



FINAL REPORT

LEGAL SERVICES CORPORATION Office of Compliance and Enforcement

Legal Services NYC
Follow-Up Review, Part II
October 7-11, 2013

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I. EXECUTIVE SUMMARY

Finding 1: The program's ACGMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Further, two (2) necessary modifications to the ACGMS intake screens have been completed by LSNYC.

Finding 2: Although substantial improvements to intake have been adopted as part of implementing the new ACGMS, further corrective action by LSNYC is required to ensure that all intake screening complies with LSC requirements and program policy.

Finding 3: Sampled cases evidenced substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. Further, as part of the new ACGMS, LSNYC has taken measures to standardize documentation for clients with income between 125-200% of FPG.

Finding 4: Sampled cases evidenced compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

Finding 5: While most sampled files complied fully with the requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens), there were non-compliant files that either lacked evidence of the required screening or the required documentation.

Finding 6: Almost every sampled extended service case contained a document that met the requirements of 45 CFR § 1611.9 (Retainer agreements). However, LSNYC should take further corrective action so that otherwise eligible CSR reportable cases are not deselected purely for the lack of a retainer agreement.

Finding 7: Current LSNYC protocols regarding the documentation of legal advice, as supported by the ACGMS and cases sampled, comply with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

Finding 8: Overall, LSNYC's application of the CSR case closure categories was consistent with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011). There was an exception pattern involving case closure category "K" that requires corrective action. Also, LSNYC needs to take corrective action so that proper case deselection protocols and coding are used.

Finding 9: Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (dormancy and untimely closure of cases).

Finding 10: Sample cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.

Finding 11: There were selected review cases for which the full supporting paper file could not be located. There was no identifiable pattern, and these misplaced records are likely due to several significant events, including office consolidations and natural disasters.

Finding 12: A limited review of publically available information and other materials, as well as assessment of offices visited, evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 13: Sampled transfers of LSC funds evidenced compliance with 45 CFR Part 1610.7.

Finding 14: Overall, LSNYC involves private attorneys in the delivery of legal assistance to eligible clients as required by 45 CFR Part 1614. Further, the PAI allocation methodology now properly includes certain direct PAI costs. However, LSNYC remains in non-compliance with 45 CFR § 1614.3(d)(3) regarding oversight and follow-up of PAI cases. Finally, a related group of three (3) clinics raise some compliance issues.

Finding 15: Limited sampling of selected activities and expenditures related to 45 CFR Part 1612 (Restrictions on lobbying and certain other activities) indicated that LSNYC has clear policies and procedures to identify, approve, and fund permissible activities. There are two (2) items that remain under review.

Finding 16: Multiple regulatory areas assessed as part of standard case review evidenced compliance with the noted requirements and restrictions.

Finding 17: LSNYC obtains quarterly certifications from part-time attorneys as required by 45 CFR § 1635.3(d).

Finding 18: LSNYC meets LSC Accounting Guide requirements regarding board financial oversight. Interviews with key board members evidenced that the LSNYC Board is both knowledgeable of financial oversight responsibilities and highly engaged in financial oversight.

Finding 19: LSNYC accounting software, as utilized by staff, is fully capable of providing fund accounting to meet the requirements of the LSC Accounting Guide.

Finding 20: The ACGMS is capable of providing documentation of legal staff time expended on specific cases, matters and supporting activities, as required by 45 CFR § 1635.3 and the LSC Accounting Guide. Sampling of time records evidenced compliance with the requirements of 45 CFR Part 1635 as records were maintained electronically and contemporaneously by case, matter, or supporting activities.

Finding 21: LSNYC should make every effort to restrict adjusting entries in the period between when the Independent Public Auditor (“IPA”) is provided a closing trial balance and when the program receives the IPA’s year-end adjusting entries.

Finding 22: LSNYC has appropriate formal written policies for use of the corporate credit cards and the resulting payments. Sampled credit card disbursements evidenced that payments have adequate supporting documentation and appropriate approvals.

Finding 23: LSNYC payroll procedures are consistent with the LSC Accounting Guide as they maintain adequate segregation of duties and supporting documentation of payments, reviews and approvals. However, the LSNYC Personnel Policy Manual should be updated as it does not reflect all current procedures and processes related to accounting.

Finding 24: LSNYC took full corrective action to improve the segregation of duties regarding wire transfers of cash.

Finding 25: Limited sampling of bank reconciliations evidenced that LSNYC follows its bank reconciliation policy and performs timely and adequate reconciliations.

Finding 26: The review identified \$1,000 charged to LSC contrary to the requirements of 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay non-mandatory membership fees or dues to any private or nonprofit organization. LSNYC took full corrective action and has credited the LSC account for these costs.

Finding 27: LSNYC engages in extensive fundraising activities and receives many public and private donations, grants and contracts. A corrective action identified during the review, regarding proper notice under 45 CFR § 1610.5, was promptly undertaken by LSNYC.

Finding 28: The program has completed the update of its Accounting Policy and Procedure Manual (“APPM”) that was formally adopted by the Board in December 2013.

II. BACKGROUND OF REVIEW

On October 7-11, 2013, the Office of Compliance and Enforcement (“OCE”) of the Legal Services Corporation (“LSC”) conducted a Follow-Up Review Part II (“FUR Part II”) to Legal Services NYC (“LSNYC”). The October 2013 review was the second of a two-part FUR visit to LSNYC. The FUR Part I was conducted on August 20-24, 2012 and had two (2) components: review of pending fiscal corrective action items from the Final Report (“FR”) issued after the Case Service Report/Case Management System (“CSR/CMS”) review which took place in 2010, and a Technical Assistance Review (“TAR”) to provide compliance-related input regarding the program’s new Automated Case and Grants Management System (“ACGMS”). The objective of the FUR Part II was to further assess LSNYC’s corrective actions taken in response to the FR, as well as items identified in the FUR Part I Final Letter (“FL”) issued on January 30, 2013. An eight (8) member team conducted the FUR Part II.

This Final Report addresses the FUR team’s findings regarding all outstanding Required Corrective Action (“RCA”) items, and incorporates program actions taken to resolve the items. As detailed in the FUR Part II Draft Report (“DR”), LSNYC had previously taken effective corrective action in several areas allowing for those items to be closed. However, in other areas, the DR noted that further corrective action was necessary. OCE notes that following the October 2013 FUR Part II, LSNYC management continued extensive corrective action work on open items, including active and ongoing engagement of technical assistance from OCE staff. Through this post-visit work, LSNYC management evidenced that it is both motivated and capable of taking the necessary steps to resolve remaining issues. Significantly, through these continued efforts, additional RCAs or other issues were subsequently able to be closed, as was reflected in the DR. Finally, it is noted that, due to program efforts taken subsequent to the FUR Part II visit, the remaining RCAs from the 2010 FR are now closed. Further, a few additional RCAs from the FUR Part I, and a few new RCAs included in the FUR Part II DR have also been adequately addressed by LSNYC and are closed, as discussed in this FUR Final Report.

Program Overview

Due to ongoing and recent changes to program offices and structure the following overview is provided: Headquartered in Manhattan, LSNYC serves low income persons and families in the five (5) boroughs of New York City. Historically, LSNYC has been composed of several semi-independent non-profit organizations, referred to as “Constituent Corporations” that were coordinated through the Manhattan program to provide a unified legal services delivery system in New York City. LSNYC is the sole member of each Constituent Corporation. As both explained by upper management and noted by OCE, in recent years LSNYC has accomplished significant changes in field office structure and leadership that have brought greater cohesion to the program throughout the city. These changes have resulted in increased administrative focus and efficiencies, including a greater ability for LSNYC to more uniformly and effectively address compliance requirements and issues, through both standardization and oversight. Although not a part of OCE’s review, it is noted that, according to management, the structural changes also included efforts for better coordination of legal work for clients.

LSNYC has a mix of LSNYC branch offices and Constituent Corporation offices.¹ There are currently seven (7) primary office locations: a lower Manhattan office containing the Administrative office, a Constituent Corporation service office, and the Legal Support Unit; an upper Manhattan Constituent Corporation office in Harlem; two (2) locations in Brooklyn – a branch office in central Brooklyn and a second Constituent Corporation office in downtown Brooklyn near the courts; a branch office in Staten Island (named Staten Island Legal Services); one (1) main Constituent Corporation office location in the Bronx; and one (1) main Constituent Corporation office location in Queens. In addition to the above locations, numerous partner organizations, including the Civil Court, provide LSNYC with space for both intake and to meet with clients. LSNYC employs approximately 380 persons through the above office and Constituent Corporation locations.

LSNYC received LSC basic funding for 2011, 2012, and 2013 of \$16,853,009, \$14,382,396, and \$12,914,140, respectively.² LSC funding represented 36.9% of LSNYC funding for 2011 and 30.9% for 2012. LSNYC reported 12,454 closed cases for 2012 of which 716 were Private Attorney Involvement (“PAI”). LSNYC also closed an additional 3,736 non-LSC funded cases that were not reported in the CSR. In the program's 2012 Self-Inspection Form G-6 submission, LSNYC reported that it reviewed 850 cases and identified 36 exception cases. A majority of the exceptions involved dormant cases or non-LSC funded cases over 200% of Federal Poverty Guidelines (“FPG”) that were incorrectly coded as CSR reportable.

FUR Part II Overview

The October 2013 FUR Part II was designed and executed to assess LSNYC’s compliance with certain LSC regulatory and statutory requirements including: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1610 (limited to transfers of LSC funds); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Part 1614 (PAI); 45 CFR Part 1627 (limited to membership fees or dues); 45 CFR Part 1630 (Cost standards and procedures); and 45 CFR Part 1635 (Timekeeping requirement - limited to PAI). Additional fiscal review items involved comparison of program policies and procedures to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.) (“LSC Accounting Guide”). These included Board financial oversight, cash disbursements, bank reconciliation, fund accounting, and payroll.

¹ During the past several years, the number of Constituent Corporations has been reduced through both mergers of existing organizations and through the disassociation (permitted in the bylaws) of Constituent Corporations. In 2012, one (1) Constituent Corporation, Brooklyn Legal Services Corp A, separated from LSNYC. Also, two (2) other Brooklyn-based Constituent Corporations engaged in the process of merging during 2012 and 2013 and as of December 2014, Constituent Corporations Bedford-Stuyvesant Community Legal Services and South Brooklyn Legal Services have been operating as a new Constituent Corporation, Brooklyn Legal Services, for approximately one (1) year. However, final approval of the merger by the New York State Attorney General is pending. When this merger is approved, LSNYC will have a total of four (4) Constituent Corporations: Manhattan Legal Services; Queens Legal Services; Brooklyn Legal Services; and Bronx Legal Services.

² In addition, LSNYC received LSC Technology Initiative Grants (“TIG”) of \$66,100 in 2010 and \$94,500 in 2012. These TIG grants were not reviewed during the FUR Part II.

The FUR Part II did not encompass a full review of every LSNYC office or unit. Instead, selected offices and PAI projects were identified to test the corrective action results arising from the 2010 FR RCAs. The team assessed case intake, case acceptance, case management, and case closure practices and policies in sampled offices. In advance of the review, numerous cases for onsite testing were identified by LSC and provided to LSNYC. Cases selected randomly, through use of an automated sample selection process, represented over 75% of the cases tested. Some targeted files were also identified so as to either diversify the underlying sample, or to test for specific compliance requirements. OCE reviewed a total of 541 case files using its full Data Collection Instrument (“DCI”). LSNYC provided highly efficient access to case information through the use of knowledgeable management staff who served as “intermediaries” for case review.

In addition to the DCI cases, over 40 additional files were tested solely for targeted compliance areas. Despite not visiting all program locations, the FUR Part II team was able to review sample cases from all offices. This was possible either by LSNYC staff transporting case samples from an office not visited to a location visited or through the new ACGMS, based on LegalServer, that allowed for review of uploaded cases from any program computer. For example, the Staten Island office case sample was reviewed solely electronically through the ACGMS.

The team also interviewed members of upper and middle management, fiscal personnel, staff attorneys, and support staff. In addition, documentation provided by LSNYC and external documentation were reviewed. As discussed *infra*, advance review of a significant amount of publicly available material produced, distributed, and/or discussing LSNYC was reviewed to test compliance with 45 CFR Parts 1608 and 1612.

In advance of, during, and after the onsite review, LSNYC management and staff cooperated fully and actively to provide requested materials and information. During the course of the visit, team members discussed with various responsible staff any issues noted, and the team leader conducted ongoing briefings with LSNYC senior management to discuss visit observations. On the last day of the visit there was an exit conference to discuss the preliminary findings. Preliminary findings were reserved for a few selected areas that required additional research, as discussed, *infra*. As the findings of this report involve sampled offices and units, any corrective action noted herein should be applied program-wide so as to have all offices following proper practices.

LSNYC was provided a DR and given an opportunity to provide comments. LSNYC requested, by email dated May 23, 2014, an extension for the submission of comments. LSC granted, by email dated May 28, 2014, an extension to provide the comments by June 27, 2014. LSNYC’s comments were received timely by letter dated June 27, 2014. The program’s comments have been incorporated into this Final Report and, in addition, the comments in their entirety have been attached to this FUR FR as an exhibit. Further, the DR requested LSNYC to provide updated information regarding eight (8) items appearing at the end of the report in a section titled “Additional Information Requested.” The additional information provided by LSNYC regarding these requests has been added to this report in the relevant sections, and the separate “Additional Information Requested” section has been deleted from this Final Report.

III. FINDINGS

Finding 1: The program's ACGMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Further, two (2) necessary modifications to the ACGMS intake screens have been completed by LSNYC.

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

The FR, at RCA-23, required LSNYC to have an automated case management system with the capacity to record accurate information regarding cases. RCA-23 also required that there be appropriate staff support for the recording of automated case information.

The New ACGMS System

After a significant commitment of time and resources spent developing and customizing a new automated case management system, on October 1, 2012, LSNYC began full use of LegalServer, for intake and case management. As part of its design of the new ACGMS, LSNYC developed procedures to support the timely and accurate reporting of data in the CSR, thereby addressing the requirements of CSR Handbook (2008 Ed., as amended 2011), §§ 3.2, 3.3, and 3.4. The ACGMS also satisfies the requirements of the CSR Handbook (2008 Ed., as amended 2011), §§ 3.1 and 3.5, and 45 CFR § 1611.3(c)(2). The ACGMS has the ability to report cases to LSC by funding source, grant type, PAI component, jurisdiction, individual office, and has the ability to exclude non-LSC reportable files from CSR data submissions. Further, for cases allowed by the authorized exceptions to the LSNYC annual income ceilings, the ACGMS retains gross income as required.

To support the accurate recordation of data, and the correct reporting of eligible cases, the ACGMS has built-in checking of various data categories, and will provide error messages when essential data fields are incomplete or appear erroneous. Such alerts are used for several compliance-related fields which include citizenship status, household income, income prospects, and assets screening fields. If an ACGMS field displays a data alert, staff cannot save the intake or move to another screen unless the missing information is entered or an "override" is affirmatively entered. This avoids inadvertent mistakes in the above listed critical fields. There are also linked data fields that check whether information provided is consistent. For example, if the income listed is over the LSC limits, the computer will not allow the case to be identified as LSC eligible. There are several types of case reports that can and are generated as part of the overall assessment of data and closed cases, such as potential duplicate case reports and quarterly "aged and open" reports (to check for case status and potential dormancy). These automated error-avoidance techniques are discussed further, *infra*. Finally, as indicated in the comments to the DR, additional ACGMS automated and periodic reports have been adopted since the October

2013 FUR Part II visit so as to further use the ACGMS to help with identification of cases that may need review by the casehandler and/or supervisory management.

The FUR Part II evidenced one (1) ACGMS default and one (1) intake-related statement that required change. First, the ACGMS had a default in household size to one (1). Second, the over-income factor section included an outdated statement ("other financial factors affecting ability to afford an attorney") which should read "other significant factors that affect the applicant's ability to afford legal assistance." *See* 45 CFR § 1611.5(a)(4). During the review, these two (2) items were shared with LSNYC management, who took immediate corrective action, as was subsequently evidenced by updated screen shots of the amended ACGMS pages. No further corrective action regarding these two (2) items is required.

For cases opened after the adoption of LegalServer, a comparison of the information in automated case records to sampled physical case file records evidenced that cases are being accurately recorded in the ACGMS. In contrast, some sampled cases opened under the prior ACMS that underwent the data conversion process to LegalServer contained some information errors. Assessment of these errors, through the case sampling process, indicated that overall many errors appear caused by the transition of data from one (1) system to another, and are being corrected, as discussed below.

Data Transition Issues

Review of case lists provided in advance of the visit, as well as sample case review, identified a few potential data-related error patterns. However, due to program actions prior to, during, and/or after the FUR Part II, all of the identified issues have been now adequately addressed, as discussed below.

"LSC Eligibility" and "CSR Eligibility" Coding Inconsistencies

A potentially significant issue was observed in the review of case lists and sampled cases involving coding errors regarding the "CSR Eligible" and "LSC Eligible" fields. There were some cases incorrectly recorded as either a CSR reportable or non-CSR reportable case when the opposite was true.³ There were also some cases coded as LSC *ineligible* and CSR *eligible*, a logical and compliance impossibility.

As the ACGMS should not allow the inconsistencies noted, LSNYC was alerted to this issue early in the review week, and the Chief Information Officer ("CIO") investigated the issue. The CIO reported that the cause of this problem was a faulty data system update protocol that, now having been identified, was fully corrected. The program's explanation of how these errors occurred, along with the fix adopted, supports the program's conclusion that such errors will not recur.⁴

³ For example, at the time of the FUR Part II, the following three (3) cases were LSC and CSR eligible but were not correctly coded as such. *See* Closed 2013 Case Nos. 13-0735055, 13-0731807, and 13-0732069. As noted below, these cases were corrected by LSNYC soon after the visit.

⁴ The CIO explained that the cases with illogical or incorrect coding were caused by a simple mistake. In the initial period of LegalServer use, when updates or upgrades were being made to the whole system, the system was not taken "off-line," resulting in persons making data entry during the update. It was those cases to which changes were

Importantly, the errors were determined to not involve any basic programming of the new ACGMS and thus the automated error-avoidance protocols remain dependable. The CIO confirmed that the ACGMS has numerous safeguards that do not allow the inconsistent coding noted above, and that help avoid ineligible cases being reported in a CSR. To avoid ineligible cases being identified or included as LSC eligible, the ACGMS will not allow a case identified as LSC ineligible to be coded as CSR reportable. Also, the computer is set up so that any cases with a “no” answer to either the "LSC Eligible" or "CSR Eligible" field will be blocked from CSR reporting. In addition, if the file income information indicates that a client is not LSC eligible, the computer is programmed to identify the case as LSC ineligible. Such ineligibility can only be changed affirmatively by a staff member conducting an “override” to the ACGMS, such as is done for accepted cases between 125-200% of FPG. As an additional test on the accuracy of case coding, the CIO also reported, in follow-up conversations subsequent to the FUR Part II, that there is a new report generated that specifically searches for any cases with illogical data.

LSNYC management also noted that for the affected files, staff reviewed and adjusted the coding, as warranted. The success of these efforts was tested by OCE after the visit, through requests for updated ACGMS data for a sample of previously defective cases. In these tested cases, the case coding had been changed and was now correct.⁵

Based on the above, no further corrective action is required.

Case Funding Code

On the case lists provided in advance of the visit, there were a few cases for which the ACGMS printout had no designated funding code. These cases were sampled, and the case files were found to properly contain a funding code designation which was simply not recorded in the ACGMS.⁶

The review indicated that the above lack of a funding code in the ACGMS was caused by the data conversion. The affected cases were all opened under the prior system and imported into LegalServer. Significantly, under the new ACGMS, this error cannot occur, as a funding code designation is a mandatory entry as part of case acceptance.

made simultaneously with a system upgrade that allowed for discordant coding. A simple change was made so that now when system-wide updates are done, all users are locked from the system.

⁵ For example, in follow-up contacts with program management in December 2013, it was reported that, as of December 2013, the following cases, miscoded as ineligible at the time of the October 2013 review, were now properly coded as both LSC and CSR eligible. *See* Closed 2013 Case Nos. 13-0735055, 13-0731807, and 13-0732069. In a second example, it was also reported by program management in December 2013 that, as of December 2013, the following four (4) PAI cases, miscoded as eligible at the time of the October 2013 review, were now properly coded as both LSC and CSR ineligible. *See* Closed 2013 Case Nos. S10E-68003632, S10E-68003507, S11E-68002184, and S11E-68000613.

⁶ For example, the following cases, all opened under the prior system and converted into LegalServer, had no funding code listed in the ACGMS, but did contain a funding code in the paper case record. *See* Open Case Nos. U10E-24000513, U10E-24000526, U11E-24000128, M12-62000477, and X12E-14002952. *See also* Closed 2013 Case No. M11E-6200635.

This issue is not currently active and is limited to a few cases opened prior to October 1, 2012. Further, once this issue was identified, LSNYC management noted that staff would identify all such cases and record the funding code into the ACGMS. With its comments to the DR, LSNYC reported that this process was completed and that all active cases have a funding code designation. As this issue is currently prevented by the ACGMS, which requires a funding code designation, this issue is considered to be closed.

Refinement of Automated Over-Income Process

The review noted a few cases *opened after the adoption of LegalServer* that contained incorrect eligibility coding. These files involved income-exception cases (household income between 125-200% of FPG) that contained appropriate exception factors for case acceptance and were accepted as LSC eligible, but were coded in the ACGMS as LSC ineligible.⁷ When investigated, it was learned that the cause of this issue had been previously identified and addressed by LSNYC. LSNYC had determined that the initial LegalServer process for granting income exceptions was confusing and difficult to use properly, resulting in accepted cases appearing as LSC ineligible. LSNYC updated the automated feature and trained staff on the new method, which involves staff selecting over-income factors from a drop-down box, as part of an “override” required to affirmatively change such cases from ineligible to eligible.

The few examples identified by OCE in case sampling occurred before the implemented change was made in summer 2013. At the time of the October 2013 visit, LSNYC was reviewing and fixing any previously affected cases that did not correctly reflect LSC eligibility. As an additional ongoing check in this area, LSNYC now generates reports that specifically check whether financial eligibility overrides are being correctly recorded. In order to close this issue, LSNYC was requested to report, with its comments to the DR, on whether it had completed the review and correction of any cases that did not correctly reflect LSC eligibility. Program comments stated that LSNYC conducted a comprehensive review of all LSC or CSR eligible cases with income over 125% of FPG and assets over \$25,000 to ensure that proper LSC eligibility is reflected in the ACGMS. Comments noted that, in addition, regarding Part 1626 compliance, a review was conducted to ensure that all cases have recorded citizenship or an eligible alien status. LSNYC comments added, that going forward, if the required verification of Part 1626 compliance is not completed that a case will be automatically deselected by the ACGMS at closing.

Overall, all of the various transitional issues discussed above do not negatively affect the conclusion that LSNYC has implemented an ACMS with the capacity to record accurate information regarding cases. Of particular note is the breadth and depth of program efforts and changes whenever potential error patterns or issues have been identified. Based on all of the above, FR RCA-23 is closed. Further, as discussed above, regarding two (2) items on which LSNYC was requested to provide updates (review and correction of cases lacking a funding code in the ACGMS, and cases that did not correctly reflect LSC eligibility), the information provided with program comments has fully addressed these open questions.

⁷ See e.g., Closed 2013 Case No. 13-0731118, opened in February 2013, with household income at 184% of FPG, in which the ACGMS initially recorded the case as LSC ineligible. Based on several fixed expenses, the applicant was accepted as LSC eligible. This case has been subsequently corrected to reflect in the ACGMS that it is LSC eligible.

Finding 2: Although substantial improvements to intake have been adopted as part of implementing the new ACGMS, further corrective action by LSNYC was required to ensure that all intake screening complies with LSC requirements and program policy.

The FR RCAs included several items involving proper application of various intake requirements. The FR, at RCA-11, required LSNYC to document authorized exceptions for clients with incomes between 125-200% of FPG, or, in the alternative, to not accept over-income cases using LSC funds. The FR, at RCA-19, required LSNYC to have all offices apply the over-income exception policy in a similar manner. RCA-19 also required LSNYC to provide staff training regarding the proper application of exception factors for clients with income between 125-200% of FPG. The FR, at RCA-20, required LSNYC to ensure consistent screening for income prospects. The FR, at RCA-14, required LSNYC to not include food stamps as income. Finally, the FR, at RCA-12, required LSNYC to revise a Bronx office form regarding income waiver and maximum income and assets level to meet regulatory requirements.

The above corrective actions, along with the program's movement toward more centralized intake, and its October 1, 2012 transition from Kemps to LegalServer required a limited, yet *de novo* review of intake procedures and practices during the FUR Part II. Two (2) locations were selected for a full intake review (Bronx and Manhattan), and two (2) additional offices received a very limited intake assessment (Queens and South Brooklyn). As part of the full intake review in Bronx and Manhattan, various intake practices were assessed, including telephone, in-person, and outreach intake procedures. This assessment included interview of multiple staff and observation of several telephonic intake screenings by diverse staff. In the limited intake assessment in Queens and South Brooklyn, only a few interviews were conducted which focused upon the standard in-office screenings, and did not include outreach and other intake options. Further, the limited assessment included collection and review of all forms used in intake.

Intake Process

While a majority of LSNYC intake in the offices reviewed is conducted by telephone, multiple other intake methods are also utilized. At present, each office and unit determines the specific days and hours that intake will be conducted and whether intake will be conducted "live" (hotline), by return call from voicemail left on the intake line (call-back), in-person (in a LSNYC office or at an outreach location), or whether a combination of intake methods will be employed. Intake methods vary by office and by unit.

Some offices and units use "live" hotline intake during designated times, in which applicants are first screened by intake staff and, if the case type and client is eligible, attorneys are available at that time to provide legal advice, as warranted. In the units assessed, such intake was done for a few hours per week.⁸ Other units, such as the Unemployment, Education, Immigration, Veterans Justice Project, General Practice, and Health Law units, do not staff telephone lines only during

⁸ For example, the Manhattan Disability Advocacy Project conducts such intake one (1) hour each Monday and Thursday while the Bronx family law unit conducts such intake three (3) hours each day on Tuesdays, Thursdays, and Fridays.

designated call-in days and times; rather, they accept calls during all office hours. Callers that are determined eligible may be transferred to an attorney for a legal consultation or -- if no attorney is available -- they are asked to leave a message with their contact information for a return call. The return call is usually made the first day, but sometimes within two (2) days. Also, eligible applicants with cases within priorities might be scheduled for an in-person consultation or for a clinic.

Some units also have "walk-in" hours for intake. For example, the Bronx Disability Advocacy Project allows for approximately three (3) hours each Monday when applicants can apply for services in-person without a prior appointment. Also, some offices will accommodate applicants who appear in person at any time. In these situations, the applicant is first provided with an intake questionnaire to complete which contains a citizenship attestation. Staff then review the questionnaire and enter the information into the ACGMS. Eligible applicants may be scheduled to attend a clinic or an in-person consultation.

LSNYC also performs in-person intake at numerous off-site locations, including courthouses and partner organizations, such as Single Stop. Off-site intake can use mobile devices connected to the ACGMS. In other instances, paper forms are used. Typically, off-site applicants execute a written citizenship attestation or have their eligible alien status verified prior to being provided legal services, although case review noted one (1) isolated non-compliant error, discussed below. At some off-site intake locations, the applicant is also provided with an intake questionnaire to complete. Any paper intake applications will be entered into the ACGMS upon return to the office.

Intake Assessment

Observation of several intake officers and one (1) paralegal conducting telephonic intake evidenced that these staff conduct a full intake screening guided by the ACGMS. These screenings included: program-wide conflicts, citizenship and alien status, income, including reasonable income prospects, and information concerning expenses and factors that affect the ability to obtain an attorney in appropriate cases), assets, duplicates, priorities, and factual basis of the legal problem.

For acceptable cases, interviews confirmed that attorneys, during the course of their legal consultations, obtain the facts relevant to the client's legal problem, analyze the legal issue(s), and then provide advice, often during the initial consultation. Cases that are not resolved by limited services are taken to group case meetings (or in emergencies are accepted after consultation with management). Upon case closure, the attorney assigns the case closure category and closes the electronic and/or paper file.

The interviews and intake observations indicated that LSNYC intake procedures and practices support compliance-related requirements concerning: duplicate and conflict case identification; income source eligibility screening; screening for reasonable income prospects; and priorities in the use of resources. However, the review identified some inconsistencies and non-compliance regarding intake screening related to: maintaining a consistent interpretation of "household"; a

lack of knowledge concerning both authorized income exceptions and asset exemptions; and a lack of clarity regarding screening of eligible alien documentation in a clinic setting.

1. Definition of Household

LSC regulations contemplate that recipients will define the term “household.” *See* 45 CFR § 1611.2(i). LSNYC lacks a written or uniform definition of the term “household” and interviews evidenced that there is diversity of interpretation as to what constitutes a “household.” For example, some staff members define household very simply, by having the applicant identify all adults and children who “live in the home.” In comparison, the determination of household by other staff members is more complex and references the standards for a separate household established by the federal government for the Supplemental Nutrition Assistance Program or receipt of Supplemental Security Income benefits. Other staff members consider various factors, such as whether expenses are shared or whether the resident member is in the home on a temporary or permanent basis.

2. Over-Income Exception Process

Intake observation and interviews revealed that, while several staff understood how to properly use over-income exception factors, there were a few staff who did not understand the proper LSNYC policy and/or procedure, or LSC regulations. For example, some staff members reported that they would consider credit card debts, food and laundry expenses, and utility expenses: however, as these expenses are not fixed as to time or amount, they are not “fixed debts and obligations” and are not authorized expenses to consider for LSC funded assistance. *See* 45 CFR Part 1611, 70 Fed. Reg. 45555 (August 8, 2005) (supplementary information). Additionally, one (1) staff member mistakenly reported that LSNYC applies expense factors as a “spend down” rather than the factor analysis adopted by the LSNYC Board.

Interviews with intake officers and management also evidenced that some staff members were unclear as to who was to make the actual determination of acceptance, with intake staff believing that was done by management and vice-versa. It is noted however, that this particular confusion appears to have been a recent occurrence, and due to the immediate past program practice. Until recently, LSNYC used a Waiver of Annual Income Ceiling form that was executed by management. When this process was automated as part of the new ACGMS, the new lines of authority for making over-income determinations became unclear to some. Currently, intake staff are authorized to review the available factors, and then decide whether an over-income applicant may be accepted.

3. Asset Screening

Intake observation and interviews revealed that while some staff members ask questions designed to elicit information about the assets an applicant possesses, other staff members were not familiar with all of the asset exemptions contained in the LSNYC policy. For example, a staff member reported that LSNYC exempts one (1) vehicle used for transportation per household. Two (2) staff members stated that they would include the value of an applicant’s home. Staff members were unfamiliar with the exemption for income producing tools and that

the assets of a domestic violence perpetrator were excluded assets. A few staff members were not sure whether IRAs, 403(B) and 401(K) retirement plans, and annuities were included or excluded assets. Finally, a few staff observed or interviewed applied the government benefits exemption allowed by LSNYC policy. It is noted that the ACGMS clearly provides exempt assets types - however staff need to understand how to properly utilize and apply the ACGMS assets information.

A very high proportion of the sampled cases listed assets of zero (0). Intake observation showed that staff consistently asked income and asset questions. Staff explained that applicants frequently responded that their assets were \$0. Further, some applicants receive public assistance or have indicators supporting the lack of assets. However, the high number of cases listing zero (0) assets raised questions as to whether some staff are failing to record the value of small amounts of assets. The LSC requirement is to list the value of the assets, no matter the amount.

The DR recommended that LSNYC review the reason(s) for high numbers of files listing no assets, and to further train staff, as needed.⁹ Program comments to the DR indicated that LSNYC acted upon this recommendation and reviewed files with no assets. Comments noted that a number of these cases involved clients who are receiving a form of public assistance that has an asset limit less than the LSNYC Board approved maximum, and, therefore, under the LSNYC policy, there is no requirement to ask asset specific questions. Comments also noted that LSNYC has taken a number of steps to ensure that staff understand the asset eligibility guidelines and properly screen applicants. These steps include covering asset screening as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014 and adding clarifications to the ACGMS asset section to provide further guidance to staff.

4. Citizenship and Alien Status Screening

Overall, intake interviews and intake observation evidenced that the basic intake process meets the requirements of 45 CFR Part 1626, the CSR Handbook (2008 Ed., as amended 2011), § 5.5, Program Letter 99-3 (July 14, 1999), and Program Letter 06-2 (Violence Against Women Act 2006 Amendments) (“VAWA exceptions”) (February 21, 2006). Interviews and intake observation demonstrated that staff members were familiar with LSC instructions that recipients make inquiry regarding an applicant’s citizenship or alienage status during telephone eligibility screenings and that further documentation is required under Part 1626 for in-person contacts, or higher level of services.

However, an area for program focus was identified regarding outreach intake, especially when it is conducted by persons who infrequently conduct intake screening, such as attorneys. One (1) attorney responsible for conducting monthly outreach intake was unclear regarding the in-person screening requirements involving green card holders. If a person with a green card came in

⁹ LSC also provided the following technique, used by several LSC recipients, for consideration by LSNYC. As part of standard assets screening (and sometimes done at the end of the screening if the applicant has identified nothing of value), intake staff are required to query the applicant about any small amounts of cash that they currently have at home or on their person, and then record that amount. The recorded amounts can be as small as \$1.00. However, when amounts are present they can provide some additional evidence, and assurance for program management, that an assets screening was fully conducted and any relevant amounts recorded.

person for intake, and did not have the green card with them, the attorney would still accept the case, and might give limited legal advice during that first meeting. This observation was shared with LSNYC management after the FUR Part II visit. LSNYC management then reviewed every 2013 case screened at the affected outreach location (Department of Labor) to test Part 1626 compliance. At the conclusion of this review, LSNYC reported that only one (1) 2013 case needed to be deselected and that all of the other files contained full and proper documentation of eligibility under Part 1626, most commonly a citizenship attestation. Therefore, it appears that the above screening error occurred rarely - nevertheless, this raises questions regarding the adequacy of the training and supervision for those who conduct occasional and/or off-site intake screening.

Form Review

As part of the intake assessment, LSNYC was asked to collect all paper forms from every office that could be used to conduct intake, whether infrequently or not. During the review, OCE team members also identified and collected other forms. All provided and collected forms were evaluated to determine whether they would support consistent and compliant intake screening. Forms reviewed included: intake questionnaires completed by in-person applicants; paper intake forms used by staff; printed ACGMS intake sheets; paper citizenship and alien status forms; case closing checklists; retainer agreements; and authorization forms. Several offices utilized more than one (1) intake form.

This review evidenced that some forms do not support compliant intake screening, and that better standardization was necessary.

A primary observation was that there were emergency intake forms created for the immediate response to Hurricane Sandy and related clinics that did not screen for income, assets, and/or citizenship. LSNYC management explained how, in the initial days after Hurricane Sandy, due to the lack of internet access by any source, cell phone communications, etc., that some forms were created by staff that were defective for full intake. These forms are no longer in use. Importantly, LSNYC is aware that no case relying on such defective form should be included in the CSR or charged to LSC funds.

Other general form-related issues included the following. First, there was a lack of a standard citizenship attestation format with some forms being inconsistent with CSR Handbook (2008 Ed., as amended 2011), § 5.5 as the signature line was not tied to the attestation statement. Second, some paper forms were inconsistent with the eligibility screening fields in the ACGMS, with some defects resulting in a non-compliant screening. Some forms only collected information concerning the amount of income but not the source of the income. Other intake forms provided a partial listing of the income sources, while others provide a space for the applicant to self-determine his or her income sources. Third, some forms lacked an income prospects screening question while other forms contained a unique and limited question – such as querying only if increases in a 12 month period are expected. Fourth, some forms contained outdated data, such as discontinued LSC case closure categories. Fifth, some staff continued to use outdated forms (including intake, case closing, and retainer agreement forms) despite having been provided new replacement documents.

The above noted variances in how intake is conducted or understood by staff have been likely leading to differing eligibility results for similar applicants depending on who conducts the eligibility screening. Also, the lack of knowledge by some staff concerning the income exception types and process, as well as the types of assets that should be excluded raises some questions as to whether all applicants are being screened in a consistent manner with the program's income and asset policy and 45 CFR Part 1611.

During the review, the weaknesses and inconsistencies of various intake forms were discussed with program management. Program management agreed to take immediate corrective action to address the concerns, and requested assistance from the team. By the end of the review week, LSNYC had created an intake/intake form committee to address the need for consistent intake treatment throughout the offices. A few weeks after the review, this committee had completed the initial step of developing a standard paper intake form to be used throughout the program.¹⁰ LSNYC must now ensure that all staff use the updated form, and do not continue use of other inadequate or non-compliant forms.

The DR recommended that LSNYC implement a policy and procedures that restrict the development or alteration of any basic program forms, including intake, case closing, and retainer, except with the involvement and express approval of the central administrative office. Program comments to the DR discussed how LSNYC adopted this recommendation and that staff have been instructed to discontinue use of all intake forms except the official form available in the computer central drive. Further, staff members were instructed to not develop their own forms and to only access the intake form from a central administrative folder so as to avoid accidental alterations that could occur when saving the form in multiple locations.

Also, shortly after the review, LSNYC assigned an experienced LSNYC staff member, the Director of Grant Management for the Brooklyn Programs, to develop and coordinate short-term, and then ongoing, intake-related training for LSNYC.¹¹ To support these efforts, technical assistance regarding training development was provided to this LSNYC staff member by two (2) OCE staff members of the review team.

It is noted that LSNYC is moving towards increasing the direct use of the ACGMS for intake, including for off-site intake. Some offices, such as South Brooklyn, now almost exclusively conduct intake with, and input information directly into, the ACGMS. LSC encourages this emphasis on use of the ACGMS as it will assist LSNYC to have a standard process for intake with no variations.

¹⁰ Soon after the review, a new draft paper intake form was drafted and received input and comments from OCE. The new draft form successfully addressed noted observations regarding needed consistency, and other issues discussed above, such as the attestation format.

¹¹ OCE had also recommended that LSNYC take additional short-term action to send simple written communication to all staff, such as emails, that provide global notice of the key corrective action issues discussed in this draft report that could involve multiple staff, such as intake screening issues, discussed above. This allows for short-term notification of key issues prior to formal training.

Overall, more effort was needed so as to *fully implement* consistent and compliant screening throughout offices by the many staff who can conduct intake screening. Related to this, discussion of both prior and new corrective action follows.

Prior RCAs - Resolved

Despite the current issues discussed above, some of the prior RCAs regarding intake have been sufficiently addressed and can now be closed.

The FR, at RCA-14, required LSNYC to not include food stamps as income. With staff training, and through the ACGMS, LSNYC staff members no longer include food stamps as income. Also, if food stamps are recorded, the ACGMS does not include the amount in any income calculation. Due to this, RCA-14 is closed.

The FR, at RCA-12, required LSNYC to revise a Bronx office form regarding income waiver and maximum income and assets level to meet regulatory requirements. After the 2010 OCE review, LSNYC adopted a standard form for the documentation of over-income exceptions which satisfied FR RCA-12. Recently this form was replaced with the new ACGMS data screen for documentation of factors for households with income between 125-200% of FPG. Due to this, RCA-12 is closed.

Continued and New Intake-Related RCAs

The current variations and exceptions in intake, discussed supra, required significant additional corrective action, as detailed in the DR. Overall, LSNYC must take corrective action to ensure that all staff allowed to conduct intake complete an adequate and compliant intake according to LSNYC policy and procedures. This in turn will ensure that intake screenings meet the underlying regulatory and CSR Handbook (2008 Ed., as amended 2011) requirements. As part of this, it was strongly recommended that targeted attention be given to attorneys or other staff who conduct infrequent or off-site intake, such as clinic or outreach intake, and/or who may conduct intake by themselves or otherwise lack ongoing or frequent supervision regarding their intake screening process. Ultimately, LSNYC needs all staff to understand, and follow, a standard and adequate intake process for all basic intake requirements, with emphasis on: over-income exceptions; Part 1626 screening; and assets screening. Further, LSNYC should adopt and utilize a uniform definition of "household."

To accomplish the above changes, the DR required LSNYC to make certain that staff use the official intake forms when conducting intake outside of LegalServer. Further, sufficient training and increased oversight both appear necessary.

At the time of the FUR Part II, five (5) prior RCAs involving intake areas remained open, at least in part. As of this Final Report, these are all now closed in their entirety, as discussed below.

- The FR, at RCA-11, required LSNYC to document authorized exceptions for clients with income between 125-200% of FPG, or in the alternative to not support over-income cases with LSC funds. Case review and review of the current LegalServer intake system

evidenced that, overall, LSNYC is now properly recording appropriate over-income factors. However, the review of intake demonstrated that there remain some staff still unclear as to the exact allowable expenses, or the correct practice. Due to this, FR RCA-11 as it relates to FR RCA-19, discussed below, remained open in the DR for continued corrective action and assessment.

- The FR, at RCA-19, required LSNYC to have all offices apply the over-income exception policy in a similar manner. RCA-19 also required LSNYC to provide staff training regarding the proper application of exception factors for applicants with income between 125-200% of FPG. Although significant progress regarding this item had taken place, RCA-19 remained open in the DR for additional corrective action so as to have all applicable staff understand and properly utilize the new over-income ACGMS protocols.

Regarding both of the above, program comments to the DR stated that LSNYC made changes to the ACGMS to include additional instruction around income eligibility. Further, LSNYC management has clarified the types of fixed debts that are appropriate as an exception factor. Critically, all staff members were trained on the documentation of factors for applicants whose income is between 125-200% of as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of program actions, FR RCA-11 and FR RCA-19 are closed.

- The FR, at RCA-20, required LSNYC to ensure consistent screening for income prospects. This has been substantially accomplished through the standard automated intake process, and through the updated paper intake form. However, FR RCA-20 remained open in the DR for LSNYC to ensure that there is no continued use of defective forms, and that all staff are consistently screening for income prospects, which can include future possible increases and/or decreases to income.

Program comments to the DR stated that the ACGMS and the new uniform paper intake uniform form both include a mandatory question about the applicant's income prospects. Further, all staff members were trained on the mandatory screening of income prospects as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, FR RCA-20 is closed.

- All clients are properly screened, and properly documented, for citizenship or eligible alien status as required by 45 CFR §§ 1626.6 and 1626.7. Emphasis should be given to outreach intake and any intake relying upon paper forms;

Program comments to the DR stated that LSNYC has updated the ACGMS and the paper immigrant eligibility screening form based on the latest revision to 45 CFR Part 1626 and Program Letter 14-2. Comments stated that the paper immigrant eligibility screening form can be used at off-site locations and is available on the central drive along with the intake form. Comments stated that the ACGMS requires that staff verify that citizenship or eligible immigrant status

has been properly documented according to LSC requirements. Comments also stated also that, in a December 13, 2013 email, all staff members were reminded of the requirement to assess eligibility and to verify citizenship or eligible immigrant status before providing any legal assistance. Finally, comments stated that, as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014, all staff members were trained on the screening and documentation requirements for citizenship or eligible alien status. As a result of these actions the related FR RCA-9 and FR RCA-15 (as both continued in RCA-5 of the DR) are closed.

As part of the program's efforts, and in addition to the above RCAs that were left open in the DR, the DR also required LSNYC to take further corrective action so that:

- All staff conducting intake outside of the ACGMS uniformly utilize the updated paper form.

Program comments to the DR stated that LSNYC adopted a uniform paper form which was disseminated on December 13, 2013. The form is available on a central drive and can only be altered by designated individuals. Further, LSNYC described numerous actions taken so as to discontinue use of all other prior paper forms. Further, all staff were trained on the use of this form as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, this RCA is closed.

- All staff conducting intake understand the program's asset policy, and also the types of fixed debts that are appropriate as an exception factor for applicants with income over 125%.

Program comments to the DR stated that additional clarifications regarding asset screening have been added to the ACGMS intake process. Further, all staff members were trained on the program's asset policy as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, this RCA is closed.

- A uniform definition and application of "household" is adopted; and

Program comments to the DR stated that a uniform definition of household has been adopted and added to the ACGMS intake process. Additionally, staff members were trained on the definition as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, this RCA is closed.

- Any cases relying upon emergency intake forms that did not screen for income, assets, and/or 45 CFR Part 1626 eligibility are both deselected from future CSR reporting and associated costs are charged to a non-LSC funding source.

Program comments to the DR stated that the ACGMS automatically deselects cases where there is no information concerning income or assets or where the verification of proper documentation for citizenship or eligible alien status has not been completed in accordance with the LSC regulations. Comments also stated that LSNYC can confirm that no emergency intake form cases lacking information on income, asset, or proper citizenship/eligible alien status documentation will be included in the CSR or funded by LSC. As a result of program comments, this RCA is closed.

Finding 3: Sampled cases evidenced substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. Further, as part of the new ACGMS, LSNYC has taken measures to standardize documentation for clients with income between 125-200% of FPG.

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.¹² *See* 45 CFR § 1611.3(c)(1) and CSR Handbook (2008 Ed., as amended 2011), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.2.

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

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.

The FR, at RCA-1, required LSNYC to document authorized exceptions for clients with income between 125-200% of FPG, or in the alternative to not support over-income cases with LSC funds. The FR, at RCA-19, required LSNYC to have all offices apply the over-income exception policy in a similar manner. RCA-19 also required LSNYC to provide staff training regarding the

¹² A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

proper application of exception factors for applicants with income between 125-200% of FPG. These RCAs were discussed, *supra*, and due to the need for additional staff training, these RCAs were left open in the DR. However, as discussed in this section, and distinguished from the training issue, the results from the review of sampled cases evidenced that, overall, the program has been successful in obtaining needed exception documentation for clients with income between 125-200% of FPG.

The Income Guidelines in effect at the time of the FUR Part II were adopted by LSNYC's Board on March 12, 2013. At the time of the October 2013 visit, LSNYC's financial eligibility policies addressed LSC requirements and directed that financial eligibility would be determined pursuant to the income guidelines most recently promulgated by LSC. Notwithstanding the program's general client eligibility policies, LSNYC will ordinarily provide extended legal assistance only when additional eligibility factors have been met. The purpose of this approach is to first provide basic case evaluation, counsel, advice, and brief services to a broad segment of LSNYC's client population and then second, to target extended services toward eligible clients with the greatest economic and legal need, with special consideration to the legal needs of elderly, institutionalized, disabled individuals, and other special populations.

All sampled cases reviewed evidenced that the applicants were screened for income eligibility. All files with household income below 125% of FPG were fully evidenced as eligible. There were also LSC ineligible sampled cases over 200% of FPG that were consistently coded as a non-CSR, and funded with non-LSC funds.¹³ Further, all sampled files *opened under the new ACGMS* evidenced compliance with the income eligibility documentation required by 45 CFR §§ 1611.2(i), and 1611.5, the CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of FPG. Some older files contained errors in cases where household income exceeded 125% of FPG, as discussed below.

Due to previous issues regarding proper documentation of factors for clients with income between 125-200% of FPG, it was necessary for LSNYC to take various measures to ensure that such cases were either properly documented, or assigned to other funders. The FUR Part II evidenced that the prior issue regarding cases involving household income between 125-200% of FPG has been addressed through the ACGMS as regards the future, although there was corrective action necessary regarding some older files, as discussed in the DR, and detailed below.

The new ACGMS includes built-in direction and prompts to assist screeners to identify one (1) or more over-income factors, where possible. Due to this, the FUR Part II found that LSC eligible cases opened since adoption of the new ACGMS, with household income between 125-200% of FPG, properly contained the evidence of one (1) or more factors establishing the case as LSC eligible. However, the FUR Part II also evidenced some older over-income cases, some open many years ago,¹⁴ that lacked the necessary documentation, may still be incorrectly coded as LSC eligible. As discussed below, these exceptions appeared to be transitional and limited, but required additional corrective action.

¹³ See e.g., Closed 2013 Case Nos. 13-0735448, 13-0730650, X10E-14002600, and X10E-14002404.

¹⁴ For example, one (1) case opened in 2005 that lacked the proper exception documentation was mistakenly coded as LSC eligible. See Closed 2012 Case No. Q05E-1012052.

There were two (2) causes identified for the exception cases noted. First, some of the older cases had not been properly documented when accepted, remain open, cannot be fixed, and simply must be switched to non-LSC funding and coding, and deselected from future CSR reporting. Second, some over-income cases were not correctly or fully imported from the prior ACMS during the transition of data into LegalServer. This resulted in cases changing coding and appearing as incorrect within the ACGMS.

The data conversion issues also affected files over 200% of FPG. Data conversion was determined as the cause for the exception pattern reported in the program's 2012 Self-Inspection Form G-6 submission wherein non-LSC cases over 200% of FPG were mistakenly coded as CSR eligible. Case sampling identified files precisely fitting this conversion issue, such as Closed 2012 Case No. B12E-4000238, opened under the prior system, funded with non-LSC funds, and initially and properly indicated as a non-CSR, that then incorrectly appeared as CSR reportable after conversion to LegalServer.¹⁵

Neither of the above two (2) causes for error involves the program's current ACGMS intake process.¹⁶ The review also noted other cases between 125-200% of FPG, or non-LSC funded cases over 200% of FPG, opened under the new ACGMS, that were fully compliant as they were properly identified as LSC or not, and properly coded as CSR reportable, or not. The new ACGMS strongly supports the proper coding and tracking of non-LSC cases from the point of intake.

LSC notes that data transition errors are common when converting large databases into a new operating system. Fortunately, the effects of any conversion errors are usually limited to those files opened prior to the conversion date and should diminish over time as such cases are closed. However, due to the possibility that ineligible and incorrectly coded cases could still be charged or reported to LSC, the DR noted that LSNYC needed to take additional targeted corrective action so that ineligible or inadequately documented over-income files are not attributed to LSC or included in a CSR. As LSNYC continues to close cases opened under the prior system, any case between 125-200% of FPG or any case over 200% of FPG should be reviewed and only those cases documented as eligible for LSC should be reported to, and/or funded by, LSC. In its comments to the DR, LSNYC stated that it has reviewed all LSC eligible or LSC funded cases, including those open prior to October 1, 2012 that were active in 2014, with income levels higher than 125%, to ensure that all cases funded by or reported to LSC have documented income eligibility. Based on program comments, this issue is closed.

¹⁵ Other sampled cases with coding errors were shared with LSNYC management who noted that these cases, and others similar, would be reviewed and coding changed, as necessary. Through this process, LSNYC has now avoided future potential reporting errors. Subsequent to the visit, LSNYC was asked to provide updated ACGMS coding data for a sample of cases. This sample reflected that, as of December 2, 2013, the following cases, which were incorrectly coded for CSR reporting at the time of the FUR Part II, were now properly deselected from the CSR. See Closed 2013 Case Nos. S12E-68002809, S10E-68001341, S12E-68003469, and S12E-68001419.

¹⁶ As discussed *supra*, LSNYC also continues to improve the ACGMS as warranted, and changes to the ACGMS over-income documentation process were made in mid-2013 to enhance the clarity of the automated documentation and case coding.

Group Eligibility

LSNYC's group eligibility policy complies with the requirements of 45 CFR Part 1611. In addition, the program has developed procedures to ensure that groups are eligible for services in compliance with 45 CFR §§ 1611.7(a)(2), (b), and (c). These group eligibility policies apply only to LSC funded legal assistance. LSNYC may use non-LSC funds to support representation of groups that do not meet these group eligibility standards.

In order for a group, corporation, association or other entity to be eligible for LSC funded legal assistance, it must provide information regarding the resources available to the group, showing that it lacks, and has no practical means of obtaining, funds to retain private legal counsel. Such information should include the group's income and income prospects, assets and obligations. A group that provides information showing that it lacks the resources to hire private counsel is eligible for LSC funded legal assistance: (1) if the group, or for a non-membership group, the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC funded legal assistance as determined by the financial or other socioeconomic characteristics of the persons comprising the group or its operating body; or (2) if one (1) of the group's principal activities is the delivery of services to those persons in the community who would be financially eligible for LSC funded legal assistance, as determined by the financial or socioeconomic characteristics of the persons served by the group, and the legal assistance sought by the group is related to such activity. A program must collect information that reasonably demonstrates that the group meets the eligibility criteria above.

Testing of group eligibility was conducted through identification of any recent group cases and sampling of the eligibility screening of one (1) case. Most staff interviewed reported no group cases handled by their offices during the review period. There was one (1) case identified that was accepted as a non-LSC case, but had nevertheless been screened under the group eligibility requirements, and was therefore tested. In *Padilla Torres vs. NYPD*, there are seven (7) separate plaintiffs comprised of six (6) individual plaintiffs and one (1) group plaintiff, *The Violence Intervention Project*. The eligibility of all seven (7) plaintiffs was reviewed. The six (6) individual plaintiffs were income and asset eligible, and all were documented as eligible under Part 1626. As a principal activity the group client serves persons eligible for LSC funded representation, such as the six (6) individual plaintiffs in the case. The case file reflected that the organization lacked the income, assets or resources to afford private counsel. Although currently non-LSC funded,¹⁷ this case was eligible to be supported with LSC funding based on the eligibility of the client. However, should LSNYC decide to use LSC funds for the case, it is recommended that more detail regarding the organization's income and assets be recorded so as to provide better underlying data to support a determination of LSC eligibility. To assist in future LSC funded group eligibility screenings, program management was provided a sample group eligibility form utilized by other programs that demonstrated the increased level of detail that helps support an LSC eligible determination for a group. The DR recommended that LSNYC consider adoption of a group eligibility form that assists staff in recording more detail regarding the applicant-organization's income, income prospects, assets, and, where relevant, obligations.

¹⁷ The costs and allocations for this case were reviewed and, evidenced that, as of the FUR Part II, a total of \$22,379.37 had been charged to non-LSC funds. These charges were comprised solely of staff time allocation, as there had been no other direct costs, such as cab fares or deposition costs, yet associated with the case.

Program comments to the DR stated that, in consultation with LSC, LSYNC has adopted a group eligibility form to assist staff in screening groups for LSC eligibility. Comments also noted that group cases are rare with the result that staff may not be familiar with the eligibility guidelines; therefore, group case acceptance requires review and approval from an office's Project Director.

Finding 4: Sampled cases evidenced compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

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.¹⁸ *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 clients' files.

The program's eligibility policy approved by LSNYC's Board of Directors on March 12, 2013 establishes an asset ceiling at \$25,000. The policy holds the following as exempt: (1) the applicant's principal residence, (2) vehicles used by the applicant or household members for transportation, (3) assets used in producing income, and (4) retirement funds to the extent that they are in an account that is exempt from federal taxation. The asset ceiling may be waived by the Executive Director, Project Directors, or their designees under unusual circumstances.

All sampled files contained asset eligibility documentation and the onsite file review evidenced that LSNYC is in compliance with the asset eligibility documentation by required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

Despite the strength of the results from the review of sampled cases, there was a related open corrective action that LSNYC ensure proper staff understanding of its asset policy that was left

¹⁸ 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.

as open in the DR; however, this is now closed, having been addressed by staff training conducted by LSNYC, as discussed *supra*.

Finding 5: While most sampled files complied fully with the requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens), there were non-compliant files that either lacked evidence of the required screening or the required documentation.

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5; *See also* LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.¹⁹ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

The FR, at RCA-13, required LSNYC to revise its Part 1626 screening elements and to revise its citizenship attestation form so that it would contain a separate signature line for citizenship. The FR, in RCA-15, required, in part, that LSNYC ensure that all case files contain citizenship attestations, where appropriate. The FR, at RCA-9, also required, in part, that LSNYC ensure that cases referred to PAI attorneys include citizenship/alien eligibility screening. The FR, at RCA-15, also required, in part, that all case files (both staff and PAI) lacking a required citizenship attestation be deselected from CSR reporting.

A majority of sampled files reviewed during the FUR Part II were appropriately and fully documented for Part 1626 eligibility. However, there were several files with exceptions that were of a varying magnitude from a compliance perspective.

¹⁹ *See* Kennedy Amendment at 45 CFR § 1626.4.

Three (3) cases were opened without obtaining citizenship or alien eligibility documentation under emergency intake procedures implemented in the wake of Hurricane Sandy.²⁰ As noted previously, use of any such emergency intake forms has been discontinued. Importantly, staff members are aware that evidence of Part 1626 screening or required documentation is missing, the case must be deselected from CSR reporting, and cannot be supported with LSC funds. LSNYC is also cautioned as to the importance of Part 1626 screening, so as to not violate the prohibitions of that regulation. Any future emergency procedures should be careful to include necessary Part 1626 screening and documentation of this screening so as to comply with this regulatory framework.

A few files lacked a required attestation as it was unable to be produced by LSNYC during the review. These files evidenced that the client was a US citizen in the ACGMS file record - but due to a missing physical paper file, no attestation was available for review. *See e.g.*, Closed 2012 Case Nos. S10E-68001086 and S09E-68002500. It is noted that in these instances, LSNYC staff were confident that an attestation was present in the paper file and that the paper file would be located. In some instances, the causes of a temporarily displaced file appear reasonable. For example, the current Bronx office is a new location that merged two (2) prior office locations, one (1) of which experienced a fire. The move to a new office resulted in a number of closed cases being boxed and shipped, but, as of the October 2013 OCE visit, not fully unpacked or logged. *See* Closed 2012 Case No. X06E-1001417 which was unable to be located by staff before the review of cases at that office. The issue of missing files is discussed in a separate finding, *infra*.

Sampled cases also included two (2) cases for non-citizens that lacked clear evidence regarding the review of appropriate documentation. The first file identified the client as a legal permanent resident, but with no evidence that this documentation was reviewed. *See* Closed 2013 Case No. Q12E-67002010. The second file contained only an application for adjustment of immigration status but with no evidence of what documentation was reviewed to determine eligibility under 45 CFR Part 1626. *See* Closed 2012 Case No. S12E-68000309.

The most frequent exception in sampled cases involved citizenship attestation documents with a signature but without any date. LSC regulations, at 45 CFR § 1626.6(a), require all *applicants* for legal assistance who are citizens to attest to this fact in writing. Attestation statements that lack a date do not provide any evidence as to whether the attestation was obtained before case acceptance, while the person was an applicant.

One (1) sampled file had a child as the client, but the citizenship attestation referred to the parent's citizenship status rather than that of the child-client, and the retainer was agreed to by the parent rather than by the parent on behalf of the child-client. *See* Open Case No. Q12E-67000784. The DR recommended that LSNYC consider adoption of alternate citizenship attestation and retainer forms for use with clients who are children or other incompetent individuals so that these documents properly reflect that the attestation and agreements refer to the client and not to their agent or guardian who signs on their behalf. Further, LSNYC was referred to LSC Office of Legal Affairs ("OLA") Advisory Opinion #AO-2013-005 which provides guidance regarding citizenship attestation by minors. Program comments to the DR

²⁰ *See* Closed 2013 Case Nos. 13-0729936, 12-0727464, and 13-0730103.

stated that LSNYC will adopt an alternative citizenship attestation, as discussed above, and save it on the central folder with the other program forms.

The FR, at RCA-13, required LSNYC to revise its Part 1626 screening elements and to revise its citizenship attestation form so that it would contain a separate signature line for citizenship. Based on actions taken by LSNYC to draft a standard intake form, with a separate attestation statement, and actions taken to update the ACGMS Part 1626 screening process, FR RCA-13 is closed.

The part of RCA-15 that required all case files lacking a required citizenship attestation to be deselected from CSR reporting has been addressed by LSNYC through LegalServer, and is closed.

LSNYC has significantly addressed FR RCA-15 and FR RCA-9 regarding documentation of Part 1626 compliance with the adoption of LegalServer, which allows for the uploading of citizenship attestation documents, and supports ongoing case oversight including case compliance. Further, prior concerns involving certain PAI cases found lacking Part 1626 documentation also appear to have been significantly addressed. However, due to the continued errors discussed above, including the inability to produce documentation in some sampled cases, FR RCA-15 and FR RCA-9 remained open in the DR for further action by LSNYC to ensure that proper Part 1626 documentation is obtained and maintained for all accepted cases.

Program comments to the DR stated that the ACGMS requires that staff verify that citizenship or eligible immigrant status has been properly documented according to LSC requirements. Comments also stated that, in a December 13, 2013 email, all staff members were reminded of the requirement to assess eligibility and to verify citizenship or eligible immigrant status before providing any legal assistance. Finally, comments stated that, as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014, all staff members were trained on the screening and documentation requirements for citizenship or eligible alien status. Comments added that LSNYC has updated the ACGMS and the paper immigrant eligibility screening form based on the latest revision to 45 CFR Part 1626 and Program Letter 14-2, and noted that this form can be used at off-site locations and is available on the central drive along with the intake form. As a result of these actions FR RCA-9 and FR RCA-15 (as both continued in RCA-5 of the DR) are closed.

Finding 6: Almost every sampled extended service case contained a document that met the requirements of 45 CFR § 1611.9 (Retainer agreements). However, LSNYC should take further corrective action so that otherwise eligible CSR reportable cases are not deselected purely for the lack of a retainer agreement.

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.²¹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

The FR, at RCA-7, required LSNYC to have retainers executed before commencement of legal services. Further, FR RCA-7 reminded LSNYC that the lack of a retainer does not preclude CSR reporting eligibility.

Sampled files evidenced that LSNYC is in compliance with the retainer requirements of 45 CFR § 1611.9. The review identified that almost every case requiring a client retainer, opened after the 2010 OCE review, contained a properly detailed and executed document.²² There remain some significantly older cases that lack timely or any retainer agreements – however those cases were opened under prior program protocols, and do not reflect LSNYC’s current practices or procedures.²³

It was also noted that LSNYC has used slightly variant, but generally adequate, retainer agreement forms.

Client Retainer and CSR Reporting

There are two (2) LSC case documentary requirements that do not affect whether a case qualifies for CSR reporting: the client retainer agreement under Part 1611; and the client identity and statement of facts documentation under Part 1636.²⁴ The FUR Part II evidenced that there is misunderstanding among some staff that the lack of a retainer in an otherwise eligible case renders a case as CSR ineligible. In addition to interviews with staff, evidence of this misconception was found in sampled cases that had been marked for deselection due to the lack of a retainer. *See e.g.*, Closed 2012 Case No. Q10E-67002161.

Regarding the RCA-7 instruction to not deselect cases solely on the basis of a missing or defective retainer, at the time of the FUR Part II, LSNYC had yet to take effective corrective

²¹ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient’s risk management.)

²² There were a few cases for which the paper file was unavailable at the time of the FUR Part II, as discussed both *supra* and *infra*. In all of the other files reviewed that had been opened after the 2010 CSR/CMS review, there were very few exception cases. Further, the exceptions involved minor errors, such as one (1) retainer that solely lacked a date. *See* Closed 2012 Case No. L12E-0000081.

²³ Also, as many of these cases are also dormant, these older files will likely be closed and deselected as part of the corrective action regarding timely case closure, discussed *infra*. *See e.g.* Closed 2013 Case Nos. X04E-200139 and X06E-1003115 opened in January 2004 and September 2006, respectively, that have been recently closed and deselected from CSR reporting. A third case, opened in June 2008, was currently open, and if the case remains active, the lack of retainer should be corrected. *See* Open Case No. Q08E-2001613.

²⁴ There were no cases identified that were improperly deselected due to the lack of a Part 1636 statement, however, it is prudent when providing instruction to staff on this rule that the absence of either or both documents do not render a case as non-reportable (Client Retainer and Part 1636 statement) be included in the discussion.

action as cases were still being improperly deselected solely for the lack of retainer. During the FUR Part II, it was emphasized to LSNYC management that it is important to not deselect a case for lack of a retainer or Part 1636 statement, as that creates an additional error of not including an eligible case in the CSR report. LSNYC management agreed to take further corrective action to implement this rule, to include education of staff and case oversight, so that cases are not improperly deselected for a lack of retainer.

At the time of the FUR Part II, the part of RCA-7 regarding execution of retainer agreements had been sufficiently addressed. However, in the DR, RCA-7 remained open for further action necessary to properly apply CSR case reporting rules so that otherwise eligible cases are not deselected solely for lack of a client retainer. Program comments to the DR stated it has performed testing on the ACGMS and that it can confirm that otherwise eligible cases without a retainer, regardless of level of service, are not deselected from CSR reporting. Based on program comments, FR RCA-7 is now closed.

Finding 7: Current LSNYC protocols regarding the documentation of legal advice, as supported by the ACGMS and cases sampled, comply 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.

The FR, at RCA-17, required that legal assistance be documented in the case file. FR RCA-17 also required LSNYC to use a case closing review system that would serve to deselect cases from inclusion in CSR reporting if they lacked evidence of legal advice. Case sampling evidenced that overall the documentation of legal assistance is strong, particularly for 2013 closed CSR eligible cases, and after the adoption of LegalServer. However, there were some sampled cases lacking sufficient description of the legal advice provided that were included in the 2012 CSR report.²⁵ These exception cases, as part of the 2012 transitional year from Kemps

²⁵ *See* Closed 2012 Case Nos. Q12E-66002270, Q12E-67000041, and Q12E-67002413.

to LegalServer, do not raise an active concern, as numerous cases did experience some miscoding or data conversion errors that could be reflected in the 2012 CSR. Further, current LSNYC protocols and management review of closed cases through the use of LegalServer should result in identification of future cases that require deselection. In support of this, there were several sampled cases that had been identified by LSNYC and properly coded for deselection due to the lack of documented legal work.²⁶ The prior failure to document legal advice, or to properly deselect cases that do not contain legal advice, does not reflect LSNYC's current practices or procedures.

Due to actions taken by LSNYC, and results of the FUR Part II review, FR RCA-17 is closed. There are no recommendations or required corrective actions.

Finding 8: Overall, LSNYC's application of the CSR case closure categories was consistent with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011). There was an exception pattern involving case closure category "K" that requires corrective action. Also, LSNYC needs to take corrective action so that proper case deselection protocols and coding are used.

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closure 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 FR, at RCA-18, required that LSNYC staff be trained on the case closure categories and their proper usage. The FR, at RCA-21, required LSNYC to not use case closure category "K" for rejected cases, and to instead use a separate reject code for such cases.

Staff reported attendance at training that included instruction in case closure category definitions and use. Further, sampled cases evidenced overall that LSNYC's application of CSR case closure categories is strong for cases tested with case closure categories "A," "B," "F," "G," "H," "I(a)," "I(b)" and "L." However, every sampled case closed with "K" had misused that case closing category.

Case review evidenced that some staff are misusing the "K" case closure category, with two (2) significant error patterns identified. First, there were files closed with "K" that were reportable cases, but that should have been closed using another case closure category that more accurately described the legal work completed.²⁷ Overall, these cases more closely fit case closure categories "A," "B," or "L." A subset of these cases were instances where the client received limited advice on the hotline or at a clinic and was instructed to return an information packet or other information to the program. When the packet was never received the staff member closed

²⁶ *See* Closed 2013 Case Nos. M09E-63000222, X08E-1001072, and X07E-1002305. *See also* Closed 2012 Case Nos. M09E-63002958 and Q11E-67001152.

²⁷ For example, the following cases were erroneously closed as "K" and should have been closed as "L": Closed 2012 Case Nos. Q11E-66002907, Q11E-66000078, and S10E-68001524. The following cases were erroneously closed as "K" and should have been closed as "A": Closed 2013 Case Nos. 13-0732311 and S12E-68000291.

the case as “K” – however these hotline/clinic cases only received limited legal assistance and fit either case closure category “A” or “B.”²⁸

The second pattern involved “K” being used for case deselection. In several sampled files, staff had used case closure category “K” in an attempt to deselect the case for various reasons, including lack of legal advice or services, untimely closure, or for a duplicate file. As required by FR RCA-21, LSNYC was no longer using “K” for *rejected* cases – however any use of “K” for deselection is in error. This misuse of “K” resulted in ineligible cases intended for deselection being incorrectly included in the 2012 CSR. *See e.g.*, Closed 2012 Case Nos. Q12E-67000041, Q12E-67002413, and M09E-63002958.

LSNYC adopted a specialized code of “ZZ” for deselection of cases, as required by FR RCA-18. Also, LSNYC has adopted new protocols for case deselection, including new ACGMS generated coding and reporting. The ACGMS will now automatically calculate CSR eligibility by determining whether the case has an LSC eligible client, is timely closed, contains documented legal assistance, and otherwise meets the necessary compliance requirements for the level of service and contact with the client. When a core requirement is indicated as “no”, the ACGMS will automatically deselect the case; however, staff can override the automatic determination, if warranted. Further, bi-annual LegalServer reports are created that show whether non-CSR cases have been properly deselected. These reports are reviewed by the Project Directors and Directors of Administration. However, the continued use of “K” for deselection evidenced that several staff continue to not understand proper case deselection.

The above presented two (2) corrective action issues left open in the DR. First, LSNYC needed to take corrective action so that “K” is not selected when another case closing category represents a more accurate description of the legal services provided. Second, LSNYC needed to take corrective action so that proper case deselection protocols and coding is done by all relevant staff. As part of this second effort, LSNYC should prohibit future use of case closure category “K” for deselection.

The issues with case closure category “K” were shared with LSNYC management during the review week. At the exit conference on October 11, 2013, LSNYC senior management stated that emails to staff regarding use of “K” had already been sent, and that targeted management oversight would occur regarding any future cases closed with “K.” In post-visit communications, management stated that all 2013 cases closed with “K” were being reviewed. Further, LSNYC management stated that if a staff person wishes to use case closure category “K” in the future that they are now required to first contact a supervisor to justify its selection.

It is strongly recommended that, to test the program's corrective actions regarding the use of “K,” LSNYC periodically generate automated case reports identifying any case with the “K” case closure category, followed by review of all such files to assess whether this coding is accurate. The above steps should address the use of case closing category “K.”

²⁸ For example, in Closed 2012 Case No. S11E-68000011 the client was provided advice on her SSI case over the SSI hotline, but then never returned an investigation packet to the program, and the case was mistakenly closed with “K”; however, the case should have been closed with case closure category “A.”

There was also a very minor awareness issue noted regarding proper use of the case closure category “I(c)” (appeals) that can be remedied through simple staff instruction. A very few cases tested that were closed with “I(c),” along with discussion with some intermediaries, indicated that LSNYC needs to remind staff that the type of cases that can be reported as an “I(c)” are typically those for which a new determination of case acceptance under 45 CFR Part 1605 is required as the case is being taken to a higher level appellate court. Case closure category “I(c)” does not include many types of appeals from one (1) forum to another. For example, when a second decision is rendered by an administrative agency, this would properly be closed as an “H”, and does not qualify for “I(c).” As part of the post-visit staff training developed by LSNYC, the program was asked to provide clarification regarding case closure category “I(c).”

During the FUR Part II, it was noted that LSNYC had taken substantial corrective action to address FR RCA-18. However, before LSC could close this RCA, LSNYC was asked to provide, with its comments to the DR, an update regarding additional actions taken, subsequent to the October 2013 review, regarding usage of case closing categories “K” and “I(c)”. With its comments to the DR, LSNYC stated that checking for “K” and “I(c)” closings is now part of LSNYC’s regular data reporting process. Further, comments noted that, as of June 2014, the program has had no case closure category “K” use in 2014, and that all “I(c)” case closures were in accordance with the CSR Handbook (2008 Ed., as amended 2011). Based on the program’s comments, and the adopted protocols that check case closure categories “K” and “I(c),” FR RCA-18 is closed.

Also, the DR required LSNYC to take corrective action so that proper case deselection protocols and coding are understood and used by all staff. In post-visit communications, management noted that this topic would be part of the staff instruction and training in development. In the DR, FR RCA-21 was identified as still being open. With its comments to the DR, LSNYC was asked to provide an update regarding any actions taken regarding instruction and enforcement of proper case deselection. Program comments to the DR stated that logic regarding case deselection has been built into the ACGMS and refined in response to discussions with OCE review team members. Comments noted that the ACGMS will properly deselect cases in nearly all categories, including: cases improperly opened or lacking legal assistance; cases where citizenship or immigrant documentation is missing; cases that are untimely closed; and cases where initial eligibility has changed over time. Comments also noted that all staff members have been instructed in the criteria for deselection.

In addition, program comments stated that cases can be also deselected after closing and noted that duplicate cases are identified and deselected through case runs conducted as part of the CSR report preparation process. Comments noted that these duplicate case assessments are done by management persons familiar with the duplicate cases deselection protocol – either a Project Director or designee. Comments also discussed how LSNYC has implemented additional review mechanisms regarding case deselection. Comments stated that in addition to ensuring cases are properly included in, or excluded from, the CSR, that the regular review by management allows for targeted interventions with any staff members who may need additional instruction or clarification. Finally, comments noted that, as discussed in several other sections of this report, that LSNYC has also implemented other review mechanisms to address proper case deselection.

Due to the program's actions, as described in its comments to the DR, the two (2) corrective actions discussed above (FR RCA-18 and FR RCA-21) are closed.

Finding 9: Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (dormancy and untimely closure of cases).

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). 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).

The FR, at RCA-16, required that cases be closed in a timely manner and required that follow-up and case oversight processes be used so as to not have open, dormant cases. FR RCA-16 also required that cases that are not timely closed, including open, dormant cases, be deselected from CSR reporting.

Significant testing of cases for dormancy and timely closing was conducted. As part of this, targeted testing was conducted through selection of older cases as part of the advance case sample and identification and review of additional cases pulled onsite.

The review of sampled cases identified numerous exceptions regarding untimely closed or dormant open, cases. Most exceptions occurred in older cases, open for many years, including numerous PAI cases that had been held for possible placement with a private attorney. Exceptions included a few cases that were mistakenly reported to LSC in the 2012 CSR.²⁹ However, exceptions mainly consisted of cases remaining open, or cases closed in 2013 that must be deselected. Open, dormant cases included many files open for several years, with several having had no activity or client contact for multiple years.³⁰ Untimely case closures included several files that were significantly delayed, being closed many years after the year in which they

²⁹ *See e.g.*, Closed 2012 Case Nos. M09E-63002958 opened in October 2009 with the last file activity in 2009 and Q07E-1001189 opened in May 2007 with the last file activity in 2010.

³⁰ *See e.g.*, Open Case Nos. M05E-141001065 opened in November 2005 with a last file activity in February 2007; X06E-1003882 opened in November 2006 with a last file activity in September 2010; X05E-1004063 opened in October 2005 with a last file activity in October 2011; Q08E-2001613 opened in June 2008 with a last file activity in May 2010; X08E-1000211 opened in January 2008 with a last file activity in January 2008; and M06E-141000478 opened in May 2006 with a last file activity in September 2007.

could have been timely closed.³¹ A subset of these exception cases involved files in which the only contact with the client recorded was on the intake date.³²

Further, there was one (1) pattern observed that related to a substantive legal area. Several untimely files were naturalization cases (Problem Code 81) in which LSNYC had reasonably kept the case open after initial advice, while waiting for a required Federal Bureau of Investigation background check and fingerprinting process, which sometimes takes several years to complete. LSNYC staff advised that the prior case management system was ineffective in identifying these pending cases, but that the new ACGMS allows for effective tracking of these cases so as to avoid dormancy.

Program staff cited a number of factors that contributed to the number of dormant or untimely closed cases, including the overall program reorganization, ongoing renovations and physical relocation of different offices, and data conversion into a new ACGMS. The review of sampled cases noted, importantly, that many untimely cases closed in 2013 had been properly coded for deselection.³³

In contrast to the above exceptions, protocols for cases opened under the new ACGMS appear to be capable of supporting timely case reporting and capable of resolving the historical dormancy and untimely case closing issues. However, to fully resolve the past, the DR asked LSNYC to take corrective action to review all cases opened prior to October 1, 2012, the date that LegalServer was commenced, to determine whether such cases are appropriately open or should be closed. Further, for many of the cases without activity for several years, LSNYC was advised the file should be deselected and not included in a future CSR. Comments to the DR described how the required review was completed. Comments stated that since the OCE visit, LSNYC engaged in an extensive review of cases to ensure that dormant cases are closed and that, in Fall 2013, all offices reviewed open case lists and closed significant numbers of dormant cases. Further, comments stated that, more recently, each office reviewed all cases opened prior to October 1, 2013 with no time charges in the last 90 days. Comments also noted that the ACGMS automatically calculates whether a case has been timely closed and deselects cases that appear untimely. For cases closed as an “A” or a “B”, the ACGMS looks at the date opened to calculate whether a case appears timely closed. For cases closed with “F” through “K”, the ACGMS looks at the last time slip to calculate whether a case appears timely closed. When closing the case, staff can choose to override the determination as necessary but, if they do so, they must record a reason for the override. Comments explained that this then allows oversight over any use of the override. Comments added that the ACGMS untimely closing calculation has been communicated to all staff during the above discussed process of reviewing and closing potentially dormant cases.

³¹ See e.g., Closed 2013 Case Nos. X04E-200139 opened in January 2004 with the last file activity in August 2007; X06E-1003115 opened in September 2006 with the last file activity in January 2011; and S10E-68005286 opened in December 2012 with the last file activity in January 2011.

³² In each of the following cases, the last activity evidenced was on the same day that the case was opened. See Closed 2013 Case Nos. M07E-1001229 (opened May 2007); X08E-1001072 (opened April 2008); M08E-1001545 (opened July 2008); M09E-63000222 (opened January 2009); and X07E-1002305 (opened in June 2007).

³³ See e.g., Closed 2013 Case Nos. Q09E-66003149, Q10E-66003187, Q11E-66001560, S10E-68005286, Q11E-66001728, Q10E-66002933, Q10E-66001901, Q11E-66000548, and Q11E-67001446.

LSC notes that a highly effective method for ensuring active case handling and timely case closing is use of the timekeeping system to identify any case lacking a time charge within a defined period. Staff at some offices visited indicated that they have commenced using such a technique, identifying cases without time charges for a several month period, which are then reviewed to determine status.

The DR recommended that LSNYC consider wider use of this “time-check” system so as to identify those units or offices that may continue to allow cases to become inactive without closure. Program comments to the DR stated that LSNYC plans to set up the ACGMS to automatically and regularly generate a list of cases, by office, with no time charges in the previous 90 days. These lists will be provided to office management for review and follow-up.

The DR had kept FR RCA-16 open and required that LSNYC take corrective action so as to close all dormant cases in a manner that they are not included in a CSR. Further, LSNYC was asked to deselect other untimely cases already closed in 2013 prior to the 2013 CSR data submission. Finally, LSNYC was asked to take other effective actions to end the practice of allowing untimely case closure, to include cases remaining open after work is completed or cases otherwise no longer active. Regarding the review of 2013 cases prior to the CSR submission, contacts between the OCE team leader and LSNYC management indicated that steps were taken by LSNYC to review cases so as to avoid untimely cases being reported in the CSR. Also, comments to the DR discussed the steps taken by LSNYC so as to avoid dormant files and untimely case closure in 2014 and forward. Comments stated that LSNYC has adopted several practices to end untimely case closings. Comments explained that the ACGMS will now alert staff when they have a case with no time charges entered in the previous 90 days, with the alert appearing in the case list found on a staff member’s home screen, and also found in each affected case when the case is next opened. In addition, comments stated that, on a regular basis, the ACGMS also is programmed to automatically generate reports to Project Directors or their designees of cases in their office with no time charges entered in the last 90 days. Finally, LSNYC’s supervision standards call for supervisors to hold quarterly case reviews with all staff and to review during the year all open cases.

As described in this section and detailed in program comments, the actions taken by LSNYC to review cases opened before adoption of the new ACGMS and to review 2013 cases prior to the 2013 CSR submission satisfy the remaining concerns regarding those groups of cases. Further, the described future ongoing systems adopted by LSNYC, if followed carefully, should be fully effective at avoiding files becoming dormant and then subsequently being closed at a time that they would be untimely for CSR reporting. Based on the actions taken by the program, and the ongoing systems implemented, FR RCA-16 is closed.

Finding 10: 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 (1) type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.2.

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.4.

The requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 were not subject to corrective action in the FR. However, review of this area was included in the FUR Part II so as to test the capabilities of the new ACGMS in this key area. Sets or groups of cases for the same client were targeted and reviewed for the limited issues regarding proper application of rules establishing when multiple cases are required, or where duplicate cases should not be reported more than once. This testing evidenced that LSNYC practices in this area remain strong. The program correctly reports only one (1) case when duplicate cases are open within the system. Further, LSNYC also opens and reports two (2) or more cases, where LSC rules direct that multiple cases should be reported. Also, the new ACGMS effectively supports compliance in this area, with capabilities for the identification of potentially duplicate cases.

There are no recommendations or required corrective actions.

Finding 11: There were selected review cases for which the full supporting paper file could not be located. There was no identifiable pattern, and these misplaced records are likely due to several significant events, including office consolidations and natural disasters.

The FR, at RCA-22, required LSNYC to maintain sufficient information in the case file, and to track closed cases so as to avoid lost or missing files. In partial response to this RCA, LSNYC designed its new ACGMS with a paperless file feature that allows a full case to be uploaded into the computer and stored electronically. This feature is not, as yet, a mandatory requirement, and staff still rely heavily on paper files, particularly for extended service and court cases. However, several files tested during the review did have all documents uploaded into the ACGMS, including all compliance and other core documents including citizenship attestations, retainers, and court filings.

A total of eight (8) files were unable to be fully presented during the case review.³⁴ All of these files contained computer-stored case information that established the cases as income, asset, and priority eligible, and also evidenced whether the client was a US citizen or an eligible alien.

³⁴ *See* Open Case Nos. Q11E-67001207 and M06E-141000478, Closed 2012 Case Nos. S12E-68004443, X06E-1001417, S10E-68001086, S09E-68002500, and 12-0722042, and Closed 2013 Case No. 13-0730473.

However, for these cases, several items were not available, including the citizenship attestation and the client retainer, as these documents only existed in hard copy with the missing paper file. Although any missing file can be cause for concern from a professionalism standpoint, under the recent circumstances confronted by LSNYC, the misplaced files may be less of less significance. Since 2012, LSNYC has endured multiple challenges including: an extreme natural disaster and related flooding from Hurricane Sandy; an office fire; a six (6) week strike; a significant reduction in its LSC grant and related consolidation of multiple offices; and the transition of all automated data from one (1) system to another. It is also highly likely that the partially missing files will be located as new filing systems are completed. For example, in one (1) office management staff showed the review team a large area of stacked and sealed legal file boxes. These boxes were filled with closed case files that had been shipped from prior office locations as part of consolidation. For this office, there was one (1) missing file which staff felt certain will be located when all of the boxes of cases are inventoried.

The DR kept FR RCA-22 open for additional information and analysis, and requested that LSNYC discuss, with its comments to the DR: any actions that it believes would assist the program to reduce the incidents of misplaced cases; its plans, if any, to require full automated case storage for any office or unit cases in the future; and any additional information regarding this topic, as desired.

Program comments to the DR stated that, as noted in the report, LSNYC currently requires that core documentation related to LSC compliance, including the citizenship attestation, be uploaded into the ACGMS. Comments stated that staff members are also required to document the legal work conducted in the case notes. Comments also explained that LSNYC is moving towards a system of electronic maintenance of its files, and that currently the Staten Island office scans closed files so they do not have to keep any physical files. Comments stated that LSNYC is examining the feasibility of expanding this project to other offices. Comments explained that for each office where the entire file is not uploaded, the physical files are kept on-site for a certain period of time, and that closed cases are filed according to date closed to facilitate easy retrieval. Finally, comments explained that, due to the volume of closed files, all files cannot be maintained on-site and that each office has a storage provider who bar-codes and collects the boxes which allows for files to be retrieved within one (1) to two (2) business days.

In consideration of program comments, FR RCA-22 (continued as RCA-14 in the DR) is closed.

Finding 12: A limited review of publically available information and other materials, as well as assessment of offices visited, evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

Sampled files reviewed, discussions with program management, and an examination of available public materials in offices visited evidenced no concerns regarding compliance with 45 CFR Part 1608.

As part of the advance work conducted for the review, extensive web searching was conducted designed to identify publically available information regarding LSNYC that may be relevant to the review. Further, review of program web pages, and related organization web pages was conducted for the period since the 2010 OCE review. Through this process, and review of extensive documentation, no activities raising concerns with Part 1608 restrictions were identified.

The FUR Part II also included limited discussions with staff regarding Part 1608 activities. These discussions evidenced clear staff awareness of prohibited activities, and that staff were aware of no prohibited activities conducted by LSNYC employees. Further, examination of publically available materials in offices visited indicated no publications or writings raising concerns with Part 1608. For example, in the South Brooklyn office, dated periodicals and children's books were the only materials available in the public areas. In the administration and lower Manhattan office, there were numerous printed materials available from various funding or governmental sources regarding diverse government programs. In addition, copies of informational materials produced by LSNYC were also available, such as its 2012 Annual Report.

It is also noted that no sampled files indicated any involvement in prohibited Part 1608 activities.

There are no recommendations or required corrective actions.

Finding 13: Sampled transfers of LSC funds evidenced compliance with 45 CFR Part 1610.7.

LSC regulation, at 45 CFR Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds by recipients and to assure that no LSC funded entity engages 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 regulation defines restricted activities as being prohibited by the LSC Act or as Activity prohibited by or inconsistent with Section 504. *See* 45 CFR § 1610.2.

Limited testing regarding transfers of LSC funds was conducted during the FUR Part II. A limited review of LSNYC's accounting and financial records for the period May to September 2012 and a sampling of LSC funded payments evidenced compliance with 45 CFR § 1610.7.

In advance of the FUR Part II visit, LSNYC provided a list of all persons or organizations to which it had transferred LSC funds for the period of January 1, 2011 to August 31, 2013. A number of the listed payees were clearly identifiable as permissible technology vendors. Of the remaining payees, a sample of two (2) consultants were tested and were found to be vendors of

goods and services used in the normal course of business. Therefore, the payments raised no concerns with the restrictions on the transfer of LSC funds.

Brooklyn A Legal Services exercised a right to separation as a Constituent Corporation of LSNYC, effective February 15, 2013. As of the FUR Part II, the property settlement portion of the separation was not final and could result in arbitration. LSNYC management was fully aware of the requirement to ensure that no LSC funds are transferred to the disassociating entity as part of any future payments.

There are no recommendations or required corrective actions.

Finding 14: Overall, LSNYC involves private attorneys in the delivery of legal assistance to eligible clients as required by 45 CFR Part 1614. Further, the PAI allocation methodology now properly includes certain direct PAI costs. However, the DR found that LSNYC remained in non-compliance with 45 CFR § 1614.3(d)(3) regarding oversight and follow-up of PAI cases. Finally, a related group of three (3) clinics raise some compliance issues.

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

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

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

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

PAI Overview

LSNYC has an extensive and diverse PAI program. LSNYC has established a number of substantive law pro bono programs, under the guidance of individual project directors at various program offices, which utilize volunteer attorneys throughout the program's service area. Each of these projects operates differently and varies based on the project's access and ability to recruit volunteer attorneys. Also, two (2) major firms provide externs who help with projects in South Brooklyn.

Brooklyn has the most number of pro bono programs: Pension Counseling; Foreclosure Prevention; Disability/HIV Advocacy; Consumer-Student Loans; Appellate Advocacy; Wills; Unemployment Insurance Advocacy; and a Family/Domestic Violence project that is housed in the Brooklyn Family Courthouse. Pro bono programs in other offices include: a Bankruptcy Assistance Project run by the Legal Support Unit in the Central office; a Consumer-Debt Collection Defense Project in the Harlem office; and various programs in Bronx senior centers operated by the Bronx office.

There is also a project, the Civil Legal Advice and Resource Office Project ("CLARO"), sponsored outside of LSNYC, for which LSNYC serves in a supporting role. Currently, LSNYC participates in three (3) CLARO projects in Manhattan, Bronx, and Queens. The project provides advice only to *pro se* defendants with consumer debt cases in civil court. This project raises compliance concerns, as discussed below.

LSNYC is also in the process of establishing the Child Support pro bono program in conjunction with the Veterans' Project, which will assist non-custodial parents with child support issues.

Not every PAI project was reviewed, rather selected projects were assessed. Interviews were conducted with the pro bono directors of five (5) projects: Consumer-Student Loans Project; Bankruptcy Assistance Project ("BAP"); Pension Counseling; Unemployment Insurance Advocacy Project; and Appellate Advocacy Project. Sampled cases were reviewed from all projects that produce case files,³⁵ with targeted attention given to BAP due to advance indicators identified during review planning.³⁶

³⁵ There was at least one (1) group of pro bono efforts identified, the CLARO clinics, that do not result in cases maintained or reported by LSNYC.

³⁶ The advance case lists provided by the program indicated that the Bankruptcy Assistance Project had potentially high numbers of dormant cases, raising questions regarding effective case oversight and follow-up, an issue identified in the prior FR. Further, review of these advance case lists raised questions about "staff" versus "PAI" cases handled by the project.

PAI Case Oversight

The FR, at RCA-9, required, in part, for LSNYC to adopt effective oversight and follow-up for PAI cases.

The FUR Part II review of cases evidenced that LSNYC is not in compliance with 45 CFR § 1614.3(d)(3) which requires ongoing oversight of the PAI case files. As a result, there were numerous PAI case files reviewed that were dormant or that had been untimely closed. (Additional discussion regarding PAI and other dormant cases is found in the section regarding dormancy and timely case closing, *supra*.)

The number of potentially dormant cases was significant in the BAP. The BAP utilizes a number of pro bono attorneys, as well as students from St. John's Law School, as participants in this project. Since its commencement in 2006, BAP reported that it has assisted in filing over 1,000 bankruptcy petitions. Clients who contact the project meet with attorneys at bankruptcy petition workshops. The attorneys prepare the bankruptcy petitions and advise the clients how to file and represent themselves in court. If a pro bono attorney is unable to represent a client or the client delays in gathering the materials necessary to file a petition, the client is placed on a waiting list. A variety of factors, such as the size of the debts, creditor pressure, and attorney availability determine which waiting list clients may then be offered further assistance. Frequently, waiting list clients are never offered additional assistance and can remain on the waiting list indefinitely. In a few instances, LSNYC staff will prepare petitions or represent these clients, and those cases are then considered staff cases and no longer part of the PAI effort. It was noted that immediately prior to the October 2013 FUR Part II visit, a key vacancy in BAP was filled through reassignment of an experienced staff member from another office. This position specifically works with the oversight of cases, and now filled, should assist with file maintenance in this project. Nevertheless, corrective action was necessary to close dormant cases and to implement an ongoing oversight process so that BAP cases are timely closed.

In response to the above observations, LSNYC management stated that the program would immediately commence review of older PAI cases for determination regarding whether the case should be closed and also deselected from the CSR. In early December 2013, LSNYC management reported that the review of older PAI files had been completed, with the majority of such cases also being deselected from reporting to LSC. Further, LSNYC management stated that the BAP waiting list protocols are being reviewed so as to determine whether some types of time limits are appropriate to avoid lengthy listing of persons who ultimately receive no additional assistance.

FR RCA-9 also required emphasis on Part 1626 screening for PAI cases. The FUR Part II review of sampled cases evidenced that PAI cases now receive the same intake screening and documentation as staff cases, and as such, there is no longer any targeted need for LSNYC to provide special attention that cases referred to PAI attorneys include Part 1626 screening documentation. However, as FR RCA-15 regarding Part 1626 documentation remained open in the DR, FR RCA-9 also remained open in the DR, pending resolution of continued corrective action regarding Part 1626. Based on the corrective action taken, as discussed *supra*, FR RCA-15 is now closed, and therefore that element of FR RCA-9 is also closed.

The part of FR RCA-9 regarding follow-up and timely review of PAI cases remained open in the DR for additional corrective action to review and close all currently dormant PAI cases. Also, LSNYC was advised to take other actions necessary to implement a periodic review of pending PAI cases in which cases are kept open only if active and are timely closed when all activity has ended.

Program comments discussed new and detailed protocols implemented by Director of Pro Bono Services (“DPBS”) for ensuring PAI case oversight and the avoidance of PAI case dormancy. Comments noted that PAI cases are opened in the same manner as regular cases and then will be coded as PAI cases in the ACGMS when the case is placed with a private attorney, along with information about the volunteer and their firm. PAI cases will also remain assigned to a LSNYC staff member in the ACGMS with that person being responsible for follow up with the volunteer attorney, and, if needed, with the client. Comments stated that this follow up is required at a minimum at six (6) month intervals and includes: identifying any assistance that LSNYC can provide to the private attorney; ascertaining if the case is still active; and collecting case closure information if the case is not active. Also, supervisors are responsible for ensuring that proper review and oversight is happening on the cases they supervise. Comments stated that as an additional level of oversight, quarterly ACGMS reports will be generated and sent to the DPBS. These reports will identify any PAI cases with no time recorded in the previous six (6) months, which will then result in direct follow up with any assigned staff, as needed. Comments also noted that the separate program protocols regarding avoidance of dormant cases will also be followed for PAI cases.

Based on the detailed new protocols discussed by LSNYC in its comments to the DR, LSC anticipates that, if followed carefully, the issues regarding dormant PAI cases should be fully addressed. FR RCA-9 in its entirety is closed.

Community Consultation

The FR, at RCA-2, required LSNYC to ensure consultation with significant segments of the client community, private attorneys, and bar associations when developing its annual PAI plan.

LSNYC’s PAI plan is designed to ensure that LSNYC involves private attorneys in the delivery of legal assistance to eligible clients through *pro bono* mechanism, via subgrant agreements, volunteers and contracts with private attorneys and law firms. As part of the FUR Part II, LSNYC management discussed multiple methods by which the program receives feedback from clients, community groups, and the private sector about client needs and the availability of pro bono services. As part of this, the program noted that its staff members are active in a variety of local, city, and state bar associations and related committees, many of which address pro bono matters and provide regular opportunities to discuss current and future PAI planning or to showcase pro bono projects. These committees include, among others, the City Bar Association’s Pro Bono Committee, comprised of more than 20 pro bono coordinators and partners from major law firms throughout the City; the Chief Judge’s Committee on Non-Lawyers and the Justice Gap; the City Bar’s Task Force on New Lawyers in a Changing

Profession; the City Bar's Social Welfare Committee; and the State Bar's Veterans Services Committee.

To augment the above described consultation activities noted above, LSNYC created and then filled a program-wide DPBS position. The DPBS began part-time immediately following the October 2013 OCE review, and began full-time in December 2013. LSNYC plans to use the new position and resource of the DPBS to further enhance pro bono efforts. LSNYC management explained that this new position will be responsible for developing and effecting the ongoing outside consultations regarding the program's PAI plan and development of pro bono activities. The work of the DPBS will also include assessment of existing LSNYC pro bono efforts to determine effectiveness and efficiency, meetings with staff and current law firm pro bono partners, assessment of client need and of the ability to create new pro bono projects, and other research and outreach to assess other successful pro bono models and opportunities for expansion of LSNYC PAI efforts.

FR RCA-2 remained open in the DR so as to obtain additional information from LSNYC. With its comments to the DR, LSNYC was asked to provide an update regarding those actions taken, or to be taken, by the DPBS, that involve activities covered by FR RCA-2. Program comments to the DR stated that, in designing the current PAI plan, LSNYC engaged in separate conversations with individuals associated with 29 bar associations, law firms, corporations, law schools, and non-profits. Comments stated that following these consultations, in May 2014, the DPBS circulated a draft Pro Bono Plan with a request for comments to the presidents of all local bar associations, including: New York City Bar Association; Queens County Bar Association; Women's Bar Association; Association of Black Women Attorneys; Brooklyn Bar Association; New York County Lawyers Association; Puerto Rican Bar Association; Richmond County Bar Association; and the Metropolitan Black Bar Association. Comments stated that the plan has since been adopted. As a result of actions taken as reflected in program comments, FR RCA-2 is closed.

Part 1614 Fiscal Review

The FR, at RCA-1, required LSNYC to ensure that its PAI allocation methodology is implemented on actual costs regarding attorney time and associated costs. During the October 2013 FUR Part II, the program's revised methodology required by the FL for the FUR Part I was tested. The FUR Part I had identified additional related corrective actions, requiring LSNYC to: allocate travel, training, litigation, and other direct costs that are specific only to PAI on an actual basis and not percentage basis; discontinue inclusion of any donated private attorney time as part of PAI staff salary calculations; and (due to a few errant and excessive PAI time entries identified) adopt oversight protocols to check staff PAI time entries for accuracy.

During the FUR Part II, the actions taken in response to the FUR Part I corrective actions were assessed through review of fiscal records, including the PAI spreadsheet outlining the processes and formulas used for the fiscal year 2012 statement of PAI expenses. This review evidenced that LSNYC took two (2) necessary corrective actions detailed in the FUR Part I. LSNYC was found to have ceased including donated attorney time, travel, and training costs in the indirect cost computations. Further, new protocols regarding PAI time allocation were in use, as required.

However, two (2) new issues were identified during the FUR Part II regarding PAI allocation methodology. Both of these new issues were resolved while the FUR Part II team was on-site.

First, the 2012 indirect PAI cost allocation incorrectly included the direct time of several non-attorneys in the attorney direct time calculation. This error resulted in a reduction of the indirect cost factor by three-tenths (3/10) of one (1) percent. Second, the 2012 PAI formula did not include such costs as telephone and the annual audit fee, but was limited to personnel costs, space, supplies and insurance. During the FUR Part II review, these issues were identified to the LSNYC Controller, who took immediate corrective action and produced a restatement of the 2012 PAI costs. The corrected indirect cost factor was applied, and pro rata costs for communications and the annual audit were added. The restated 2012 PAI expenses were adjusted higher to \$2,161,568 or 15.03% of the total basic field grant.³⁷

LSNYC employees are required to maintain their official work/leave time recordation in the AGCMS. As applied to PAI, the ACGMS is capable of providing ongoing reports regarding time expended on PAI cases, matters or supporting activities, as well as identifying employee salary rates to be used to calculate actual costs. This capacity allows the accounting department and others to frequently monitor time entries as well as LSNYC's progress towards meeting the PAI expenditure requirement. Also, as described by LSNYC in its comments to the FUR Part I, the new LegalServer time recordation system has dedicated protocols for PAI time recordation that help correctly identify such time, and that will also avoid any mistaken excessive time charges. Further, as part of the LegalServer oversight system, supervisors review time entries on a bi-weekly basis. PAI time also receives additional review for accuracy on a quarterly basis by designated staff. In addition, under LegalServer, mistaken excessive time entries are blocked, as any single time entry cannot exceed 9.75 hours.

During the FUR Part II, a sample of 2012 PAI direct time charged by advocates under the prior automated time system was reviewed. The 2012 contemporaneous time records for two (2) attorneys from different offices was reviewed and found to have been accurately and properly traced into the payroll system.

Based on actions taken by LSNYC, and results from the FUR Part II, FR RCA-1 is closed.

Limited PAI Coding Issue

Review of case lists identified three (3) PAI cases without a client name. Review of these cases determined that they each involved general assistance by private attorneys that was not related to one (1) single client case, and a Constituent Corporation was listed as the client in the ACGMS. In these cases the program had secured private attorney assistance in a wider issue that could affect the representation of multiple current or future clients, such as assistance obtaining general records from a governmental entity. When it was discussed that these cases as presented are not currently appropriate for PAI allocation and that the ACGMS usually tracks specific client cases,

³⁷ The restatement has resulted in a higher PAI percentage than that reported in the "LSC Schedule of Revenue and Expenses" in the LSNYC Audited Financial Statement ("AFS") for fiscal year 2012. The 2012 PAI expenditures reported in the AFS were \$2,106,438.

LSNYC management decided to remove these cases from the ACGMS open client files. Further, they are no longer identified as PAI, and no time spent on these cases will be charged to PAI. It is noted, however, that should any of these cases result in outcomes that are then applied to specific LSC eligible client cases, such work might then be appropriate as PAI. At such time, LSNYC is encouraged to contact OCE for further guidance so as to ensure any such allocation to PAI is appropriate.

There are no recommendations or required corrective actions.

*Debt Collection Clinics*³⁸

LSNYC staff members participate in three (3) ongoing clinics organized by CLARO, which is part of the New York State Courts Access to Justice Program. LSNYC participates in a key support role for these pro se and limited legal advice clinics. LSNYC program attorneys train and provide legal support to private volunteer attorneys who in turn provide legal advice and services to CLARO clients.

There is no client eligibility screening for CLARO clinics and, therefore, no information as to whether the legal advice is provided to eligible or ineligible persons. Further, compliance with the prohibitions of 45 CFR Part 1626 cannot be determined. The potential issues involving an LSC recipient's participation with such unscreened clinics was not discussed with LSNYC management during the review, so as to conduct further research and consultation at LSC. After this additional post-visit assessment was completed, LSNYC management received notice of the issues from the visit team leader via email.

The CLARO clinics, with no screening for eligibility, but in particular no Part 1626 screening, raise PAI allocation and restricted activity concerns. These concerns are based on LSC OLA External Opinion #EX-2008-1001 issued March 19, 2008. This opinion found that in order to allocate to PAI support given to a clinic, the persons served by the clinics must be screened for eligibility, determined to be eligible, and considered clients of the program. In addition, this opinion stated that a program could provide support to a clinic and not charge it to PAI, only if the program could ensure that it was not subsidizing any restricted activity. The opinion also cautioned that without any citizenship/eligible alien status screening that it would be very difficult for a program to be able to ensure that its support was not subsidizing a restricted activity, specifically the provision of legal assistance to ineligible aliens.

The DR had noted that, for 2012, the final PAI allocation percentage exceeded 15%, and, removal of CLARO costs may not affect LSNYC's achievement of the overall minimum required percentage of 12.5%. However, with its comments to the DR, LSNYC was requested to calculate the 2013 PAI costs attributed towards support of CLARO, and the funds used for these costs. With its comments to the DR, LSNYC reported that the 2013 cost of CLARO was \$4,362.37 and stated that none of these costs were charged to LSC. LSNYC also reported that

³⁸ Subsequent to the FUR Part II review, LSC revised 45 CFR Part 1614. The new regulation contains updated requirements, includes an increased scope of eligible PAI activities, and specifically addresses clinics involving private attorneys. LSNYC should consult the new regulation as it determines what PAI clinic activities it can conduct in the future.

the 2013 funders of CLARO were: Single Stop USA; the New York Community Trust; the New York State Office of the Attorney General; and the Tides Foundation. LSNYC also reported that removal of the CLARO costs from the 2013 PAI calculation resulted in a total revised PAI cost amount of \$2,048,078, or 15.86% of the LSC basic field award.

Regarding continued participation in these clinics, the DR requested LSNYC to review External Opinion #EX-2008-1001 and to discuss in its comments whether and how it believes continued participation in these clinics would be able to meet the requirements set forth in that opinion. With its comments to the DR, LSNYC stated that it will not charge CLARO costs to PAI and will not charge CLARO time to LSC funds. Further, LSNYC reported that the Office of Court Administration and the Feerick Center, who collaborate in running CLARO, have agreed to allow LSNYC to screen for citizenship or immigration status and to complete required related documentation. Then, LSNYC attorneys will only consult with volunteer attorneys who are assisting clients who are 45 CFR Part 1626 eligible. Whenever an ineligible person seeks assistance from CLARO, the volunteer attorney will consult with a non-LSNYC attorney as needed. Comments added that because of the nature of the work and the population served, CLARO believes that a very small percentage of their clients will be ineligible under 45 CFR Part 1626.

Finding 15: Limited sampling of selected activities and expenditures related to 45 CFR Part 1612 (Restrictions on lobbying and certain other activities) indicated that LSNYC has clear policies and procedures to identify, approve, and fund permissible activities. There are two (2) items that remain under review.

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

45 CFR § 1612.10 addresses recordkeeping and accounting for activities funded with non-LSC funds. This section requires that: no funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in section 1612.6; recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by 1612.6; and recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to section 1612.6, together with such supporting documentation as specified by LSC.

Under 45 CFR § 1612.11, a recipient is required to adopt written policies and procedures to guide its staff in complying with this part. LSNYC has a written policy that meets the requirements of this section. Further, the review of selected Part 1612 activities evidenced that LSNYC has clear procedures to identify, approve, and fund permissible activities. It is noted that LSNYC provides periodic compliance-related training that includes 45 CFR Part 1612. The

most recent training for all staff, that included Part 1612, was conducted in six (6) sessions between October 23, 2012 and May 9, 2013.

LSNYC conducts a significant number of activities covered by 45 CFR Part 1612, as detailed in the program's semi-annual reports on legislative and rulemaking activities submitted to LSC. These reports receive ongoing oversight by OCE staff through testing of sampled activities to review the documentation and ensure compliance with the regulation. Due to this ongoing review, and the generally limited nature of a follow-up review, a comprehensive assessment of Part 1612 was not conducted as part of the FUR Part II. However, some testing did occur through review of sampled items identified through the advance review of materials. As part of the advance work conducted for the review, extensive web searching was conducted designed to identify publically available information regarding LSNYC that may be relevant to the review. Further, review of program web pages, and related organization web pages was conducted for the period since the 2010 OCE review. Through this process, numerous records discussing Part 1612 activities were identified and selected activities were traced back to the program's semi-annual reports to determine whether the activity had been appropriately reported. All tested activities were present on the reports submitted to LSC.

Through the above process, two (2) letters were identified that require further assessment by LSC: a July 15, 2010 letter from Michael D. Young, Interim Executive Director, LSNYC to Peter Kiernan, Esq., Counsel to the Governor of New York, Executive Chamber; and a November 20, 2012 letter from the Empire Justice Center, The Legal Aid Society, and South Brooklyn Legal Services ("SBLs") to Michael R. Bloomberg, Mayor, New York City and Commissioner Robert Doar, New York City Human Resources Administration. LSC is reviewing these communications and will provide its findings under separate cover.

Part 1612 Accounting

Selected Part 1612 activities were reviewed to determine how costs are tracked and charged.

Interviews with staff and review of financial records evidenced that lobbying activities are properly tracked and charged to non-LSC funding codes. Staff members conducting lobbying activities identify their time as a matter or a supporting activity with a lobbying code in the ACGMS timekeeping module. The ACGMS is then able to isolate time spent on lobbying activities. Funding code "8002" is a general holding account that all staff have been directed to use for any LSNYC legislative or administrative activity. The Controller will then, after each bi-weekly payroll, reallocate the time to an appropriate non-LSC funding account. This process was tested by sampling detailed time records for three (3) staff for the period from January through July 2013. This review found that the total time each individual recorded corresponded with the automated time and summary information.

The review of Part 1612 time recorded by staff evidenced some use of a second funding code of "8889" in early 2013. The Chief Information Officer ("CIO") stated that this second code is used for general matters reporting, and that its use for Part 1612 activity was in error. The CIO explained that when this was discovered around July 2013 that corrective programming in the automated time system was done so as to direct all Part 1612 related time to "8002". Currently,

when staff record Part 1612 related time, the ACGMS directs them to a dedicated input page that is locked to funding code "8002". This change was complimented with dedicated staff training, and related management follow-up, so that staff properly identify time that must be reported as Part 1612. Although human error is always possible in failing to identify or record time as legislative or administrative advocacy, under the revised system, the use of an incorrect funding code for these activities will no longer occur when staff properly identify Part 1612 time.³⁹

In addition to the above testing, a review of time records was conducted for the two (2) individuals identified in the LSNYC 2011 990 as engaged in lobbying activities. This review indicated that the Executive Director and the Communications Assistant spent 10% and 25% of their time, respectively, on lobbying activities and their time was paid with non-LSC funds. The cost of time for the Executive Director was \$17,000 and the cost of time for the Communications Assistant was \$13,783, with these amounts paid by one (1) or more of the following: Single Stop USA, IOLA General Fund, and NYC OCA Judiciary Civil Legal Services Fund in New York.

The Wright Group

Program records disclosed that LSNYC also paid \$69,000 in 2011 for lobbying activities conducted by a consultant firm, The Wright Group. LSNYC financial records evidenced that this payment to The Wright Group was funded by non-LSC IOLA general funds. The contracts with The Wright Group for 2011, 2012, and 2013 were reviewed and they lacked specificity regarding the contracted services. LSNYC management stated that these contract services all relate to fundraising. The DR recommended that any future contracts with The Wright Group contain additional detail regarding the services to be provided, and specifically detail that these contracts involve fundraising activities. Program comments to the DR stated that LSNYC will adopt these recommended changes in future contracts with The Wright Group.

Finding 16: Multiple regulatory areas assessed as part of standard case review evidenced compliance with the noted requirements and restrictions.

The following items, reviewed as part of the standard case review process, were not subject to corrective action from the 2010 CSR/CMS review: 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1613 (Restrictions on legal assistance with respect to criminal proceedings); 45 CFR Part 1615 (Actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing); 42 USC 2996f § 1007 (a) (8) (Abortion); 42 USC 2996f § 1007 (a) (9) (School desegregation litigation); and 42 USC 2996f §

³⁹ The CIO explained that a convenience feature of the automated time recordation is the automatic duplication of the most recently used funding code for the next blank generated time slip, as multiple entries by a single staff member may occur for the same funding code. It was this feature that previously led to incorrect coding of Part 1612 time to "8889."

1007 (a) (10) (Military selective service act or desertion). However, sampled cases were assessed regarding compliance with the above regulatory or LSC Act requirements.

One (1) of the above is an affirmative requirement that applies to all acceptable cases – priorities in the use of resources. All sampled cases complied with the requirement that accepted cases fit within the program’s priorities. Another of the above, client identity and statement of facts is an affirmative requirement in certain cases. All sampled cases that required such a statement contained the document. The remaining requirements listed above involve restrictions on the type of cases that can be handled by a recipient. No sampled case involved any such prohibited activity or subject.

There are no recommendations or required corrective actions.

Finding 17: LSNYC obtains quarterly certifications from part-time attorneys as required by 45 CFR § 1635.3(d).

The FR, at RCA-24, required LSNYC to adopt protocols to make sure that part-time casehandlers timely submit quarterly certifications. New protocols were discussed and adopted during the prior visit in 2010, which the program then implemented.

Recent results of these corrective action efforts were tested for two (2) periods of 2013. At the time of the FUR Part II LSNYC had 24 part-time attorneys. For the most recent two (2) quarterly periods, all of these part-time attorneys had submitted the required certifications. Based on actions taken by LSNYC and results of the FUR Part II review, FR RCA-24 is closed.

There are no recommendations or required corrective actions.

Finding 18: LSNYC meets LSC Accounting Guide requirements regarding board financial oversight. Interviews with key board members evidenced that the LSNYC Board is both knowledgeable of financial oversight responsibilities and highly engaged in financial oversight.

Financial oversight by the Board is an integral part of managing the financial health of a program. According to the LSC Accounting Guide, § 1-7 p. 6, “Each recipient's governing body has a fiduciary responsibility to the program and must establish a financial oversight committee or committees.” The financial oversight committee(s) should, at a minimum engage in the following activities: review monthly management reports with the chief financial officer, controller, and/or CPA; revise the budget and make recommendations to the full board of directors; review accounting and control policies and make recommendations for improvements; set rules and processes for complaints for both accounting and internal control practices; review regularly and make recommendations about investment policies; oversee the auditor’s activities including hiring and setting compensation; review the audited financial statements, management letter, and senior staff’s response with staff and auditor; review the annual Form 990 and provide

assurances of compliance to the full board; coordinate board training on financial matters; and act as liaison between the full board and staff on fiscal matters.

In addition, the responsibilities of a board and/or financial oversight committee may be subject to other requirements of state laws. Finally, it is critical that the financial oversight committee(s) have at least one (1) member who is a financial expert or for the board to have access to a financial expert.

During the FUR Part II visit, the Board Chair and the Audit and Budget Committee (“ABC”) Chair were interviewed by two (2) OCE staff to assess the Board’s financial oversight responsibilities. The current Board Chair and ABC Chair have been involved with the Board since 2000 and 1999, respectively. The topics and questions found in Section 1-7 of the LSC Accounting Guide were discussed with both Board representatives.

The ABC has six (6) members, one (1) of who has a Master of Business Administration in Finance. The interviews indicated that both the Board and the ABC are heavily engaged in oversight of the on-going financial operations of LSNYC. The ABC meets monthly to discuss the standard audit and budget presentation, which is then given to the full Board on a quarterly basis. The material reviewed by the ABC details the monthly financial health of the organization, and includes actual and budgeted financial information, and variance explanations for each of the following: revenues; expenses; subcontracts; funding; and other pertinent financial information such as pending government contracts.

The Board holds meetings in 10 months out of the year, with no meetings held in July or August. In addition, each LSNYC constituent component has its own Board of approximately five (5) members who have representation on the LSNYC Board.

The interviews conducted indicated that these key Board members, as well as other Board members, are both very knowledgeable of financial oversight responsibilities, and highly engaged in discharging the Board’s financial fiduciary responsibilities.

There are no recommendations or required corrective actions.

Finding 19: LSNYC accounting software, as utilized by staff, is fully capable of providing fund accounting to meet the requirements of the LSC Accounting Guide.

The LSC Accounting Guide, Part 2-1 requires a recipient to establish and maintain an accounting system to separately record grants, contracts and contributions. Further, a recipient should be able to prepare, from its accounting records, its financial statements in accordance with Generally Accepted Accounting Principles (“GAAP”), including having separate records for net assets (fund balances), revenues, support, expenses, gains, losses, and contributions based on the existence or absence of donor-imposed fund restrictions. Because LSC and many other fund providers require separate disclosure as part of the financial statements, either within the overall statement of activities or as a separate schedule, recipients must maintain a fund-based accounting system.

LSNYC has a staff of nearly 380 spread through 10 cost centers that are funded by up to 135 grants or contracts at a given time. The begin/end dates, period in force, and specific restrictions on use are unique in each grant or contract. Due to nature of the revenue stream and fund conditions and restrictions, costs are attributed in both direct charges and indirect allocations. In general, indirect allocations are made based on a LSNYC Cost Policy Statement which uses the Simplified Allocation Method available for non-profit organizations as described in OMB Circular A-122.

LSNYC uses Abila/MIP Fund Accounting software which, along with the Chart of Accounts, is fully capable of providing fund accounting that meets LSC Accounting Guide and OMB Circular A-133 requirements. The program uses the Abila/MIP payroll module for payroll accounting and distribution as well as other software modules such as for accounts payable and financial reporting. The accounting software is maintained on LSNYC's in-office servers that are regularly backed-up for off-site backup data storage. In response to a risk assessment conducted by LSNYC, the program is currently researching methods of remote mirrored service which would allow continued operations in the event of catastrophic loss of local servers, data, and software.

LSNYC also has interfaces between the ACGMS and Abila/MIP that allow for conversion and transfer of ACGMS timekeeping data directly to the Abila/MIP accounting payroll module. Continued development of the LegalServer and Abila/MIP interfaces was active at the time of the October 2013 FUR Part II, with outside consultants working to finalize the protocols and drafting written policies to document the system. The ACGMS timekeeping system is the basis for the payroll system, including integrated review of time/cost allocation by employees and supervisors. Concurrent features include employee work/leave/pay data being posted to a secure portion of the LSNYC intranet. Monthly, employees are required to review and certify the accuracy of time and funding source postings utilized for payroll purposes, which is followed by a supervisory review.

LSNYC expects the new protocols linking the ACGMS and Abila/MIP will limit the potential for recordation errors, as the interfaces between the two (2) databases allows for some single entry of data, thus eliminating the potential for error that can occur when multiple or duplicative entries are necessary. Ongoing customization of the ACGMS software also serves to support accurate funding use by restricting data selection available to different staff. For example, for any particular office, the available funding choices, appearing in a drop-down box, will be limited to funding allowable for that office's location and projects.

There are no recommendations or required corrective actions.

Finding 20: The ACGMS is capable of providing documentation of legal staff time expended on specific cases, matters and supporting activities, as required by 45 CFR § 1635.3 and the LSC Accounting Guide. Sampling of time records evidenced compliance with the requirements of 45 CFR Part 1635 as records were maintained electronically and contemporaneously by case, matter, or supporting activities.

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.

In addition, the LSC Accounting Guide, Appendix II requires each recipient to establish an adequate time-reporting system that must be able to demonstrate the number of hours worked by an employee, including overtime and compensatory time earned.

Review of the ACGMS determined that it is fully capable of meeting the requirements of 45 CFR § 1635.3. The ACGMS allows for handling of multiple cost centers and funding sources, accounting for various fund restrictions including service locations, program restrictions, or allowable expenses. Also, the AGCMS is designed with an interface to the Abila/MIP payroll system which utilizes the official time and attendance information from the AGCMS.

All LSNYC employees are currently required to keep their official time and attendance information in the AGCMS. Employees are instructed to contemporaneously enter all time for each workday, including accounting for leave and holidays. Non-exempt employees are required to seek supervisor approval for work beyond their normal required hours. Sampled timekeeping records consisting of five (5) advocates, selected from different LSNYC offices for the two (2) July 2013 pay periods, evidenced that these records were electronically and contemporaneously

kept. The time spent on each case, matter or supporting activity is recorded as required by 45 CFR §§ 1635.3(b) and (c), with no exceptions noted.

There are no recommendations or required corrective actions.

Finding 21: LSNYC should make every effort to restrict adjusting entries in the period between when the Independent Public Auditor (“IPA”) is provided a closing trial balance and when the program receives the IPA’s year-end adjusting entries.

The 2012 AFS noted that LSNYC makes numerous journal entries to reclassify expenses between programs. This was reviewed during the FUR Part I and it was concluded that the number and type of these entries were reasonable and justified. Due to the business structure of LSNYC, its multiple funding sources, and the operation of accrual accounting, it is anticipated that the program reasonably will have significant adjusting and reclassification entries during any given year.

However, the 2012 AFS also noted that adjusting entries continued after the trial balance had been provided to the IPA, and recommended that the program complete their review of charges prior to the audit. LSC concurs with this recommendation. The DR requested LSNYC to take corrective action and to limit adjusting entries between the time the IPA receives the year-end trial balance and the when the program receives the IPA’s year-end adjusting entries. In its comments to the DR, LSNYC stated that it makes very minimal journal entries after the trial balance is given to the auditors. Comments noted that reclassifications between funding sources are done prior to finalizing the trial balance given to the auditor. Comments also noted that journal entries made after the trial balance has been finalized are classified as “audit adjusting entries” and that for 2013 there was only one (1) such entry. Finally, comments also stated that the most recent program audit noted that the number of reclassification entries had been reduced for 2013. Based on program comments, this corrective action is closed.

There are no recommendations or further required corrective actions.

Finding 22: LSNYC has appropriate formal written policies for use of the corporate credit cards and the resulting payments. Sampled credit card disbursements evidenced that payments have adequate supporting documentation and appropriate approvals.

Cash disbursements includes any cash outflow or payment of money to settle obligations such as operating expenses, during a particular period, in order to carry out business activities. LSC’s accounting guidelines focus on a variety of ways disbursement transactions are processed utilizing today’s current technology. In addition to traditional checks, other methods include: automatic and recurring bank withdrawals; telephone transfers; online bill pay options; internet/web-based initiated transactions; wire transfers (such as inter account transfers); and credit/debit card payments.

Regardless of the method used, LSC’s guidelines require that a program establish: the allowable disbursement methods; required documentation to accompany the disbursements; who is authorized

to initiate disbursements; and which independent employee(s) are responsible for review of supporting documentation. Additionally, independent, authorized signors must log into the program's bank account(s) on a regular basis to review the disbursements used to withdraw cash. When disbursements (except payroll) are presented to authorized signors for review, they must include the supporting vouchers and invoices; and there must be appropriate controls to ensure that payments are made only for allowable items of costs, as defined by the terms of respective contracts and grants.

Written accounting policies and procedures must be established to describe the accounting system and ensure that similar transactions are processed consistently. Also, appropriate systems for filing checks must be in place for check copies, non-check disbursements, and supporting documents. Supporting documents must be marked 'paid' or otherwise canceled to prevent duplicate payment. *See* LSC Accounting Guide, App. VII § G nos.2-7.

LSNYC uses individual credit cards issued by Chase MasterCard. Prior to issuance, an employee's supervisor must place a request to the Program Administrator indicating the card purpose as one (1) of the following: commercial use only; travel and entertainment use only; or both. Individual cardholder agreements must also be completed and signed. Monthly, limits are raised or lowered based on need as determined by the accounting department.

As set forth in LSNYC policy, and as confirmed by staff, the credit card payment process begins with an individual cardholder submitting required supervisor-approved purchase documentation to the Accounts Payable Department ("APD") by the 28th of each month. The APD reviews the individual submitted documentation against on-line individual credit card transactions statements and inputs the funding source code, expense code, and description for posting to the general ledger. If discrepancies exist, individual cardholders are engaged to reach resolution. Physical credit card statements are received by the APD and are acknowledged with an APD date received stamp. A consolidated scheduled payment on behalf of all cardholders is paid by LSNYC at the end of each billing cycle.

During the onsite review, 11 credit card transactions were sampled for the months of May, June, and July 2012. All transactions were sampled from the check register and traced to the credit card statements. Additionally, credit card payments were traced to the corresponding credit card statements and bank statements. The supporting documentation sampled contained appropriate approvals by a supervisor and all necessary documentation to evidence that the goods or services were received and payments were made timely. The review noted some delays by the APD regarding review and processing of credit card documentation during the period of May 13 to June 25, 2013. These delays were a direct result of decreased staffing due to a union strike, did not continue after the strike ended, and raise no broader concerns.

The review identified some recommendations. It is recommended that LSNYC adopt the following protocols to enhance the credit card process: (1) credit card statements should be initialed by the receiver along with the APD date stamp; (2) credit card submission request forms should consistently include both the printed name of the submitter along with the date and signature; (3) the purpose for each charge should be included by the APD if not clearly understandable to others outside of the department; and (4) paid supporting documentation should be marked 'paid' to

prevent duplicate payments. Program comments to the DR stated that LSNYC concurs with these recommendations and that additional training and instruction will be given to staff to implement the enhanced procedures. Comments also stated that the new procedures will be monitored periodically to ensure that they are being followed.

There are no further recommendations or required corrective actions.

Finding 23: LSNYC payroll procedures are consistent with the LSC Accounting Guide as they maintain adequate segregation of duties and supporting documentation of payments, reviews and approvals. However, the LSNYC Personnel Policy Manual should be updated as it does not reflect all current procedures and processes related to accounting.

The LSC Accounting Guide, Appendix VII Accounting Procedures and Internal Control Checklist B. Personnel and Payroll provides guidance to programs for personnel and payroll functions. The LSC Accounting Guide § 3.5.5(a) requires that payroll records should list all payments to employees by name, check number, gross pay, withholdings, and net pay. An attendance record or time record shall be maintained for each employee and shall be approved by the employee's supervisor. Each employee shall have a payroll/personnel file which includes, among other things, documentation concerning appointments, position reclassifications, salary information, evaluations, promotions, and terminations. Further, § 3.5.5(b) addresses payroll payments and requires that salary and wage rates should be approved in writing by an authorized individual and adjustments to payroll disbursements should be approved by an authorized individual independent of payroll preparation. Payrolls should be disbursed from an imprest bank account restricted for that purpose. Further, deposits to the payroll account should be controlled by an authorizing procedure which prevents duplicate deposits and over-deposits.

LSNYC utilizes the Director of Human Resources & Diversity ("DHRD") position to establish segregation of duties within the personnel and payroll functions. All hires must be approved for budgetary purposes and cleared by Human Resources before being entered into the payroll system. Upon hire, the DHRD is responsible for obtaining required employment documents, including IRS Forms W-4, Employment Eligibility Form I-9, other LSNYC employment documents, direct deposit authorization, and providing the collective bargaining agreement.

All payroll changes (hire, probation, promotion, pay change and termination) must be submitted by management on a standard Personnel Action Change Form, initiated by the employee's supervising manager and then approved by the DHRD prior to being routed to the accounting department.

LSNYC has a Personnel Policy Manual ("PPM") that discusses hiring and selection policies, the relationship with the Collective Bargaining Agreement, restrictions on outside practice of law, and other appropriate matters. The PPM was outdated in some details. The PPM contains various addenda through 2007; however, it still references a Human Resources Administrator position which no longer exists. The Human Resources Administrator position was rolled into the current expanded position of DHRD. Also, the PPM does not reference currently required employment documents such as the Form I-9, Employment Eligibility Verification. Finally, the

LSNYC Accounting Policy and Procedures Manual (“APPM”), Section 5200-Human Resources discusses in substantial detail the human resources functions and responsibilities relative to staffing, from hire to termination, defining personnel actions beyond those mentioned in the PPM. Due to this, the DR recommended that LSNYC update those sections of the PPM so that the policies and procedures of the APPM and the PPM are consistent. The DR also noted that the DHRD was already working on an update of the program’s PPM, at the time of the FUR Part II. Program comments to the DR confirmed that LSNYC is undergoing a comprehensive review of the PPM and that the program will ensure that its policies and procedures are consistent with the APPM.

The APPM specifies that salary advances are not allowed under any circumstances.

There are no required corrective actions.

Finding 24: LSNYC took full corrective action to improve the segregation of duties regarding wire transfers of cash.

The FUR Part I required additional segregation of duties regarding wire transfers of money. Specifically, LSNYC was required to have an employee independent of the accounting function approve wire transfers.

After the FUR Part I, LSNYC management assigned the DHRD as the independent reviewer and signer for wire transfers so as to strengthen the fiscal segregation of duties. The FUR Part II confirmed this individual, as assigned, has been approving the bi-monthly wire transfers of funds, comprised of expense reimbursements, to the program’s field offices. The DHRD stated that before she approves and releasing a wire transfer, she reviews the on-line banking records and compares the electronic wire transfer to the paper back-up.

Based on actions taken by LSNYC and results of the FUR Part II review, this RCA from FUR Part I is closed.

There are no recommendations or required corrective actions.

Finding 25: Limited sampling of bank reconciliations evidenced that LSNYC follows its bank reconciliation policy and performs timely and adequate reconciliations.

The LSC Accounting Guide, Appendix VII, Section I, Bank Reconciliation Procedures provides guidance to programs regarding bank reconciliations. The LSC Accounting Guide discusses the need for monthly bank account reconciliations and that related procedures consider the following: determination of whether the reconciliation agreed to the bank statement; determination of whether the bank reconciliation agreed to the list of outstanding checks; determination of whether bank statements reconcile with the respective general ledger cash account; whether the preparer’s and reviewer’s initials were on the reconciliation documents; and lastly, whether the reconciliation was done in a timely fashion by checking for the date. Program

procedures should also direct that bank statements be delivered unopened directly to the person preparing the reconciliation, and that a program's fiscal manager review and initial completed bank reconciliations.

The 2010 CSR/CMS FR indicated that several bank reconciliations were not performed timely, but it did not include any related corrective action. Bank reconciliations were tested during the FUR Part I and no exceptions were noted in the review of two (2) accounts. As part of the FUR Part II, this was further tested, through review of bank reconciliations for three (3) significant accounts (the General Operating Account, Payable Account, and the Payroll Account). The General Operating and Payable Accounts both house LSC funds. Each account was tested for three (3) months: May, June, and July of 2013.

As described in the program's bank reconciliation policy, since 2009, the senior accountant downloads the bank statements and saves the information to a shared drive. The accounting assistant then obtains the information from this drive to start the reconciliation process.

The limited testing described above evidenced that LSNYC is following its policy and performs reconciliations in a timely manner. A review of the reconciliation materials for the Payable Account with JP Morgan Chase Bank, NA) for the three (3) months tested evidenced that all three (3) reconciliations agreed with the bank statement, the list of outstanding checks, and to the GL account. Further, these reconciliations showed the signature and date of both the preparer and reviewer. A review of the reconciliation materials for the Payroll Account for the three (3) months tested also showed no exceptions.

The review of the supporting documentation for the reconciliation of the General Operating Account for the three (3) months tested evidenced the following. Both the June and July 2013 reconciliations showed the dates and signatures of the preparer and reviewer, and the reconciliations agreed with the bank statement and the list of outstanding checks. The June 2013 reconciliation agreed with the GL account, with the July 2013 reconciliation having a variance of \$6,706.10 from the GL account. This variance cleared on August 16, 2013 when a transaction for the same amount was posted. The May 2013 reconciliation agreed with the bank statement, the list of outstanding checks, and to the GL account. However, this reconciliation was slightly delayed and contained the reviewer signature and date, but only had the preparer's signature with no date. Staff stated that these exceptions resulted from a union strike during a six (6) week period in May and June of 2013. Once the strike ended, the fiscal department worked to bring reconciliations and other processes up to date. This occurrence was extraordinary, does not reflect on the standard reconciliation process, and raises no wider concern.

There are no recommendations or required corrective actions.

Finding 26: The review identified \$1,000 charged to LSC contrary to the requirements of 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay non-mandatory membership fees or dues to any private or nonprofit organization. LSNYC has adopted protocols, which they further refined after the review, so as to avoid such payments in the future.

45 CFR § 1627.4 requires that 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. However, LSC funds may be used for the payment of membership fees or dues mandated by a government organization to engage in a profession. LSC Program Letter 12-2 (April 2, 2012) also reminded recipients of these requirements.

The Federal Register /Vol. 62, No. 76 defines “dues” as payments for membership or to acquire voting or participatory rights in an organization. This definition does not include payments for training sessions, goods, research materials and other such services, for which LSC funds may be used, provided the expenditures are made in accordance with applicable regulations, including 45 CFR Part 1630.

A review of LSNYC accounting records and detailed LSC general ledger (limited to LSC basic funds) for the calendar year ending December 31, 2012, disclosed some errors regarding certain expenses charged to LSC funds in the Membership Fees account, #562500. While most payments were for membership fees related to New York State, County or City Bar memberships, or were registrations to practice before a court, and were allowable under 45 CFR § 1627.4 (b), other expenditures were allowable but incorrectly identified as membership fees under Chart of Accounts code #562500. Some involved allowable expenses for on-line data access or services while others involved payment for bonding of process servers which should have been recorded under insurance. These payments were shared with LSNYC so that the program could direct proper coding of such expenses.

More critically, there were five (5) payments identified totaling \$1,000 and made with LSC funds, that were not allowable under 45 CFR § 1627.4. These involved non-mandatory membership fees or dues: \$100 for NLADA dues and training; \$750 to the Staten Island Not for Profit Association; and \$150 to The New York Immigration Coalition (comprised of three (3) separate payments of \$50). During the review, LSNYC was notified of the need to take corrective action to re-classify these payments so as to fund them with non-LSC funds. Immediately following the review, a total of 10 adjusting entries were made to credit the LSC fund for a total of \$1,000 and charge these costs to the IOLA General account, effective October 31, 2013. A report showing the posted general ledger transactions was provided as documentary evidence of the changes.

Further, post-visit communications from LSNYC management stated that the program has been very aware of the prohibition against charging membership fees to LSC, but that due to the above mistakes, additional attention to this category of expenses is being given so as to not have such costs allocated to LSC. In addition to discussions held with the relevant staff, the Accounts Payable system has been modified to create an alert if any future membership cost is allocated to LSC. Based on the above described program actions, the DR required no further corrective

action and there were no recommendations. However, program comments to the DR noted that during a subsequent LSC Office of Inspector General (“OIG”) visit to LSNYC, that the OIG found six (6) additional instances of improper charges of membership fees, in the total amount of \$1,320. Program comments stated that the amount of \$1,320 was reclassified to another funding source. Program comments also discussed how the discovery of these additional errors identified a problem with the corrective action system it adopted in response to the FUR Part II finding and, that in response, LSNYC further modified its accounting system to flag vendors associated with membership fees (such as the New York State Bar Association). Comments explained that because each vendor has multiple codes (with different ones for each of the LSNYC local offices) LSNYC needed to provide multiple flags for each vendor, which had not been done initially. Comments noted that LSNYC was in the process of implementing these changes and further that the program has reinforced the need for more careful attention to this matter with the relevant staff both at the field and central office level. Finally, comments stated that LSNYC will institute an additional level of semi-annual review of the general ledger by the Controller. OCE appreciates the additional information above, and the description of the additional corrective action steps implemented.

Finding 27: LSNYC engages in extensive fundraising activities and receives many public and private donations, grants and contracts. A corrective action identified during the review, regarding proper notice under 45 CFR § 1610.5, was promptly undertaken by LSNYC.

LSC regulation, 45 CFR § 1610.5, requires that no recipient may accept funds of \$250 or more from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds. Guidance to the regulation directs that generally notification should be provided before the recipient accepts the funds. However, for unsolicited donations where advance notice is not feasible, notice should be given in the recipient’s letter acknowledging the contribution.

LSNYC is funded by over 135 grants or contracts at any given time. Under the direction of the Director of Development the program also conducts several fundraising events and activities during the year as well as maintaining an on-line donation program. A limited sampling of donor response letters found that some letters contained no required notification, and other letters contained an incomplete notification, under 45 CFR § 1610.5.

This was shared with LSNYC management during the review, and LSNYC management agreed to take immediate corrective action. To assist in this effort, OCE provided a sample letter containing adequate Part 1610 notification language. Subsequently, LSNYC provided a copy of a new standard draft notification letter for both funders and individual contributors. OCE noted that this letter met the notification requirements, and LSNYC then confirmed that it had implemented the new letter as standard correspondence as of early December 2013.

Although at the time of the October 2013 review, LSNYC was not in compliance with 45 CFR § 1610.5, based on actions taken since that time, no further corrective action is required.

The DR recommended that LSNYC adopt a simply policy reflecting the 45 CFR § 1610.5 notification requirements, and directing that the standard language be used. Comments to the DR stated that LSNYC has adopted standard language regarding the 45 CFR § 1610.5 notification requirements and has directed relevant staff that this standard language be used for all funding sources.

There are no further required corrective actions.

Finding 28: The program has completed the update of its Accounting Policy and Procedure Manual (“APPM”) that was formally adopted by the Board in December 2013.

Recipients are required to establish and maintain adequate accounting records and fiscal control procedures. Each recipient's governing body has a fiduciary responsibility to the program and is responsible for reviewing and approving accounting and control policies and making recommendations for changes and improvements. LSC promulgates standards and regulations that govern recipients' use of Corporation funds. These standards appear in LSC Grant Assurances, the LSC Accounting Guide and in 45 CFR § 1600 et seq. As a condition on their grants, recipients are required to adopt accounting policies and procedures that meet the requirements of these regulations, and to modify those policies and procedures as necessary when any of the regulations are amended or new regulations are issued.

The LSC Accounting Guide requires each recipient to develop a written accounting manual that describes the specific procedures to be followed by the recipient in complying with the LSC Fundamental Criteria. The LSC Fundamental Criteria is a listing of the elements of an adequate accounting and financial reporting system.

The FR, in RCA-3, required LSNYC to update its accounting manual. Due to LSNYC upper management staff changes, this update was not completed before the August 2012 FUR Part I. The FUR Part I again required the manual's updating, and also requested that a draft be submitted to OCE by April 1, 2013 for review. LSNYC met the April 1, 2013 deadline, and OCE staff provided recommendations and required amendments. LSNYC produced an updated draft that was then reviewed as part of the FUR Part II. Factors used in assessing the draft APPM included the LSC Accounting Guide, regulations, and GAAP. The results of the assessment were shared with the LSNYC Controller during the review, with follow-up feedback provided subsequent to the review. The feedback included several recommendations⁴⁰ and four (4) required amendments discussed below.

⁴⁰ October 2013 suggestions regarding the draft APPM included: adding detail regarding leases to the section involving leasehold improvements; stating how often the surprise counts of the petty cash fund will occur (i.e. monthly, semi-annually, etc.); including, as part of bank reconciliations, mention of a voided check log with defaced checks; adding to the section on bank reconciliations whether or not actual bank statements are received, the responsible employee, and where the statements are housed; adding whether and what approval is required for the write-down of assets; stating the location of the server used for storage of financial records; stating where the LSNYC Board has documented the Audit and Budget Committee duties; and clarifying certain signature approvals in the section regarding electronic transfer payments.

The APPM draft available during the October 2013 FUR Part II review had appropriately incorporated a combination of fiscal policies and procedures that adequately defined most internal controls and significant fiscal processes needed to meet the requirements of LSC Grant Assurances, regulations, the LSC Accounting Guide, and GAAP. However, the FUR Part II identified four (4) areas that required amendment so as to include more detail:

- A. 45 CFR § 1609.4 requires that attorneys' fees received by a recipient supported with LSC funds shall be allocated to the recipient's LSC grant in the same proportion that Corporation funds were expended. It is also required that attorneys' fees be recorded during the accounting period in which the money from the fee award is actually received. LSNYC needed to include in the APPM procedures regarding the above requirements. In addition, additional cross-references regarding attorneys' fees were provided to LSNYC, including that the attorneys' fees section should include a reference to 45 CFR Part 1600 that also mentions attorneys' fees. *See* LSC Accounting Guide, § 2-2.6, 45 CFR Part 1609, and Program Letter 10-1 (February 18, 2010);⁴¹
- B. 45 CFR § 1612.10 requires that no funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6. Also, LSC requires that recipients maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6. LSNYC needed to include in the APPM procedures regarding the above requirements. *See* 45 CFR Part 1612. *See also* Program Letter 12-1 (March 21, 2012);
- C. 45 CFR Part 1614 allows that non-LSC funds be used to achieve the 12.5% PAI requirement. LSNYC needed to include this concept in the APPM. *See* LSC Accounting Guide, § 2-3.4 and 45 CFR Part 1614; and
- D. The methodology regarding what portion of the audit fee is attributable to the PAI schedule needed to be described. The policy should note that this allocation will use the PAI indirect cost percentage. Further, the method used and the amount allocated should be detailed in the audited financial statements.

As part of the post-visit follow-through, LSNYC was asked to take corrective action regarding the above. A final APPM was provided by LSNYC by email dated December 12, 2013, as approved by the LSNYC Board in a meeting on December 10, 2013. A review of the final APPM evidenced that three (3) of the above areas were satisfactorily addressed. Items C & D above were fully included in the final version. Also, the additional requirements of Item A were sufficiently added, with a small omission in that no reference to the attorneys' fees authority in 45 CFR Part 1600 appears to have been included. Regarding Item B, OCE could not find where such language was added. With its comments to the DR, LSNYC was requested to clarify whether, and where, the details in Item B regarding 45 CFR § 1612.6 were located in the APPM.

⁴¹ As the FUR Part II was limited in scope, this report's discussion regarding attorneys' fees involved the need for a proper and complete *policy* to be included in the program's APPM. In contrast, the OIG's subsequent 2014 Selected Internal Controls audit of LSNYC conducted testing of the program's attorneys' fees *practices*. As evidenced by OIG Final Report AU-15-01, issued in October 2014, the OIG found that LSNYC had failed to properly allocate certain attorneys' fees to the LSC fund.

Program comments to the DR expressed appreciation of this omission being brought to their attention, noted that these requirements had been erroneously omitted from the APPM, and stated that this requirement has been now added to the APPM. LSNYC also subsequently provided a copy of a revised APPM. These requirements are now included in the APPM in section 5380 – *Lobbying Policies and Restriction*.

The FUR Part I also required LSNYC to adopt a policy establishing the system for regular reviews and updates of the APPM that required updating at least every three (3) to five (5) years and when significant changes occur. In response, LSNYC management noted the Board's Audit and Budget Committee adopted a three (3) year period for review of the manual.

It is noted that the LSNYC APPM is supplemented by LSNYC Policy Statements and a Collective Bargaining Agreement. The APPM also includes, as Appendix B, a listing of LSC regulations with internet links to the individual regulations. It is also noted that LSNYC is currently updating its Personnel Policy Manual, as discussed *supra*.

IV. RECOMMENDATIONS⁴²

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

- A. As part of the intake-related improvement and staff training, provide targeted attention to attorneys or other staff who may conduct infrequent or off-site intake, such as clinic or outreach intake, and/or who may conduct intake by themselves or otherwise lack ongoing or frequent supervision regarding their intake screening process (Finding 2);

Program comments to the DR stated that all staff, including those attorneys and other staff who infrequently conduct intake, were trained as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. Comments added that conversations that reinforce the training are held when staff members who infrequently conduct intake are asked to do so.

- B. Adopt a group eligibility form that assists staff in recording more detail regarding the organization's income, income prospects, assets, and where relevant, obligations (Finding 3);

Program comments to the DR stated that, in consultation with LSC, LSYNC has adopted a group eligibility form to assist staff in screening groups for LSC eligibility. Comments also noted that group cases are rare with the result that staff may not be familiar with the eligibility guidelines. Due to this, group case acceptance requires review and approval from an office's Project Director.

- C. Implement a policy and procedures that restrict the development or alteration of any basic program forms, including intake, case closing, and retainer, except with the involvement and express approval of the central administrative office (Finding 2);

Program comments to the DR discussed how LSNYC adopted this recommendation and that staff have been instructed to discontinue use of all intake forms except the official form available in the computer central drive. Further, staff members were instructed to not develop their own forms and to only access the intake form from a central administrative folder so as to avoid accidental alterations that could occur when saving the form in multiple locations.

- D. Review the reason(s) for the high numbers of files listing no assets, and review whether staff are recording small amounts of assets. To further train staff, as needed, if any action is warranted (Finding 2);

Program comments to the DR indicated that LSYNC acted upon this recommendation and reviewed files with no assets. Comments noted that a number of these cases have

⁴² Items appearing as "Recommendations" 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 as "Required Corrective Actions" must be addressed by the program, and will be enforced by LSC.

clients who are receiving a form of public assistance that has an asset limit less than the LSNYC Board approved maximum, and therefore, under the LSNYC policy, there is no requirement to ask asset specific question. Comments also noted that LSNYC has taken a number of steps to ensure that staff understand the asset eligibility guidelines and properly screen clients. These steps include covering asset screening as part of the mandatory Intake and Eligibility Trainings conducted in January/February 2014, and adding clarifications to the ACGMS asset section to provide further guidance to staff.

- E. Consider adoption of alternate citizenship attestation and retainer forms for use with clients who are children or other incompetent individuals so that these documents properly reflect that the attestation and agreements refer to the client and not to their agent or guardian who signs on their behalf. Further, LSNYC can consult OLA Advisory Opinion #AO-2013-005 that provides guidance regarding citizenship attestation by minors (Finding 5);

Program comments to the DR stated that LSNYC will adopt an alternative citizenship attestation and save it on the central folder with the other program forms.

- F. Adopt standard open case testing for potential dormancy through generation of reports that identify any case without a time charge for a chosen period (Finding 8);

Program comments to the DR stated that LSNYC plans to set up the ACGMS to automatically and regularly generate a list of cases, by office, with no time charges in the previous 90 days. These lists will be provided to office management for review and follow-up.

- G. Include additional detail in any future contracts with The Wright Group to specify the services as fundraising (Finding 15);

Program comments to the DR stated that LSNYC will adopt these recommended changes in future contracts with The Wright Group.

- H. Enhance the credit card process as follows: (1) credit card statements should be initialed by the receiver along with the APD date stamp; (2) credit card submission request forms should consistently include the printed name along with the date and signature; (3) receipts purpose should be included by the APD if not clearly understandable to others outside of the department; and (4) paid supporting documentation should be marked 'paid' to prevent duplicate payments (Finding 22);

Program comments to the DR stated that LSNYC concurs with these recommendations and that additional training and instruction will be given to staff to implement the enhanced procedures. Comments also stated that the new procedures will be monitored periodically to ensure that they are followed.

- I. Update those sections of the Personnel Policies Manual ("PPM") so that the policies and procedures of the Accounting Policy and Procedures Manual ("APPM") and the PPM are consistent (Finding 23); and

Program comments to the DR stated that LSNYC is undergoing a comprehensive review of the Personnel Policies Manual and will ensure that the policies and procedures are consistent with the APPM.

- J. Adopt a policy reflecting the 45 CFR § 1610.5 notification requirements, and directing that the standard language be used for all funding sources. (Finding 27)

Program comments to the DR stated that LSNYC has adopted standard language regarding the 45 CFR § 1610.5 notification requirements and has directed relevant staff that this standard language be used for all funding sources.

V. REQUIRED CORRECTIVE ACTIONS⁴³

Consistent with the findings of this report, LSNYC is required to take the following corrective action:

1. Adopt and implement a uniform definition of "household" (Finding 2);

Program comments to the DR stated that a uniform definition of household has been adopted and that this has been added to the ACGMS intake process, and that staff members were trained on the definition as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, this RCA is closed.

2. Require all intake screening conducted outside of the ACGMS be done thoroughly and consistently. This could be accomplished by ensuring that all such intake uses only the new standard paper intake form and that applicable staff understand how to properly and consistently utilize that form (Finding 2);

Program comments to the DR stated that LSNYC has adopted a uniform paper form disseminated on December 13, 2013. The form is available on a central drive and can only be altered by designated individuals. Further, LSNYC described numerous actions taken so as to discontinue use of all other prior paper forms. Further, all staff were trained on the use of this form as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, this RCA is closed.

3. Require all applicable staff understand and properly utilize the new ACGMS protocols regarding documentation of factors for client incomes between 125-200% of FPG, as well as the types of fixed debts that are appropriate as an exception factor for such applicants (Relates to FR RCA-11 and FR RCA-19) (Finding 2);

Program comments to the DR stated that LSNYC made changes to the ACGMS to include additional instruction around income eligibility. Further, LSNYC management has clarified the types of fixed debts that are appropriate as an exception factor. Critically, all staff members were trained on the documentation of factors for applicants whose income is between 125-200% of FPG as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, FR RCA-11 and FR RCA-19 are closed.

4. Require all applicants be consistently screened for "income prospects," which can include future increases and/or decreases to income. (Relates to FR RCA-20) (Finding 2);

⁴³ An additional required corrective action, numbered as "17" appeared in the DR. However, as LSNYC correctly discussed in its comments to the DR, that issue had already been fully addressed prior to the issuance of the DR, as was also noted in the DR. As such, RCA-17 that appeared in the DR has been removed from this final report. Discussion regarding the involved topic – proper notification for donors or funders under 45 CFR § 1610.5 – appears in the text of this final report under Finding 27.

Program comments to the DR stated that the ACGMS and the new uniform paper intake uniform form both include a mandatory question about the applicant's income prospects. Further, staff members were trained on the mandatory screening of income prospects as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, FR RCA-20 is closed.

5. Require all clients be properly screened, and properly documented, for citizenship or eligible alien status as required by 45 CFR §§ 1626.6 and 1626.7, with emphasis given to outreach intake, and to any intake process that relies solely on paper forms. (Relates to FR RCA-9 and FR RCA-15) (Finding 2);

Program comments to the DR stated that the ACGMS requires that staff verify that citizenship or eligible immigrant status has been properly documented according to LSC requirements. Comments also stated that, in a December 13, 2013 email, all staff members were reminded of the requirement to assess eligibility and to verify citizenship or eligible immigrant status before providing any legal assistance. Finally, comments stated that, as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014, all staff members were trained on the screening and documentation requirements for citizenship or eligible alien status. Comments added that LSNYC has updated the ACGMS and the paper immigrant eligibility screening form based on the latest revision to 45 CFR Part 1626 and Program Letter 14-2, and noted that this form can be used at off-site locations and is available on the central drive along with the intake form. As a result of these actions FR RCA-9 and FR RCA-15 are closed.

6. Require all applicable staff to understand the program's asset policy (Finding 2);

Program comments to the DR stated that additional clarifications regarding asset screening have been added to the ACGMS intake process. Further, all staff members were trained on the program's asset policy as part of mandatory Intake and Eligibility Trainings conducted in January/February 2014. As a result of these actions, this RCA is closed.

7. Deselect from CSR reporting, and charge to a non-LSC funding source, any cases relying upon emergency intake forms that did not screen for income, assets, and/or 45 CFR Part 1626 eligibility (Finding 2);

Program comments to the DR stated that the ACGMS automatically deselects cases where there is no information concerning income or assets or where the verification of citizenship or eligible alien status has not been completed in accordance with the LSC regulations. Comments also stated that LSNYC can confirm that no emergency intake form cases lacking information on income, asset or citizenship/eligible alien status will be included in the CSR or funded by LSC. As a result of program comments, this RCA is closed.

8. Review any case opened prior to October 1, 2012, with income between 125-200% of FPG or over 200% of FPG, so that only those cases documented as eligible for LSC are funded by, or reported to, LSC (Finding 3);

Program comments to the DR stated that it has reviewed all LSC eligible or LSC funded cases, including those open prior to October 1, 2012 that were active in 2014, with income levels higher than 125% of FPG, to ensure that all cases funded by or reported to LSC have documented income eligibility. Based on program comments, this RCA is closed.

9. Not deselect from CSR reporting otherwise eligible cases for lack of a client retainer. (Relates to FR RCA-7) (Finding 6);

Program comments to the DR stated it has performed testing on the ACGMS and can confirm that otherwise eligible cases without a retainer, regardless of level of service, are not deselected from CSR reporting. Based on program comments, FR RCA-7 is closed.

10. Take action to have proper use of case closure categories “K” and “I(c)” (Relates to FR RCA 18) (Finding 8);

Program comments to the DR stated that checking for “K” and “I(c)” closings is now part of LSNYC’s regular data reporting process. Comments also stated that as of June 2014, the program has had no case closure category “K” use in 2014, and that all “I(c)” case closures were in accordance with the CSR Handbook (2008 Ed., as amended 2011). Based on the program comments, and the adopted LSNYC protocols to check case closure categories “K” and “I(c)”, FR RCA-18 is closed.

11. Review any case opened prior to October 1, 2012, both staff and PAI, to determine whether the case is appropriately open or should be closed. Close all currently dormant cases, and deselect from CSR reporting all cases that have been untimely closed (Relates to FR RCA-16) (Finding 9);

Program comments to the DR stated that since the OCE visit, LSNYC engaged in an extensive review of cases to ensure that dormant cases are closed and that in fall 2013, all offices reviewed open case lists and closed significant numbers of dormant cases. Further, comments stated that, more recently, each office has reviewed all cases opened prior to October 1, 2013 with no time in the last 90 days. Comments also noted that the ACGMS automatically calculates whether a case has been timely closed and deselects cases that appear untimely. For cases closed as an “A” or a “B”, the ACGMS looks at the date opened to calculate whether a case appears timely closed. For cases closed with “F” through “K”, the ACGMS looks at the last time slip to calculate whether a case appears timely closed. When closing the case, staff can choose to override the determination as

necessary but, if they do so, they must record a reason for the override. Comments explained that this then allows oversight over any use of the override. Comments added that the ACGMS untimely closing calculation has been communicated to all staff during the above discussed process of reviewing and closing potentially dormant cases.

The actions taken by LSNYC to review cases opened before adoption of the new ACGMS and to adopt ongoing review of cases that could become dormant has addressed the related corrective Action. As discussed below, FR RCA-16 (continued in RCA-11 of the DR) is now closed.

12. Take other effective actions to end the practice of allowing untimely case closure. (Relates to FR RCA-9 and FR RCA-16) (Finding 9);

Program comments to the DR addressed the steps taken by LSNYC so as to avoid dormant files and untimely case closure in the future. Comments stated that LSNYC has adopted several practices to end untimely case closings. Comments explained that the ACGMS will now alert staff when they have a case with no time charges entered in the previous 90 days, with the alert appearing in the case list found on a staff member's home screen, and also found in each affected case when the case is next opened. In addition, comments stated that, on a regular basis, the ACGMS also is programmed to automatically generate reports to Project Directors or their designees of cases in their office with no time entered in the last 90 days. Finally, LSNYC's supervision standards call for supervisors to hold quarterly case reviews with all staff and to review during the year all open cases.

The above described systems adopted by LSNYC, if followed carefully, should be fully effective at avoiding files becoming dormant and then subsequently being closed at a time that they would have become untimely for CSR reporting. Based on the actions taken by the program, and the ongoing systems implemented, as noted in this RCA and in other sections of this report, FR RCA-16 is closed. Also, as discussed *infra*, FR RCA-9 is also now closed.

13. Require that all relevant staff understand and use proper case deselection protocols and coding. (Relates to FR RCA-21) (Finding 9);

Program comments to the DR stated that logic regarding case deselection has been built into the ACGMS and refined in response to discussions with OCE review team members. Comments noted that the ACGMS will properly deselect cases in nearly all categories, including: cases improperly opened or lacking legal assistance; cases where citizenship of immigrant eligibility cannot be verified; cases that are untimely closed; and cases where initial eligibility has changed over time. Comments also noted that all staff members have been instructed in the criteria for deselection.

In addition, program comments stated that cases can be also deselected after closing and noted that duplicate cases are identified and deselected through case runs conducted as part of the CSR report preparation process. Comments noted that these duplicate case assessments are done by management persons familiar with the duplicate cases deselection protocol – either a Project Director or designee. Comments also discussed how LSNYC has implemented additional review mechanisms regarding case deselection. Comments stated that in addition to ensuring cases are properly included in, or excluded from, the CSR, that the regular review by management allows for targeted interventions with any staff members who may need additional instruction or clarification. Finally, comments noted that, as discussed in several other sections of this report, LSNYC has also implemented other review mechanisms to address proper case deselection.

In consideration of the above actions and ongoing program systems, FR RCA-21 is closed.

14. Maintain case records in a manner so as to avoid misplaced files or core documentation. (Relates to FR RCA-22) (Finding 11);

Program comments to the DR stated that, as noted in the report, LSNYC currently requires that core documentation related to LSC compliance, including the citizenship attestation, be uploaded into the ACGMS. Comments stated that staff members are also required to document the legal work conducted in the case notes. Comments also explained that LSNYC is moving towards a system of electronic maintenance of its files, and that currently the Staten Island office scans closed files so they do not have to keep any physical files. Comments stated that LSNYC is examining the feasibility of expanding this project to other offices. Comments explained that for each office where the entire file is not uploaded, the physical files are kept on-site for a certain period of time, and that closed cases are filed according to date closed to facilitate easy retrieval. Finally, comments explained that due to the volume of closed files, that all files cannot be maintained on-site and that each office has a storage provider who bar-codes and collects the boxes which allows for files to be retrieved within one (1) to two (2) business days.

In consideration of program comments, FR RCA-22 is closed.

15. Conduct effective oversight and periodic review of open PAI cases so that cases are kept open only if active and are timely closed when all activity has ended. (Relates to FR RCA-9) (Finding 14); and

Program comments stated that the Director of Pro Bono Services has implemented an oversight policy for PAI cases. Comments stated that PAI cases are opened in the same manner as regular cases and are then coded as PAI cases in the ACGMS when the case is placed with a private attorney, along with information about the volunteer and their firm. PAI cases also remain assigned to

a LSNYC staff member in the ACGMS with that person being responsible for follow up with the volunteer attorney, and, if needed, with the client. Comments stated that this follow up is required at a minimum at six (6) month intervals and includes: identifying any assistance that LSNYC can provide to the private attorney; ascertaining if the case is still active; and collecting case closure information if the case is not active. Comments also noted that other program protocols regarding avoidance of dormant cases will also be followed for PAI cases. Also, supervisors are responsible for ensuring that proper review and oversight is happening on the cases they supervise. Comments also stated that as an additional level of oversight, quarterly ACGMS reports will be generated and sent to the Director of Pro Bono Services that identify any PAI cases with no time recorded in the previous six (6) months, which will then result in direct follow up with any assigned staff members, as needed.

Based on the detailed new protocols discussed by LSNYC with its comments to the DR, LSC anticipates that, if followed carefully, the issues regarding dormant PAI cases should be fully addressed. FR RCA-9 is closed.

16. Limit adjusting entries between the time the independent auditor receives the year-end trial balance and the when the program receives the auditor's year-end adjusting entries (Finding 21).

Program comments to the DR stated that LSNYC makes very minimal journal entries after the trial balance is given to the auditors. Comments noted that reclassifications between funding sources are done prior to finalizing the trial balance given to the auditor. Comments also stated that journal entries made after the trial balance has been finalized are classified as "audit adjusting entries" and that for 2013 there was only one (1) such entry. Finally, comments also stated that the most recent program audit noted that the number of reclassification entries had been reduced for 2013.

Based on program comments, this corrective action item is closed.

June 27, 2014



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

Re: Legal Services NYC's response to the Draft Report after Follow-Up Review, Part II

Dear Ms. Rath:

Thank you for the report by the Office of Compliance and Enforcement ("OCE"), dated April 28, 2014, to Legal Services NYC ("LSNYC") after the Follow-Up Review ("FUR") in October 2013. LSNYC appreciates the work performed by your audit team and their thoughtful comments and suggestions, which will help us improve our systems and more effectively serve low income New Yorkers.

Our responses to Recommendations, Required Corrective Actions and Comments are attached and include steps that are already in place or will be implemented to meet the requirements detailed in the report.

It should particularly be noted that, in response to issues raised by the OCE team and in consultation with David de la Tour and Lisa Melton, we developed an Intake and Eligibility Training which was mandatory for all staff. This training was given in each borough and the central office during January and February of this year. Many of the issues discussed in our response were covered during the training and have been the subject of significant follow up. More information on the training can be found in our responses below.

Thank you again for your helpful assessment of our program. And please let us know if you need additional information or have further questions.

Sincerely,


Raun J. Rasmussen

Legal Services NYC
40 Worth Street, Suite 606, New York, NY 10013
Phone: 646-442-3600 Fax: 646-442-3601 www.LegalServicesNYC.org
Raun J. Rasmussen, Executive Director
Michael D. Young, Board Chair



June 27, 2014

Legal Services NYC's Response to the OCE Draft Report for the Follow-Up Review Part II

RECOMMENDATIONS

A. As part of the intake-related improvement and staff training, provide targeted attention to attorneys or other staff who may conduct infrequent or off-site intake, such as clinic or outreach intake, and/or who may conduct intake by themselves or otherwise lack ongoing or frequent supervision regarding their intake screening process. (Finding 2)

As noted above and described in further detail below, LSNYC conducted a mandatory Intake and Eligibility Training in January and February 2014 for all staff, including attorneys and other staff who infrequently conduct intake. This included a review of all LSC eligibility guidelines and discussion of off-site intake. Conversations that reinforce the training are held when staff members who infrequently conduct intake are asked to do so.

B. Adopt a group eligibility form that assists staff in recording more detail regarding the organization's income, income prospects, assets, and where relevant, obligations. (Finding 3)

After consultation with David de la Tour, LSNYC has adopted a group eligibility form to assist program staff in screening groups for LSC eligibility. Since group cases are rare and program staff may not be familiar with the eligibility guidelines, the case acceptance process requires review and approval from the office's Project Director.

C. Implement a policy and procedures that restrict the development or alteration of any basic program forms, including intake, case closing, and retainer, except with the involvement and express approval of the central administrative office. (Finding 2)

After the adoption of the uniform intake form, an email was circulated to all staff informing them about the form and the requirement to use it if they were not putting the information directly into LegalServer. In this email, they were also explicitly instructed to discontinue use of all other intake forms and to access the new form through the central drive. These instructions were reinforced during the Intake and Eligibility Training.

To ensure that staff have access to the most up-to-date versions of program forms, these, including the off-site intake form, are saved in a central folder and are password protected. This ensures that the forms are not accidentally altered and that the central administrative office can update the forms as needed. As noted above, staff have been expressly instructed not to develop their own forms and to access the basic program forms from the shared folder instead of saving them locally.

D. Review the reason(s) for the high numbers of files listing no assets, and review whether staff are recording small amounts of assets. To further train staff, as needed, if any action is warranted. (Finding 2 and 4)

We reviewed the files with no assets. A number of those cases have clients who are receiving a form of public assistance that has an asset limit less than our board approved maximum; thus, we are not required to ask asset specific questions under our board approved asset policy. We have also taken a number of steps to ensure that our staff understand the asset eligibility guidelines and properly screen clients. Our mandatory Intake and Eligibility Training included a section on the asset eligibility guidelines. We also added additional clarifications to the asset section of the ACGMS to provide further guidance to staff.

E. Consider adoption of alternate citizenship attestation and retainer forms for use with clients who are children or other incompetent individuals so that these documents properly reflect that the attestation and agreements refer to the client and not to their agent or guardian who signs on their behalf. Further, LSNYC can consult OLA Advisory Opinion #A0-2013-005 that provides guidance regarding citizenship attestation by minors. (Finding 5)

LSNYC will adopt alternative citizenship attestation and save it on the central folder with the other program forms.

F. Adopt standard open case testing for potential dormancy through generation of reports that identify any case without a time charge for a chosen period. (Finding 9)

LSC noted that a highly effective method for ensuring active case handling and timely case closing is use of the timekeeping system to identify any case lacking a time charge within a defined period. LSNYC will set up the ACGMS to automatically and regularly generate and send to the Project Director of each office, or her designee, for review and follow up a list of cases in that office with no time in the previous 90 days.

G. Include additional detail in any future contracts with The Wright Group to specify the services as fundraising. (Finding 15)

We will make these changes in future contracts with The Wright Group.

H. Enhance the credit card process as follows: (1) credit card statements should be initialed by the receiver along with the APD date stamp; (2) credit card submission request forms should consistently include the printed name along with the date and signature; (3) receipts purpose should be included by the APD if not clearly understandable to others outside of the department; and (4) paid supporting documentation should be marked 'paid' to prevent duplicate payments. (Finding 22)

Legal Services NYC concurs with the recommendations provided. Additional training and instruction will be given to staff to implement enhanced procedures. The new procedures will be monitored periodically to ensure compliance.

I. Update those sections of the Personnel Policies Manual ("PPM") so that the policies and procedures of the Accounting Policy and Procedures Manual ("APPM") and the PPM are consistent. (Finding 23)

LSNYC is undergoing a comprehensive review of our Personnel Policies Manual and will ensure that the policies and procedures are consistent with the Accounting Policy and Procedures Manual.

J. Adopt a policy reflecting the 45 CFR § 1610.5 notification requirements, and directing that the standard language be used for all funding sources. (Finding 27)

As noted in the related finding and corrective actions, we have adopted standard language, approved by LSC, regarding the 45 CFR § 1610.5 notification requirements. We have directed relevant staff that the standard language be used for all funding sources.

REQUIRED CORRECTIVE ACTIONS

1. Adopt and implement a uniform definition of "household." (Finding 2)

LSNYC has adopted a uniform definition of household. The definition of household has been added to the ACGMS intake process and was included in the mandatory Intake and Eligibility Training.

2. Require all intake screening conducted outside of the ACGMS be done thoroughly and consistently. This could be accomplished by ensuring that all such intake uses only the new standard paper intake form and that applicable staff understand how to properly and consistently utilize that form. (Finding 2)

LSNYC has adopted a uniform paper intake form, which was disseminated by email on December 13th 2013, and trained all staff on its use during the mandatory Intake and Eligibility Training. The form is saved on a central drive and can only be altered by designated individuals. Staff have been instructed that use of all prior forms must be discontinued, not to save copies on their individual drives, and not to print out multiple copies in advance or to save copies in their folders in order to ensure that they are using the most recent version. Staff who enter the case information into the ACGMS have been instructed to accept only the new forms. Each office has performed checks to ensure that old forms are no longer in use, including review of files from off site locations and review of the paper forms given to designated staff to input into the ACGMS. As needed, the Project Directors or their designees have had one-on-one conversations with staff members.

3. Require all applicable staff to understand and properly utilize the new ACGMS protocols regarding documentation of factors for client incomes between 125-200% of FPG, as well as the types of fixed debts that are appropriate as an exception factor for such applicants. (Relates to FR RCA 11 and RCA-19) (Finding 2 and 3)

LSNYC trained all staff on the documentation of factors for applicant incomes between 125 – 200% of FPG during the mandatory Intake and Eligibility Training. LSNYC also made changes to the ACGMS to include additional instruction around income eligibility. LSNYC has clarified

the types of fixed debts that are appropriate as an exception factor and will communicate that to staff.

4. Require all applicants be consistently screened for "income prospects," which can include future increases and/or decreases to income. (Relates to FR RCA-20) (Finding 2)

The ACGMS and the uniform paper intake form both include a mandatory question about the applicant's income prospects. All staff have been trained on screening for "income prospects" as part of the mandatory Intake and Eligibility Training.

5. Require all clients be properly screened, and properly documented, for citizenship or eligible alien status as required by 45 CFR §§ 1626.6 and 1626.7, with emphasis given to outreach intake, and to any intake process that relies solely on paper forms. (Relates to FR RCA-9 and RCA-15) (Finding 2)

LSNYC has updated the ACGMS and our paper immigrant eligibility screening form based on the latest revision to 1626 and Program Letter 14-2. The paper immigrant eligibility screening form can be used at off-site locations and is saved on the central drive along with the intake form. The ACGMS requires that staff verify that citizenship or eligible immigrant status has been properly documented according to LSC requirements. In the email on December 13th 2013, all staff were reminded of the requirement to assess eligibility before providing any legal assistance and to verify citizenship or eligible immigrant status. In order to reinforce these instructions, during the Intake and Eligibility Training, all staff were trained on the screening and documentation requirements for citizenship or eligible alien status.

6. Require all applicable staff to understand the program's asset policy. (Findings 2 and 4)

The Intake and Eligibility Training covered the program's asset policy and the policy was distributed at that training. Further clarifications have been added to the ACGMS intake process.

7. Deselect from CSR reporting, and charge to a non-LSC funding source, any cases relying upon emergency intake forms that did not screen for income, assets, and/or 45 CFR Part 1626 eligibility. (Finding 2)

The ACGMS automatically deselects cases where there is no information concerning income or assets or where the verification of citizenship or eligible alien status has not been completed in accordance with the LSC regulations. We have confirmed that no emergency intake form cases lacking information on income, asset or citizenship or eligible alien status will be included in the CSR report or funded by LSC.

8. Review any case opened prior to October 1, 2012, with income between 125-200% of FPG or over 200% of FPG, so that only those cases documented as eligible for LSC are funded by, or reported to, LSC. (Finding 3)

LSNYC has reviewed all LSC-eligible or LSC-funded cases, including those open prior to 10/1/12, active in 2014 with income higher than 125% to ensure that all cases funded by or reported to LSC have documented income eligibility.

9. Not deselect from CSR reporting otherwise eligible cases for lack of a client retainer. (Relates to FR RCA-7) (Finding 6)

LSNYC performed testing on the ACGMS and can confirm that otherwise eligible cases without a retainer, regardless of level of service, are not deselected.

10. Instruct staff in the proper use of case closure categories "K" and "IC." (Finding 8)

Staff have been instructed in the proper use of case closure categories. So far in 2014, LSNYC has no K closings and all IC closings are in accordance with the CSR Handbook. Checking for K and IC closings is now a part of LSNYC's regular data reporting process.

11. Review any case opened prior to October 1, 2012, both staff and PAI, to determine whether the case is appropriately open or should be closed. Close all currently dormant cases, and deselect from CSR reporting all cases that have been untimely closed. (Finding 9)

Since the OCE visit, LSNYC has engaged in extensive review of our cases to ensure that all dormant cases are closed. In the fall of 2013, all offices reviewed open case lists and closed significant numbers of dormant cases. More recently, each office has reviewed all cases opened prior to October 1, 2013 with no time in the last 90 days.

The ACGMS automatically calculates whether a case has been timely closed and deselects cases that are untimely closed. For cases closed as A or B, the ACGMS looks at the date opened to calculate whether a case has been timely closed. For cases closed F - K, the ACGMS looks at the last time slip to calculate whether a case has been timely closed. When closing the case, staff can choose to override the determination if necessary. In that case, they are required to provide a reason for the override. This allows oversight over any use of the override. The untimely closing calculation has been communicated to all staff during the process of reviewing and closing potentially dormant cases, as described in the prior paragraph.

12. Take other effective actions to end the practice of allowing untimely case closure. (Relates to FR RCA-9 and RCA-16) (Finding 9)

LSNYC has adopted several practices to end the practice of untimely case closings. As an initial matter, the ACGMS alerts staff members when they have cases with no time entered in the previous 90 days. The alert is in the case list which is on the staff member's home screen and also appears when a case record is opened. Moreover, on a regular basis, the ACGMS is set up to automatically generate reports to Project Directors or their designees of all cases in their office with no time entered in the prior 90 days. LSNYC's supervision standards call for supervisors to hold quarterly case reviews with all staff and to review, in the course of a year, all open cases.

13. Require that all relevant staff understand and use proper case deselection protocols and coding. (Relates to RCA-21) (Finding 8)

LSNYC has built significant deselection logic into the closing protocols of our ACGMS. The ACGMS will automatically deselect cases that are untimely closed, cases without citizenship or eligible immigrant verification, and cases where legal assistance was not provided. After the

closing information has been entered, the ACGMS automatically calculates CSR eligibility and displays the CSR eligibility and the basis for the eligibility determination. All staff have been instructed in the criteria for deselection.

Cases can also be deselected after closing. This is done by or at the behest of the Project Director or her designee for duplicate cases (where deselection is not automatically calculated by the ACGMS). The Project Directors and any designees are all trained on deselection protocols and coding.

As noted in 10, 11 and 12 above, LSNYC has implemented additional review mechanisms to ensure that staff are properly deselecting cases.

14. Maintain case records in a manner so as to avoid misplaced files or core documentation. (Relates to RCA-22) (Finding 11)

As noted in the report, LSNYC currently requires that core documentation related to LSC compliance, including the citizenship attestation, be uploaded into the ACGMS. Staff are also required to document the legal work conducted in the case notes.

We are moving towards a system of electronic maintenance of our files. Our Staten Island office scans closed files so they do not have to keep the physical files. We are examining the feasibility of expanding this project to other offices. For each office where the entire file is not uploaded, the files are kept on-site for a certain period of time. Closed cases are filed according to the date closed to facilitate easy retrieval. Due to the volume of closed files, all files cannot be maintained on-site. Each office has a storage provider who bar-codes and collects the boxes. Files can be retrieved within 1 – 2 business days.

15. Conduct effective oversight and periodic review of open PAI cases so that cases are kept open only if active and are timely closed when all activity has ended. (Relates to RCA-9) (Finding 14)

The Director of Pro Bono Services has implemented an oversight policy for PAI cases. PAI cases are opened in the same manner as regular cases. They are coded as PAI cases in the ACGMS when the case is placed with a private attorney. Information about the volunteer with whom the case is placed and the firm at which they work is documented. PAI cases remain assigned to a staff member in the ACGMS and that individual is responsible for follow up with the volunteer attorney and, if needed, with the client. This follow up will include ascertaining if the case is still active, collecting the information needed for case closure if the case is not active, and identifying any assistance that LSNYC can provide to the private attorney. Follow up must happen at 6 month intervals, if not before. The notifications and actions described in 12 above will also apply to PAI cases and, as with all cases, supervisors are responsible for ensuring that proper review and oversight is happening on the cases they supervise. As an additional level of oversight, on a quarterly basis, the ACGMS will automatically generate and send to the Director of Pro Bono Services a report with PAI cases with no time recorded in the previous 6 months. He will follow up with the assigned staff members as needed.

16. Develop and implement policies/procedures to limit adjusting entries between the time the independent auditor receives the year-end trial balance and when the program receives the auditor's year-end adjusting entries. (Finding 21)

LSNYC makes very minimal journal entries after the trial balance is given to our auditors. Reclassifications between funding sources are done prior to finalizing the trial balance given to our auditors. Journal entries made after the trial balance has been finalized are classified as "audit adjusting entries" and for 2013 the organization required one audit adjusting entry. In addition, our most recent audit noted that the number of reclassification entries had been reduced for 2013.

17. Provide all non-LSC funding sources of \$250 or more with sufficient written notification of the prohibitions and conditions which apply to funds. (Finding 27)

The draft FUR report notes that LSNYC took sufficient corrective action on this item between the time of the FUR Part II and issuance of the draft report and that no further corrective action is required.

ADDITIONAL INFORMATION REQUESTED

1. Whether the review and correction of any cases that lacked a funding code designation in the ACGMS has been completed. (Finding 1)

This has been completed. All cases active in 2014 have a funding code designation. Our ACGMS requires that all cases be assigned a funding code upon acceptance so this problem should be resolved.

2. Whether the review and correction of any cases that did not correctly reflect LSC-eligibility has been completed. (Finding 1)

LSNYC has conducted a comprehensive review of all LSC- or CSR-eligible cases with income over 125% and assets over \$25,000 to ensure that proper LSC-eligibility is reflected in ACGMS. We have also conducted a review to ensure that all cases have recorded citizenship or an eligible alien status. As described above, if the required verification of such status is not completed, the case will be automatically deselected by the ACGMS at closing.

3. An update regarding those actions taken, or to be taken, by the DPBS, that involve consultation activities regarding the LSNYC PAI plan. Further, LSNYC is requested to include any supporting documentation that explains and/or evidences recent consultation activities. (Relates to RCA-2) (Finding 14)

In designing our PAI plan, LSNYC engaged in separate conversations with individuals associated with 29 bar associations, law firms, corporations, law schools, and non-profits. Following these consultations, in May 2014, the Director of Pro Bono Services circulated a draft Pro Bono Plan with a request for comments to the presidents of all local bar associations, specifically: the New York City Bar Association, the Queens County Bar Association, the

Women's Bar Association, the Association of Black Women Attorneys, the Brooklyn Bar Association, the New York County Lawyers Association, the Puerto Rican Bar Association, the Asian-American Bar Association of New York, the Bronx County Bar Association, the Richmond County Bar Association, and the Metropolitan Black Bar Association. The plan has since been adopted and is attached.

4. An update regarding any actions taken regarding instruction and enforcement of proper case deselection. (Relates to RCA-21) (Finding 8)

Logic regarding case deselection has been built into the ACGMS and refined in response to discussions with the OCE team. The ACGMS properly deselects cases in nearly all categories, including cases improperly opened or lacking legal assistance, cases where citizenship or immigrant eligibility cannot be verified, cases that are untimely closed, and cases where initial eligibility has changed over time. Duplicate cases are identified through case runs conducted in the process of preparing reports to LSC and are deselected. This is done by the Project Director or her designee, each of whom is familiar with the duplicate deselection protocol.

As noted above, LSNYC has implemented additional review mechanisms to ensure that staff are properly deselectioning cases. In addition to ensuring that cases are properly included in or excluded from the CSR report, this regular review permits targeted interventions with staff members who may need additional instruction or clarification.

5. A discussion of any actions that it believes would assist the program to reduce the incidents of misplaced cases. Discuss its plans, if any, to require full automated case storage for any office or unit cases in the future; and any other related additional information. (Relates to RCA-22) (Finding 11)

As noted above, LSNYC has introduced a requirement that core documentation pertaining to client eligibility and compliance, including the citizenship attestation, must be uploaded into the ACGMS. Our Staten Island office is piloting a project to scan case files and LSNYC is investigating the feasibility of extending that effort to the other offices. Each office has a protocol for filing closed cases, moving them to off-site storage facilities as needed, and destroying them after 7 years.

6. A calculation of the 2013 PAI costs attributed towards support of CLARO, and identification of the funds to which CLARO time was charged in 2013. (Finding 14)

In 2013, the cost of CLARO was \$4,362.37. None of this time was charged to LSC. The funders charged were: the Robin Hood Foundation; Single Stop USA; the New York Community Trust; the New York State Office of the Attorney General; and the Tides Foundation. LSNYC has recalculated the PAI costs without the CLARO costs and the total revised PAI costs were \$2,048,078, 15.86% of our LSC award.

7. A discussion of whether and how LSNYC believes that any continued participation in the CLARO clinics would be able to meet the requirements of External Opinion #EX-2008 1001. (Finding 14)

LSNYC will not charge CLARO costs to PAI and will not charge CLARO time to LSC funds. CLARO (a pro bono project run in collaboration with the Office of Court Administration and the Feerick Center) has allowed us to screen those in need of assistance about their citizenship or immigration status and to complete required documentation. LSNYC attorneys will only consult with volunteer attorneys about Part 1626-eligible clients. Because of the nature of the work and the population served, CLARO believes that a very small percentage of their clients will be ineligible. However, should an ineligible applicant seek assistance from CLARO, the volunteer attorney will consult with a non-LSNYC attorney about the case.

8. Identify whether, and where, the following requirements were included in the final version of the APPM: 45 CFR § 1612.10 requirement that no funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6, and that separate records be maintained documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6. (Finding 28)

This requirement was erroneously omitted from the APPM. It has since been added and the relevant language is attached. We appreciate OCE bringing this to our attention.

Additional Comments

Finding 26 identified \$1,000 charged to LSC for non-mandatory membership fees or dues contrary to the requirements of 45 CFR 1627.4(a). Based on corrections and assurances made by LSNYC, including the implementation of an alert system, LSC did not recommend further corrective action.

However, during the recent visit by the Office of the Inspector General, six additional instances of improper charges of membership fees, in the amount of \$1,320, were identified. This revealed a problem with the system we implemented, which we are now correcting. To prevent improper charges, we modified our accounting system to flag vendors associated with membership fees (e.g., New York State Bar Association). Because each vendor has multiple codes—different for each of our local offices—we need to provide multiple “flags” for each vendor, which we had not done originally. We are in the process of implementing those changes, have reinforced the need for more careful attention to this matter with relevant staff (both in the field and at the central office), and will institute an additional level of review of the general ledger, semi-annually, by our Controller. We will also reclassify the \$1,320 to another funding source.

Responsibility	Description
Payroll Specialist	Each pay period, using summary timesheets, posts sick leave and vacation leave amounts (i.e., hours/days) to the Accrued Annual Leave and Sick Time Worksheet on the computer system. Updates these records by recalculating the total hours/days of sick leave and vacation leave accrued to the employee.
Payroll Specialist	If sick leave or annual leave is reported where accrued time is unavailable, the Project Director and employee are advised of the condition and corrective action to be taken by the Payroll Department.
Payroll Specialist	At the end of the fiscal year, computes the total accrued vacation payable, by summarizing the accumulated leave for of each individual employee and multiplying each individual accumulated leave times the current daily pay (up to a maximum of 40 or 45 days as applicable.) Totals all the individual accrued vacation payable amounts to obtain a grand total. Document this computation into the Accrued Vacation Leave Payable Schedule.
Controller	Reviews the Accrued Vacation Leave Payable Schedule for accuracy, completeness and reasonableness. If information is determined to be accurate, complete and reasonable, signs and dates the schedule as indication of approval. If not, it is returned to the Payroll Specialist for corrections and resubmits for completion.

5380 – Lobbying Policies and Restriction

As mandated by 45 CFR 1612-Restrictions on lobbying and certain other activities Legal Services NYC has created a dedicated funding source in its time and effort system(Legal Server) to maintain a separate record documenting the expenditure of time and effort of non-LSC funds for legislative and rulemaking activities permitted.

Legal Services currently submit semi-annual reports describing the organizations legislative activities with non LSC funds together with supporting documentation.



During time and effort timesheet entry, all staff are required to state whether time was spent on Legislative and/or Administrative Advocacy (LAA). When they designate time as LAA, several questions are asked regarding work time spent:

- Activity type: Whether Matters; Supporting Activity.
- Activity code: Whether LAA City; Federal; State
- Type of LAA: Whether Meeting with Legislator or Agency Official; Meeting with Staff; Testimony; Written comments
- If Sub-Type of LAA: Lobbying support; Lobbying Activity

If there were documents associated with LAA time, staff uploads the documents to LAA folder on LSNYC network. Such documents include: Lobbying invitation letters; written testimony; written regulations comments; and/or public notices inviting regulation comment.

Preparation of LAA required reporting is handled by Andrea Zigman, Deputy Director.

5400 - Private Attorney Involvement

Effective June 20, 1984, the Legal Service Corporation (LSC) required all legal service programs to use 12.5% of the LSC Basic Field Grants to encourage the involvement of private attorneys in the delivery of legal services to the poor. This requirement is documented in the LSC's Private Attorney Involvement Regulation issued in May 1984 [Catalogue of Federal Register, Volume 45, Part 1614.]

Since LSNYC receives an annual LSC Basic Field Grant, it is obligated to meet the requirements of the PAI Regulation. Consequently, LSNYC has established a PAI Program designed to ensure compliance of this regulation.

This section describes the general policies, the activities allowed and prohibited, and the fiscal requirements of the PA Regulation as well as how LSNYC complies with them.

5410 - General Procedures

The PAI Regulation policy requirements as they apply to LSNYC are summarized as follows:

- 12.5% of LSNYC annualized basic field award must be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both pro bono and compensated mechanisms, and such funds be expended in an economical and efficient manner.
- LSNYC must apply the percentage requirement to that portion of their program related to any direct advocacy activities on behalf of eligible clients.
- LSNYC Board of Directors is responsible for the implementation of the PAI Program as well as compliance with its requirements; subject to review and evaluation by the Legal Services Corporation.

5420 - Private Attorney Involvement - Activities Allowed



2014 Pro Bono Program Plan

Legal Services NYC



1. Who We Are

Legal Services NYC (LSNYC) fights poverty and seeks justice for low-income New Yorkers. For more than 40 years, we have challenged systemic injustice and helped clients meet basic needs for housing, access to high-quality education, health care, family stability, and income and economic security. LSNYC is the largest civil legal services provider in the country, with deep roots in all of the communities we serve. Our neighborhood-based offices and outreach sites across all five boroughs help more than 60,000 New Yorkers annually. LSNYC leverages its limited resources with a range of pro bono partnerships across all of our practice areas.

2. Pro Bono Program Mission

To expand and leverage private resources to address the legal needs of low-income New Yorkers in a manner that is: (1) effective for LSNYC clients; (2) informative and meaningful for individual volunteers and partnering law firms, corporations, law schools, bar associations, and community-based organizations; and (3) efficient and sustainable for LSNYC staff.

3. Pro Bono Program Description

LSNYC operates an expansive pro bono program that engages a range of private partners on behalf of thousands of low-income New Yorkers across multiple practice areas, and in all five boroughs. Managed by a full-time Director of Pro Bono Services, the Pro Bono Services Department works with staff and pro bono partners to create and manage pro bono projects, place cases, access in-kind resources, and match individual volunteers with appropriate LSNYC offices. The Department also manages communications related to pro bono, builds and maintains relationships with private partners, and ensures that pro bono partners are adequately trained and supervised.

a. Leveraging a Range of Private Resources

Private partners include dozens of large law firms, many medium sized law firms, corporations, law schools, bar associations, and individual volunteers. LSNYC utilizes this wide range of pro bono resources in an efficient manner by: (1) co-counseling with large firms on impact cases; (2) setting up client service initiatives that deliver a pipeline of cases to firms, corporations, and sometimes bar associations; (3) using law firms for research, policy initiatives, assistance for

LSNYC as an organization, and in-kind resources; and (4) placing externs, law students, and individual volunteers for on-site pro bono assistance and occasional special outreach initiatives.

As discussed below, each of these meet LSNYC's priority legal needs.

b. Co-Counseling on Impact Litigation

LSNYC regularly co-counsels with large law firms when it brings impact litigation on behalf of low-income New Yorkers. These are especially effective pro bono relationships, because law firms utilize their resources and existing skills to provide legal research, draft papers, conduct discovery, and appear in court. LSNYC could not manage cases of this magnitude without private assistance — and could instigate additional litigation of this nature if it had additional private support.

For example:

- Paul Weiss co-counsels with LSNYC's Queens office and Catholic Migration to challenge the eviction and harassment of nearly 50 rent-regulated tenants by a notorious predatory landlord in *Centino v. Zara Realty* (N.Y. Sup. Ct. Qns Cty).
- Fried Frank co-counsels with LSNYC's Brooklyn office for an intervention into an owner's bankruptcy to prevent a predatory land lord from regaining control of a large apartment building. *In re Gordon* (E.D.N.Y. Bankr.).
- Seyfarth Shaw and LSNYC's Staten Island office brought suit against the New York City Housing Authority (NYCHA) for terminating a blind client's Section 8 rental subsidy without providing him with notice in an accessible format in *Williams v. NYCHA* (E.D.N.Y). The case settled in January, 2014, with NYCHA agreeing to change its practices across the board.
- Cleary Gottlieb and LSNYC's Brooklyn office intervened in a large multi-family foreclosure case to preserve the rights of tenants, in *Ridgewood Realty* (S.D.N.Y. Bankr.).

c. Client Service Initiatives and Case Placement

LSNYC offers a number of ongoing projects that partner law firms, corporations, and bar associations with individual clients who have discreet needs. LSNYC provides training, supervision, and technical support, while pro bono partners take the lead on the cases. Examples include:

- **SSI/SSD Appeals.** LSNYC's Manhattan office partners with Skadden and other law firms to give associates the chance to represent disabled clients at hearings before federal administrative law judges. These cases frequently result in significant disability benefits to clients who would otherwise go unrepresented.

- **Family Law Administrative Appeals.** LSNYC’s Bronx office partners with Patterson Belknap and other law firms to represent clients challenging their inclusion on the New York State Central Register for Child Abuse and Maltreatment. Victories permit clients to return to work in a variety of fields, and to foster parent and adopt children.
- **Bankruptcy Assistance Project.** LSNYC’s Bankruptcy Assistance Project (NYCBAP) partners with dozens of leading law firms to help debtors file *pro se* Chapter 7 bankruptcy petitions and help clients with contested matters. To date, more than 700 attorneys have participated, providing assistance to over 3,000 debtors. Clients are able to clear their debts and start their financial life over with a clean slate.
- **Sandy-Related Housing Repairs.** LSNYC’s Brooklyn and Queens offices partner with several large law firms to represent low income clients in “HP actions”—cases in which a client has significant repair issues in her apartment that a landlord refuses to remedy. These cases make real, significant change for clients living in unacceptable living conditions.
- **Eviction and other Housing cases.** LSNYC has long standing relationships with Debevoise and Simpson Thacher, and regularly places a range of housing cases with these firms.
- **Wills Clinics.** LSNYC’s Bronx and Brooklyn offices offer wills clinics to low-income clients. Bronx Legal Services partners with Carter Ledyard to serve elderly clients, while Brooklyn Legal Services partners with Katten to serve HIV-positive, LGBT and elderly clients.
- **Veteran Student Debt.** LSNYC helps low-income veterans who are struggling with unpaid federal student debt—usually from attending predatory, for-profit educational institutions. Pro bono advocates negotiate with debt servicers to secure fair repayment plans, consolidate, or even discharge federal student loan debt in certain circumstances.
- **Unemployment Insurance Hearings.** LSNYC partners with Brown Rudnick to represent a number of low-income clients at unemployment insurance hearings.

In addition to these initiatives, LSNYC also circulates a number of cases to law firms that could benefit from their expertise or resources, and are suitable for a one-time placement.

d. Special Projects and In-Kind Donations

LSNYC leverages other kinds of law firm resources that can be just as significant for the organization and its clients. Special projects can range from a simple research memorandum for a case, to drafting an amicus brief, or even preparing a white paper. These projects provide law firm lawyers with the chance to engage in legal writing, research, and sometimes court arguments in a capacity that is limited in scope. This kind of pro bono work assists LSNYC attorneys tremendously by bringing special expertise and relieving the load on our extremely busy advocates. These opportunities are also often appealing for pro bono attorneys who cannot commit to taking on a client or more substantial litigation.

Law firms also provide pro bono representation to LSNYC on a range of matters crucial to managing the organization. These pro bono services would otherwise cost LSNYC millions of dollars each year in fees—money that would necessarily be drawn from funds now used to provide direct services to eligible clients.

Finally, law firms and corporations provide a range of in-kind support to improve LSNYC's work. This includes producing training manuals, and providing space for trainings, meetings, and events.

e. Emeritus, Law Student, and Individual Volunteers

In addition to partnerships with law firms, corporations, and bar associations, LSNYC offers a range of volunteer opportunities to individual attorneys, law students, and others. Depending on interest and availability, LSNYC places volunteers across all of its office and practice areas. These include individual externs from several law firms: Kramer Levin provides an extern for the Housing Unit, and Weil provides an extern on Elder Law.

LSNYC hosts nearly 100 law students every summer, along with dozens of students during the school year.

LSNYC also utilizes emeritus attorneys, who bring a career's worth of legal expertise to a number of our offices.

Other individual volunteers from a variety of backgrounds who commit to spending a significant amount of time on-site at a LSNYC office similarly provide important legal, paralegal, outreach and administrative support.

f. Case Intake, Training, Placement, Supervision, and Follow-Up

Intake. LSNYC screens and conducts intake on cases that are subsequently placed with pro bono attorneys.

Training & the Learning Center. LSNYC provides thorough trainings and accompanying materials for pro bono attorneys. LSNYC has the largest Continuing Legal Education poverty law program in the country, the Learning Center. In addition to supporting pro bono attorneys, the Learning Center itself provides another method of engaging private attorneys in our work: courses are taught by experienced instructors, many of whom are themselves pro bono attorneys, law school professors and leading lawyers from the public interest bar.

Placement. Pro bono cases are placed off site with attorneys who either already have substantive expertise in the relevant area of law, or who have gone through a prerequisite training with LSNYC.

Supervision and Follow up. Experts at LSNYC provide technical support and supervision to pro bono attorneys. On-site volunteers receive ongoing oversight on all matters. Cases placed

with off-site counsel are regularly followed up on to determine if additional assistance is needed, and to determine outcomes. When cases are placed with large law firms, efforts are also made to pair more experienced pro bono advocates with new volunteers—although LSNYC still follows up and remains available to provide help as needed.

4. Pro Bono Goals for 2014

g. Increase Co-Counseling with Large Law Firms

Co-counseling on impact litigation is perhaps the single most efficient use of law firm resources. In the next year, co-counseling will be considered on all impact litigation. Where full co-counseling is not feasible, LSNYC will attempt to utilize other law firm resources to help—for example, assistance with research, discovery, and motion drafting.

h. Expand Client Service Initiatives with Law Firms, Corporations and Others

A central challenge to placing pro bono clients is determining the kind of cases that are appropriate to send to law firms, and doing the necessary ground work to make the partnership successful. The ideal candidates must consist of an area of law that it is easy to train on, that does not require extensive supervision, that can create positive impact for clients, and that is appealing to law firms.

LSNYC seeks to expand existing client service initiatives, and to launch new ones. Priority projects include:

- **Federal Student Debt.** Assistance with student debt for low-income people is a key service gap in New York City. LSNYC would like to expand a pro bono pilot initiative that targeted veterans into a much larger project providing relief to low-income individuals who are in default or otherwise behind on payments. Relief may include discharge, consolidation, rehabilitation of the debt, and/or establishing a suitable repayment plan.
- **Orders of Protection.** This project will serve low-income victims of domestic violence from across the city.
- **U-Visas,** particularly for underserved communities. LSNYC aims to collaborate with the Asian American Bar Association of New York (AABANY) to expand service to low-income Asian clients who are victims of violence.
- **Veterans Uncontested Divorce.** There is a particularly acute need for male veterans, because the limited free services available in the area are generally exclusively provided for women.
- **LGBT SSI Hearings.** Low-income LGBT clients are particularly in need of projects that are sensitive to their needs. LSNYC seeks to partner with LGBT community-based organizations to reach clients, and ensure that holistic client needs are met. Cases would then be placed with law firms.

- **Housing Repair.** LSNYC seeks to expand pro bono representation in housing repair matters by bolstering its existing program, and expanding it to additional partners.

In addition to those identified above, LSNYC will explore and respond to new client needs and pro bono opportunities as they arise. Particular areas of interest include veterans and LGBT clients.

i. Utilize Law Firm and Corporation Resources for Special Projects and In-Kind Donations

LSNYC will ramp up placement of special projects—research, briefs, and white papers—with law firms, and utilize law firms for production of training manuals associated with client service initiatives.

j. Partner with Law Schools, Bar Associations, and Community Based Organizations

LSNYC will partner with law schools, bar associations, and community based organizations to conduct outreach, address particular legal problems, connect with clients, and, on limited occasions, place cases.

k. Build Relationships and Enhance LSNYC’s Profile Among Law Firms, Corporations, Law Schools, Peer Organizations, and the Pro Bono Community

LSNYC will enhance its profile among and relationship with potential pro bono partners, including law firms, corporations, law schools, peer organizations, and the pro bono community in New York City.

- **Law firm contact.** LSNYC will hold dozens of meetings at law firms with pro bono counsel and others.
- **Committees, conferences, and events.** LSNYC will participate in key pro bono committees and conferences, including the Pro bono Institute Conference, the Equal Justice Conference, the State Bar Association’s pro bono events, and the New York City Bar Association’s Pro Bono and Legal Service Committee, among others.
- **Contact with non-profits.** LSNYC will regularly meet with peer organizations and community based organizations to discuss the most pressing client needs and most effective way to leverage pro bono resources.
- **Outreach materials.** LSNYC will prepare communications materials that promote and highlight client needs and service initiatives, and help private actors to learn how they can get involved.
- **Trainings and manuals.** LSNYC will prepare thorough training manuals and related materials for client service initiatives, and go to law firms and corporations to deliver trainings.

- **Recognition.** LSNYC will thank and acknowledge key pro bono partners both individually and at events.

l. Standardize Placement of Emeritus, Individual Volunteers, and Interns

LSNYC will develop standard methods for outreach, application, screening, placement, and supervision of emeritus attorneys, interns, and individual volunteers.

m. Implement Internal Policies, Procedures, and Training

LSNYC will review, improve, and expand on the number of policies, procedures, and training related to pro bono matters. This will enhance staff understanding of how to best utilize pro bono and how to utilize the new technological capacity described above, standardize key aspects of pro bono partnerships, and address risk management for LSNYC.

n. Enhance use of Technology

LSNYC will enhance its use of technology for pro bono purposes by:

- Improving pro bono capacity within our case management system, LegalServer.
- Building and implementing new capacity with probono.net.
- Creating a new LSNYC website that will highlight pro bono opportunities and volunteer recognition.
- Expanding electronic access to pro bono training materials for volunteers.

5. Consultation Regarding the Pro Bono Plan

To create this strategic plan, LSNYC engaged in dozens of separate conversations with individuals associated with bar associations, law firms, corporations, law schools, and non-profits about a number of the goals and projects described above. These include separate meetings with representatives from:

- Allen & Overy
- Arnold & Porter
- Anderson Kill
- Chadbourne & Park
- Con Edison
- Davis Polk
- Debevoise
- DLA Piper
- Hogan Lovells
- Hughes Hubbard
- Kirkland & Ellis
- Kramer Levin
- Morrison & Foerster

- Paul Weiss
- Schulte Roth
- Simpson Thacher
- Sullivan & Cromwell
- White & Case
- LegalServer
- Probono.net
- New York Lawyers for the Public Interest
- Brooklyn Legal Defenders
- The Asian American Bar Association of New York
- The Feerick Center for Social Justice
- The Legal Aid Society of New York
- The Center for Reproductive Rights
- SAGE
- New York Law School
- Fordham Law School

LSNYC also consulted about the specific pro bono plan set forth above with all local bar associations, including:

- Carey R. Dunne, President, New York City Bar Association, carey.dunne@davispolk.com
 - Mark Cunha, board member appointed by the NYCBA, mcunha@stblaw.com
 - Susan Kohlmann, board member appointed by the NYCBA, skohlmann@jenner.com
 - Andrew Multer, board member appointed by the NYCBA, amulter@gmgllp.com
 - Michael Young, board member appointed by the NYCBA, myoung.lsnyc@gmail.com
- Joseph F. DeFelice, President, Queens County Bar Association, JDEFEL4@GMAIL.COM
 - Susan Bryant, board member appointed by QCBA bryant@mail.law.cuny.edu
- Jacqueline W. Silbermann, President, Women's Bar Association of New York, president@nywba.org
- Margo Ferrandino, President, Association of Black Women Attorneys, mgf0520@gmail.com
- Andrew M. Fallek, President, Brooklyn Bar Association, andrew@falleklaw.com
 - Fern Finkel, board member appointed by BBA, ffinkel@aol.com

- Sophia J. Gianacoplos, Executive Director, New York County Lawyers Association, sgianacoplos@nycla.org
 - Vincent Chang, board member appointed by NYCLA, vchang@wmd-law.com
 - Vilia Hayes, board member appointed by NYCLA, hayes@hugheshubbard.com
 - Jack Jackson, board member appointed by NYCLA, jjackson8992@aol.com
- Elba Galvan, President, Puerto Rican Bar Association, president@prba.net
 - Rosevelie Marquez Morales, board member appointed by PRBA, rmarquez@HarrisBeach.com
- Clara Ohr, President, Asian-American Bar Association of New York, clara.ohr@aabany.org
- Mary Conlan, Executive Director, Bronx County Bar Association, mary@bronxbar.com
 - Olu Jaiyebo, board member appointed by BCBA, ojaiyebo@gmail.com
- Thomas J. Hall, President, Richmond County (Staten Island) Bar Association, HallJ@HallandHallLaw.com
 - Sheila McGinn, board member appointed by RCBA, smcginn6@gmail.com
- Nadine Fontaine, President, Metropolitan Black Bar Association, president@mbbanyc.org
 - Arthur Greig, board member appointed by MBBA, awgreig@aol.com

The pro bono plan was circulated by email to the above local bar association representatives on May 16, 2014, with comments requested by May 27, 2014. No responses were received by that date.