



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

**Legal Aid of the Bluegrass**  
Case Service Report/Case Management System Review  
July 9-12, 2012

Recipient No. 618004

## **I. EXECUTIVE SUMMARY**

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

**Finding 2:** LABG's intake procedures and case management system support LABG's compliance related requirements. LABG's case management and oversight procedures for staff cases are also substantially sufficient to support LABG's compliance requirements.

**Finding 3:** Review of the recipient's policies revealed that LABG's financial eligibility policy, as submitted, needed revisions to be compliant with LSC regulations. The necessary revisions were completed by LABG during the on-site review and will be approved by its Board of Directors at their October 2012 meeting. LABG 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 exceeds 125% of the Federal Poverty Guidelines.

**Finding 4:** Review of the recipient's policies revealed that LABG's financial/asset eligibility policy as submitted, needed revisions to be compliant with LSC regulations. The necessary revisions were completed by LABG during the on-site review and will be approved by its Board of Directors at their October 2012 meeting. LABG maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2008 Ed., as amended 2011), § 5.4.

**Finding 5:** Review of the recipient's policies and sampled cases evidenced compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

**Finding 6:** Review of the recipient's policies and sampled cases, as well as documents reviewed, evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

**Finding 7:** Review of the recipient's policies and sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

**Finding 8:** Review of the recipient's policies and sampled cases, as well as documents reviewed, evidenced compliance with the requirements of 45 CFR § 1620.3(a) and § 1620.6 (Priorities in use of resources).

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

**Finding 10:** LABG's application of the CSR case closure categories is consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed, as amended 2011).

**Finding 11:** Sampled cases evidenced that LABG is not in compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 regarding the timely

**closing of cases. Sampled cases evidenced numerous untimely closed cases and numerous dormant cases.**

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

**Finding 13: Review of the recipient's policies and interviews with management, as well as a review of the timekeeping records for the attorneys interviewed, did not reveal any violations of the requirements of 45 CFR Part 1604 (Outside practice of law).**

**Finding 14: Sampled cases, as well as fiscal and other records, and interviews 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 cases, as well as fiscal and other records, and interviews with management and staff evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).**

**Finding 16: Review of the recipient's accounting and financial records evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) and LABG donor notification letters reviewed were found to be consistent with the requirements of 45 CFR § 1610.5(a).**

**Finding 17: Review of the recipient's policies and fiscal records, as well as interviews with fiscal staff, evidenced compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.**

**Finding 18: Review of the recipient's policies and sampled cases, as well as fiscal and other records, and interviews with management and staff evidenced substantial compliance with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Oversight and follow-up of the PAI case files were not in compliance with 45 CFR § 1614.3(d)(3). Numerous cases were dormant, or untimely closed, or lacked a description of the legal assistance provided or lacked the required citizenship/alien eligibility documentation, and, as a result, had to be de-selected by LABG. In addition, the allocation of PAI costs associated with the Modest Means Program operated by LABG violates 45 CFR § 1614.3, because the applicants are not eligible clients.**

**Finding 19: Review of timekeeping and other fiscal records evidenced substantial compliance with 45 CFR Part 1635 (Timekeeping requirement). However, the review revealed that one (1) attorney and two (2) paralegals are not maintaining time as required by 45 CFR § 1635.3(b).**

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

**Finding 21: Review of the recipient's policies and sampled cases, as well as fiscal and other records, and interviews with management and staff evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

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

**Finding 23: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).**

**Finding 24: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

**Finding 25: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced 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 cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

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

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

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

**Finding 30: Review of the recipient's policies and a sample of signed written agreements evidenced compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).**

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

**Finding 32: Review of the recipient's policies and sampled cases evidenced compliance with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).**

**Finding 33: Review of LABG's policies and procedures related to cash receipts from clients revealed that the program maintains a detailed Client Trust policy which includes sound internal controls.**

**Finding 34: Review of LABG's bank statement reconciliations revealed that the bank statements are reconciled timely and that the review is appropriately documented.**

**Finding 35: Review of State Health Insurance Assistance Program ("SHIP") cases revealed that cases that were LSC eligible were not reported to LSC in the CSRs.**

**Finding 36: Review of LABG's fiscal policies and procedures, accounting manual, management reports, cost allocations, general ledger, and cash disbursements and property revealed that they compared favorably to LSC's Fundamental Criteria of an Accounting and Financial Reporting System.**

## I. BACKGROUND OF REVIEW

On July 7 through 12, 2012, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") review at Legal Aid of the Bluegrass ("LABG"). 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 Recipients (2010 Ed.), and the Property Acquisition and Management Manual. The visit was conducted by a team of four (4) attorneys and two (2) fiscal analysts. Two (2) team members were temporary employees and the remaining were OCE staff.

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 LABG has correctly implemented the 2008 CSR Handbook, as amended 2011. Specifically, the review team assessed LABG 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 §§ 1620.3(a) 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).

LABG currently provides legal services to eligible clients in the following counties in Kentucky: Anderson, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Campbell, Carroll, Carter, Elliott, Fayette, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Jessamine, Kenton, Lewis, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Pendleton, Robertson, Rowan, Scott, and Woodford. LABG provides client services at four (4) offices located in the cities of Covington, Morehead, Ashland, and Lexington. The administrative office of the program, as well as LABG's central office, is located in Covington, Kentucky.

The OCE team interviewed members of LABG's upper and middle management, staff attorneys, and support staff. LABG's case intake, case acceptance, case management, case closure, and

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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.

Private Attorney Involvement (“PAI”) practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2010 through May 15, 2012. In accordance with the approved work plan, a total of 425 case files were reviewed. OCE reviewed files from the main office in Covington and from LABG’s branch offices in Morehead, Ashland, and Lexington.

By letter dated May 7, 2012, OCE requested that LABG provide a list of all cases reported to LSC in its 2010 CSR data submission (closed 2010 cases), a list of all cases reported in its 2011 CSR data submission (closed 2011 cases), a list of all cases closed between January 1, 2012 and May 15, 2012 (closed 2012 cases), and a list of all cases which remained open as of May 15, 2012 (open cases). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closure category assigned to the case, and the funding code assigned to the case. OCE requested that two (2) sets of lists be compiled - one (1) for cases handled by LABG staff and the other for cases handled through LABG’s PAI component. LABG was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). LABG was requested to promptly notify OCE, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the OCE team would review during the on-site visit. The sample was developed proportionately among 2010, 2011, and 2012 closed and open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closure categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LABG agreement of May 24, 2012, LABG staff maintained possession of the file and discussed with the team the nature of the client’s legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.<sup>3</sup> LABG’s management and staff cooperated fully in the course of the review process. As discussed in greater detail below, LABG was made aware any of compliance issues during the on-site visit. This was accomplished by informing intermediaries, as well as the Executive Director, of any compliance issues uncovered during case review.

OCE conducted an exit conference on July 12, 2012, during which LABG was provided with OCE’s preliminary findings and was made aware of any areas in which compliance issues were found. LABG was advised that it would receive a Draft Report which would include all of OCE’s findings and that the program would have 30 days to submit comments.

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<sup>3</sup> In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

LABG was provided a Draft Report (“DR”) on September 24, 2012 and given an opportunity to comment. LABG comments were received on October 25, 2012 and have been incorporated in this Final Report, where appropriate.

### III. FINDINGS

**Finding 1: LABG’s automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.**

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

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, and a review of LABG’s Kemps screen shots, LABG’s ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. LABG uses Kemps Case Management from Kemp’s Case Works as its ACMS. It includes sufficient fields to document citizenship, income sources, perspective income, asset sources, over-income and over-asset exceptions, funding sources, and CSR eligibility.

A review of asset fields did, however, evidence a field for “Food Stamps,” which is not considered an “asset” for LSC purposes. Notably, even though LABG’s income and asset fields contain zeros (0), the ACMS will not allow the user to proceed without information being entered into those fields. As such, there are no defaults in practice.

LABG’s staff was also able to recreate their 2011 CSR numbers with relative accuracy. Further, sampled cases reviewed also evidenced consistency with electronic files in Kemps.

No comments were made to this Finding.

**Finding 2: LABG’s intake procedures and case management system support LABG’s compliance related requirements. LABG’s case management and oversight procedures for staff cases are also substantially sufficient to support LABG’s compliance requirements.**

**Intake Procedures and Case Management**

Covington Office

An assessment of LABG’s ACMS fields and interviews with intake staff evidenced that LABG has sufficient ACMS fields and eligibility screening practices to generally support LSC requirements. The vast majority of the staff cases handled by LABG’s Covington office come in

through LABG's call-back intake procedure and a limited number of applicants are screened as walk-in applicants. Intake for the office's *Pro Bono* and *Pro Se* Divorce Clinics is conducted by mail.

### *Walk-in Intake*

Walk-in applicants are required to sign a citizenship attestation and to call LABG's main intake line to begin the application process. Walk-in applicants who do not have access to a phone, or who have an emergency case, will be screened in person the day they walk in as per the "call back" screening procedure, which is described in detail below. Walk-in applicants seeking help with a Divorce are provided a Divorce and Asset Questionnaire and are required to complete it and return it by mail. The process for screening these applicants is also described in detail below.

### *Call Back Intake*

Applicants can call LABG's main intake line 24 hours a day, seven (7) days a week. When they call, they are given a series of prompts that will guide them to leave key information (*e.g.*, name, legal issue, key hearing dates, etc.) in a legal-issue-specific and/or applicant-type-specific (*e.g.*, elderly) mailbox.

Various staff members and volunteers listen to the messages and open call back files in LABG's ACMS under the caller's name. They note the caller's legal issues, and any other key information in the call back file. The ACMS is designed to flag duplicate call back files. As such, duplicate applicants are identified at this stage in the eligibility screening process.

Call back files then go into an "Intake Call Manager Que" in Kemps. Intake staff and paralegals will then call applicants to conduct full eligibility screenings by phone. In doing so, first, intake staff will conduct a conflicts check using the applicant's and opposing party's names. Next, intake staff asks whether the applicant is a US citizen and, if so, they check the "citizenship" box in the ACMS. If the applicant is not a US citizen, the intake staff will refer to the list on LABG's Citizenship/Eligible Immigrant Determination form and determine whether the applicant falls under one of the categories eligible for service.

Intake staff will then inquire about the applicant's household income. Interviews indicate that the manner in which they do so is adequate to meet LSC requirements and that the intake staff is familiar with these requirements. If an applicant's income is between 125% and 200% of the Federal Poverty Guidelines ("FPG,") and LABG needs to fund the case with LSC funds, intake staff is required to complete an Income Eligibility Determination/Form noting the basis for the request to accept an over-income applicant. This form is then given to the Director of Advocacy for approval or rejection and the intake staff informs the applicant that they will be contacted once their application has been further evaluated. Interviews indicated that intake staff also documents the basis for the over-income exception in the ACMS.

Notably, page 2 of LABG's Income Eligibility Determination/Waiver form allows staff to select the following reasons for accepting an over-income applicant: 1) "[t]he unavailability of private legal representation at a low cost with respect to the particular matter for which representation is sought" and 2) "[t]he consequences for the individual if legal assistance is denied."

Although 45 CFR § 1611.5 allows for certain over-income exceptions, they are specific to the applicant's financial condition, regardless of whether affordable legal assistance is available. Financial eligibility is a threshold determination that focuses exclusively on the applicant's economic situation. The relative merit of the applicant's legal issue, the consequences to the applicant if legal assistance is denied, or the existence of other affordable legal assistance may be considerations for whether an LSC recipient accepts an eligible applicant's case, but is not to be included in a recipient's financial eligibility determination. As such, LABG should remove these over-income justifications from its Income Eligibility Determination Form.

Intake staff then inquires about prospective income and inserts any information regarding this in the notes field. If the applicant expects their income to change in the near future, they will consider the nature of the case, the timing for the income change, etc, and make a determination as to whether LABG can accept the case.

Intake staff then inquires about the applicant's assets. Interviews indicated that intake staff's questioning of applicants' assets is adequate to meet LSC requirements. However, as the Team Leader discussed with LABG's Executive Director onsite, LABG should clarify in its financial eligibility policy that the exception under 45 CFR § 1611.4(c) (governmental program for the poor exception) only applies where the applicant's sole source of income is from the selected governmental program and train staff on the proper use of this exception. Interviews indicated that intake staff believes they can forgo asset screening for applicants on Medicaid and who receive Food Stamps. Although intake staff is typically conducting full asset screenings in practice, regardless of whether the applicant is receiving Food Stamps or is on Medicaid, intake staff should understand the proper use of his exception.

Staff attorneys conducting intake have the authority to accept applicants for counsel and advice and/or brief services. Staff attorneys assigned to a case by intake staff then have the authority to accept clients for extended services if, after meeting with the client, they believe more extensive service is warranted.

LABG's Director of Advocacy, who also serves as the Covington office's Managing Attorney, conducts annual open case reviews of all staff attorneys' cases. New staff members' open cases are reviewed on a more frequent basis (*e.g.*, every 3 (three) to 6 (six) months). All staff attorneys are also required to conduct annual self-evaluations. The Covington office holds weekly staff meetings where staff has the opportunity to raise challenges or issues with pending cases and to get feedback.

Staff attorneys are responsible for properly closing their cases. Staff attorneys are required to complete a Closing Memo form for each closed case. The case file and Closing Memo are then given to an Administrative Assistant, who closes the case in the ACMS. Covington's Managing

Attorney does not conduct regular reviews of closed cases, although such cases are occasionally spot checked.

### *“Divorce and Asset Questionnaire” Intake*

Intake for the *Pro Se/Pro Bono* Divorce Clinic is also conducted in the Covington office by a Paralegal and Clinic Law Clerk. Applicants seeking assistance with a *pro se* Divorce are provided a Divorce and Asset Questionnaire. Applicants are instructed to complete the questionnaire and return it by mail to the program.

The Paralegal or Clinic Clerk staffed to conduct intake for these cases will then review the Questionnaire. If the applicant appears eligible for services, they will accept the applicant, and open an ACMS file using the eligibility information the applicant provided on the form. They will then attempt to contact the client by phone to explain the pro bono referral or clinic process. If they cannot reach the client by phone, they will also send them a letter to provide them with the same information. Although intake staff may ask certain follow-up questions if they see something peculiar on the Questionnaire, interviews indicated that intake staff does not routinely ask applicants follow-up questions about key eligibility criteria. A review of the questionnaire also indicated it does not inquire about the income of household members other than a husband and wife, or about prospective income. As such, it appears applicants are not routinely asked for this information.

Historically, OCE has interpreted the requirement that programs make a “reasonable inquiry regarding sources of the applicant’s income, income prospects and assets” to include some direct questioning of the applicant to ensure they have understood the eligibility questions and that they have provided sufficient information to the program to make an effective eligibility determination. *See* 45 CFR § 1611.7(a)(1). Since interviews indicate this is not routinely done, and that the Questionnaire upon which staff relies lacks some key questions, intake for the *Pro Se/Pro Bono* Divorce Clinic is not currently sufficient to meet LSC requirements.

LABG should follow-up with applicants after they have submitted a Divorce and Asset Questionnaire to screen applicants on topics not covered in the questionnaire (e.g., other household member’s income, prospective income). They should also ask sufficient follow up questions to ensure that the applicant understood the questions asked and to ensure that a reasonable inquiry regarding the applicant’s financial situation has been conducted before accepting the person as a client.

### Lexington Office

Eligibility screening for approximately one-half (50%) of the cases handled by the Lexington office is conducted through the Covington office’s call back system. The Lexington office, however, conducts screening for the other approximate half (50%) of the cases it handles, which are almost exclusively domestic violence and eviction cases.

The vast majority of the intake conducted by staff in Lexington is conducted as per the same call-back procedure used in the Covington office, and which is described above in detail. Two (2) full-time intake attorneys and one (1) full-time paralegal conduct intake for Lexington's domestic violence cases. One (1) full-time legal assistant conducts intake for Lexington's eviction cases.

The same legal assistant who conducts eligibility screening for Lexington's eviction cases will also screen occasional walk-in applicants who either have an emergency case, or who otherwise cannot access the call back system. Other applicants are asked to sign a citizenship attestation and to call LABG's main intake line to begin the application process. Occasionally, intake staff will collect an applicant's name, contact information, legal problem, conduct conflicts check, and add them directly to the call-back que.

Although staff had not been provided with CSR or LSC-specific training, interviews evidenced intake staff was sufficiently familiar with LSC's requirements to conduct a compliant intake screening. Interviews also indicated that where non-LSC funding is available to fund services for an applicant with a household income of between 125-200% of the FPGs, some staff will select a non-LSC funding source and forego a determination as to whether the applicant falls under an LSC-allowed over-income exception. As such, LABG may not be reporting all of its potentially CSR-reportable cases. It is recommended that LABG's Lexington office determine LSC eligibility (*i.e.*, CSR-reportable) for all of its cases so to avoid under-reporting CSR-eligible cases.

Just as in LABG's Covington office, intake staff attorneys have the authority to accept applicants for counsel and advice and/or brief services and staff attorneys assigned to a case by intake staff attorneys have the authority to accept clients for extended services.

As in Covington, the Lexington office's Managing Attorney (who also serves as LABG's Executive Director) conducts annual open case reviews and requires staff to complete an annual self-evaluation. Closed cases are not reviewed by a member of senior management on a regularly basis, and the staff member assigned to a case has the responsibility to properly close it. As in Covington, staff attorneys are required to complete a Closing Memo form for each closed case. Also as in the Covington office, the case file and Closing Memo for all cases are then given to a non-attorney staff member who closes the case in the ACMS.

Although LSC does not require programs to have a specific level of formal case oversight, case review in both offices evidenced that more oversight – specifically, a review of open cases on a more frequent basis - could improve LABG's compliance with LSC's requirement to close cases in a timely manner and also to remedy any documentation or other CSR deficiencies before the case is closed.

### Ashland Office

All intake for the Ashland office is conducted out of the Covington office with the exception of walk-in emergencies and cases obtained by the Ashland office nursing home

ombudsman/paralegal when she visits nursing homes located in Ashland's service area. Approximately 90 percent of the Ashland cases are generated out of the Covington office.

Walk-ins that are non-emergency are given the Covington office telephone number or the option of calling the Covington office from a phone located in the program's lobby. It is deemed an emergency if there is a court appearance or some other deadline that will occur prior to the next case acceptance meeting. These meetings are held one (1) time per week. The majority of walk-ins that are deemed emergencies are domestic violence cases and amount to about one (1) case in a three (3) month period. There are two (2) staff attorneys located in the office and they each cover different counties within Ashland's service area. The intake for these emergencies will be conducted by the attorney who is responsible for the county in which the case will be heard. Occasionally, if neither of the attorneys are available, the legal secretary will perform the intake.

The intake will be conducted in one (1) of two (2) manners, by using a written form or by going to the computer and using the case management system's intake procedure. If one (1) of the attorneys handles the intake, it is more than likely to be done with the written intake form. If the legal secretary performs it, it is more likely to be done directly on the computer. The intake form, to some extent, follows the case management screens on the computer with slight variances. In addition, if using the ACMS, there are numerous dropdown screens that can help the intake personnel collect all the necessary information as well as information screens that can be opened for specific intake policy for areas such as financial income eligibility and asset eligibility. If the written intake form is utilized, the form is given to the legal secretary after the case has been accepted to input into the ACMS. If utilizing the written form, the attorneys can still access the computer conflicts system to determine if there is an active conflict. It should be noted that in the ACMS there is a specific question which asks the intake staff about prospective income, while the written form does not have such a question included.

When the ombudsman/paralegal visits the nursing homes, she inquires as to any legal needs of the residents. She obtains minimal information concerning the applicant and their legal issues and brings that back to the program for a case acceptance meeting. If the case is accepted, then normally, the applicant is contacted by the program by phone to do a complete intake. Again, it can be done while the intake staff is using the ACMS directly or the information can be written on the paper form and entered into the computer at a later date.

It is important to note that while either intake method, (the written form or using the ACMS directly), has the ability to collect all the necessary information, it appears that intake staff did not understand the program's asset policy. Without knowledge of what the policy says, it would be extremely difficult to obtain all of the necessary asset information or to make an asset eligibility determination. It should also be noted that the information screens on the ACMS contained conflicting information regarding the program's asset policy. In one (1) section, the ACMS indicated that any personal car was an exempt asset and in another, correctly stated the asset policy which indicated one (1) car is exempt and a second car is exempt only up to \$4,500.

Case acceptance is performed once a week with the Managing Attorney and two (2) staff attorneys. Using an ACMS generated list of the cases sent to them from the Covington office, as well as information on any nursing home or emergency walk-in cases. Covington initially

assigns cases referred to the office to a specific attorney. That attorney will be prepared to discuss these cases at the meeting as well as any walk-ins that the office may have obtained. The cases are discussed and accepted cases are subsequently entered into the ACMS and a hard file is also prepared.

With regard to income eligibility, it is the program's policy that any case where income exceeds 125% of the FPG must contain documented authorized exceptions in the file, pursuant to 45 CFR § 1611.5, which are signed by the managing attorney. When closing a case, a Closing Memo is completed by the attorney who handled the case. The attorney also selects the case closure category. The file and the Closing Memo are reviewed and signed by the managing attorney who keeps one copy in the file for himself and places another copy in the client file. Once a case is closed by an attorney, the file is given to the legal secretary who closes the case in the ACMS. The legal secretary indicated that all closed cases are closed in the ACMS within one (1) week of the file being given to her.

In addition to accepting cases during the case acceptance meeting, the staff attorneys also talk about any issues regarding ongoing cases. The Managing Attorney indicated that the staff attorneys are also free to call at any time with any issues. In addition to these methods of oversight, the managing attorney sits down with each staff attorney and goes over their entire open case file list. At that time, they also discuss goals and other issues not directly related to a particular case file.

### Morehead Office

Intake in the Morehead office is conducted by utilizing the same ACMS that is used in the Covington office. The only difference being that the Morehead office has trained three (3) of its own staff to conduct the intake. The Morehead office does not rely upon intake staff located in the Covington office. Applicants in the Morehead service area call the Morehead office directly in order to obtain services. The Morehead office indicated that it can better serve its clientele because they are more familiar with the legal issues that surround that particular area.

All intakes are conducted over the phone, with the exception of walk-in emergencies. It is deemed an emergency if there is a court appearance or some other deadline that will occur prior to the next case acceptance meeting, which is held once a week. Emergencies number less than one (1) per month.

There are two (2) main intake staff who conduct the majority of the intake. Intake staff divides the calls according to case type. One (1) intake staff member primarily conducts all of the intakes for domestic cases, as well as pro bono and contract Private Attorney Involvement ("PAI") cases. The other intake staff member primarily conducts intake for bankruptcies, foreclosures, consumer cases, and evictions. There is a third intake staff who primarily conducts intake for the Kentucky State Health Insurance Assistance Program ("SHIP")<sup>4</sup> cases and Social

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<sup>4</sup> SHIP provides information, counseling and assistance to seniors and disabled individuals, their family members and caregivers. The program seeks to educate the general public and Medicare beneficiaries so they are better able to make informed decisions about their health care. LABG receives SHIP funding for 40 counties. This funding source is utilized by LABG for the most part to counsel clients who receive federal benefits.

Security termination cases. Telephone applicants are routed by the receptionist to the appropriate intake staff. It takes approximately one (1) hour to one and a half hours (1½) to conduct a complete intake and obtain all necessary information concerning an applicant's the legal issues.

Since the intake staff can only conduct about three (3) to four (4) intakes per day, callbacks are necessary and are made within three (3) days. Again, emergency intakes are conducted immediately and the weekly case acceptance meeting is bypassed. The Managing Attorney makes decides whether or not the case will be accepted.

The Morehead office utilizes the same written intake form as the Ashland office. (In the event a computer is not available). The intake staff follow the ACMS prompts during intake, in the same manner that was discussed regarding the Ashland office.

A case acceptance meeting is held once a week with a Managing Attorney, staff attorneys, and all intake staff. The intake staff present the cases for which they have conducted intake and a decision is made as to case acceptance and whether to accept the case for extended services or to provide some counsel and advice or brief service. The intake staff may be instructed by the staff attorneys to provide counsel and advice to clients. The intake staff members that provide legal advice are paralegals, supervised by staff attorneys. Intake staff is given precise instructions regarding what advice should be given and they are required to keep detailed notes in ACMS regarding the advice given. The Managing Attorney reviews each case in which counsel and advice has been given by intake staff. Occasionally, in addition to the advice, the intake staff will mail legal brochures to the client.

The Morehead office uses the same case Closing Memo as the Ashland office. The staff attorneys complete the Closing Memo and select the appropriate case closing categories. All Closing Memos are reviewed and signed by the Managing Attorney and he keeps one (1) copy in his own file and places another copy in the client's file. Once the Closing Memo has been signed by the Managing Attorney, it's given to intake staff to close in the ACMS.

In addition to accepting cases during the case acceptance meeting, the staff attorneys also talk about any issues involving ongoing cases. The Managing Attorney of the Morehead office is the same managing attorney for the Ashland office and, as a result, does oversight in the same manner. He meets with each staff attorney two (2) times a year to discuss open cases, as well as to discuss goals and other issues not directly related to a particular case file.

Required Corrective Action Number (7) required that LABG intake staff follow-up with applicants after they have submitted a Divorce and Asset Questionnaire in order to screen applicants on topics not covered in the questionnaire (*e.g.*, other household member's income, prospective income) and to ask sufficient follow up questions to ensure that the applicant understood the questions asked, as well as ensure that a reasonable inquiry regarding the applicant's financial situation had been conducted.

Comments to the DR stated that while it was unusual for LABG to open a pro bono case where the only intake and asset information attained was on the written form, there were some instances

where LABG regarded that as sufficient. Further comments to the DR stated that, prior to placing a client with a PAI attorney, LABG now has a follow-up eligibility screening interview.

LABG's intake staff must follow-up with applicants to insure adequate screening for LSC eligibility including financial eligibility, case is within LABG's priorities, and citizenship/alien eligibility documented.

**Finding 3: Review of the recipient's policies revealed that LABG's financial eligibility policy, as submitted, needed revisions to be compliant with LSC regulations. The necessary revisions were completed by LABG during the on-site review and will be approved by its Board of Directors at their October 2012 meeting. LABG 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 exceeds 125% of the Federal Poverty Guidelines.**

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>5</sup> *See* 45 CFR § 1611.3(c)(1), 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.

Sampled cases reviewed evidenced that the applicants were screened for income eligibility. However, Closed 2011 Case Nos. 10E-60121366 and 11E-60129811 were over income with no

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<sup>5</sup> A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed., as amended 2011) § 5.3.

authorized exception noted, and Open Case No. 07E-60088337 was over income with no authorized exception noted.

Subsequent to the on-site visit, LABG provided OCE with their financial eligibility policy which required certain revisions to be compliant with LSC regulations. LABG made the required revisions and was scheduled to obtain its Board of Directors' approval at their October 2012 Board meeting. The revised financial eligibility policy was provided during the on-site visit.

Comments to the DR stated that LABG amended their client financial eligibility policy to reflect the exception under 45 CFR § 1611.4 (c) (governmental program for the poor exception) that only applies when an applicant's sole source of income is derived from the selected governmental program. Comments to the DR further stated that LABG's Board of Directors approved the amendment on October 5, 2012.

**Finding 4: Review of the recipient's policies revealed that LABG's financial/asset eligibility policy as submitted, needed revisions to be compliant with LSC regulations. The necessary revisions were completed by LABG during the on-site review and will be approved by its Board of Directors at their October 2012 meeting. LABG maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2008 Ed., as amended 2011), § 5.4.**

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.<sup>6</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.

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<sup>6</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.

Subsequent to the on-site visit, LABG provided OCE with its financial eligibility policy, which included their asset policy. LABG financial eligibility policy required certain revisions to be compliant with LSC regulations. LABG made the required revisions and is scheduled to obtain its Board of Directors' approval at their October 2012 Board meeting. The revised financial eligibility policy, which included their asset policy, was provided during the on-site visit.

The financial eligibility policy to be approved by LABG's Board of Directors in October 2012 establishes an asset ceiling of \$3,000 for household furnishings and \$6,000 fair market value for any other property. In LABG's revised policy, exempt from consideration is an applicant's principle residence, any property exempt from seizure or attachment under federal and state law, household vehicles used for transportation, reasonable equity value in work related equipment which is essential to the employment or is otherwise used to generate income for an applicant or any member of the household, professionally prescribed health aids, and the cash surrender value of a household member's life insurance policy.

Sampled case files reviewed revealed that LABG maintains asset eligibility documentation as required by 45 CFR § 1611.6, 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2008 Ed., as amended 2011) § 5.4.<sup>7</sup>

Comments to the DR stated that pursuant to LSC's Required Corrective Action Number (8) which required LABG to remove the following over-income justifications from its Income Eligibility Determination/Waiver form: "[t]he unavailability of private legal representation at a low cost with respect to the particular matter for which representation is sought," and 2) "[t]he consequences for the individual if legal assistance is denied." That provision eligibility and asset guidelines had been eliminated, which were approved by the Board on October 5, 2012, according to comments to the DR.

**Finding 5: Review of the recipient's policies and sampled cases evidenced compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).**

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5; *See* 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>7</sup> The revised 45 CFR § 1611.2 defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms "liquid" and "non-liquid" have been eliminated.

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>8</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.

Review of the recipient's policies and sampled cases evidenced compliance with 45 CFR § 1626.6 and all staff case files reviewed contained citizenship/alien eligibility documentation.

No comments were made to this Finding.

**Finding 6: Review of the recipient's policies and sampled cases, as well as documents reviewed, evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).**

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.<sup>9</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Review of the recipient's policies and sampled cases, as well as documents reviewed, evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9. However, Closed 2012 Case No. 07E-61089458, closed with the closure category of "uncontested court decision," lacked the required retainer. Closed 2011 Case No. 10E-61119664, closed with a case closure category of "contested court decision," was opened on August 4, 2010 but the retainer agreement in the file was dated January 26, 2008 and did not accurately reflect the scope of services to be provided to the client.

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<sup>8</sup> *See* Kennedy Amendment at 45 CFR § 1626.4.

<sup>9</sup> However, a retainer is more than a regulatory requirement. It is a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

No comments were made to this Finding.

**Finding 7: Review of the recipient’s policies and sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).**

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

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

Case files reviewed indicated that LABG is in compliance with the requirements of 45 CFR Part 1636. Policies and procedures provided by LABG for review also revealed compliance with this regulation.

No comments were made to this Finding.

**Finding 8: Review of the recipient’s policies and sampled cases, as well as documents reviewed, evidenced compliance with the requirements of 45 CFR § 1620.3(a) and § 1620.6 (Priorities in use of resources).**

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

Prior to the visit, LABG provided LSC with a list of its priorities. The priorities are stated as “supporting families, preserving the home, maintain economic stability, maintain, safety, stability and health, meeting needs of individuals with special vulnerabilities, and maximizing access to legal services.”

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

No comments were made to this Finding.

**Finding 9: Sampled cases evidenced 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.

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.

LABG is in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6, as there were only four (4) case files reviewed which lacked a description of legal assistance provided. *See* Closed 2010 Case No. 10E-60118772 which backed a description of the legal assistance provided but was reported, in error, to LSC. *See* also Closed 2012 Case Nos. 11E-65126413, 04E-60060650, and 11E-60127816. Closed 2010 Case No. 10E-60118772. These case files, and those similar to them, should not closed in such a manner as to not be reported to LSC in LABG’s future CSR data submissions.

No comments were made to this Finding.

**Finding 10: LABG’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 CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.1.

The files case reviewed demonstrated that LABG’s application of the CSR case closure categories is consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011).

No comments were made to this Finding.

**Finding 11: Sampled cases evidenced that LABG is not in compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 regarding the timely closing of cases. Sampled cases evidenced numerous untimely closed cases and numerous dormant 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>10</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).

LABG is not in compliance regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). Sampled cases evidenced numerous untimely closed cases and numerous dormant cases. *See* Closed 2010 Case No. 03E61055676, which was opened on December 10, 2003 and closed on December 30, 2010 with a case closure category code of “contested court decision,” but all legal work was completed on December 9, 2008. Therefore, the case was untimely closed; and Closed 2011 Case Nos. 10E-60118193, which was opened on June 23, 2010 and closed on May 16, 2011 with a case closure category of “counsel and advice.” All activity ceased in this case in 2010, and 09E-65110645, which was opened on October 20, 2009 and closed on March 15, 2011, with a case closure category of “counsel and advice.” This case was untimely closed.

*See also*, Closed 2012 Case Nos. 06-E-60076995, which was opened on July 18, 2006 and closed on May 14, 2012 with a case closure category of “counsel and advice.” This case was de-selected because it was untimely closed; 10E-60113344, which was opened on January 14, 2010 and closed on January 14, 2012 with a case closure category of “limited action.” This case was de-selected because it was untimely closed; 11E-60127423, which was opened on May 11, 2011 and closed on February 12, 2012 with a case closure category of “counsel and advice.” This case was de-selected for untimely closing; 11E-60127816, which was opened May 27, 2011, and closed June 28, 2012, with a case closure category of “counsel and advice.” This case was de-selected because it was untimely closed; 10E-60124322 which was opened on December 9, 2010

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<sup>10</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).

and closed on June 6, 2012 with a case closure category of “counsel and advice.” This case was de-selected because it was untimely closed; 09E-60103769, which opened on March 20, 2009 and closed July 3, 2012 with a case closure category of “counsel and advice.” All legal work ceased in this case in 2009; 09E-66110394, which was opened on October 13, 2009 and closed on June 27, 2012 with a case closure category of “agency decision.” The final order in the file was dated November 4, 2009; 04E-61057001, which was opened on February 20, 2004 and closed on January 9, 2012, with a case closure category of “counsel and advice.” This case was untimely closed and was marked as “rejected” by LABG; 03E-61052842, which was opened on August 5, 2003, and closed on May 17, 2012, with a case closure category of “counsel and advice.” This case was de-selected because it was untimely closed; 03E-65050739, which was opened on May 13, 2003 and closed on April 25, 2012, with a case closure category of “contested court decisions.” This case was de-selected because it was untimely closed; 06E-65078688, which was opened on August 29, 2006 and closed on May 14, 2012 with a case closure category of “negotiated settlement with litigation.” This case was de-selected because it was untimely closed; 05E-65070069, which was opened on August 22, 2005 and closed on April 25, 2012 with a case closure category of “counsel and advice.” The case was rejected and de-selected because it was untimely closed; 07E-65083544, which was opened on May 3, 2007 and closed on March 23, 2012 with a case closure category of “counsel and advice.” This case was de-selected because it was untimely closed; 97-0300156N which was opened on March 26, 1997 and closed on April 25, 2012, with a case closure category of “extensive service.” This case was untimely closed; 04E-60060650, which was opened on August 6, 2004 and closed July 6, 2012 with no closing code. This case was untimely closed; 04E-65062487 which was opened on November 8, 2004 and closed on July 2, 2012, with case closure category of “administrative agency decision.” This case was untimely closed; and 03E-65054174 which was opened on September 26, 2003 and closed on July 2, 2012, with a case closure category of “administrative agency decision.” This case was de-selected because it was untimely closed; and

Open Case Nos. 08E-60095350, which was opened on June 9, 2008 and remains open. All legal work ceased in this case in the year 2010. There is no recent activity and no documented activity in the file regarding future legal assistance pending or needed, therefore this case is dormant; 07E-60086141, which was opened on July 7, 2007 and remains open. All legal work ceased in this case in the year 2009. There is no recent activity and no documented activity in the file regarding future legal assistance pending or needed, therefore this case is dormant; 05E-62067796, which was opened on June 23, 2005 and remains open. All legal work ceased in this case in the year 2005. There is no recent activity and no documented activity in the file regarding future legal assistance pending or needed, therefore this case is dormant; and 10E-60115247 which was opened on March 11, 2010 and remains open. All legal work ceased in this case in the year 2010. There is no recent activity and no documented activity in the file regarding future legal assistance pending or needed, therefore this case is dormant.

As described above, LABG identified and noted that several of selected cases for review should be de-selected and therefore not be reported in future CSR data submissions. LABG must review all open cases to determine their status for CSR reporting purposes. Dormant cases must be closed in a manner which ensures they are not included in future CSR data submissions

Comments to the DR stated that LABG will, prior to the end of 2012, check the status of each of the cases listed in this report as potentially dormant and see that they are closed, or provide explanation as to why a particular case is not closed. LABG will send a quarterly reminder to each staff attorney of any case that he or she has that has been open for more than two (2) years and ask the staff attorney either to close the case within 30 days, or state in writing why the case needs to remain open. Further comments to the DR stated, that at the annual case review, LABG supervisors will focus on the seemingly stale cases that the attorney has indicated need to remain open to determine whether the case can be closed.

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

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.2.

When a recipient provides more than one 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.

Case file review indicated that LABG is in compliance with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.

No comments were made to this Finding.

**Finding 13: Review of the recipient's policies and interviews with management, as well as a review of the timekeeping records for the attorneys interviewed, did not reveal any violations of 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.

LABG has adopted a written policy titled “Outside Practice of Law Policy, 45 CFR 1604” to guide its staff in complying with 45 CFR Part 1604. OCE reviewed the policy and determined that it is consistent with Part 1604. Discussions with the Executive Director, staff attorneys, and paralegals confirmed that LABG is not involved in any unauthorized outside practice of law.

No comments were made to this Finding.

**Finding 14: Sampled cases, as well as fiscal and other records, and interviews 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.

The review of LABG’s cash disbursement records for years 2010, 2011, and year-to-date 2012, along with the vendor list provided by LABG, did not disclose any noticeable payments or contributions to a political party or association, the campaign of a candidate for public or party office or for use in advocating or opposing a ballot measure, initiative or referendum. In addition, in response to our inquires, the Executive Director and the Business Director both stated that neither LABG nor its employees are involved in any political activities that are prohibited by LSC regulation(s) or made contributions of the program's grant funds or resources to support or promote political activities or interests.

Sampled files reviewed, and interviews with staff indicate, that LABG is not involved in such activity. Additionally, a review of hard-copy informational materials and publications which LABG makes available to applicants and clients that are published by LABG, as well as a review of LABG’s website, did not evidence any content prohibited by 45 CFR §§ 1608.4, 1608.5, and 1608.6.

Based on the review of the recipient’s accounting records, hard-copy informational materials, and LABG’s website, and interviews with the Executive Director, Controller, and Business Director, LABG appears to be in compliance with the requirements of 45 CFR Part 1608.

No comments were made to this Finding.

**Finding 15: Review of the recipient’s policies and sampled cases, as well as fiscal and other records, and interviews with 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 private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

LSC has 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).

LABG has a written policy titled "Policy of Fee-Generating Cases, 45 CFR 1609," which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1609. OCE reviewed the policy and determined that it is consistent with 45 CFR Part 1609. A limited review of accounting records and documentation for the period of 2010 through March 2012 and interviews with LABG management disclosed that LABG did not have any fee-generating cases during the period of review and therefore 45 CFR Part 1609 was not applicable. None of the sampled files reviewed involved legal assistance with respect to a fee-generating case.

Based on the review of accounting records, cash receipts, audited financial statements, case files, and the recipient's policies, as well as interviews with management and the Executive Director, LABG appears to be in compliance with the requirements of 45 CFR Part 1609.

No comments were made to this Finding.

**Finding 16: Review of the recipient's accounting and financial records evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) and LABG donor notification letters reviewed were found to be consistent with the requirements of 45 CFR § 1610.5(a).**

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

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

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

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

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

*See* 45 CFR § 1610.8(a); *see* , 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 review of LABG's cash disbursement records for years 2010, 2011, and year-to-date 2012, along with the vendor list provided by LABG, did not reveal any noticeable payment

inconsistent with the requirements of this regulation. In addition, in response to our inquires, the Executive Director and the program's Business Director both stated that LABG does not expend its LSC and non-LSC funds to support work prohibited by the LSC Act and regulations, or LSC appropriations. Observations of the physical location of LABG's Covington, Morehead, Ashland, and Lexington offices evidenced compliance with the requirements of 45 CFR § 1610.8(a) relating to physical separation.

With regard to donor notification, the review of relevant documentation found compliance with the notification of this part. While on-site, the program provided OCE a sample donor notification letter which acknowledges receipt of a donation and informs the donor of the restrictions placed on the donation. The text of the notification letter meets the requirement of 45 CFR § 1610.5 and are sent consistently.

With regard to LABG's accounting for LSC and non-LSC funds, the review of LABG's accounting and financial reporting system were found to be in compliance with the separate requirement of 45 CFR § 1610.9 – *Accounting*. LABG's chart of accounts and cost allocation policy and procedures are set up to separately account for its LSC and non-LSC receipts and disbursements, as required.

No comments were made to this Finding.

**Finding 17: Review of the recipient's policies and fiscal records, as well as interviews with fiscal staff, evidenced compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.**

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

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

The review of LABG's cash disbursement records for years 2010, 2011, and year-to-date 2012, along with the vendor list provided by LABG, did not reveal any subgrant payments, contributions or payments to other LSC recipients. In addition, in response to our inquiry, the Executive Director and the program's Business Director both stated that LABG does not have any subgrants or make contributions to any other organization or individual or transfers to other LSC recipients.

With regard to membership fees and dues, LABG's accounting manual states as program policy that "LABG pays for all Bar Dues that are required to practice law in the State of Kentucky.

Local and specialty bar dues are paid at the discretion of the Executive Director and the availability of program funds, however only dues, which are required for the practice of law, will be paid with LSC funds. Memberships to professional organizations and/or support centers will be based upon the availability of program funds and must be approved by the Executive Director. These expenses *may not* be charged to Legal Services Corporation funds.” This section complies with 45 CFR § 1627.4.

According to LABG’s cost allocation methodology statement, LABG uses non-LSC funds, Kentucky Filing Fees, to pay these types of expenses. No exceptions were noted with this policy.

Pursuant to 45 CFR § 1627.8, LABG has written policies and procedures to guide its staff in complying with this part and maintains records sufficient to document its compliance with this part. LABG’s accounting manual and cost allocation methodology statement both set forth its policies and procedures for the expenditure of its LSC and non-LSC funds and the allocation of common costs amongst its funding sources.

No comments were made to this Finding.

**Finding 18: Review of the recipient’s policies and sampled cases, as well as fiscal and other records, and interviews with management and staff evidenced substantial compliance with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Oversight and follow-up of the PAI case files were not in compliance with 45 CFR § 1614.3(d)(3). Numerous cases were dormant, or untimely closed, or lacked a description of the legal assistance provided or lacked the required citizenship/alien eligibility documentation, and, as a result, had to be de-selected by LABG. In addition, the allocation of PAI costs associated with the Modest Means Program operated by LABG violates 45 CFR § 1614.3, because the applicants are not eligible clients.**

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

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

implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

LABG has adopted a PAI plan which states, in part, that it will expend at least 12.5% of its LSC basic field grant for permissible private attorney involvement activities. The 2012 PAI Plan states that LABG will accomplish this through operating Pro Bono Programs in its four (4) offices, pro se activities in two (2) or three (3) offices, a modest means program in one (1) office, and contracts with private attorneys who agree to represent eligible clients at a reduced fee.

### Covington

From its Covington office, LABG co-sponsors the Northern Kentucky Volunteer Lawyers, Inc. as a joint venture with the Northern Kentucky Bar Association. This program no longer has a dedicated pro bono director, but has instead distributed the responsibilities of that position among the Executive Director, Advocacy Director, staff attorneys, and law clerks.

The panel of active pro bono attorneys is comprised of approximately 210 members who represent approximately 285 individuals each year in civil legal aid through extended representation, brief service, or advice and counsel. Cases involve contested dissolution of marriage, child custody and related dissolution issues, domestic violence and eviction matter. The balance of the cases includes bankruptcies, landlord-tenant, probate, and consumer law cases. In addition to individual cases, approximately 15 pro bono attorneys volunteer their time by participating in pro se divorce and wills clinics.

Fifteen (15) pro bono attorneys also volunteer their time and expertise by representing individuals who are victims of domestic violence through the programs' Voices Against Violence Project. Volunteer attorneys make a commit to attend the domestic violence dockets two (2) times per month. The same model of pro bono attorneys covering court dockets is used in the Helping Our UnderServed Evictees project ("HOUSE") where 14 volunteer attorneys represent individuals in eviction court. These projects free up LABG's staff attorney time, which allow the staff attorneys at LABG to handle cases in the more remote counties which do not have ready access to pro bono attorney.

In response to the overwhelming number of foreclosures being filed, in December 2009, the Homeowner Education & Legal Protection Project ("HELP") was launched. HELP pairs homeowners at risk of losing their homes with pro bono attorneys in face to face conferences. Attorneys review paperwork, and assist the homeowners in a variety of ways, including: (1) filling out a hardship letters to be sent to a lender asking for a loan modification; (2) completing a pro se answer to be filed in a foreclosure case along with a hardship letter; (3) explaining bankruptcy; (4) explaining other options; and (5) answering questions.

The Chase Law Advocate program is a joint effort of the Northern Kentucky Volunteer Lawyers and Salmon P. Chase College of Law. The student pro bono panel has approximately 25 law students who volunteer at pro se divorce clinics and wills clinics, assist Legal Aid and pro bono attorneys with research, and provide community education and outreach.

The day to day operations of the pro bono divorce panel are the responsibility of several individuals. A LABG divorce paralegal screens applicants for income eligibility, citizenship/ alien eligibility, runs conflicts checks, mails out divorce questionnaires, types initial divorce pleadings, and mails/emails pleadings to pro bono attorneys as case referrals. A staff attorney reviews all divorce pleadings before they are distributed to the pro bono attorneys. The divorce paralegal sends out closing case letters, records case information, provides follow-up and maintains a database of pro bono divorce referrals. A part-time law student coordinator screens clients, prepares packets of forms and vital statistics, and recruits pro bono attorneys and student volunteers for the pro se divorce clinics. In addition, the student coordinator organizes student trainings and clinics for wills, domestic violence, Hispanic outreach and community education. For non-family law referrals, intake specialists screen clients and forward the case information directly to the pro bono attorneys.

Case oversight is conducted twice a year, utilizing e-mails, telephone calls to the attorneys, telephone calls from clients, and also utilizing the Court database, CourtNet. The Director of advocacy closes all cases utilizing the LSC case closure categories

### Morehead Office

From its Morehead office, LABG operates a rural pro bono panel. Approximately 20 attorneys have agreed to handle cases in the twelve rural counties of Bath, Bracken, Carter, Elliott, Fleming, Mason, Menifee, Montgomery, Morgan, Nicholas, Robertson, and Rowan. A Paralegal spent approximately 20% of her time referring cases and preparing pleadings. In addition, a lawyer spent approximately 5% of her time in recruiting and oversight activities, while the Managing Attorney spent approximately 1.7% of his time participating in these activities.

The Morehead office PAI component is currently coordinated by a paralegal who has taken over for a former staff employee. She is presently attempting to organize all outstanding PAI cases and determine whether they should be closed. As a result, at the time of the review, she has not referred many cases so far this year but was beginning to do so.

The PAI component in the Morehead office utilizes both contract and pro bono attorneys. Currently, there are five (5) attorneys that have agreed to take domestic violence cases at a reduced fee. The contract attorneys are paid after they send an itemized bill to LABG with a final order or memorandum concerning the final resolution as to the case. There are approximately 18 pro bono attorneys who handle uncontested divorces involving children and bankruptcies. In 2011, the Morehead office closed a total of 14 PAI cases. Citizenship documentation must be provided and a retainer agreement executed and returned by a client before a PAI referral is made.

In addition, the Morehead office participates in a pro se divorce clinic that is run by a former staff attorney. Intake is conducted by the Morehead office before the applicants are referred to the clinic. The clinic accepts divorce cases where no children or property issues are involved. Citizenship documentation and retainer agreement must be returned before a referral can be made to the pro se clinic. Because a former employee runs the clinic, she also does a second full

intake on individuals prior to the beginning of the clinic.<sup>11</sup> The PAI attorney closes the PAI clinic cases using the same Closing Memo used by staff attorneys for staff cases. Again, because the PAI attorney is a former LABG staff attorney, she has the training and capacity to apply the appropriate case closure category and give the information to intake staff who closes the cases in the ACMS. A special assistant at the Morehead office, reviews all files before they are closed.

The PAI coordinator sends status letters to PAI attorneys two (2) times per year. If a reply is not received from the PAI attorney, she will attempt to call them, or if that fails, she will go to the courthouse and look at the court file to obtain any and all pleadings necessary for the file. The clinic is held approximately every fourth Friday of each month and is held in different counties throughout the year.

### Ashland Office

The Ashland office PAI component serves three (3) counties: Boyd, Greenup, and Lewis. Cases referred to PAI attorneys include divorce, bankruptcy, Social Security terminations, power of attorneys, wills, living wills, and adoptions. Approximately 25 to 30 cases are referred on an annual basis and the current pro bono list has 28 participating attorneys on it. Approximately, 95% of referred cases are divorces. There is a waiting list for all PAI cases; the average wait for Boyd County cases is one (1) year and the average wait for both Greenup and Lewis Counties is approximately six (6) months.

The Ashland office receives the cases it refers in various ways. For example, the Covington office may send emails referring applicants that have gone through LABG's intake process to the Ashland office for PAI assistance. Occasionally, applicants residing in the nursing homes visited by LABG staff may be referred. Divorce cases that the program has decided not to handle internally are referred to PAI attorneys and pro bono attorneys contact the program regarding applicants they believe qualify for assistance. Occasionally, the pro bono coordinator handles these referrals and will attend the office's case management meeting to assess acceptance. Once accepted, the cases are placed on the waiting list for placement. Prior to placement with a PAI attorney, the PAI coordinator sends a letter to the applicant explaining the waiting list process that also includes a citizenship attestation form and retainer agreement. The PAI coordinator explains what must be returned before placement with a PAI attorney can occur.

Once a PAI attorney has accepted a case, the PAI coordinator sends out case status letters approximately two (2) times per year. If she does not receive a reply from these letters, she will either go on CourtNet to pull up case information from the computer, call the attorney or, if all else fails, will go to the courthouse and look at the court file. The PAI coordinator has indicated that these methods have provided her with a sufficient ability to track the PAI cases that have been referred.

PAI attorneys are instructed to send Closing Memos, along with any applicable court decisions, once a case has been resolved. At that time, the PAI coordinator will prepare a Closing Memo on the same form that is used for staff cases and will obtain advice from the Managing Attorney

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<sup>11</sup> This former employee is an attorney who separated from LABG in the year 2008.

or staff attorneys regarding the proper case closure category. Once completed, the Managing Attorney will review the file, sign the Closing Memo, and give it back to the PAI coordinator for closure in the ACMS.

### Lexington Office

The Lexington Office has a Pro Bono Coordinator who oversees the PAI component in that office. One program supported by the Lexington office and part of its PAI component is the Law Care program. Law Care is a joint pro bono effort between LABG and the Fayette County Bar Association. The project employs a full-time lawyer director and a paralegal assistant. LABG supports the Fayette County Pro Bono Program (Law Care) with salary costs for these two LABG employees who work in the Law Care program. Also, LABG allocates 12.5% of all filing fee revenue attributable to Fayette County to Law Care.

Through Law Care, 315 private attorneys have agreed to accept referrals. The bulk of referrals to PAI attorneys are uncontested divorce cases. The program also handles other types of cases such as adoption, bankruptcy, collections, homeownership/real property, landlord/tenant, spouse abuse, wills and estates, etc. LABG estimates that Law Care handles at least 400 cases per year at an approximate value of \$256,000 (four hours per case at \$160 per hour). LABG also maintains a special panel of attorneys who act as Guardian Ad Litem and Warning Order Attorneys. Intake for Law Care is conducted by the intake staff at LABG in the normal course of applicant screening

The funding arrangement between LABG and Law Care entails LABG employing Law Care staff and paying salaries and fringe benefits, using non-LSC funds. The Law Care program then reimburses LABG for 50% of those costs.

The Lexington office also participates in a pro se divorce clinic as part of its PAI component. The pro se divorce clinic is hosted by LABG every other month with the full cooperation of the Fayette Family Court Judges on-site to grant final decrees when appropriate. The pro se divorce clinic serves an average of 15-20 pro se litigants every other month. These cases are closed as "limited action cases."

The Fayette County Bar Association Pro Bono Program, Inc., LABG, and the Fayette Bar Foundation have partnered to develop a new Bluegrass Domestic Violence Project ("BDVP"), where PAI attorneys volunteer to attend Domestic Violence court in order to provide a consistent presence in court and to also represent victims of violence if a LABG staff member cannot accept the case. A second partnership with BDVP provides custody and divorce representation, through PAI attorneys to victims of violence, as well as other legal matters that may be related to domestic violence, including the domestic violence hearing.

Once a case has been successfully referred to a PAI attorney, the pro bono coordinator in the Lexington office will send out case status letters. Case oversight is conducted approximately four (4) times a year using, telephone, emails, CourtNet, and on occasion, a visit to the court house in order to obtain documents from the court files. Attorneys are instructed to send in Closing Memos along with any court decisions, once a case has been resolved. The pro bono

coordinator assigns the case closure categories to the completed PAI case and closes them in the ACMS.

The Modest Means Program is a joint program with the Fayette County Bar Association and Law Care. The purpose of the program is to provide legal representation in family law cases to those people over the economic guidelines for free legal services, but who are unable to afford a full fee or who are involved in a contested case. Fayette County Bar Association members who have agreed to lower their fees make-up the panel. The sliding scale fees that the attorneys charge the Modest Means clients are income-based. LABG estimates that Law Care provides intake for about 100 to 150 Modest Means Program clients per year.

The DR found that the allocation of PAI costs associated with the Modest Means Program operated by LABG violated 45 CFR § 1614.3, because the applicants were not thought to eligible clients, but after comments were reviewed and additional information was provided, LABG's practice does not violate 45 CFR § 1614.3. The Comptroller advised that she could not determine the amount of expenditures attributable to the Modest Means Program. The Executive Director advised that this amount would not be significant since referrals to the Modest Means Program only included applicants that LABG had already determined were ineligible based on income restrictions.

Comments to the DR stated that, if LSC is insistent on this, LABG will not allocate to PAI expense the time that its PAI eligibility workers spend on making Modest Means referrals. LABG is of the opinion that LSC is taking an overly rigid interpretation of 45 CFR Part 1614 and that part of the cost of providing PAI services to eligible clients is time expended in screening out applicants who are not eligible. Further comments to the DR stated that, with respect to the Modest Means Program operated in Fayette County, LABG has no administrative duties or any oversight duties for that Program. When an applicant is determined not to be ineligible for pro bono service, where appropriate, LABG refers the applicant to the Fayette Bar Association's Modest Means Program. Additional comments to the DR stated that the time expended in making the referral is minuscule and LABG respectfully submitted that the time expended in determining whether an applicant qualifies as an eligible PAI client, and in making a referral for those who are not eligible, should be considered a "cost related to our PAI effort." 45 CFR § 1614.4.3(e).

LABG's argument is correct and the additional information provided by LABG evidenced that such activities would not be a violation of 45 CFR § 1614.3. Accordingly, LSC removed the related Required Corrective Action.

Additional comments to the DR indicated that LABG will see that those PAI cases noted in this report will not be reported to LSC in the future. The comments further noted that LABG will contact each attorney who has PAI open cases twice a year, approximately in December and June, to request status reports for all open cases. If LABG does not get a response, they will check court records to determine if anything has gone on with the case and, as a last resort, if LABG fails to get sufficient information to report a case, they will close it and deselect it, according to comments to the DR.

## **Fiscal**

LABG has met its PAI ratio requirements during each year in the review period. Based upon the information contained in its 2011 Audited Financial Statements (“AFS”), LABG documented \$278,086 in PAI expenses and achieved a 19.84 % PAI ratio for 2011.

Upon review of its fiscal documentation, it was determined that LABG does utilize financial systems and procedures and maintain supporting documentation to identify and account separately for costs related to the PAI effort. Non-personnel PAI costs (overhead) are calculated by applying a ratio of total PAI wages to total wages. This methodology addresses the requirements of 45 CFR § 1614.3(e)(1)(i) as described in the Accounting Guide for LSC Recipients (“AGLR”), Chapter 3, which discusses Fundamental Criteria and Internal Controls. The Comptroller advised that she determines the amount to allocate to PAI for each invoice, as well as a determination of the allocation between LABG’s applicable funding sources.

A random sample of PAI personnel expenses claimed for several employees, including attorneys, paralegals, and other staff who do not keep time records. Based upon this sampling of PAI salary expenditures, it was revealed that one (1) attorney and two (2) paralegals had PAI time that was not documented by time sheets, accounting for the time those employees have spent on PAI activities as required by 45 CFR § 1614.3(e)(1)(i). LABG must ensure that any allocations of direct time of attorneys and paralegals as a cost to PAI is documented by time sheets accounting for the time those employees spent on PAI activities as required by 45 CFR § 1614.3(e)(1)(i).

The regulation, at 45 CFR § 1614.3(e)(2), requires that the support and expenses relating to a program’s PAI effort must be reported separately in the recipient’s year-end audit. Also, 45 CFR § 1614.3(e)(3) requires that in private attorney models, attorneys may be reimbursed for actual fees and expenses; however, attorney’s fees paid may not exceed 50% of the local prevailing market rate for that type of service. Review of LABG’s 2011 Audited Financial Statements revealed that PAI activity is separately reported in its year-end audit. Also, interviews with the Comptroller and Executive Director substantiated that attorneys’ fees paid to contract attorneys do not exceed 50 % of the local prevailing market rate for that type of service.

The case review of the PAI cases revealed that oversight and follow-up was not in compliance with 45 CFR § 1614.3(d)(3). Numerous cases were dormant, untimely closed, lacked a description of the legal assistance provided, or lacked the required citizenship/alien eligibility documentation and, as a result, some cases had to be de-selected from LABG’s CSRs. The following case files, and those similar to them, should not have been reported to LSC in LABG’s CSR data submissions. *See* Closed 2010 Case No. 07E-60081547, which was opened on February 8, 2007 and closed on June 8, 2010. The case notes indicate that all legal work ceased in this case in 2007 and, therefore this case is untimely closed; Closed 2010 Case No. 06E-60075850, which was opened on May 30, 2006 and closed on June 8, 2010. The case notes indicate that all legal work ceased in the case in 2007 and, therefore this case is untimely closed; Closed 2010 Case No. 05E-60070575, which was opened on October 14, 2005 and closed on June 1, 2010, lacking a description of legal assistance provided; Closed 2011 Case No. 07E-60089942, which was opened on December 12, 2007 and closed October on 22, 2011, with the

case closure category of “counsel and advice.” The case notes indicate that all activity ceased in the year 2009 and, therefore this case is untimely closed; Closed 2012 Case No. 07-E60082567 which was opened on March 15, 2007 and closed on July 6, 2012 and, therefore this case is untimely closed; Closed 2012 Case No. 06-60079457, which opened on November 2, 2006 and closed on April 14, 2012, and, therefore this case is untimely closed; Closed 2012 Case No. 07E-6008128, which was opened on January 30, 2007 and closed on July 9, 2012 and, therefore this case is untimely closed; Closed 2012 Case No. 09E-6110934, which was opened on September 14, 2009 and closed on June 26, 2012, and, therefore this case is untimely closed; Closed 2012 Case No. 45430C, which was opened on November 5, 1999 and closed on July 9, 2012, and, therefore this case is untimely closed; Closed 2012 Case No. 04E-6005982, which was opened on June 30, 2004 and closed on July 9, 2012, and, therefore this case is untimely closed; Closed 2012 Case No. 03E-61048656, which was opened on February 4, 2003 and closed March 26, 2012, De-selected because file was lost; Open Case No. 07-60087564, which was opened on September 24, 2007 and remains open, and therefore dormant with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Open Case No. 05E-60065906 which was opened on April 14, 2005 and remains open, and therefore dormant with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Open Case No. 04-60058213, which was opened on April 14, 2004 and remains open, and therefore dormant with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Closed 2012 Case No. 04E-6105787, which was opened on March 30, 2004 and closed July 9, 2012 and, therefore this case is untimely closed, case notes indicating that all legal work ceased in this case in 2006; Open Case No. 04E-6105678, which was opened on February 10, 2004. The file could not be located;

*See also*, Closed 2012 Case File Nos. 04E-65059620, which was opened on June 22, 2004 and closed July 7, 2012, with the case closure category of “administrative agency decision”; 02E-2047622N, which was opened on November 19, 2002 and closed on July 6, 2012, with the case closure category of “administrative agency decision”; 06E-65078564, which was opened on September 25, 2006 and closed on July 6, 2012, with the case closure category of “contested court decision”; 07E-65083511, which was opened on May 2, 2007 and closed on July 6, 2012, with the case closure category of “contested court decision,;” 04E-65059620 which was opened on June 22, 2004 and closed on July 6, 2012, with the case closure category of “administrative agency decision”; 05E-65067902 which was opened on June 30, 2005 and closed on July 6, 2012 with the case closure category of “contested court decision”; 02E-2047622N which was opened on November 19, 2002 and closed on July 6, 2012, with the case closure category of “administrative agency decision”; 06E-65078564, which was opened on September 25, 2006 and closed on July 6, 2012, with the case closure category of “contested court decision”; 07E-65083511, which was opened on May 5, 2007 and closed on July 6, 2012, with the case closure category of “contested court decision”; and 05E-65063601, which was opened on January 18, 2005 and closed on July 6, 2012, with the case closure category of “contested court decision.” All of these cases were de-selected because they were untimely closed.

All 2012 closed and open cases identified above should be de-selected and not reported to LSC in future CSR data submissions. In addition, LABC should carefully review all closed PAI cases prior to including them in future CSR data.

No comments were made to this Finding.

**Finding 19: Review of timekeeping and other fiscal records evidenced substantial compliance with 45 CFR Part 1635 (Timekeeping requirement). However, the review revealed that one (1) attorney and two (2) paralegals are not maintaining time as required by 45 CFR § 1635.3(b).**

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.

Interviews with the Business Director and the Comptroller disclosed that there are no part-time case handlers working for an organization that engages in restricted activities in compliance with 45 CFR § 1635.3(d). LABG requires that employees work a 35 hour work week and the program is open to the public Monday through Friday. Attorneys and paralegals utilize the Kemps timekeeping system to enter their time worked broken down by activities in as little as six (6) minute increments.

A review was conducted of five (5) advocates' timekeeping records, including three (3) attorneys and two (2) paralegals selected for the bi-weekly pay periods of December 10 through 23, 2011 and May 14 through May 25, 2012. The review disclosed that the records are electronically and contemporaneously kept. However, the records for one (1) of the paralegals selected could not be reviewed as this employee did not enter time into Kemps timekeeping system. Additionally, there are two (2) staff members, one (1) attorney and one (1) paralegal who are not entering their time in Kemps. For other staff reviewed, the time spent on each case, matter or supporting

activity was recorded in substantial compliance with 45 CFR § 1635.3(b) and § 1635.3 (c). Additionally all records reviewed confirmed that the employee had worked a minimum of 35 hours, in compliance with the program's work week requirement

The Comptroller advised that payroll is performed bi-weekly. Each employee completes a manual timesheet for payroll and attendance records are included. The Time Coordinator in each office enters the information from the timesheets into a spreadsheet which includes a Paycor file number for each employee. The Comptroller takes all of the spreadsheets and converts them into a file for the Paycor (payroll) software. The approval process is as follows: employees sign their timesheets; their supervisor/managing attorney approves the timesheets that are prepared by the Time Coordinator for their office; the Comptroller reviews the submitted timesheets; and the Executive Director and Business Director review the payroll register and timesheets. A review was conducted of the payroll timekeeping reports for the aforementioned five (5) advocates, which included three (3) attorneys and two (2) paralegals selected for the bi-weekly pay periods of December 10 through 23, 2011, and May 14 through 25, 2012. The review revealed no exceptions.

Based on the limited review of the program's fiscal and timekeeping records, LABG appears to be in substantial compliance with 45 CFR Part 1635, with the exceptions as noted above. LABG must ensure that all time spent by attorneys and paralegals is documented by time records that record the amount of time spent on each case, matter, or supporting activity, as required by 45 CFR § 1635.3(b).

No comments were made to this Finding.

**Finding 20: Review of sampled cases, as well as fiscal and other records, and interviews with management and staff 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>12</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

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<sup>12</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).

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).

A limited review of LABG's fiscal records and the 2010 and 2011 Audited Financial Statements, as well as interviews with LABG management and the Executive Director, evidenced that there were no attorneys' fees awarded, collected, or retained for cases serviced directly by LABG that would violate 45 CFR Part 1642.

Based on case files reviewed, as well as a limited review of fiscal records, and interviews with management and the Executive Director, LABG appears to be in compliance with the requirements of 45 CFR Part 1642.

No comments were made to this Finding.

**Finding 21: Review of the recipient's policies and sampled cases, as well as fiscal and other records, and interviews with management and staff evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part 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 office.

LABG has a written policy titled "Legislative and Administrative Rule Making Prohibitions," which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1612. OCE reviewed the policy and determined that it is consistent with Part 1612. OCE also reviewed LABG's 45 CFR § 1612.10(c) Semi-Annual Reports regarding Legislative Rulemaking Activities submitted to LSC for the years of 2010 and 2011. LABG disclosed activities permissible under 45 CFR § 1612.6(f). None of the documents reviewed evidenced any lobbying or other prohibited activities. A limited review of LABG's fiscal records provided no indication that the program was involved in lobbying or other restricted activities during the review period. Moreover, as discussed *supra* in Finding 14 with regard to Part 1608, a review of hard-copy informational materials and publications which LABG makes available to applicants and clients which are published by LABG and other federal, state, and private organizations, as well as a review of LABG's website, did not evidence any content prohibited by 45 CFR §§ 1612.4, 1612.8, and 1612.9. Discussions with the Executive Director, Controller, and Business Director also confirmed that LABG is not involved in any prohibited public rulemaking or lobbying activities.

Based on a review of the recipient's policies and sampled cases, as well as fiscal and other records, and interviews with the Executive Director, Controller, and Business Director, LABG appears to be in compliance with the requirements of 45 CFR Part 1612.

No comments were made to this Finding.

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

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also confirmed that LABG is not involved in this prohibited activity.

Based on the case files reviewed and interviews with the Executive Director, staff attorneys, and Business Director, LABG appears to be in compliance with 45 CFR Parts 1613 and 1615.

No comments were made to this Finding.

**Finding 23: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).**

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations define "initiating or participating in any class action" as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).<sup>13</sup>

LABG has a written policy titled "Class Actions Program Policy, 45 CFR 1617," which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1617. OCE reviewed the policy and determined that it is consistent with Part 1617. None

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<sup>13</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).

of the sampled files reviewed involved initiation or participation in a class action. Interviews with the Executive Director also confirmed that LABG is not involved in this prohibited activity.

Based on the program's policies, the case files reviewed, and interviews with the Executive Director, staff attorneys, and Business Director LABG appears to be in compliance with the requirements of 45 CFR Part 1617.

No comments were made to this Finding.

**Finding 24: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

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

LABG has a written policy titled "Redistricting Policy, 45 CFR 1632," which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1632. OCE has reviewed the policy and has determined that it is consistent with Part 1632. None of the sampled files reviewed revealed participation in litigation related to redistricting. Interviews with the Executive Director, staff attorneys, and Business Director also confirmed that LABG is not involved in this prohibited activity.

Based on the program's policies, case files reviewed, and interviews with the Executive Director, LABG appears to be in compliance with the requirements of 45 CFR Part 1632.

No comments were made to this Finding.

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

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

LABG has a written policy titled " Eviction Proceedings Policy, 45 CFR 1633," which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1633. OCE reviewed the policy and determined that it is consistent with Part 1633. None

of the sampled files reviewed involved defense of any such eviction proceeding. Interviews with the Executive Director also confirmed that LABG is not involved in this prohibited activity.

Based on the program's policies, case files reviewed, and interviews with the Executive Director, staff attorneys, and Business Director LABG appears to be in compliance with the requirements of 45 CFR Part 1633.

No comments were made to this Finding.

**Finding 26: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

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

LABG has a written policy titled "Representation of Incarcerated Persons Policy, 45 CFR 1637," which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1637. OCE reviewed the policy and determined that it is consistent with Part 1637. None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings challenging the conditions of incarceration, on behalf of an incarcerated person.

Based on the program's policies, case files reviewed, and interviews with the Executive Director, staff attorneys, and Business Director LABG appears to be in compliance with the requirements of 45 CFR Part 1637.

No comments were made to this Finding.

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.<sup>14</sup> This restriction has been contained in all subsequent appropriations acts.<sup>15</sup> This new restriction is a strict prohibition

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<sup>14</sup> *See* Section 504(a)(18).

<sup>15</sup> *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: “This part is designed to ensure that recipients and their employees do not solicit clients.”

LABG has a written policy titled “ Restrictions on Solicitation Policy, 45 CFR 1638,” which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1638. OCE reviewed the policy and determined that it is consistent with Part 1638. None of the sampled files reviewed, including documentation such as community education materials and program literature, indicated program involvement in such activity.

Based on the program’s policies, case files reviewed, and interviews with the Executive Director, staff attorneys, and Business Director LABG appears to be in compliance with the requirements of 45 CFR Part 1638.

No comments were made to this Finding.

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

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

LABG has a written policy titled “ Restriction on Cases Involving Assisted Suicide, Euthanasia, and Mercy Killing, 45 CFR 1643,” which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1643. OCE reviewed the policy and determined that it is consistent with Part 1643. None of the sampled files reviewed indicated program involvement in such activity. Interviews with the Executive Director also confirmed that LABG is not involved in this prohibited activity.

Based on the program’s policies, case files reviewed, and interviews with the Executive Director, staff attorneys, and Business Director LABG appears to be in compliance with the requirements of 45 CFR Part 1643.

No comments were made to this Finding.

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

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

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

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

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

No comments were made to this Finding.

**Finding 30: Review of the recipient's policies and a sample of signed written agreements evidenced compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).**

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

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

- c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

LABG has a written policy, 45 CFR 1620, which was adopted by its Board of Directors on June 27, 2012, to guide its staff in complying with 45 CFR Part 1620. OCE reviewed the policy and determined that it is consistent with Part 1620. A review of the 45 CFR § 1620.6 required written agreements signed by eight (8) randomly selected LABG staff members, who handle cases or matters, or who are authorized to make decisions about case acceptance, demonstrated that LABG obtains these agreements from necessary personnel.

Based on the policies and signed written agreements reviewed, LABG appears to be in compliance with 45 CFR § 1620.6.

No comments were made to this Finding.

**Finding 31: Review of the recipient’s policies reviewed 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 require 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.

LABG’s policy on case disclosure was reviewed subsequent to the on-site visit and was met with approval and is in compliance with the requirements of 45 CFR Part 1644.

**Finding 32: Review of the recipient’s policies and sampled cases evidenced compliance with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).**

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

LABG’s policy on welfare reform was reviewed subsequent to the on-site visit for compliance with 45 CFR Part 1639 and the policy meets the requirements of 45 CFR Part 1639.

No comments were made to this Finding.

**Finding 33: Review of LABG’s policies and procedures related to cash receipts from clients revealed that the program maintains a detailed Client Trust policy which includes sound internal controls.**

LABG will sometimes accept cash from a client to cover anticipated fees in connection with their legal representation (Client Trust Accounts). The program has a written policy regarding this practice entitled “Client Trust Account” which is maintained in its Accounting Manual. The policy states, in part, that each office will maintain client trust receipts and a client trust log for all client funds and that all client funds received by LABG will be kept in a client trust checking account. LABG’s policy further provides that the designated person in each office will be responsible for accepting funds from clients, logging the funds and delivering the funds to a separate depositor for deposit in the Client Trust checking account. The Comptroller advised that Client Trust Accounts are maintained in a separate Enterprise client trust file within its accounting software.

To strengthen a program’s internal controls with the goal of reducing opportunities for fraudulent activities to occur, LSC recommends that clients should be provided notice about the program’s cash receipts policy, which states that the client is entitled to a receipt for cash provided and that if a receipt is not provided that the client should see a supervisor. *See Accounting Guide for LSC Recipients (“AGLR”) (2010 Edition), Appendix VII, Section H, Accounting Procedures and Internal Control Checklist - Controls over Cash Receipts.*

Through review of the lobby area at the Covington office it was observed that a sign is displayed which advises clients to obtain a receipt for any cash payments made to LABG. The Comptroller advised that LABG maintains similar signs in each of its offices.

No comments were made to this Finding.

**Finding 34: Review of LABG’s bank statement reconciliations revealed that the bank statements are reconciled timely and that the review is appropriately documented.**

Bank statement reconciliations to the general ledger should be conducted on a monthly basis and should be reviewed and approved by a responsible individual. The review must be appropriately documented and signed and dated. *See AGLR § 3-5.2 and LSC Program Letter 12-2, Compliance Guidance, Fiscal Management Issues.*

The program currently maintains six (6) separate bank accounts used for various purposes including its main operating account (special account), cafeteria/flexible account (Sheakley account), Capital Campaign/savings account, checking account, client trust account, and savings account. The bank statement reconciliation process is performed monthly by the Comptroller and the completed bank statement reconciliations are then reviewed by the Executive Director. The

Executive Director also performs a random sampling of checks expensed on the statement. A limited review of LABG's bank statement reconciliations from December 2011 and May 2012 revealed that the bank statements are reconciled timely and that the review is appropriately documented.

Outstanding checks should be investigated and resolved in accordance with the procedures detailed in the AGLR (2010 Edition), Appendix VII, Accounting Procedures and see also LSC Program Letter 12-2, Compliance Guidance, Fiscal Management Issues. Upon review of LABG's bank statement reconciliations from December 2011 and May 2012, it was determined that the program is clearing stale checks timely.

It is noted that in LABG's December 2011 statement, PNC bank had charged monthly fees of \$125 for maintenance and usage. A similar fee was not observed in its May 2012 bank statement. The Comptroller advised that its bank had ceased charging these fees effective May 2012. LABG also demonstrated that the bank fees charged prior to that time had not been charged to LSC funds.

No comments were made to this Finding.

**Finding 35: Review of State Health Insurance Assistance Program (“SHIP”) <sup>16</sup> cases revealed that cases that were LSC eligible were not reported to LSC in the CSRs.**

Pursuant to the CSR Handbook (2008 Ed., as amended 2011), § 2.1, for CSR purposes, a case is defined as the provision of permissible legal assistance to an eligible client with a legal problem, or set of closely related legal problems, accepted for assistance in accordance with the requirements of the LSC Act, regulations, and other applicable law. *See also*, 45 CFR § 1635.2. Cases that meet LSC eligibility criteria should be reported in the CSR irrespective of funding source. Legal services programs may record and report the provision of legal assistance as a case only if: (a) the client is financially and otherwise eligible to receive legal assistance under the LSC Act, regulation, and other applicable law; (b) the client's case is within program priorities (or is an emergency case accepted under the program's emergency cases acceptance procedures); (c) the legal service program has actually accepted the client for service through its intake system or another established procedure for ensuring client eligibility; (d) the legal assistance provided to the client meets the criteria of one of the CSR Closure Categories described in Chapters VIII of the CSR Handbook (2008 Ed., as amended 2011); (e) the type of legal assistance provided to the client is not prohibited by the LSC Act, regulations, or other applicable law (e.g., a class action); and (f) the legal problem(s) of the client are not of a type prohibited by the LSC Act, regulations, or other applicable law (e.g., an abortion case).

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<sup>16</sup> LABG's priorities, (F) Maximizing Access to Legal Services, state that to enhance access to legal services for the fifty percent (50%) of the **eligible client community** (emphasis added) whose legal needs cannot be met due to limited resources and staff, LABG adopts the following priorities: 3. In those geographic areas where funding is provided through SHIP, to provided benefit counseling to individuals age 60 or older or disabled and receiving Medicare or Medicaid. SHIP provides information, counseling and assistance to seniors and disabled individuals, their family members and caregivers. This service is provided at no charge by local, well trained counselors. The program seeks to educate the general public and Medicare beneficiaries so they are better able to make informed decisions about their health care.

LABG receives SHIP funding for 40 counties. This funding source is utilized by LABG, for the most part, to counsel clients who receive federal benefits. Nine (9) SHIP cases reviewed were not LSC eligible either due to no screening for income eligibility or due to failure of LABG to utilize the authorized exceptions to the annual income ceiling pursuant to 45 CFR § 1611.5 in instances where the income exceeded 125% but not 200% of the FPG. *See* Closed 2012 Case Nos. 12E-65134006, 11E-61131555, 11E-65130396, 11E-61132503, 11-61132124, 11E-61131777, 11E-65132311, 11E-65127170, and 11E-65131414. None of these cases are scheduled to be reported to LSC in the CSRs.

There were also nine (9) SHIP cases reviewed that were closed in 2012 and are not expected to be reported in LABG's CSRs even though they meet LSC's eligibility criteria. LABG should report LSC eligible cases funded by SHIP in its CSR data. *See* CSR Handbook (2008 Ed., as amended 2011) § 4.3. *See* Closed 2012 Case Nos. 11-611311718, 11E-61132341, 11E-61232678, 12E-65133656, 11-61182287, 11E-61131801, 12-61134534, 11E-65132237, and 12E-65134135.

Comments to the DR stated that LABG had considerable discussion with the review team concerning this matter and thought that the consensus among team members and LABG was that many of the SHIP cases would not be a case within the LSC definition because many of them involve mere distribution of legal information concerning various public benefits programs which affect the elderly. Further comments to the DR stated that some SHIP clients certainly receive legal advice or brief service from an attorney, or a paralegal under the supervision of an attorney and LABG will report qualifying SHIP cases as LSC eligible, where appropriate.

**Finding 36: Review of LABG's fiscal policies and procedures, accounting manual, management reports, cost allocations, general ledger, and cash disbursements and property revealed that they compared favorably to LSC's Fundamental Criteria of an Accounting and Financial Reporting System.**

As defined, LSC's Fundamental Criteria of an Accounting and Financial Reporting System ("Fundamental Criteria") encompass the coordinated methods and measures that should be adopted by recipients of any size to safeguard assets, check the accuracy and reliability of accounting data, promote operating efficiency, and encourage adherence to prescribed management policies.

Considering the noted areas reviewed and, also, program documents provided and reviewed, essential for adequate internal controls, LABG appears to employ competent personnel to properly document, record, account for, and report financial transactions. No exceptions were noted in the regulatory fiscal areas reviewed or in the financial information contained in its accounting records.

LABG has established its financial planning and control in its Accounting Manual. The Accounting Manual enunciates, in writing, its financial philosophy and management controls. The introduction/overview of LABG's accounting manual states, in part, that: the manual is prepared in compliance with the LSC AGLR (2010 Edition) to comply with LSC regulations. All

LABG employees are bound by these policies and any deviation from these established policies is prohibited. The review noted no exceptions with regard to LABG's Accounting Manual.

The review found that the LABG compares favorably with its management reports and cost allocations. LABG's management reports list actual expenses against budget, display variances for both over and under budget for each expense item, provide management and the board of directors with fiscal information by cost center, funding source, and total program. For cost allocations, LABG has established indirect cost allocation rates based on percentages by full time equivalent, percentage of income and/or square footage for each source, or other reasonable methods.

With regard to transaction control, the "Quickbooks - Enterprise" accounting software utilized, i.e., its general ledger appears to be posted on a timely basis. The software's design accommodates fund and cost-center accounting and its chart of accounts adequately provides general ledger detail sufficient to easily generate needed financial management information. No exceptions were noted.

With regard to cash disbursements, 25 disbursements were randomly selected using a randomizer and were tested for the following attributes: supporting documentation; agreement of payee and check amount with supporting documentation; invoice cancellation; accounting coding; and managerial approval. Out of 25 invoices reviewed only one (1) invoice had no invoice cancellation. No other exceptions were noted.

With regard to property, the review of accounting records and discussions with program management found that the program complies with the Fundamental Criteria. As indicated in its accounting manual and confirmed by reviewed documentation and observation, LABG's subsidiary property records contain the necessary information and LABG tags fixed assets with a unique identification number. In addition, LABG's office coordinators conduct a physical inventory every year and make updates made to the inventory system as needed. LABG conducted its most recent physical inventory in December 2011. No exceptions were noted.

No comments were made to this Finding.

#### IV. RECOMMENDATIONS<sup>17</sup>

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

1. Run periodic case management reports in order to ensure the accuracy of the CSR reporting information prior to submission to LSC;

Comments to the DR stated that the report did not suggest that LABG's submission of CSR data to LSC was problematic and the last error rate was a reasonably good 4.5%. Further comments to the DR stated that LABG sees no problem with running a test sample sometime between the end of May and the end of July each year at approximately the halfway point of the reporting year to determine whether any patterns have developed which might cause LABG to have difficulties when they prepare the final report.

2. Regularly schedule a review of all open PAI cases in order to determine their eligibility status and to comply with 45 CFR § 1627.4(2) oversight and follow-up;

Comments to the DR stated that LABG is going to implement new case oversight procedures with respect to its PAI cases as per the required corrective action 5. LABG will also, consistent with required corrective action 7, make sure that intake personnel speak with each applicant for service and not simply rely on an income and asset questionnaire that the applicant submits in writing, according to comments to the DR. Further comments to the DR stated that this communication should take place when a pleading is prepared or when the case is ready to be assigned to an attorney since there is often a several month lapse of time between receipt of questionnaire and case assignment. However, with respect to Recommendation 2, LABG argued that once they have made an eligibility determination, there is no need to reschedule a periodic review in order to determine eligibility status, according to comments to the DR. Additional comments to the DR stated that the pertinent regulation, 45 CFR § 1611.8, requires LABG to perform a new inquiry where they attain information tending to establish that the client is no longer eligible or was never actually eligible to be a client and LABG does not want to take on an additional duty of regularly scheduling reviews to determine eligibility status.

3. Regularly schedule a review of all open cases in order to determine their eligibility status; and

Comments to the DR stated that LABG reviews all open cases annually with each advocate and does not necessarily double check eligibility status at that time; however, LABG stated they will consider making it part of their regular case review process to determine if the cases are LSC

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<sup>17</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.

eligible. Further comment to the DR stated that LABG also reviews the eligibility status of all cases before they decide whether or not they should be reported as a LSC case.

4. Report the SHIP cases that are LSC eligible in LABG's CSR data submission.

Comments to the DR stated that LABG had considerable discussion with the review team concerning this matter and thought that the consensus among team members and LABG was that many of the SHIP cases would not be a case within the LSC definition because many of them involve mere distribution of legal information concerning various public benefits programs which affect the elderly. Further comments to the DR stated that some SHIP clients certainly receive legal advice or brief service from an attorney, or a paralegal under the supervision of an attorney and LABG will report qualifying SHIP cases as LSC eligible, where appropriate.

## V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that case files are closed in a timely manner and that those identified in this Draft Report as being untimely closed or dormant are not reported to LSC in future CSR data submissions;

Comments to the DR stated that LABG will, prior to the end of this year, check the status of each of the cases listed in this report as potentially dormant and see that they are closed, or provide explanation as to why a particular case is not closed. LABG will send a quarterly reminder to each staff attorney of any case that he or she has that has been open for more than two years and ask the staff attorney either to close the case within 30 days, or state in writing why the case needs to remain open, according to comments to the DR. Further comments to the DR stated that at the annual case review, LABG supervisors will focus on the seemingly stale cases that the attorney has indicated need to remain open to determine whether the case can be closed.

2. Ensure that any allocations of the direct time of attorneys and paralegals as a cost toward LABG's PAI requirement is documented by time sheets accounting for the time spent on PAI activities, as required by 45 CFR § 1614.3(e)(1)(i);

Comments to the DR stated that every LABG attorney and paralegal is keeping time records and has been trained on how to code PAI activities. LABG will continue to monitor this, according to comments to the DR.

3. Ensure that all time spent by attorneys and paralegals is documented by time records that record the amount of time spent on each case, matter, or supporting activity, as required by 45 CFR § 1635.3(b);

Comments to the DR stated that LABG had three (3) employees whose duties it believed did not fall within the LSC definition of paralegal. LABG has revised their interpretation, and now agrees with LSC that employees in these positions need to be keeping time records, according to comments to the DR. Further comments to the DR stated that these employees are now timekeepers within the meaning of 45 CFR Part 1635 and attend a time-keeping webinar training which LABG conducted on September 25, 2012. These employees started keeping time on October 1, 2012, according to comments to the DR.

4. Ensure that PAI case files are closed in a timely manner and that those identified in this Draft Report as untimely closed or dormant are not reported to LSC in future CSR data submissions;

Comments to the DR stated that LABG will see that those PAI cases noted in this report will not be reported to LSC in the future and will contact each attorney who has PAI open cases twice a year, approximately in December and June, with a list of cases and a request for status reports. If LABG does not get a response, they will check court records to determine if anything has gone

on with the case and as a last resort, if LABG fail to get sufficient information to report a case, they will close it and deselect it, according to comments to the DR.

LABG's intake staff must follow-up with applicants to insure adequate screening for LSC eligibility, including financial eligibility, case is within LABG's priorities, and citizenship/alien eligibility documentation obtained.

5. Clarify in its financial eligibility policy that the exception under 45 CFR § 1611.4(c) (governmental program for the poor exception) only applies when an applicant's sole source of income is derived from the selected governmental program(s);

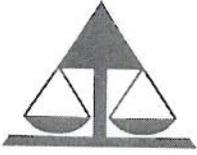
Comments to the DR stated that LABG has amended their client financial and asset eligibility guidelines to reflect this change and the Board of Directors approved the amendment October 5, 2012.

6. Require intake staff to follow-up with applicants after they have submitted a Divorce and Asset Questionnaire in order to screen applicants on topics not covered in the questionnaire (*e.g.*, other household member's income, prospective income) and to ask sufficient follow up questions to ensure that the applicant understood the questions asked, as well as ensure that a reasonable inquiry regarding the applicant's financial situation has been conducted; and

Comments to the DR stated that while it was unusual for LABG to open a pro bono case where the only intake and asset information attained was on the written form, there were some instances where LABG regarded that as sufficient. Further comments to the DR stated that prior to placing a client with a PAI attorney, LABG now has a follow-up eligibility screening interview.

7. Remove the following over-income justifications from its Income Eligibility Determination/Waiver form: 1) "[t]he unavailability of private legal representation at a low cost with respect to the particular matter for which representation is sought," and 2) "[t]he consequences for the individual if legal assistance is denied."

Comments to the DR stated that this provision from LABG's eligibility and asset guidelines has been eliminated and approved by the Board on October 5, 2012.



## LEGAL AID OF THE BLUEGRASS

**Administrative Office:**  
104 EAST SEVENTH STREET  
COVINGTON, KY 41011  
Ph: 859-431-8200  
1-800-888-8189  
Fax: 859-431-3009

*(Via US Mail and Email)*

August 24, 2012

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

Re: Your letter dated 8/21/2012 concerning 2011 Audit Findings – Recipient #618004

Dear Ms. Rath:

I did not understand that LABG was supposed to respond to LSC concerning the deficiencies the auditor noted in its 2011 audit. LABG did respond to the auditor as to what corrective actions it was taking (copy attached). Specifically, we indicated, that by May 15, 2012 we would reiterate to all staff that the importance of getting citizenship forms executed properly; that we would remind all intake workers that the asset questions must be asked and that the applicants' responses must be entered into the case management system; and that staff, where appropriate, should get a waiver on a case that is to be an LSC case where the family income is between 125% and 200% of poverty; and that we would reiterate the importance of having our clients sign retainers. All LABG staffs were cautioned timely concerning these matters. The Ashland office was given a special training.

With respect to Board review of LSC eligibility and asset criteria, the Board reviewed and adopted new policies at the May 2012 meeting (minutes attached). I also note that during the recent OCE compliance visit (week of July 9-13, 2013), the LSC team examined some 300 of LABG's cases and did not detect a single instance of a missing signed citizenship form where one was needed, and according to the exit conference LABG's case files were nearly 100% compliant with LSC regulations.

I hope this response is satisfactory. Please contact me should you need additional information. Thank you for your cooperation in this matter.

Sincerely,

Richard A. Cullison  
Executive Director

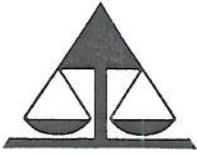
**Lisa Goetz**

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**From:** Lisa Goetz  
**Sent:** Friday, May 04, 2012 1:28 PM  
**To:** 'Nick Shipley'; 'Nick S. Pharo'  
**Cc:** Brenda Combs; Dick Cullison; Angela Dailey  
**Subject:** Audit Findings Response Letter  
**Attachments:** Response to Section III of the Audit.pdf

Hi Nick  
Please find attached our audit response letter.  
Thanks

Lisa Goetz, CPA  
Comptroller  
Legal Aid of the Bluegrass  
104 E. 7th Street  
Covington KY 41011  
859-431-8200 ext 1204



## LEGAL AID OF THE BLUEGRASS

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### Response to Section III of the Audit

**Citizenship-** By May 15, 2012, we will reiterate to all staff the importance of getting citizenship forms executed properly, and we will provide special training and oversight for the branch office that seems to be experiencing the most difficulty in this regard by June 1, 2012.

**Financial Eligibility-** We will remind all intake workers by May 15, 2012, that the asset questions must be asked and that the applicant's responses must be entered into our case management system.

We will also remind all staff by May 15, 2012, that where appropriate they should get a waiver on a case that is to be an LSC case where the family income is between 125% and 200% of poverty. We will, within a reasonable time, implement a system where the lawyers will request waivers in an electronic format.

**Signed Retainers-** By May 15, 2012, we will reiterate to all staff on the importance of getting retainers signed. By June 1, 2012, we will provide special training and oversight for the office that seems to have the most difficulty in this regard.

We will also monitor cases to be closed carefully to make sure that the above referenced items are contained in the closed case files.

**Property Management-** There was only one instance of a \$5,900 capital expenditure being expensed instead of capitalized. We will take steps to assure that an error of this nature does not happen in the future.

**Policy Approvals-** The Board will review a revised LSC eligibility and asset criteria document not later than its annual meeting on June 27, 2012.

*Richard A. Cullison*

Richard A. Cullison  
Executive Director  
May 4, 2012

## Jenny Schild

**From:** Dick Cullison  
**Sent:** Friday, May 04, 2012 1:45 PM  
**To:** Jenny Schild  
**Subject:** FW: Audit of Case files  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed  
retain

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**From:** Dick Cullison  
**Sent:** Friday, May 04, 2012 1:44 PM  
**To:** LABG  
**Subject:** Audit of Case files

We just completed our annual audit. In addition to our financials, we were audited on our adherence to LSC Regulations on our cases. Our error rate was unacceptably high which led to some findings of non-compliance, though as our auditor pointed out he would have founded to be non-compliant even if he had found only one error. This is particularly worrisome in light of our impending visit from the Office of Compliance and Enforcement. We need to address our deficiencies now. Here is how you can help

The first time we see the client get a citizenship form signed and dated; if we are going to represent a non-citizen, the file must exhibit some proof that the client's situation meets one of the LSC exceptions or that the client is a victim so spouse abuse, extreme cruelty or another serous crime and the representation is related to the abuse crime etc.

The same goes for retainers. Make sure they are singed by you and the client; that the client gets a copy; and there is sufficient language in it that limits the scope of representation to what is contemplated.

Remember that if the client has income between 125% and 200% of poverty and is otherwise LSC eligible, you should have a waiver in the file and one she also be on file in Covington; if you are an appellant, you should have evidence in the file that I approved the appeal, and a copy of that should also be in Covington.

Intake Workers: Remember to get check the tab that you checked on income prospects; and be sure to ask the asset questions and enter the responses.

Richard A. Cullison  
Executive Director  
Legal Aid of the Bluegrass  
104 E. Seventh St.  
Covington, KY 41011  
Phone: 859-957-0186 \* Fax: 859-431-3009

**Lisa Goetz**

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**From:** Dick Cullison  
**Sent:** Friday, May 04, 2012 12:41 PM  
**To:** Dan Mason; Annie Francis; Brian Dufresne  
**Cc:** Lisa Goetz; Jenny Schild; Brenda Combs  
**Subject:** Citizenship and Retainer Forms

I replied to our audit and indicated than the Ashland office world receive extra training and scrutiny regarding having citizenship forms and retainers in the file. Please consider our meting of this week to be the training. I think the problem as been improving recently, but eternal vigilance is the price of being a legal aid lawyer. Dick

Richard A. Cullison  
Executive Director  
Legal Aid of the Bluegrass  
104 E. Seventh St.  
Covington, KY 41011  
Phone: 859-957-0186 \* Fax: 859-431-3009

**Minutes of the Board Meeting of the Board of Directors for Northern Kentucky  
Legal Aid Society, Inc., d.b.a. Legal Aid of the Bluegrass,  
Held on May 16, 2012, 1:00 p.m.,  
Legal Aid of the Bluegrass, 546 East Main Street, Morehead, KY**

**Call to Order**

President Kruer called the meeting to order and introduced new Board members Billie Mallory, Willa Ginter and Stephen McGinnis.

**Minutes of December 14, 2011**

Paul Blair moved, and Jim Moore seconded the motion, that the Minutes of December 14, 2011, be approved as presented. Motion carried unanimously.

**Audit Committee Reports- May 9, 2012, and March 19, 2012**

The Audit and Finance Committee had reviewed with the auditor the 2011 audit during its meeting of May 9, 2012. The Board reviewed the 2011 audit. The Auditor issued an unqualified report. There were no questioned costs. The auditor noted that the program had met its Private Attorney Involvement obligation. The audit did contain findings and recommendations. Most related to discrepancies in the cases that the auditors tested for compliance with the LSC regulations.

The Board then discussed the 2010 audit deficiency as disclosed to the Audit Committee during its March 19, 2012 meeting. LSC had engaged another CPA firm to audit the 2010 VonLehman audit. VonLehman, the Auditor, discussed the 2010 deficiency and where we stand in correcting the 2010 audit to meet LSC regulations. We have until July 12, 2012, to complete the 2010 audit corrections. VonLehman says we are on track to meet the deadline and they are satisfied that we have addressed all of the concerns. Once VonLehman left the call Dick went over the Auditor's response to the 2010 deficiency. Consensus was that we switch auditors for the 2012 audit. Dick would like to solicit bids from auditors of other LSC-funded organizations. He suggested possibly Cincinnati, Louisville or Dayton, Ohio. Jim Moore moved to accept the 2011 audit, and Bessie Mays seconded the motion. Motion carried unanimously. Motion by Jim Moore, second by Connie Kyle, to solicit bids for the 2012 audit. Motion carried unanimously.

**Finance Committee Report**

The Board discussed the March financial report. Revenue is up \$122,283 more than expected, mostly due to some unanticipated foundation funding and \$58,000 in extra carryover. We received \$50,000 in new foundation money to fund a new attorney

position. Carryover is 7%, but we are deficit spending to get there. We are currently projecting carryover into next year of \$300,439.

The Board reviewed the balance sheet. Our bank accounts have \$502,881. We had accounts receivable of \$331,602; total current assets of \$834,933; total assets of \$1,835,914. Our liabilities were \$15,721.

### **Personnel Committee Report**

There was no Personnel Committee meeting. LABG went through staff layoffs since the last Board meeting. Everyone took the severance package offered to them. It was a peaceful transition.

### **Program Committee Report**

The program committee had met May 2 and discussed the priority setting process and policies on Emergency Exception from Priorities and a Fee Generating Policy. The Board discussed the Emergency Exception Rule from Priorities, which outlines LABG's policy on accepting cases outside of our priorities. Motion by Paul Blair, second by Bessie Mays to accept the Emergency Exception Rule.(copy attached). Motion carried unanimously.

The next item on the agenda was the Fee Generating Policy. There was discussion on domestic relations cases and how that fits within this policy. Dick will amend the Policy regarding this. Motion by Jim Moore, second by Stephen McGinnis. Motion carried unanimously. (copy attached)

The Board discussed priorities and the priority setting process. We base our priorities on the LSC recommended priorities and United Way data, as well as the data that we collect. LABG is currently undergoing a legal needs study. Pete Nienaber, a Scripps Howard law student, has compiled data for the study and issued a report. We will compile data from the report, summarize the data, and give it to the Program Committee. The Program Committee will come up with a plan and present it to the full Board at the last meeting of 2012 or the first meeting of 2013. Motion by Oscar Geraldts, second by Paul Blair to accept this priority setting process. Motion carried unanimously. Dick recommended that the new client Board members participate in the Program Committee when it next meets.

### **Director's Report**

Dick updated the Board on what is occurring in Congress regarding Legal Services funding. State funding is currently at 50% of what we were getting two to three years ago. These issues, along with cuts in other boutique type funding, and IOLTA funding have caused a significant reduction in revenue through no fault of our own.

Dick discussed the LSC Office of Compliance and Enforcement visit scheduled for July 9 through 13. During that week the group from LSC will be talking to Board members and staff, and reviewing financial and case records.

### Old Business

Jim Kruer updated the Board on the Director Evaluation process. The process was completed and had originally been scheduled for a Board update in December 2011. However, with so many other issues on the agenda for December and for this meeting, President Kruer decided to delay the report to the Board about this. President Kruer and his Committee have spoken to colleagues and allies regarding Dick's performance. All comments have been typically wonderful. President Kruer directed that the Director's evaluation be placed on the June Board meeting agenda to update the Board about the comments Board members received. He advised his Committee of Gene Vance and Nicole Barse to be prepared to discuss their findings at that meeting.

### New Business

The Board reviewed the 2012 Private Attorney Involvement (PAI) Plan. The plan lays out how we involve private attorneys in the provision of legal services to the poor. Motion by Bessie Mays, second by Connie Kyle, to approve the PAI Plan. Motion carried unanimously. (copy attached)

\* The Board reviewed the Income/Eligibility Guidelines. Discussion ensued about clients who were eligible at intake and then during the course of representation become ineligible. Motion by Paul Blair, second by Willa Ginter to approve the Income/Eligibility Guidelines and to submit them to the Program Committee for further review. Motion carried unanimously. (copy attached)

As there was no further business, Willa Ginter moved to adjourn the meeting, seconded by Bessie Mays. Motion carried unanimously.

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Stephanie Dietz, Secretary  
*By signing above, I certify that the  
Board of Directors reviewed,  
corrected and approved the minutes  
as set out herein.*

**Board Members Present:**

Jim Kruer  
Bessie Mays  
Connie Kyle  
Paul Blair  
Jim Moore  
Kim Hunt Price  
Billie Mallory  
Steve McGinnis  
Willa Ginter

Stephanie Dietz  
Oscar Geraldts  
Mike Nitardy  
Sara Elrod  
Nicole Bearse

**Staff Members Present:**

Dick Cullison, Executive Director  
Brenda Combs, Business Director  
Lisa Goetz, Comptroller  
Angela Dailey, Administrative Assistant