice section of the Brief Service, Advice, and Referral Clinic Intake and Advice Forms are completed by the private attorneys participating in the clinics. After the clinic, intake and case information is entered into the ACMS by PAI staff members. Cases are de-selected if no assistance was provided; if assistance was provided, cases are closed as a staff case or PAI, depending upon whether staff members or private attorneys provided the highest level of legal assistance. Staff members assign case closure categories based on the information supplied in the Brief Service, Advice, and Referral Clinic Intake and Advice Forms.

### **Compliance Concerns:**

#### Eligibility Screening

It was disclosed during the review that participants in the Driver License Reinstatement Clinic were not screened for financial or 45 CFR Part 1626 eligibility during the clinic held on January 14, 2012. During this clinic, LASC's partner, in an effort to streamline the intake process, created an independent intake form, and substituted this intake form for LASC's paper PAI intake form. The substituted form collected the participants' demographics, employment, education, insurance, and criminal history information. However, this form failed to collect the necessary information concerning citizenship, household size, income, and assets as required by LASC policy and LSC regulation.<sup>37</sup> The Managing Attorney reported that the failure to adequately screen clinic participants was an oversight. During the review, OCE was provided with a License Reinstatement Clinic Intake Form (which is the standard PAI paper intake form) which was reported to be the intake form used in previous clinics and which LASC indicated would be used from now on. However, as indicated below, the standard intake form and the Brief Service, Advice, and Referral Clinic Intake and Advice Forms are insufficient and must be revised. The DR directed LASC to take all necessary steps to ensure that no LSC funds were used to support the January 2012 clinic and that no cases stemming from that clinic are reported in LASC's 2012 CSR data submission.

In its comments to the DR, LASC indicated that the January 14, 2012 License Suspension Clinic was not sponsored by LASC. LASC stated that it did not publicize the clinic, conduct the clinic, or recruit volunteers for this clinic. However, during the review, LASC staff provided a redacted completed intake sheet from the intake sheets it retained after the January 14, 2012 clinic. Additionally, staff provided OCE with a 2012 Brief Advice and Referral Clinic calendar that LASC publishes and decimates by quarterly mailing to social services agencies and other interested parties. On this calendar, a free legal advice "Assistance for Drivers with Suspended Licenses" clinic was scheduled for April 21, 2012, from 10:00-12:00 pm. The Legal Aid Society of Cleveland Volunteer Lawyers Program was listed as the sponsor.<sup>38</sup> During the review, LSC was provided with a License Reinstatement Clinic Intake Form (which is the standard PAI paper intake form) which was reported to be the intake form used in previous clinics and which LASC indicated would be used from now on. LASC further noted that it has contacted its partner and advised the partner that it must use LASC intake forms and procedures at these clinics and that LASC cannot use intake forms created by others.

### Paper Intake Forms

The paper intake forms used by the License Reinstatement Clinic and the Brief Service, Advice, and Referral Clinic Intake and Advice are insufficient because the form does not solicit information concerning the participant's reasonable income prospects, it does not fully screen for income, it does not consider any factors affecting eligibility for those persons whose incomes exceed 125% of the FPG, and does not screen for assets (the screening for assets is a question that asks the applicant if his "assets are more than \$8000." LASC's financial eligibility policy establishes an asset ceiling at \$10,000). A few staff members explained that even with an insufficient paper form, a compliant intake screening could still occur if an applicant is then

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<sup>37</sup> See 45 CFR Parts 1611 and 1626, and The Legal Aid Society of Cleveland Financial Eligibility Policy and Guidelines (October 12, 2011).

<sup>38</sup> See Practice and Procedure Manual for the Volunteer Lawyers Program of The Legal Aid Society of Cleveland (revised April 2012) at A-4.

further questioned, as a staff person could ask additional questions. However, any intake form in use should ensure, on its face, a fully complaint screening process.

## Conclusions

LASC must ensure that all clinic participants provided with legal assistance, as defined by the CSR Handbook (2008 Ed., as amended in 2011), § 2.2, are fully screened for eligibility consistent with LASC policy and LSC regulation. LASC must discontinue the use of current paper intake forms and ensure program-wide adoption and use of a standard paper form that mirrors the automated intake system. Further, LASC should not allow local paper intake forms to be developed – but if a local form is allowed, it should be required to receive advance approval from the administrative office, and the LASC administrative office should ensure that the form reflects all necessary compliance screening areas and questions contained in the ACMS. During the on-site review, LASC committed to revise its paper intake form and instruct staff on its use, thus, no corrective actions are required or being made.

In its comments to the DR, and in its May 3, 2012 Memorandum to staff submitted with the DR comments, LASC noted that the paper intake forms used for its PAI clinics are being revised to ensure that adequate screening is conducted and to ensure that required eligibility information is consistently recorded. LASC anticipated that it would complete the revisions to the intake forms by September 30, 2012. LSC is available and willing to review the reused forms for adequacy.

With the exception of the use of the non-compliant paper intake forms, interviews, and sampled files demonstrated that LASC's PAI system ensures that PAI cases are active and that current and accurate information is maintained within the PAI files. As discussed in Finding 9, all cases allocated to the PAI component yielded evidence that legal assistance was provided. As discussed above in Finding 11, only PAI Case No. Cuy-08-06944, closed 2011 Case No. Cuy-09-16275, and closed 2010 Case No. Cuy-08-14187 were identified as dormant or untimely closed.

Although, the review noted only one (1) dormant and one (1) untimely closed PAI case, LASC indicated that it instructed its staff, on May 3, 2012, to use the Aging Case Report to identify potential dormant and untimely cases.

However, as discussed above in Finding 1, closed 2010 PAI Case No. CUY-08-14187 was incorrectly allocated to the PAI component because the file contained no evidence of private attorney involvement. Management is reminded that activities undertaken by the recipient to meet the requirement of 45 CFR Part 1614 must include the direct delivery of legal assistance to eligible clients by private attorneys. Accordingly, if the legal assistance is not provided by a private attorney it cannot be allocated to the PAI component and should be indicated as a staff case.

As discussed in Finding 1, *supra*, LASC adopted a new practice regarding file review as explained in a May 3, 2012 Memorandum to staff. The Memorandum described the new practice which requires staff to review open cases every six (6) months in order to ensure that the

information contained in the ACMS is correct and that it is consistent with the information contained in the paper file.

With a few exceptions, LASC is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

**Finding 18: LASC is in compliance with 45 CFR Part 1627 which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and approval of payments made to attorneys in excess of \$25,000.00. Additionally, LASC is in substantial compliance with 45 CFR § 1610.5 (notification).**

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.<sup>39</sup> 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 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 *Federal Register* 28485 (June 2, 1983) and 48 *Federal Register* 54207 (November 30, 1983).

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 (1) 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).

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<sup>39</sup> 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 is included.

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 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.

The fiscal review of LASC's accounting records for selected general ledger expenses accounts that track and account for litigation expenses which include fees and dues payments from January 1, 2010 through February 28, 2012, disclosed that all non-mandatory dues and fees were paid with non-LSC funds. LASC is in compliance with the requirements of 45 CFR § 1627.4(a). A limited fiscal review of LASC's accounting records, related operating policies and procedures, and the audited financial statements from January 1, 2010 through February 28, 2012, as well as discussions with management, disclosed compliance with the financial reporting requirements of 45 CFR § 1627.3. The review noted no evidence of payments to private attorneys that required subgrants or any exceptions or inconsistencies in this area.

A limited fiscal review of contracts, as well as the 2011 draft audit, disclosed that LASC is the beneficiary of a TIG subgrant from Community Legal Aid Services in the amount of \$2,290. The monies are being used to develop payroll software (Automated Data Processing) that integrates with the ACMS.

A limited review of the cash receipts journal, list of individual donors, grants, contracts, and donor notification letters disclosed that from January 1, 2010 through February 28, 2012, LASC received funding from federal governmental agencies, foundations, law firms, and individuals. Recipients are required by 45 CFR § 1610.5 (Notification) to provide donors of funds of \$250 or more with written notification of the prohibitions and conditions on use of the funds resulting from the receipt of LSC funding.<sup>40</sup> The fiscal review evidenced that LASC failed to provide this written notification to all funders and/or funding sources who contributed \$250 or more. For example, the U.S. Department of Health and Human Services, U.S. Department of Housing and Urban Development, and U.S. Department of Treasury, supplied LASC with funds of \$250 or more and were not provided with a written donor notification letter.

As a corrective action, LASC was directed to ensure it provides the required 45 CFR § 1610.5 notification to donors of funds of \$250 or more. By way of general advice, for those donations being solicited, LASC may consider incorporating the 45 CFR § 1610.5 restriction language in the solicitation request, and if there is any confusion on whether or not a donor notification letter should be sent to a donor, LASC should err on the side of caution and provide a written notification letter.

In its comments to the DR, LASC indicated that it provides the 45 CFR § 1610.5 notice to all donors regardless of the amount of the contribution.

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<sup>40</sup> *See* 45 CFR § 1610.5.

Accordingly, based upon the fiscal review of the development of new oversight procedures as contained in LASC's May 5, 2012 Memorandum to administrative and development staff, OCE finds that LASC has taken sufficient action designed to implement Required Corrective Action item 12.

**Finding 19: Review of the recipient's policies and sampled files, as well as a limited review of fiscal and other records, and interviews with management and staff members, evidenced that LASC is in substantial 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.

LASC uses an automated time management system that records and accounts for time spent by attorneys and paralegals who work on cases, matters and supporting activities.

The fiscal review of 10 case handlers' timekeeping records sampled for the pay period ending October 21, 2011, disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c). However, a review of the 2010 audit and 2011 draft audit disclosed that a staff member failed to enter and maintain time keeping records from January 2010 through

January 2011. After this was discovered by the audit, the staff member began electronically and contemporaneously maintaining time records. A review of the staff member's time records for 2012 revealed that the time spent on each case, matter or supporting activity has been recorded in compliance with 45 CFR §§ 1635.3(b) and (c). Accordingly this matter has been resolved.

Additionally, a limited review of case files against their corresponding timekeeping records was conducted to determine the accuracy of the time reported as compared to the amount of work performed as disclosed in the case file. The review disclosed that both records compared favorably.

There are no recommendations or corrective actions required.

**Finding 20: Review of the recipient's policies and sampled cases, as well as interviews with management and staff members, evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.<sup>41</sup> However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, 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.

LSC further determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. As well, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action. *See* LSC Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010).

The limited fiscal review of LASC's accounting records (January 2010 through February 28, 2012) and review of audited financial statements for 2010 and draft 2011 evidenced no instances in which LASC recognized or reported the receipt of any attorneys' fees or court-awarded payments for cases.

The sampled files reviewed did not contain a prayer for attorneys' fees and, as such, LASC is in compliance with the requirements of 45 CFR Part 1642. Interviews with the Executive Director and Deputy Director further corroborated this finding.

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<sup>41</sup> The regulations defined "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).

LASC maintains a policy prohibiting the collection of attorneys' fees. However, it is recommended that LASC review this policy as LASC may wish to include the claiming, collecting, and retaining attorneys' fees as part of its litigation goals and objectives. There are no corrective actions required.

**Finding 21: Review of the recipient's policies and sampled files, as well as a limited review of fiscal and other records, and interviews with management and staff members evidenced non-compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities), in that the Board-approved policy does not contain all required provisions.**

The purpose of 45 CFR Part 1612 is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

LASC has a written policy containing the 45 CFR Part 1612 restrictions and has implemented procedures which substantially comport with the regulation.<sup>42</sup> However, the DR advised LASC that paragraph II(A)2 of this policy should be revised because it omits a required provision of 45 CFR § 1612.8(a)(2), which is that LASC employees cannot support or conduct training programs that “*encourage or facilitate the development of strategies to influence legislation or rulemaking*” emphasis added).

In its comments to the DR, LASC agreed to revise its Board-approved policies to bring them into compliance with 45 CFR § 1612.8(a)(2) by December 31, 2012.

Although LASC has indicated that it will take sufficient action designed to implement Required Corrective Action item 13 by ensuring that its Board-approved policies are consistent with 45 CFR § 1612.8(a)(2), such actions have not yet been completed. Thus, LASC must provide LSC with a copy of its Board-approved 45 CFR § 1612.8(a)(2) policy by January 30, 2013. It is recommended that LASC provide LSC with a draft copy of its revised policy for review and approval prior to its submission to its Board for approval.

A limited fiscal and document review, as well as interviews with management and staff members, was conducted to assess compliance with 45 CFR Part 1612. None of the sampled files evidenced that any lobbying or other prohibited activities were engaged in by staff members while engaged

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<sup>42</sup> See The Legal Aid Society of Cleveland Policy on Lobbying, Administrative Advocacy, Public Demonstrations, Advocacy Training and Organizing, 45 CFR 1612 (February 11, 1998). Staff members are required to complete a specified form, “Report of Legislative and Administrative Advocacy” for each legislative and administrative advocacy activity in which staff participated.

in legal assistance activities. Interviews with the Executive Director and Deputy Director further corroborated this finding; however, two (2) minor exceptions were noted.

First, the review identified that a March 23, 2009 request to testify before the state legislature was broadly drafted, as to the scope of the subject matter and time limit, because the elected official requested LASC's assistance with "all housing matters involving pending and future legislation."<sup>43</sup> The review further disclosed that LASC engaged in legislative activity pursuant to this request from January 1 to January 20, 2010, when it provided testimony to the elected official concerning tenant utility issues. The review evidenced that LASC's response to the request was narrow as to the scope of the subject matter and reasonable as to the time limit duration. During the review, LASC concurred that the request was overly broad and that it would not rely upon it to support further legislative activity. As the actions taken in response to the request were compliant, there are no recommendations or corrective actions required.

Second, the review of fiscal documentation and timekeeping records maintained by LASC, pursuant to 45 CFR § 1612.6, evidenced substantial compliance with 45 CFR § 1612.10. However, the review identified that the legislative and rulemaking activity time of two (2) staff members was mistakenly supported with LSC funds because the staff members incorrectly entered their time into the timekeeping system as LSC eligible activity. The total legislative and rulemaking hours reported were 1.70 hours (1.0 hour on April 18, 2011 and .7 hours on July 22, 2011), so only a de minimis amount of LSC resources were used to support these activities. However, as 45 CFR § 1612.10 requires LASC to maintain separate recordkeeping and accounting records for these activities and support them with non-LSC funds improvement is required.

As a corrective action, LASC was directed to cease supporting expenditures related to legislative and rulemaking activities with LSC funds. As part of its response to the Draft Report, LASC was directed to provide timekeeping and/or other documentation demonstrating that all expenditures for legislative and rulemaking activities are supported with non-LSC funds.

In its comments to the DR, LASC indicated that it adopted a new practice regarding the review of time records, and provided LSC with a copy of timekeeping records along with its comments to the DR. Pursuant to this new practice, management now reviews time records for legislative and administrative activities in order to ensure that appropriate time records exist for such activities and that no LSC funds are used to support such work.

Accordingly, based upon the fiscal review conducted by OCE of the newly developed oversight procedures, as contained in LASC's May 5, 2012 Memorandum to administrative and development staff, and the fiscal review of the timekeeping records for staff engaged in legislative and administrative activities pursuant to 45 CFR Part 1612, LASC has taken sufficient action designed to implement Required Corrective Action item 14.

**Finding 22: Sampled cases, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Parts 1613 and**

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<sup>43</sup> See Correspondence from State Representative Mike Foley (March 23, 2009).

**1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).**

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Interviews with management and staff members also confirmed that LASC is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

**Finding 23: Review of the recipient’s policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1617 (Class actions).**

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).<sup>44</sup>

LASC has a written policy governing defense of certain eviction proceedings as required by 45 CFR Part 1617.<sup>45</sup>

None of the sampled files reviewed involved initiation or participation in a class action. Interviews with management and staff members, as well as review of the recipient’s policies also confirmed that LASC is not involved in this prohibited activity and is in compliance with the requirements of 45 CFR Part 1617.

There are no recommendations or corrective actions required.

**Finding 24: Review of the recipient’s policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

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<sup>44</sup> 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).

<sup>45</sup> *See* The Legal Aid Society of Cleveland Policy on Class Actions (February 11, 1998).

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.

LASC has a written policy governing redistricting activities as required by 45 CFR Part 1632.<sup>46</sup> None of the sampled files reviewed involved initiation or participation in redistricting. Interviews with management and staff members, as well as review of the recipient’s policies confirmed that LASC is not involved in this prohibited activity and is in compliance with the requirements of 45 CFR Part 1632.

There are no recommendations or corrective actions required.

**Finding 25: Review of the recipient’s policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).**

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

LASC has a written policy governing the defense of certain eviction proceedings as required by 45 CFR Part 1633.<sup>47</sup>

None of the sampled files reviewed involved defense of any such eviction proceeding. Interviews with management and staff members, as well as review of the recipient’s policies, confirmed that LASC is not involved in this prohibited activity and is in compliance with the requirements of 45 CFR Part 1633.

There are no recommendations or corrective actions required.

**Finding 26: Review of the recipient’s policies and sampled cases, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

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<sup>46</sup> *See* Legal Aid Society of Cleveland Policy on Redistricting (February 11, 1998).

<sup>47</sup> *See* The Legal Aid Society of Cleveland Policy on Representation in Certain Eviction Proceedings (February 11, 1998). This policy provides that staff members are required to complete a specified form, for each case accepted involving the allegation of drug sale, distribution or manufacture, or possession with intent to sell or distribute and in which representation is permissible.

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.

LASC has a written policy governing the representation of incarcerated persons as required by 45 CFR Part 1637.<sup>48</sup>

None of the sampled files reviewed involved participation in civil litigation or administrative proceedings on behalf of incarcerated persons. Interviews with management and staff members, as well as review of the recipient's policies, confirmed that LASC is not involved in this prohibited activity and is in compliance with the requirements of 45 CFR Part 1637. There are no recommendations or corrective actions required.

**Finding 27: Review of the recipient's policies and sampled cases, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).**

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.<sup>49</sup> This restriction has been contained in all subsequent appropriations acts. 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: "[t]his part is designed to ensure that recipients and their employees do not solicit clients."

LASC has a written policy governing the solicitation of clients as required by 45 CFR Part 1638.<sup>50</sup>

None of the sampled files reviewed evidenced solicitation. Interviews with management and staff members, as well as review of the recipient's policies, confirmed that LASC is not involved in this prohibited activity and is in compliance with the requirements of 45 CFR Part 1638. There are no recommendations or corrective actions required.

**Finding 28: Review of the recipient's policies and sampled cases, as well as interviews with management and staff members, evidenced that LASC is in compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

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<sup>48</sup> *See* The Legal Aid Society of Cleveland Policy on Representation of Incarcerated Persons (date illegible). This policy provides that staff members are required to complete a specified form, "Approval for Continued Representation of Incarcerated Client" for each case accepted involving an incarcerated client.

<sup>49</sup> *See* Section 504(a)(18).

<sup>50</sup> *See* The Legal Aid Society of Cleveland Restrictions on Solicitation (February 11, 1998).

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.

LASC has a written policy governing the restrictions on assisted suicide, euthanasia, and mercy killing as required by 45 CFR Part 1643.<sup>51</sup>

None of the sampled files reviewed evidenced involvement in these activities. Interviews with management and staff members, as well as review of the recipient's policies also, confirmed that LASC is not involved in this prohibited activity and is in compliance with the requirements of 45 CFR Part 1643.

There are no recommendations or corrective actions required.

**Finding 29: Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that LASC is in 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

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<sup>51</sup> *See* The Legal Aid Society of Cleveland Restrictions on Assisted Suicide, Euthanasia, and Mercy Killing (February 11, 1998). This policy provides that staff members are required to complete a specified form, "Report of Activities Involving Assisted Suicide, Euthanasia, and mercy Killing" for each case accepted with non-LSC funds concerning these matters.

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.

None of the sampled files evidenced involvement with these prohibited activities. Interviews with management and staff members confirmed that LASC is not involved in the aforementioned prohibited activities and is in compliance with these requirements.

There are no recommendations or corrective actions required.

**Finding 30: A limited review of the signed written statements evidenced that LASC is in compliance with the requirements of 45 CFR § 1620.6.**

45 CFR § 1620.6 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 and a limited review of signed written agreements evidenced that LASC is in compliance with the requirements of 45 CFR § 1620.6.

There are no recommendations or corrective actions required.

**Finding 31: Review of the recipient's policies evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information).**

In accordance with 45 CFR Part 1644, recipients are directed to disclose to LSC and the public certain information on cases filed in court by their attorneys. 45 CFR § 1644.3 requires that the following information be disclosed for all actions filed on behalf of plaintiffs or petitioners who are clients of the recipient:

- a. the name and full address of each party to a case, unless the information is protected by an order or rule of court or by State or Federal law, or the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;
- b. the cause of action;
- c. the name and full address of the court where the case is filed; and
- d. the case number assigned to the case by the court.

LASC has a written policy governing the disclosure of case information as required by 45 CFR Part 1644.<sup>52</sup> The review disclosed that LASC's policy concerning the submission of these reports is in compliance with 45 CFR Part 1644.

There are no recommendations or corrective actions required.

**Finding 32: A limited review of LASC's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.).**

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, 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 Accounting Guide for LSC Recipients (2010 Edition).

The 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.

#### Internal Controls and Documentation

A limited fiscal review assessed whether LASC has in place a system of authorizations and approvals that require appropriate managerial approval for all significant actions and financial transactions of the organization consistent with the Accounting Guide For LSC Recipients (2010 Ed.), Appendix VII, Section A(1), (Accounting Procedures and Internal Controls). The review found that LASC has in place internal controls and maintains appropriate documentation; however, a few exceptions were identified, and improvement is required.

#### Segregation of Duties

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<sup>52</sup> *See* The Legal Aid Society of Cleveland Policy on Disclosure of Case Information 45 CFR 1644 (July 3, 2003).

As part of the fiscal review, a limited sampling of journal entries, credit card statements, bank statements, physical property records, and the LSC Internal Control Worksheet, was reviewed to identify internal control deficiencies within the financial operations. While the review compared favorably, some weaknesses in LASC's internal controls as they relate to segregation of duties were identified within the financial operations of LASC:

- A fiscal review of four (4) journal voucher entries recorded in December 2011, disclosed that journal voucher 110253, in the amount of \$22,201.04, had been both prepared and approved by the Director of Finance because of a vacancy in the position;
- A review of a limited sampling of bank statements reflected insufficient documentation of their review and approval as there was no signature, initials or date of review recorded on the bank statements or elsewhere; however, interviews disclosed that the Executive Director reviews and approves them;
- The Internal Controls Worksheet disclosed that the same staff member, the Director of Finance, maintains the property inventory records, takes the physical inventory, and reconciles the inventory property records to the general ledger;
- A limited sampling of credit card statements and expense reports reflected that expense reports for the Executive Director are approved by direct reports, such as the Director of Finance. Also credit card statements are being approved by those who also have charging authority on the card and go to the Executive Director, who also has charging authority for the card. For example, the approval of the Executive Director's expenses and credit charges should not be performed by staff directly reporting to the Executive Director. Moreover, credit charges cannot be approved by those who are also users of that credit. The credit charges and expenses of the Executive Director should be approved by a member of the Finance Committee of the Board of Directors. The approval can be obtained after the payments have been made so that late charges are not incurred, and the ED is reimbursed for expenses reported on a timely basis.

As the Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII, § § (A)(1), C(5) and I(8), requires that all journal entries, physical property inventories, bank statements, and expense and credit charges be reviewed and approved by someone other than the preparer, and duties should be performed independent of each other, improvement is required to avoid situations such as those described above.

A limited fiscal review, as well as interviews with management and staff, evidence that LASC is in substantial compliance with the Accounting Guide For LSC Recipients (2010 Ed.). However, as a corrective action, LASC was directed to strengthen its internal controls and must ensure the adequate segregation of duties.

In its comments to the DR, LASC indicated that it has adopted new practices designed to strengthen its internal controls and to adequately segregate duties. First, LASC established a relationship with an independent contractor who is available to fill in for the fiscal office staff when needed to ensure that journal entries are not prepared and approved by the same individual. Second, the Executive Director now initials and dates the bank statements upon review each month. Third, LASC stated that it is in the process of creating a new Office Manager position that will be responsible for some parts of the inventory, so that one (1) person is no longer responsible for maintaining records, taking inventory, and reconciling inventory records with the general ledger. Finally, LASC has instituted a new practice where the Finance Committee reviews and approves the Executive Director's expense reimbursements and credit card statements at each regular quarterly meeting. Any member of the committee has the opportunity to ask questions, raise concerns, or object to expenditure.

Accordingly, based upon the fiscal review conducted by OCE of the new oversight procedures as contained in LASC's May 5, 2012 Memoranda to administrative and development staff submitted with comments to the DR, LASC has taken sufficient action designed to implement Required Corrective Action item 15 by strengthening its internal controls and ensuring the adequate segregation of duties.

#### Bank Reconciliations

A review of the seven (7) bank reconciliations completed for November 2011 "New Court Costs Account," disclosed that 16 checks, ranging in amounts of \$1.00 to \$10.00 in the "New Court Costs Account" were outstanding. The Accounting Guide For LSC Recipients (2010 Ed.), Appendix VII, §, I(7), requires that all checks outstanding for over six (6) months should be resolved.

As a corrective action, LASC was directed to resolve these 16 outstanding checks. LASC was also directed to develop and implement procedures to resolve outstanding checks and provide LSC with such with its comments of the Draft Report.

In its comments to the DR, LASC noted that it developed and implemented additional procedures to resolve outstanding client trust checks and that it has resolved the 16 outstanding client trust checks (ranging from \$1 – \$10) identified during the CSR/CMS review.

Accordingly, based upon the fiscal review conducted by OCE of the newly developed oversight procedures contained in LASC's May 5, 2012 Memorandum to administrative and development staff and the fiscal review conducted by OCE of the Client Trust Procedures submitted along with comments to the DR, LASC has taken sufficient action designed to implement Required Corrective Action item 16 by resolving the 16 outstanding checks in the November 2011 "New Court Costs Account" in accordance with LASC's outstanding check policy.

#### Cash Balances

The Federal Deposit Insurance Corporation's ("FDIC") limit is \$250,000 per depositor, per insured bank, for each account ownership category. All cash accounts held in financial institutions which are federally insured are limited to the maximum insured limits.

A limited review of several bank statements and of the general ledger identified that LASC's monthly cash balance exceeded the \$250,000 FDIC limit during the review period. Interviews with the Executive Director and Director of Finance, disclosed that LASC's management and finance committee were aware that its cash balance exceeded the FDIC insurance limit because of the large sums of money LASC is required to expend for payroll and other expenses. Management explained that after assessing the failure risk of the banking institution, and evaluating the timing of their cash flow, it was determined that the risk level was minimal as compared to its fiscal responsibility to ensure adequate deposits to satisfy its withdrawals.

A limited fiscal review demonstrated that LASC's monthly cash balance during the year may exceed, at times, the \$250,000 insurance limit covered by the FDIC. It is recommended that LASC management continue to monitor its cash balance and that the finance committee periodically assesses the risk of maintaining cash balances that exceed FDIC insurance limits.

No corrective actions are required.

#### Cash Receipts

A limited review of LASC's cash receipts logs, monthly deposits, cash receipts journal, bank statements, general ledger, and 2011 donor list, as well as interviews with management and staff members, disclosed that LASC properly records its cash receipts to the cash receipts log, both regular deposits and donor contributions are deposited in a timely manner to LASC's bank account, and cash receipts are reconciled to the cash receipts log on a monthly basis.

LASC is in compliance with the Accounting Guide For LSC Recipients (2010 Ed.), (Accounting Procedures and Internal Controls).

No recommendations or corrective actions are required.

#### Policy Review

A limited review of LASC's policies, such as the document retention policy, payroll advance policy, and vacation leave policy and timekeeping revealed that these policies are consistent with LSC's Accounting Guide (2010 Ed.) (Accounting Procedures and Internal Controls).

LASC is compliance with the Accounting Guide For LSC Recipients (2010 Ed.), Appendix II and VII, § (A)14 (Accounting Procedures and Internal Controls).

No recommendations or corrective actions are required.

#### Cost Standards and Procedures

The Accounting Guide For LSC Recipients (2010 Ed.), Appendix VII, § (G)3 (Accounting Procedures and Internal Controls) requires that recipients timely review, timely pay vendor charge account transactions, avoid finance charges and late fees, and maintain such supporting documentation that will validate disbursements.

A limited review of cash disbursements, invoices, and the general ledger from January 1, 2010 through February 28, 2012, as well as interviews with members of the LASC's fiscal staff and management, disclosed that several AT&T invoices were not paid timely because the program was disputing the charges. An analysis of the general ledger revealed that LSC funds were not used to cover these late fees.

With this isolated exception, LASC's vendor payment practices are consistent with the Accounting Guide For LSC Recipients (2010 Ed.), Appendix VII, § (G)3 (Accounting Procedures and Internal Controls). By way of general advice, LASC is advised that if an invoice is being disputed, LASC should pay the invoice in a timely manner and then proceed to resolve the issue to avoid late charges.

No corrective actions are required.

#### **IV. RECOMMENDATIONS<sup>53</sup>**

Consistent with the findings of this report, it is recommended that LASC implement the following recommended actions:

1. Program its ACMS to alert staff when citizenship and alien eligibility verification fields are incomplete;
2. Provide training to staff on the program's policies regarding 45 CFR § 1611.5 (exceptions to annual income ceiling), 45 CFR § 1611.7(a) (reasonable income prospects), and 45 CFR § 1611.4 (maximum annual asset ceiling);
3. Develop a standardized procedure and practices for obtaining and documenting reasonable income prospects information pursuant to 45 CFR § 1611.7(a);
4. Develop a standardized procedure and practice for obtaining and documenting exceptions to annual income ceiling information pursuant to 45 CFR § 1611.5;
5. Develop additional oversight methods and practice for obtaining and documenting citizenship and/or eligible alien status;
6. Develop additional periodic compliance monitoring procedures to ensure the consistent accurate and timely completion of retainer agreements;
7. Review the application of its case closure categories and provide training to staff consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011);
8. Determine whether to include court appointments within its permissible outside practice activities consistent with 45 CFR § 1604.7;
9. Review its attorneys' fees policy to determine whether the continuance of this policy is consistent with LASC's litigation goals and objectives;
10. Discontinue the use of current paper intake forms to ensure a program-wide adoption and use of a standard paper forms that mirror the automated intake system and require the pre-approval of all intake forms prior to their distribution and use;

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<sup>53</sup> 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.

11. Monitor all cash balances and periodically assesses the risk of maintaining cash balances that exceed FDIC insurance limits; and
12. Challenge disputed invoices after first paying them in a timely manner in order to avoid late fees.

## V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, LASC is required to implement the following corrective actions:

1. Ensure that the ACMS information necessary for the effective management of cases is accurately and timely recorded so that congruence is maintained between the information in the case files and the ACMS;

In its comments to the DR, LASC noted that it had taken a number of actions designed to ensure that the ACMS information necessary for the effective management of cases is accurately and timely recorded. For example, LASC indicated that it discussed the preliminary findings detailed during the exit conference with its intake staff and management, and conducted a mandatory training for all staff on May 11, 2012. LASC reported that it instructed staff about the use and review of Case Contradiction and Missing Data Reports. Each month those reports will be distributed to case handlers and Managing Attorneys will be included so that they can insure that case handlers take the required corrective action. On August 24, 2012, LASC advised LSC that it now requires staff to review open cases every six (6) months to ensure that the information in the ACMS is correct and that it is consistent with the paper file. After this review, staff is required to prepare a Memorandum to the file in order to provide assurance that the review was completed. A copy of the instruction to staff was provided to LSC along with the comments to the DR. Additionally, LASC reported it is in the process of developing a new Intake Manual that will reflect changes to its policies and procedures which are required to implement the recommendations and required corrective actions detailed in the DR. LASC indicated that its new Intake Manual will incorporate a citizenship red flag system and will contain a newly developed compliance page in its ACMS that provides an additional oversight method in order to ensure that each file contains the information necessary to comply with LSC requirements. However, LASC's vendor who is performing the work has indicated that it will take considerable time to program the modifications into the ACMS and that the modifications cannot be completed until February 28, 2013; thus, LASC indicated that the new Intake Manual cannot be completed until March 31, 2013. LASC indicated that it anticipates its Reference Guide will be completed by November 30, 2012.

Accordingly, and based upon the review of the May 3, 2012 Memorandum instruction to staff submitted with its comments to the DR, LASC has taken partial action designed to implement Required Corrective Action item 1 and must continue to take corrective action to ensure that a new Intake Manual is created and that the modifications made to its ACMS are completed. LASC must provide LSC with a copy of the new Intake Manual, the Reference Guide, templates, and screen shots of the ACMS modifications by April 30, 2013.

2. Remove the LSC eligible default as it is in an essential category of eligibility;

In its comments to the DR, LASC agreed to remove the "LSC Eligible" default from its ACMS and stated it has requested that its vendor modify its ACMS accordingly. LASC

anticipates that this ACMS modification will be completed no later than December 31, 2012.

Accordingly, LASC must continue to take corrective action designed to implement Required Corrective Action item 2, by ensuring that the planned ACMS modifications are completed. LASC must provide LSC with a screen shot of the modifications made to its "LSC Eligible" ACMS field by January 30, 2013.

3. Ensure that all cases reported to LSC in the CSRs contain documentation evidencing the particular facts and factors the program relies upon to determine eligibility for applicants with household incomes between 125-200% of the FPG as required by 45 CFR § 1611.5(b) and that there is no use of standardized expense deductions;

In its comments to the DR, LASC indicated that it has instructed staff to adhere to the factor analysis and record the facts supporting the authorized exception factors that are contained in this policy. In its comments to the DR, LASC further indicated that it no longer uses standardized expenses.

Accordingly, based upon review of comments to the DR, and of the May 3, 2012, Memorandum instruction to staff, LASC has taken sufficient action designed to implement Required Corrective Action item 3 in order to ensure that there is no use of standardized expense deductions and to ensure that cases reported to LSC in the CSRs contain documentation evidencing the particular facts and factors LASC has relied upon to determine eligibility for applicants with incomes between 125-200% of the FPG, consistent with its Board-approved policy. However, LASC must provide LSC, by January 30, 2013, with documentation evidencing its instructions to staff related to recording the facts supporting any authorized exception factors used for case acceptance.

4. Ensure that over-income applicants are screened in a manner consistent with the Board of Director's intent (factor analysis) or that LASC's policies reflect its staff screening practices (spend down); and develop tools in ACMS to facilitate the correct use of the income justification process;

As discussed in Required Corrective Action item 3, *supra*, LASC instructed its staff to record facts supporting any 45 CFR § 1611.5 authorized exception factors that are used for case acceptance that are contained in its Board-approved financial eligibility policies, and indicated that it is modifying its ACMS to facilitate staff's ability to obtain and record information concerning the authorized exception factors. Additionally, LASC is revising its Intake Manual to include procedures for the screening of over-income applicants consistent with the Board-approved policy. LASC anticipates that the ACMS modifications will be completed by December 31, 2012, and that the revised Intake Manual will be completed by March 31, 2013. LASC did not submit documentation to evidence this training or instruction with its comments to the DR.

Accordingly, and as discussed in Required Corrective Action item 3, *supra*, LASC has taken sufficient action designed to implement Required Corrective Action item 4 by

ensuring that cases reported to LSC in the CSRs contain documentation evidencing that LASC has determined eligibility for applicants with incomes between 125-200% of the FPG consistent with its Board-approved policy. As stated in Required Corrective Action item 3, *supra*, LASC must provide LSC, by January 30, 2013, with documentation evidencing its instructions to staff regarding the screening of over-income applicants consistent with Board-approved policy. LASC must provide LSC with a screen shot of the applicable ACMS modifications, as well as a copy of its revised Intake Manual, by April 30, 2013.

5. Ensure that all cases reported to LSC in the CSRs contain evidence of eligibility consistent with 45 CFR § 1611.6;

In its comments to the DR, and in its May 3, 2012 Memorandum to staff submitted with these comments, LASC noted that it implemented a new practice requiring the approval of the Executive Director before a case handler undertakes representation of a group so as to ensure staff performs group eligibility consistent with LASC's Board-approved policy. Additionally, all group representation cases are now reviewed by the Executive Director and/or Deputy Director bi-annually to ensure continued compliance.

Accordingly, LASC indicated that it has taken sufficient action designed to implement Required Corrective Action item 5. However, as LASC did not provide LSC with a copy of its instruction to staff regarding this new practice, LASC must provide LSC with a copy of the instruction no later than January 30, 2013.

6. Ensure that all cases contain evidence of reasonable income prospects screening consistent with 45 CFR § 1611.7(a);

In its comments to the DR, LASC noted that, on May 3, 2012, it instructed staff to inquire into the reasonable income prospects of every applicant and document it in the case file. Additionally, LASC advised that it now prepares ACMS reports to determine whether staff is recording reasonable income prospect information. LASC reported that it intends to further modify its ACMS so that staff can more easily record this inquiry. LASC anticipates that this ACMS modification will be completed no later than March 31, 2013.

Accordingly, and based upon a review of the May 3, 2012, LASC Memorandum instruction to staff submitted to OCE with its comments to the DR, LASC has taken sufficient action, designed to implement Required Corrective Action item 6, to ensure inquiries are made into every applicant's reasonable income prospects. However, LASC must provide LSC with a screen shot of its newly implemented ACMS report and a screen shot of the ACMS modifications made relating to reasonable income prospects screening no later than April 30, 2013.

7. Revise its policies consistent with 45 CFR § 1611.3(b) and 45 CFR § 1611.4(b);

In its comments to the DR, LASC agreed to revise its Board-approved policies to bring them into compliance with 45 CFR § 1611.3(b) and 45 CFR § 1611.4(b) by December 31, 2012.

Although LASC has indicated it will take sufficient action designed to implement Required Corrective Action item 7 by ensuring that its financial eligibility policies are consistent with 45 CFR § 1611.3(b) and 45 CFR § 1611.4(b), such actions have not yet been completed. Thus, LASC must provide LSC with a copy of its Board- approved financial eligibility policy by January 30, 2013. It is also recommended that LASC provide LSC with a draft copy of its revised financial eligibility policy for review and approval prior to its submission for Board approval.

8. Demonstrate that the categories of assets listed in the program's policy Section II (4), (5), and (6) are exempt from attachment under State or Federal law, and ensure that the policy on asset eligibility is consistent with 45 CFR § 1611.3(d)(2) and 45 CFR § 1611.3(f);

In its comments to the DR, LASC agreed to revise its Board-approved financial eligibility policies by December 31, 2012 to ensure that its asset policy is consistent with 45 CFR §§ 1611.3(d)(2) and 1611.3(f) .

Although LASC has indicated that it will take sufficient action designed to implement Required Corrective Action item 8 by ensuring that its financial eligibility policies are consistent with 45 CFR §§ 1611.3(d)(2) and 1611.3(f), such actions have not yet been completed. Thus, LASC must provide LSC with a copy of its revised Board-approved financial eligibility policy by January 30, 2013. It is also recommended that LASC provide LSC with a draft copy of its revised financial eligibility policy for review and approval prior to its submission for Board approval.

9. Ensure that all cases contain evidence of citizenship/alien eligibility screening and that all cases contain executed citizenship attestations or alien eligibility documentation, when necessary, as required by 45 CFR §§ 1626.6 and 1626.7; obtain the required document or include evidence of document review in any open case lacking the necessary level of documentation under Part 1626; and charge the full costs of any Part 1626 exception case (in which full documentation under Part 1626 is not ultimately obtained) to a non-LSC funding source. Such cost calculations should begin at case acceptance. Cases lacking 1626 screening and/or documentation should be closed in a manner ensuring they are not included in future CSR data submissions;

In its comments to the DR, LASC indicated that on May 3, 2012, LASC management communicated with staff via Memorandum the importance of obtaining citizenship or eligible alien status documentation in every case and clarified that staff should obtain a citizenship attestation or alien eligibility status documentation for any case in which there is in-person contact, even when an applicant is merely dropping off documents at an office. LASC further instructed staff to review all open cases to ensure that a citizenship attestation or eligible alien status documentation was present when necessary. Additionally, LASC submitted, with its comments to the DR, a copy of its August 24,

2012 case opening procedures which requires staff to review the paper and ACMS file upon case acceptance and thereafter every six (6) months to ensure that a citizenship attestation or eligible alien status documentation has been obtained. LASC further indicated that if it determines that cases lack a citizenship attestation or eligible alien status documentation when required, LSC funds would not be charged for the costs associated with the cases and those cases would not be reported to LSC in the CSRs.

Accordingly, and as discussed in Finding 2, *supra*, LASC has taken sufficient action designed to implement Required Corrective Action item 9 to ensure that all cases contain evidence of citizenship or eligible alien status documentation and that cases lacking appropriate documentation are not included in the CSRs.

10. Ensure all files contain statement of facts where required pursuant to 45 CFR Part 1636;

In its comments to the DR, LASC indicated that, on May 3, 2012, it advised staff regarding LSC regulations concerning client identity and statement of facts. LASC stated that a section of its new ACMS compliance page will be devoted to ensuring that management reviews every case to determine whether a 45 CFR Part 1636 statement was required. Finally, LASC reported that it modified its Divorce Application to include a signature line.

Accordingly, and based upon review of the May 3, 2012 Memorandum submitted with its comments to the DR, LASC has taken sufficient action designed to implement Required Corrective Action item 10 by ensuring that all cases contain a 45 CFR Part 1636 statement when required. However, LASC must provide LSC with screen shots of the ACMS compliance page modifications no later than April 30, 2013.

11. Revise the policy on outside practice of law to include that full-time attorneys may use *de minimis* amounts of LASC resources for outside practice activities necessary to carry out the attorney's professional responsibilities pursuant to 45 CFR § 1604.6(a);

In its comments to the DR, LASC noted that it had revised its Outside Practice of Law Policy to ensure that full-time attorneys may use *de minimis* amounts of LASC resources for outside practice activities necessary to carry out the attorney's professional responsibilities, pursuant to 45 CFR § 1604.6(a). LASC further advised that the revised policy would be presented for approval at LASC's next regularly scheduled Board of Directors meeting on October 31, 2012.

Although LASC has indicated that it will take sufficient action designed to implement Required Corrective Action item 11 by ensuring that its Outside Practice of Law policy is consistent with 45 CFR § 1604.6(a), such actions have not yet been completed. Thus, LASC must provide LSC with a copy of its Board-approved policy by January 30, 2013.

12. Ensure that all donors of funds in the amounts of \$250.00 or more be provided with a donor notification letter pursuant to 45 CFR § 1610.5;

In its comments to the DR, LASC indicated that it provides the 45 CFR § 1610.5 notice to all donors regardless of the amount of the contribution.

Accordingly, based upon the fiscal review of the development of new oversight procedures as contained in LASC's May 5, 2012 Memorandum to administrative and development staff, OCE finds that LASC has taken sufficient action designed to implement Required Corrective Action item 12.

13. Revise the policy on advocacy training to reflect that LASC employees cannot support or conduct training programs that "*encourage or facilitate the development of strategies to influence legislation or rulemaking*" and to ensure the policy conforms with 45 CFR § 1612.8(a)(2);

In its comments to the DR, LASC agreed to revise its Board-approved policies to bring them into compliance with 45 CFR § 1612.8(a)(2) by December 31, 2012.

Although LASC has indicated that it will take sufficient action designed to implement Required Corrective Action item 13 by ensuring that its Board-approved policies are consistent with 45 CFR § 1612.8(a)(2), such actions have not yet been completed. Thus, LASC must provide LSC with a copy of its Board-approved 45 CFR § 1612.8(a)(2) policy by January 30, 2013. It is recommended that LASC provide LSC with a draft copy of its revised policy for review and approval prior to its submission to its Board for approval.

14. Cease supporting expenditures related to legislative and rulemaking activities with LSC funds;

In its comments to the DR, LASC indicated that it adopted a new practice regarding the review of time records, and provided LSC with a copy of timekeeping records along with its comments to the DR. Pursuant to this new practice, management now reviews time records for legislative and administrative activities in order to ensure that appropriate time records exist for such activities and that no LSC funds are used to support such work.

Accordingly, based upon the fiscal review conducted by OCE of the newly developed oversight procedures, as contained in LASC's May 5, 2012 Memorandum to administrative and development staff, and the fiscal review of the timekeeping records for staff engaged in legislative and administrative activities pursuant to 45 CFR Part 1612. LASC has taken sufficient action designed to implement Required Corrective Action item 14.

15. Strengthen internal controls and ensure the adequate segregation of duties; and

In its comments to the DR, LASC indicated that it has adopted new practices designed to strengthen its internal controls and to adequately segregate duties. First, LASC established a relationship with an independent contractor who is available to fill in for the

fiscal office staff when needed to ensure that journal entries are not prepared and approved by the same individual. Second, the Executive Director now initials and dates the bank statements upon review each month. Third, LASC stated that it is in the process of creating a new Office Manager position that will be responsible for some parts of the inventory, so that one (1) person is no longer responsible for maintaining records, taking inventory, and reconciling inventory records with the general ledger. Finally, LASC has instituted a new practice where the Finance Committee reviews and approves the Executive Director's expense reimbursements and credit card statements at each regular quarterly meeting. Any member of the committee has the opportunity to ask questions, raise concerns, or object to expenditure.

Accordingly, based upon the fiscal review conducted by OCE of the new oversight procedures as contained in LASC's May 5, 2012 Memoranda to administrative and development staff submitted with comments to the DR, LASC has taken sufficient action designed to implement Required Corrective Action item 15 by strengthening its internal controls and ensuring the adequate segregation of duties.

16. Resolve the 16 outstanding checks in the November 2011 "New Court Costs Account" in accordance with LASC's outstanding check policy.

In its comments to the DR, LASC noted that it developed and implemented additional procedures to resolve outstanding client trust checks and that it has resolved the 16 outstanding client trust checks (ranging from \$1 – \$10) identified during the CSR/CMS review.

Accordingly, based upon the fiscal review conducted by OCE of the newly developed oversight procedures as contained in LASC's May 5, 2012 Memorandum to administrative and development staff and the fiscal review conducted by OCE of the Client Trust Procedures submitted along with comments to the DR, LASC has taken sufficient action designed to implement Required Corrective Action item 16 by resolving the 16 outstanding checks in the November 2011 "New Court Costs Account" in accordance with LASC's outstanding check policy.



*The*  
**Legal Aid Society**  
*of Cleveland*  
*Since 1905*

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August 31, 2012

Lora Rath  
Acting Director  
Office of Compliance and Enforcement  
Legal Services Corporation  
3333 K Street, NW, 3<sup>rd</sup> Floor  
Washington, DC 20007-3522

RE: CSR/CMS Review Visit, Recipient No. 436050

Dear Ms. Rath:

Please find enclosed the Legal Aid Society of Cleveland's comments to the Legal Service Corporation Draft Report for the on-site Case Service Report/Case Management System review which took place during the week of April 16-20, 2012.

We appreciate having the opportunity to respond to the report. We also appreciated the professionalism of your team. Their insight and recommendations are helpful.

If you have any questions about our response, please contact me.

Sincerely,

Colleen M. Cotter, Esq.  
Executive Director

Enc.

The Legal Aid Society of Cleveland (Cleveland Legal Aid) has reviewed the Legal Services Corporation Office of Compliance and Enforcement (LSC OCE) Draft Report following its April 16 – 20, 2012 visit. This document is provided to LSC OCE to provide corrections and additional clarification, and to provide information about corrective actions that Cleveland Legal Aid has taken or will soon undertake in order to implement all of the required corrective actions.

### Corrections to the Report:

There were a few factual errors in the Draft Report which The Legal Aid Society requests are corrected for the final report.

- **Page 5:** The draft report contains a typographical error in the third paragraph. In 2011, 23.6% of the cases closed by Cleveland Legal Aid were closed with an extended service case closure category (not 76.4% as indicated in the draft).
- **Page 39:** The draft report describes a January 14, 2012 Driver License Reinstatement Clinic. That clinic was not sponsored by Cleveland Legal Aid. Cleveland Legal Aid did not conduct any part of the clinic, including screening, intake or the provision of legal advice. The clinic was sponsored by the Garfield Heights Municipal Court. This court has conducted these clinics for several years. The court advertised the clinic, organized the logistics of the clinic, and recruited volunteers who provided *pro se* litigants with assistance. Those individuals were not entered into Cleveland Legal Aid's case management system and were not served by Cleveland Legal Aid. The judge invited the Cleveland Legal Aid Volunteer Lawyers Program Managing Attorney to attend the clinic to observe because Cleveland Legal Aid conducts similar clinics. The judge provided copies of the intake forms to Cleveland Legal Aid, which were shared with the LSC OCE team, but only did so to compare procedures. The managing attorney informed the judge that if Cleveland Legal Aid were to be a co-sponsor on future clinics, those clinics would need to use Cleveland Legal Aid's intake forms and procedures. Cleveland Legal Aid does not use intake forms created by others.

### Actions Taken to Improve Compliance Overall:

Cleveland Legal Aid has taken a number of actions to improve its compliance with LSC requirements. These steps are responsive to many of the recommendations in the report and to the required corrective actions. These include:

- **Training:** Cleveland Legal Aid conducted a mandatory training of all staff on May 11, 2012, in response to the preliminary findings by the OCE team regarding both required corrective actions and recommendations. In addition to this training, the preliminary findings were discussed at the April 25 Managing Attorney meeting and at several meetings of the Intake Specialists. Cleveland Legal Aid is committed to continuing this type of training to reinforce the importance of compliance, and to develop and implement new policies and procedures. [Initial Training Complete; on-going]
- **New Intake Manual:** Cleveland Legal Aid will update its intake manual to reflect all of the changes in policies and procedures referenced in this document, as well as other improvements. [Complete by 3/31/13]

- **Case Contradiction Reports:** All staff have been instructed about the importance of reviewing these reports and taking prompt corrective action. Currently those reports are distributed monthly to casehandlers. We will add managing attorneys to that distribution, so that they can ensure corrective action is taken. [Training Complete; Copies to Managers by 10/31/12]
- **Reference Guide:** Cleveland Legal Aid will develop a one page, laminated Reference Guide which will provide staff with an accessible reminder of appropriate coding guidelines and other compliance requirements. [Complete by 11/30/12]
- **Case Closing Codes:** All staff were trained about closing codes at the May 11 meeting. An additional training is planned for later in the year. In addition, the Reference Guide described above will be helpful in ensuring consistent use of closing codes. [Training #1 Complete; Training #2 Complete by 12/31/12]
- **Paper Intake Forms:** Cleveland Legal Aid is in the process of revising its paper intake form (especially for use at *Pro Bono* Clinics) to ensure it captures all of the required eligibility information and will ensure that all clinic participants provided with legal assistance are fully screened and are eligible for assistance. [Complete by 9/30/12]
- **ACMS Improvements:** Cleveland Legal Aid is implementing several improvements to its automated case management system (ACMS) in addition to the specific changes noted below. The two biggest improvements will be improvements to the red flag system to incorporate citizenship attestations and a new compliance page which will provide an additional check on required documentation and other compliance issues. Cleveland Legal Aid is transitioning to a new vendor to provide support for the ACMS. Therefore, the turnaround for needed modifications to the ACMS is somewhat delayed. [Complete by 2/28/13]

### Required Corrective Actions:

Cleveland Legal Aid has reviewed each of the required corrective actions described on pages 57 – 58 of the draft report and has begun, or in some cases has completed, work to address each of them. Those steps are described below.

#### Corrective Action #1

- Cleveland Legal Aid will develop a one page laminated document that will be a quick reference guide for staff members on compliance requirements. [Complete by 11/30/12]
- Cleveland Legal Aid trained all staff about most of the matters raised in the OCE report. An additional training will take place later in the year. [Training #1 Complete; Training #2 Complete by 12/31/12]
- Cleveland Legal Aid adopted a new practice requiring that all casehandlers review their open cases every six months, ensure the information in the ACMS is correct and that it matches the paper file, and draft an update memo. Cleveland Legal Aid also reinforced its policy of requiring an opening and closing memo and a review to ensure that information in the ACMS and the paper file match. [Complete]
  - As requested, a copy of the most recent staff memorandum describing this practice is attached.

**Corrective Action #2**

- Cleveland Legal Aid will remove the LSC eligible default from its automated case management system. This change has already been requested. [Complete by 12/31/12]

**Corrective Action #3**

- Cleveland Legal Aid is no longer using standardized expenses. [Complete]
- Intake staff have been trained regarding the appropriate use of factors and the need to document the facts and factors. [Complete]

**Corrective Action #4**

- Cleveland Legal Aid will make revisions to its automated case management system (ACMS) to assist staff in obtaining, recording and appropriately using information about the factors to be applied for applicants with income 125-200% of the federal poverty guidelines. [Complete by 12/31/12]
- The staff will be trained and the Intake Manual will be updated to incorporate the factor analysis required by Cleveland Legal Aid's policy. [Training complete by 12/31/12; Intake Manual Revised by 3/31/13]

**Corrective Action #5:**

- Cleveland Legal Aid implemented a policy by which the approval of the Executive Director is required before representation of a group is undertaken. This will ensure determination of group eligibility. In addition, the Executive Director and/or Deputy Director will review open group cases every six months to ensure continued compliance. [Complete]

**Corrective Action #6:**

- Cleveland Legal Aid now requires and has trained intake specialists and other staff conducting intake to ask applicants about prospective income and record this information in the ACMS. [Complete]
- Cleveland Legal Aid has developed a report that captures instances where the field in which the prospective income is to be recorded is blank. This will help ensure this information is always recorded. [Complete]
- Cleveland Legal Aid is making modifications to its ACMS to improve the system of recording information about prospective income and to more easily record that the question has been asked. [Complete by 3/31/13]

**Corrective Action #7:**

- Cleveland Legal Aid will modify its eligibility policy to be consistent with §1611.3(b) and 1611.4(b). [Complete by 12/31/12]

**Corrective Action #8:**

- Cleveland Legal Aid will modify its eligibility policy to ensure that all assets listed by Section II(4), (5) and (6) are exempt from attachment and that the policy is consistent with 1611.3(d)(2) and 1611.3(f). [Complete by 12/31/12]

**Corrective Action #9:**

- Cleveland Legal Aid has instructed all staff to review all open cases to ensure that citizenship attestations or alien eligibility documentation, when necessary, is present in the case. All staff have been instructed of the importance of obtaining this documentation. [Complete]
- Cleveland Legal Aid staff have been instructed to obtain citizenship attestation or alien eligibility documentation for any case in which there is any in-person contact, even dropping off papers. [Complete]
- Cleveland Legal Aid has implemented case opening procedures to ensure that the citizenship attestation or alien eligibility documentation has been obtained and in those cases where it has not, LSC is not charged for those costs and those cases are not reported to LSC. [Complete]

**Corrective Action #10:**

- All staff have been reminded of the requirement to obtain a statement of facts. In addition, Legal Aid's Divorce Application (used for all family law cases) has been modified to include a signature. This document will now satisfy the statement of facts requirement. [Complete]

**Corrective Action #11:**

- Cleveland Legal Aid will amend its Outside Practice policy, changing the current language of "limited" to the new language of "de minimus". This change has been approved by the Personnel Committee and will be presented for approval at the next Board Meeting. [Complete by 10/31/12]

**Corrective Action #12:**

- Cleveland Legal Aid has modified its practice to ensure that all donors of more than \$250 receive the required notice. [Complete]

**Corrective Action #13:**

- Cleveland Legal Aid will modify its policy on Restrictions on Lobbying and Certain Other Activities to include the appropriate language on "encouraging or facilitating". [Complete by 12/31/12]

**Corrective Action #14:**

- Cleveland Legal Aid has adopted a new practice in which management reviews time records for legislative and administrative activities to ensure that there are appropriate time records for such activities and that no LSC funds are used to support that work. [Complete]
  - As requested, time records are attached for all Legal Aid staff who participated in legislative and rulemaking activities during the first half of 2012 demonstrating that there are appropriate time records for those activities and that all expenditures are supported with non-LSC funds.

**Corrective Action #15:**

- Cleveland Legal Aid has taken a number of steps to strengthen internal controls and ensure adequate segregation of duties. Cleveland Legal Aid has established a relationship with an independent contractor who is available to fill in for the fiscal office staff when needed to ensure that journal entries are not prepared and approved by the same individual. This was necessary because of the small number of people in the finance department. [Complete]
- The Executive Director now initials and dates the bank statements upon review each month. [Complete]
- Cleveland Legal Aid is in the process of creating a new Office Manager position. That new position will be responsible for some parts of the inventory, so that one person will no longer be responsible for maintaining the records, taking the inventory and reconciling the inventory records to the general ledger. [Complete 12/31/12]
- Cleveland Legal Aid has instituted a new practice in which the Finance Committee reviews and approves the Executive Director's expense reimbursements and credit card statements each quarter at a regular meeting. Any member of the committee has the opportunity to ask questions, raise concerns or object to any expenditure. [Complete]

**Corrective Action #16:**

- Cleveland Legal Aid has resolved the 16 outstanding client trust checks (ranging from \$1 – \$10). [Complete]
- Cleveland Legal Aid has developed and implemented additional procedures to resolve outstanding client trust checks. [Complete]
  - As requested, the revised client trust procedures are attached.



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## MEMO

To: All Legal Aid Attorneys and Paralegals

From: Colleen Cotter

Date: August 24, 2012

Re: Legal Aid Policy on Opening, Closing and Interim Memos and Periodic Review of Compliance

As indicated in a memo to the staff on May 3, 2012 (and most of which was contained in a 2005 memo also), all Legal Aid attorneys and paralegals will comply with the following requirements. You will find memo templates on the intranet in Legal Work – Practice Standards and Policies.

- At the time it is determined that an application will receive **no legal assistance**:
  - Create a file memo for all not served cases (which may be satisfied by the results from our intake questionnaire);
    - The relevant facts.
    - The reason(s) LAS rejected the case.
    - The communication with the applicant on the decision to reject the case.
  - Review the file to ensure all coding is completed appropriately and that the paper and electronic file match.
  
- At the time it is determined that a case will be provided with **short service only**:
  - Create a short service memo (which may be satisfied by the intake questionnaire), to include:
    - The relevant facts.
    - The short service Legal Aid provided.
    - The reason(s) Legal Aid provided the client with short service rather than extended service.
  - Review the case to ensure compliance with LSC and other funder requirements, including citizenship attestation and retainer agreement, and to ensure that the paper and electronic file match.
  
- At the time a case is **accepted for extended service**:
  - Create an opening memo to include:
    - The relevant facts.
    - The client's goals (i.e., what the client wants).

- All known deadlines.
- An initial analysis of the potential claims/defenses/remedies, and the potential strategies.
- An initial list of things to do, including any factual investigation and/or legal research prompted by the initial analysis.
- Review the case to ensure compliance with LSC and other funder requirements, including citizenship attestation and retainer agreement, and to ensure that the electronic and paper file match.
  
- Every 6 months (in June and in December), **for all extended service cases** or short service cases open more than 3 months:
  - Create an interim status memo to include:
    - What has happened in the case.
    - What will happen next, including upcoming deadlines.
    - Any update from the opening memo regarding direction, analysis, or strategies.
  - Review the case for compliance with LSC and other funder requirements, and to ensure that the paper and electronic file match.

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Each office will follow these Client Trust Procedures. Where procedures vary based on location, those variations are noted below.

The managing attorney of each office and department will designate a support staff person who will be responsible for accepting client funds, issuing a receipt, completing the deposit remittance form and forwarding all of the above to the Finance Department on a daily basis. That support staff member is referred to below as the Custodian. These employees will not be signers on the account.

**Receipts**

• **Main Office**

1. The Custodian collects funds from the client and writes a receipt. The original goes to the client, the yellow copy to the Finance Department with the cash/check, and the pink copy stays in receipt book.
2. A copy of the receipt is placed in the clients file.
3. The Custodian completes a Deposit Remittance Form. That form is available on the Legal Aid intranet site.
4. The Custodian delivers the cash, yellow copy of receipt and completed Deposit Remittance Form to the Finance Department. The Executive Assistant issues a receipt for the money received and gives that to the Custodian.
5. All deposits are kept in a locked room until it is taken to the bank (daily) for deposit.
6. The Custodian places the receipt in the client file.
7. The Executive Assistant daily completes a deposit slip as funds come in and the Administrative/Docket Assistant takes the bank deposits to the bank and returns the bank issued slips to the Executive Assistant. The Executive Assistant reviews the deposit slip for accuracy. The Deposit slips are filed with the bank statements.
8. The Executive Assistant forwards the Remittance Forms to the bookkeeper for entry into the computer system.

• **Local Field Offices**

1. The Custodian collects funds from the client and writes a receipt. The original goes to client, yellow stays with the paperwork for the cash/check, and the pink copy stays in receipt book.
2. A copy of the receipt is placed in the clients file.
3. The Custodian completes a Deposit Remittance Form. That form is available on the Legal Aid intranet site.
4. The Custodian places all deposits in a locked file until ready to be deposited in the bank. Deposits will be made daily. The Custodian creates a deposit slip and takes the funds to the bank for deposit. The Custodian reviews the bank deposit record for accuracy.
5. The Custodian scans the remittance form, client receipt, check copy and bank deposit receipt into the shared drive on the computer. The Custodian updates the shared monthly Trust Account Activity report. The Custodian sends an email alert to the bookkeeper alerting her that the deposit has been made
6. The Bookkeeper prints and enters the deposit information into the computer system and files the paperwork.

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**Disbursements**

1. When a disbursement from the Client Trust Account is required, the attorney representing the client initiates the process by completing a Client Trust Check Request Form located on the intranet site. The Check Request form is to be signed by the attorney and by the Managing Attorney and forwarded to the Finance Department for payment.
2. Prior approval by the Managing Attorney is strongly preferred. If the Managing Attorney is unavailable, the check may be issued and the Managing Attorney must review all such disbursements and approve them after the fact.
3. The Bookkeeper reviews the client's account to make sure sufficient funds are available to cover the check request before they process the check for payment. In the event the client has deposited a personal check, the Bookkeeper will wait 7-10 days to make sure the check has cleared the bank before issuing a check from the LASC trust account.
4. A listing of Selected Check Requests for Payment with backup is reviewed and initialed by the Director of Finance, Deputy Director or Executive Director before the checks are issued.
5. Check stubs and back up paperwork are retained in the Bookkeeper's disbursement files.
6. A copy of the disbursement request is placed in the client file.
7. All voided checks are stamped void and kept in a void file.

**Bank Reconciliations**

1. Monthly bank statements are delivered to the Main Office. They are opened and reviewed by the Executive Director.
2. The Bookkeeper reconciles the bank account, ensuring the bank account balance equals the total of the individual client account balances. The cash and liability accounts on the operating books are also adjusted monthly to the reconciled bank statement amount.
3. The Director of Finance reviews the reconciliation and statements before they are filed.

**Stale Checks**

1. For checks outstanding more than 4 months, additional steps will be taken to resolve as follows:
  - A. The bookkeeper and the client's paralegal/attorney will work together to resolve the outstanding check.
  - B. The bookkeeper will contact the vendor or, if the check is endorsed to a client, the client's attorney/paralegal.
  - C. The attorney/paralegal will try to contact the client to verify the address, see if the client has received the check and will cash it. Based on this information, the attorney will determine whether the check should be re-issued. Every effort to contact the payee will be made to ensure the check is cashed.
  - D. If a check needs to be re-issued, the bookkeeper will:
    - i. Void the check – reviewed by Director of Finance before posting;
    - ii. Have a stop payment issued (when appropriate);
    - iii. Check again with the bank to see if the check has since cleared before re-issuing; and

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- iv. Have the Director of Finance review/initial the paperwork before the check is re-issued.
2. For checks that remain outstanding for 6 months, the bookkeeper will:
  - A. Have a stop payment issued (where appropriate)
  - B. Void the check and payment request;
  - C. Notify the client or vendor by mail at their last known or most recent address found, notifying them of the funds held on their behalf and asking them to contact Legal Aid within 10 days for the return of the funds.
  - D. If the client or vendor does not contact Legal Aid, the funds will be escheated to the state, as described below.

**Unclaimed Funds**

1. Attorneys are responsible for forwarding a Client Trust Check Request to refund any unused money to a client after the case is closed.
2. Twice a year the Bookkeeper sends a list to attorneys who have clients with balances in the trust accounts. The attorneys identify those clients who should receive refunds. The attorney completes a check request form which is approved by the Managing Attorney and forwarded to the Finance Department.
3. The Finance Department issues a check, following the Disbursement procedure described above.
4. Client funds that have been inactive for a period of three years will be escheated to the State of Ohio according to the unclaimed property laws.

**Lora Rath**

---

**From:** Cotter, Colleen <colleen.cotter@lasclev.org>  
**Sent:** Saturday, May 19, 2012 1:01 PM  
**To:** Lisa Melton  
**Cc:** Cotter, Colleen  
**Subject:** Following up  
**Attachments:** Agenda 5-11-12.pdf; Response to LSC Compliance Visit - TM-CMC.ppt; Memo to Staff Re OCE visit.pdf; Memo to admin and dev re OCE visit.pdf; 01 - Agenda Finance Committee Mtg 05-15-2012.pdf

Lisa: Hope all is well. I wanted to follow up with you about the recent OCE visit here to the Legal Aid Society of Cleveland. We have taken a number of steps to address the issues your team raised at our exit meeting.

1. I sent the staff a memo about the preliminary issues and our expectations for changes (see attached memo);
2. We had an all-staff meeting on 5/11/12 at which we discussed the issues and our corrective action (see attached agenda and power point slides);
3. I sent a memo to the administration and development staff addressing those specific issues (see attached memo);
4. We shared with the finance committee information about expenses for the executive director and agreed on a process and expectation at the most recent meeting with that committee. (see attached agenda)

If you have any questions about any of this, please let me know. And, if I missed anything major in my 2 memos to the staff, it would be great if you could let me know that.

Have a great weekend!

Colleen M. Cotter, Esq.  
Executive Director  
Legal Aid Society of Cleveland  
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Cleveland, OH 44113

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**The Legal Aid Society of Cleveland All Staff Meeting**  
**Friday, May 11, 2012, 10:00 – 4:30**  
**Cleveland Public Library**  
**Louis Stokes Wing, Rooms 218 East & West**  
**525 Superior Avenue, Cleveland, OH (Northwest corner of East 6<sup>th</sup> and Superior)**

### **Agenda**

- |               |   |
|---------------|---|
| 10:00 – 10:45 | Health Care Reform Act (Bob Bonthius and Karla Perry)   |
| 10:45 – 12:15 | Strategic Plan (Colleen Cotter and Consultant Amy Morgenstern)<br>1) With 12/2 as a reference point, get started, where we are in the process?<br>2) Review Proposed Mission and Values – discussion in small groups<br>3) Review Decision-Making Criteria – discussion as full group |
| 12:15 – 12:45 | Lunch   |
| 12:45 – 2:15  | Strategic Plan Continued (Colleen Cotter and Consultant Amy Morgenstern)<br>1) Review Draft Goals<br>2) Discuss and provide feedback on goals and how success is measured – discussion in small groups<br>3) Outline where we go from here, how and by whom decisions are made        |
| 2:15 – 2:25   | Break   |
| 2:25 – 3:30   | OCE Follow up (Tom Mlakar and Colleen Cotter)   |
| 3:30 – 4:00   | Pika and Payroll Timekeeping (Tom, Rachel Perry and Bettina Kaplan)   |
| 4:00 – 4:30   | Legal Aid Update (Colleen)  |

#### **Logistics:**

\*The only entrance to the Louis Stokes Wing of the Library is on Superior Avenue. Rooms 218 East & West are on the second floor and may be reached via the elevators which are located to the left of the Audio/Video Room on the main level.

There is a security station in the lobby of the building (to the right of the entrance), and the guard at the desk will gladly direct you to the elevators. Proceed to the left after exiting the elevators on the second floor. The doors to 218W are located on that left wall.

**Note: We will not have coffee! You are welcome to bring coffee with you – just tell the security person you are with Legal Aid.**



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## MEMO

To: All Staff

From: Colleen M. Cotter, Executive Director

Date: May 3, 2012

Re: LSC OCE Visit Follow-up

The Legal Services Corporation Office of Compliance and Enforcement visited The Legal Aid Society of Cleveland during the week of April 16, 2012. We will receive a report from them in 2 – 4 months with more details on their findings and corrective action we must take. However, I want to share their preliminary findings with you now so that we can take immediate action to correct them. We will discuss these at our May 11 All Staff Meeting.

### **Overall Corrective Action:**

In general we need to establish better practices to ensure full compliance with the LSC rules and also to make sure we are in compliance with good legal work practice standards. Details of these are described below. In general we will be taking the following actions to improve our compliance:

- All staff will be expected to take responsibility for compliance for the cases they work on, and especially the cases they close. For example, although it may be the intake staff who initially gather income information, it is the responsibility of the attorney or paralegal handling the case to ensure that the income information has been updated if it changes and that the appropriate income is recorded in the case.
- We will conduct more training to ensure that all staff have full understanding of the coding and other requirements to ensure LSC compliance. We will also conduct more training on the option to deselect cases from LSC eligibility.
- We will enhance our systems of review so that cases are appropriately reviewed to ensure compliance.
- We will establish file maintenance and file naming protocols to ensure that all paper and electronic files are similarly organized so that documents can be found by others.
- We will reinforce the current policies that require an opening and closing memo and we will start to require a periodic status memo (see below).

### **Areas of Concern:**

Most of the issues raised by the OCE team fall into the categories described below. The final report may raise additional issues, and may provide more detail on these.

### Identification of Legal Aid:

LSC has very strict rules about the identification of our organization. They found that the signage that our landlord has provided in the Painesville office violates those rules. The signage refers to us as "Legal Aid of Lake and Geauga County." In addition, the phone message for at least some of our CAP staff refers to MetroHealth. We are contacting our Painesville landlord to get those signs changed, and we'll be clarifying the phone message. But everyone should be careful about identification of Legal Aid. Please always use our official letterhead and an appropriate footer on all emails, for example.

**Corrective Action:** Change your message and communications if necessary. Legal Aid will request (again) that the Painesville landlord change the signs.

### Political Content:

While the OCE team did not find any inappropriate political content here, they did want me to stress with you that we need to be vigilant about any suggestion that Legal Aid is at all political or partisan. We are not! That means that you must refrain from posting any political or partisan materials in your office, or forwarding any political or partisan material in emails. Look out especially for political cartoons – they can be funny and seem innocuous, but they are almost never appropriate for Legal Aid.

**Corrective Action:** Be attentive to all political or partisan communication. Do not post, forward or distribute them.

### Eligibility Screening:

- **Prospective Income:**

LSC requires that we inquire at intake whether the applicant's income is likely to change in the relatively near future. We must document in the case that we asked and what the answer was. If the answer is yes, then we must inquire further. If the applicant's income is going to change, we may have to determine that the applicant is ineligible, as we should avoid situations in which we take on a case but then shortly thereafter have to withdraw. In addition, if we take the case, the attorney handling it must be aware that income may change.

**Corrective Action:** We will conduct additional training and develop tools in Pika to facilitate this requirement.

- **No Income:**

LSC requires that if the applicant/client has no income, that we inquire further about how they are paying for necessities. Clearly some of our clients have no income. But, sometimes an applicant may have child support or disability income or some other cash that comes into their household but they are not considering it income. We must ask about no income and document that we have asked. We currently do ask in some instances, but not consistently.

**Corrective Action:** We will conduct additional training and develop tools in Pika to facilitate this inquiry.

- **Income Justification:**

LSC found that we are not using the income justification system consistently. We seem to be merging the old system (which required a spend down of expenses for applicants above 125%) with the new system which requires us to document expenses and choose the appropriate justification. The new system requires documentation of the expense, but does not require a spend down to get below 125%. We are not properly documenting why we are choosing a particular justification, and we are using the particular justifications automatically which is not permissible.

**Corrective Action:** We will conduct additional training and develop tools in Pika to facilitate the correct use of the Income Justification process.

- **Alien Eligibility Form**

We are not consistently using this form. Sometimes we are completing the form for telephone-only contacts (although it is not required). The form is very complicated because it includes all of the exceptions, even though just 1 or 2 of the exceptions apply to 90% of our situations. So, OCE suggested that we revise the form so that we use a simpler form in those 90% of the situations in which a simple form will suffice, and only use the more complicated form when required.

**Corrective Action:** We will conduct additional training and develop new forms to facilitate this. We will also correct our Pika red flag connected to this issue.

- **Paper Intake Screening Tool**

The paper form we use for intake screening (such as at clinics and when Pika is down) is not specific enough. We need to ensure that we use the same paper form in all situations in which we use a paper intake form, and that the form incorporates all the required screening questions that are in Pika.

**Corrective Action:** We will revise the paper intake form and provide training on it. All staff must use only the approved intake form.

#### Case File Documentation:

- **Retainer**

We had too many extended service cases without a retainer. Retainers are required by LSC and are also required by the rules of good legal work practice. We must get retainers before we begin our representation. It is our responsibility to ensure that our clients understand what we are agreeing to do for them and understand their responsibilities and ours.

**Corrective Action:** We will add this to a compliance page and establish additional requirements regarding case file organization and review.

- **Documentation about legal work done and file disarray**

Many cases that OCF reviewed did not have clear documentation about the work that was done. This is not merely in violation of LSC rules, but is also bad legal work practice. All case files must be maintained so that another Legal Aid staff member can quickly figure out what has happened in the case, what should happen next, and what the ultimate goals are in the case. This should be the case throughout the life of a case. In most of these instances there were many notes in the case, but the file was in such disarray (electronic and paper) that the reviewer simply could not discern what the issue in the case was, what we did for the client, and what the final disposition was.

**Corrective action:**

- All staff should immediately comply with the following:
  - Create an opening memo for all extended service cases;
  - Create a file memo for all short service cases (which may be satisfied by the results from our intake questionnaire);
  - Create a file memo for all not served cases (which may be satisfied by the results from our intake questionnaire);
  - Create a closing memo for all extended service cases;
  - Create a periodic status memo in all file at least every six months, including what has happened in the case and what should happen next;
  - Organize your files so that others can quickly locate documents (electronic and paper); and
  - Keep your case notes in a format that others can understand.
- We will also soon develop a protocol for:
  - Naming documents
  - Filing system (electronic and paper)

▪ **Timely Closing**

Too many cases were not timely closed. This is also a requirement of good legal practice. We should not allow cases to languish. The basic rules (there are some exceptions) are:

- All brief service cases opened prior to October 1 must be closed in the year they were opened unless there is documentation in the case file indicating why it should remain open.
- All extended service cases must be closed in the year the legal work concluded.
- All cases that remain open at the end of the year should have a note in the file indicating why they needed to stay open.

**Corrective Action:** All staff must regularly use their Aging Case Report to monitor cases, make appropriate notations in them and close them when our work has concluded.

▪ **Citizenship Attestation**

We had an unacceptably high number of cases without the required citizenship attestation. We must get a citizenship attestation for every client with whom we have any in-person contact and in all extended service cases. This means that even if a client drops off papers we must get the attestation. We need to get the attestation at the beginning of the case.

**Corrective Action:** Everyone who touches a case must take responsibility for this—and at the end of the day it is the responsibility of the attorney handling the case. We will add this to the compliance page and institute additional procedures for clients who drop off papers.

▪ **Closing Codes**

We had a number of cases that were closed with the wrong closing code. We were discouraged by the OCE Team Leader from ever using the K closing code. We also were

instructed that we should never have an automatic closing code based on the type of case or the time involved.

**Corrective Action:** All staff must review the case closing code definitions, including the FAQs. We will have additional training on this, and will establish additional protocols regarding review of closed cases.

▪ **Missing Data**

We had a number of cases where there was missing data (dates and codes). For example, when a case was transferred between practice groups it seems that no one was taking responsibility for ensuring that data in the case was complete.

**Corrective Action:** All staff must use the Missing Demographic Report and the Case Contradiction Report make immediate corrections. We will review those reports and make improvements as necessary. All staff must also make sure that they pay attention to any red flags in their cases.

▪ **Statement of Facts**

We had a number of cases in which we did not have the required Statement of Facts. The Statements of Facts is required to be signed by the client before we file law suit or engage in pre-filing negotiation.

**Corrective Action:** We will incorporate this into an expanded compliance page on Pika.

▪ **Representing Groups**

Our practices with regard to the representation of groups do not comply with LSC rules, nor does it comply with good legal practice or Legal Aid policies. Too many of our cases in which we represent groups have no retainer and inadequate documentation with regard to eligibility. Finally, we are not clearly maintaining separate case files for separate cases.

**Corrective Action:** To respond to this issue we are immediately requiring Deputy Director approval for all group cases prior to beginning representation and regular reports throughout representation and upon conclusion of the case.

**Legislative and Rulemaking Activity:**

We do not have appropriate documentation and record-keeping for our legislative and rule-making activity. We must ensure that we have an appropriate written invitation to engage in legislative activity, that we keep all written materials we develop, that we are only engaging in allowable activity, and that no LSC funds go to support this work. There were situations where we were in violation of all of these requirements.

**Corrective Action:**

- We will create a policy that more clearly describes the legislative activity invitation and other requirements for this work and will follow that with training.
- We are considering requiring that all staff obtain prior authorization before engaging in any legislative or rule-making activity.
- We will adjust our expense reimbursement form so that staff can indicate whether any expense is not chargeable to LSC.
- All staff who engage in this type of activity must immediately provide the Deputy Director with copies of the invitation and written materials (where applicable).

- Finally, all staff must immediately comply with the Policy on Policy Advocacy, approved 9/9/09 (which can be found on the Intranet).

**Policy Refresh:**

Many of our LSC required policies are very old and need to be refreshed to bring them in line with current expectations and policy. These include:

- Fee-generating Cases (1609)
- Redistricting (1632)
- Statement of Facts (1636)
- Representation of Prisoners (1637)
- Attorneys Fees Regulation – need to formally revoke
- Legislative Activity (1612)



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**Financial Oversight and Audit Committee**  
1223 West Sixth Street, Cleveland  
Tuesday – May 15, 2012, 4:30 p.m.  
**Agenda**

- Welcome and Introductions
- Minutes:
  - Action: Approve 04/24/12 Minutes
- 2012 Finance Committee Goals – Quick Review to keep the committee on track
- Planning for 2013 Budget
  - Expense Brainstorming Session
  - Report on Progress
- Review April Financial Statements
  - Action: Accept unaudited financial statements
- OCE Visit Preliminary Findings
  - Report and discussion
- Executive Director Expenses
  - 1<sup>st</sup> Quarter review of Executive Director expense reimbursements
- Other Business



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**MEMO**

To: All Administration and Development Staff

From: Colleen Cotter

Date: May 5, 2012

RE: LSC OCE Follow up

This memo confirms the conversations that we have had about the preliminary findings made by the LSC OCE team and how we will address them. Each person receiving this memo has responsibility for ensuring that we implement the changes identified in order to ensure compliance with LSC rules. Overall, the LSC team was very pleased with our financial and administrative systems. However, they did identify a few areas which we need to address.

**Issue #1: Signage – Painesville Office**

The signage provided by the landlord in Painesville refers to us as “Legal Aid Society of Lake and Geauga Counties.” We have requested that this signage be corrected to read “Legal Aid Society of Cleveland,” but that change has not been made.

**Corrective Action:** Colleen will contact the landlord again and request that the signage outside the elevator and the signage outside the suite door be changed. She will do this by May 15 and will request the change by June 15.

**Issue #2: Bank statements**

Legal Aid’s accounting manual requests that all bank statements be delivered first to the Executive Director and that the ED open and review those bank statements. We do comply with this process, however, there is no evidence that we comply.

**Corrective Action:** Starting with the April statements, the Executive Director will initial and date the bank statements when she reviews them.

**Issue #3: Credit card and expense reimbursement for ED**

Pursuant to our practices, credit card usage and expense reimbursement for the Executive Director is approved by the Director of Finance and the Deputy Director for Advocacy. This caused the LSC team some concern because the ED supervises both of those people.

**Corrective Action:** Beginning with the May Finance Committee meeting, the Director of Finance will prepare a report for the Finance Committee which provides detail about the Executive Director's expense reimbursement and use of the Legal Aid credit card for the first quarter of the year. The Finance Committee will be asked to review this report and to take on the responsibility of reviewing it and asking questions of any expenses that might seem inappropriate or questionable or even unclear. This process of report and review will be done each quarter. The finance committee will not be asked to approve the expenses.

**Issue #4: Client Trust Account Stale Checks**

Legal Aid has a number of stale checks in its client trust accounts. These are mainly checks that have been written to reimburse clients but which the client never cashed – perhaps because they never received the check, or because the check was small and the client would have to pay to cash the check. Legal Aid's procedures require that these stale checks be cleared out annually and where the client cannot be found, the money is sent to the state, as required. This process did not occur in 2011 because of the departure of the bookkeeper.

**Corrective Action:** Legal Aid will clear out the stale checks as required by its procedures. This will be accomplished by July 1, 2012 and then again in October 2012, and annually thereafter.

In addition, by July 1 Legal Aid will determine whether it can establish systems to ensure that it does not receive some of these funds into its trust account. For example, some of these stale checks are for \$1 – clients bring in \$300 for their bankruptcy filing when we only need to collect \$299. We send them a check of \$1, and the client never cashes the check. We should instead devise a system whereby the client immediately receives their \$1 in change and we do not take that additional dollar into the client trust account. Bettina will work with the Consumer Practice Group to devise that system.

**Issue #5: Inventory of fixed assets**

Pursuant to our current procedures, the Director of Finance both conducts the fixed asset inventory and keeps the fixed asset inventory records. This procedure does not have sufficient separation of duties.

**Corrective Action:** For the next fixed asset inventory Legal Aid will ensure that an additional staff member is assigned to conduct the inventory. For non-technology equipment, that assignment will be made to an appropriate person in each office. For technology equipment, a staff person will conduct the inventory with the assistance of the IT consultant. This change will be made in the accounting manual. By June 1, Bettina will modify the Accounting Manual to reflect this policy and practice.

**Issue #6: Funds in the operating account**

The LSC OCE team expressed concern that Legal Aid frequently has more than \$250,000 in its operating account, which means that we have more funds in the account than are insured by FDIC.

**Corrective Action:** Legal Aid was already aware of this situation and has considered the risks involved in a potential bank failure compared with the resources that would be required

to monitor the bank accounts daily and move funds between accounts weekly. Legal Aid management, with support of the Finance Committee, has decided that the certain burden on resources outweighs the very unlikely possibility of bank failure. Legal Aid will continue to maintain the operating account at one bank. However, Bettina and Rick Petrusis (former Treasurer) will pursue other possibilities with Key Bank to determine whether it is possible and financially smart to maintain a fully insured account. In addition, Bettina will talk to our insurance broker to determine whether our current insurance would cover the account, or whether another product is available which might provide the same coverage as FDIC. These two actions will take place by June 30.

**Issue #7: Donor language**

LSC regulations require us to insert language in communications to donors indicating that the funds they contribute cannot be used in violation of LSC regulations. We provide that language in letters to individual donors, but do not regularly provide the language to foundations, law firms, government grantors and others.

**Corrective Action:** Melanie will devise a procedure to ensure that this language is appropriately communicated to all donors. Compliance with the new procedure will be the responsibility of Melanie and others as well. We will immediately begin providing the donor language to new donors, or on the submission of a new proposal or receipt of a new grant. Melanie will develop the procedure by June 30.

**Issue #8: Tracking Costs of Legislative and Rule-making Activity**

The LSC team indicated that it would be best if we track all expenses associated with Legislative and Rule-making Activity so that we know what we have spent and so that all expenses are attributed to non-LSC funding sources. This should include staff expenses and also other expenses, such as mileage.

**Corrective Action:** Bettina will ensure the expense reimbursement and check requests have a spot for the staff member to indicate whether the funds should come from non-LSC sources. Staff will be trained on the new field. Bettina will then maintain a spreadsheet of the expenses, using time from Pika and the expenses. This new system will be implemented on July 1.

**Issue #9: Late Fees**

We had some late fees for bills for ATT. A contributing factor in this is the on-going issues we have had with ATT and confusion about bills, compounded by Garrick's departure. We did not pay any late fees with LSC funds, which would have been prohibited.

**Corrective Action:** All staff will be reminded to immediately send on invoices for payment. Linda and Bettina will review their processes to ensure that all invoices are timely paid. This will happen by July 1.



*The* Legal Aid Society  
of Cleveland  
*Since 1905*

**RESPONSE**  
to  
**LSC COMPLIANCE VISIT**





## Corrective Actions –

- Establish better practices for our legal work
  - Improve client services
  - Comply with LSC rules
- All staff responsible for compliance



## Corrective Actions (*cont'd*) –

- More training . . . for everyone
  - Current policies and standards
  - New protocols and procedures



## **Identification of Legal Aid -**

- Correct signs and phone messages
- Use only official Legal Aid letterhead

## **Political Content -**

- Avoid all political or partisan communications



## Eligibility Screening -

- Prospective Income:
  - Is income likely to change in near future?
  - Document in Pika file – Eligibility screen notes
- No Income:
  - How supporting self (i.e., food and shelter)?
  - Document in Pika file
    - Eligibility screen notes



- Income Justification:
  - Problem for incomes between 125-200%
    - merging *old* spend down system and *new* income justification system
  - Create new intake procedures
  - Document in Pika file
    - Eligibility screen notes



## Alien Eligibility Form -

- Need to be more consistent in using this form
  - Step 1: completing form
  - Step 2: verifying documentation
- Both steps must be completed when meet client
- Form is too complicated
  - New form – most exceptions



## Paper Intake Screening Form -

- Must use same paper forms for all intake
  - Legal Aid office
  - VLP clinic
  - CAP site
- Paper form = Pika screens?
- Revise paper intake form



## Case File Documentation -

- Retainers
  - Good legal practice
  - Required by LSC  
(also Citizenship Attestation and Statement of Facts)
  - New protocols
    - Organizing & reviewing case files



## Documentation about Legal Work Done –

- What advice or representation provided?
- Update case file notes during life of a case
  - File memo for brief service cases  
AND not served cases
  - Opening/closing memos for extended service
  - Periodic status update at least every 6 months



## **File Disarray:**

- Staff in law firms need to easily share case files
- New protocols
  - Organizing case files (electronic and paper)
  - Naming documents saved in Pika
  - Reviewing case files
    - Pika Compliance screen



## Timely Closing -

- Brief service cases *opened prior to October 1<sup>st</sup>*
  - must be closed in calendar year
  - OR document in Pika why remaining open
- Brief service cases *opened on or after October 1<sup>st</sup>*
  - must be closed in following year
  - OR document in Pika why remaining open
- Extended service cases
  - must be closed in year legal work is concluded
  - OR document in Pika why remaining open



## Timely Closing -

- End of year review
  - Add note in Pika for all cases remaining open
  - “Reviewed case and legal work for client is not yet concluded. Need to do x, y and z.”
- Use Aging Case Report to monitor throughout year
  - December is already a busy time



## **Citizenship Attestation -**

- Required for every applicant (verbal or written)
- Signed CA required where in-person contact
  - Includes clients who drop off papers
  - All staff share responsibility
- New protocols
  - Organizing & reviewing case files
  - Compliance page in Pika



## Closing Codes -

- Must use consistently and per LSC rules
  - CSR Handbook
- K-Other
  - Do not use it!
- Do not select closing code per time involved
  - B-Limited Action vs. L-Extensive Service



## Missing Data -

- Use existing reports, which are being updated
  - Missing Demographic Reports
  - Case Contradiction Reports
  - Outcomes Reports (MA only)
- Use **red flags** in Pika cases



## Statement of Facts -

- Required to be signed by the client *before* we
  - file a lawsuit
  - engage in pre-filing negotiation
- New protocols
  - Organizing & reviewing case files
  - Compliance page in Pika



## Representing Groups -

- Need to comply with LSC rules for groups
  - Documentation re: financial eligibility
  - Retainer
- Need new case file (both electronic and paper) for each separate case that group seeks representation
  - General counsel vs. specific projects



## Legislative and Rulemaking Activities -

- Allowable activity
  - See Policy Advocacy policy on intranet
- Document work
  - Keep written invitations & materials developed
  - Send Deputy Director copies (as applicable)
- Timekeeping → do not use LSC funds
- Changes
  - New policy would require prior authorization
  - Adjusting expense form to add funding



## **Other Policies to update –**

- Fee-generating cases (1609)
- Redistricting (1632)
- Statement of Facts (1636)
- Representation of Prisoners (1637)
- Attorneys Fees Regulation (need to formally revoke)
- Legislative Activity (1612)