



FINAL REPORT

LEGAL SERVICES CORPORATION Office of Compliance and Enforcement

LEGAL AID SOCIETY OF MID-NEW YORK, INC
COMPLIANCE REVIEW
September 23-27, 2013

Recipient No. 233150

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I. EXECUTIVE SUMMARY

Finding 1: With few exceptions, sampled cases evidenced that LASMNY's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Finding 2: LASMNY's intake procedures and case management system generally support the program's compliance related requirements. However, there were exceptions noted with respect to screening for asset eligibility and obtaining timely approval to assist over-income HelpLine cases. In addition, the program's eligibility policy did not fully comply with 45 CFR Part 1611.

Finding 3: Sampled cases evidenced that LASMNY was in 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 exceed 125% of the Federal Poverty Guidelines ("FPG").

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

Finding 5: Sampled cases evidenced that LASMNY was not in compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

Finding 6: Sampled cases evidenced that LASMNY was in substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements). A retainer was missing from eight (8) reviewed case files, and three (3) reviewed case files contained defective retainer agreements.

Finding 7: Sampled cases evidenced that LASMNY was in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases evidenced that LASMNY was in compliance with the requirements of 45 CFR § 1620.4 and 1620.6(c) (Priorities in use of resources).

Finding 9: Sampled cases evidenced LASMNY was in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). There were nine (9) reviewed case files in which no legal assistance was provided or documented.

Finding 10: Sampled cases evidenced that LASMNY's application of the CSR case closure categories is in non-compliance with Chapter VIII and IX of the CSR Handbook (2008 Ed., as amended 2011).

Finding 11: Sampled cases evidenced LASMNY is in substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (dormancy and untimely closure of cases). However, case review revealed several untimely closed or dormant cases.

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

Finding 13: Review of LASMNY's policies and the list of attorneys who have engaged in the outside practice of law revealed that LASMNY is in compliance with the requirements of 45 CFR Part 1604 (Outside Practice of Law). However, LASMNY should revise its outside practice of law policy to be fully consistent with 45 CFR Part 1604.

Finding 14: Interviews with program management and a limited review of LASMNY's policies and fiscal documentation indicated that the program is in compliance with 45 CFR Part 1608 (Prohibited political activities) which is designed, in part, to ensure Corporation funds will not be used to support or promote political activities or interests.

Finding 15: Sampled cases evidenced LASMNY is in compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 16: A limited review of LASMNY's financial records disclosed substantial compliance with 45 CFR § 1610.5. (Notification), in that the program provided the mandated funding notification letters to its donors and non-LSC funding sources of \$250 and over of the prohibitions and conditions which apply to the funds; however, the donations section of LASMNY's web site solicited donations but did not include the notifications required by 45 CFR § 1610.5.

Finding 17: LASMNY is in substantial compliance with the requirements of 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

Finding 18: LASMNY demonstrated compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and LASMNY has no LSC-funded subgrants.

Finding 19: LASMNY demonstrated compliance with 45 CFR Part 1635 (Timekeeping requirements).

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

Finding 21: Review of LASMNY's financial documentation and interviews with its management indicated the program is in compliance with the requirements of 45 CFR Part

1612 (Restrictions on lobbying and certain other activities) in that LASMNY has complied with its policy which restricts lobbying and certain other restricted activities.

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

Finding 23: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 24: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 25: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

Finding 27: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on Solicitation).

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

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

Finding 30: LASMNY is in compliance with the requirements of 45 CFR § 1620.6.

Finding 31: Policy review evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information).

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

Finding 33: Interviews with staff and a limited review of procedures, practices, and documents related to TIG No. 10064 evidenced compliance with reviewed TIG grant assurances, but disclosed a lack of documentation in support of a payment for a third party contract as well as a failure to follow certain terms of the contract.

II. BACKGROUND OF REVIEW

On September 23 - 27, 2013, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Compliance Review of Legal Aid Society of Mid-New York, Inc. ("LASMNY"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Ed.), the Property Acquisition and Management Manual, and grant conditions. The visit was conducted by a team of six (6) attorneys, one (1) management analyst, and three (3) fiscal compliance analysts.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that LASMNY has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LASMNY for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement); 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees);¹ 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion); and whether the program's policies and procedures compared favorably to the elements outlined in Chapter 3- Internal Control/Fundamental Criteria of an Accounting and Financial reporting System of the accounting Guide for LSC Recipients (2010 Ed.). Additionally, the review team evaluated LASMNY's management of its TIG projects and its use of TIG funds and assessed compliance with 2010 Grant Assurances 7, 8, 9 and 15, LCS's TIG Procedures Manual, and Program Letter 10-3.

LASMNY is a non-profit legal services organization that provides free legal services to eligible clients in LSC service area NY-22, MNY, which covers 13 counties in the Central New York region of upstate New York. According to LSC's Recipient Information Network ("RIN"), the service area covers 12,803 square miles of mixed rural and urban geography, with a poverty population totaling 1,508,695. LASMNY also operates a Farmworker Law Project that serves migrant farmworkers isolated in rural labor camps statewide. LASMNY is headquartered in

¹ On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant on-site review, LSC's review of LASMNY's compliance with this regulation was, therefore, only for the period prior to December 16, 2009.

Utica, and maintains other branch offices in Binghamton, Cortland, New Paltz (Farmworker Law Project), Syracuse, Oneonta, Oswego, and Watertown. See www.newrin.lsc.gov.

In 2011, LASMNY received funding from LSC totaling \$2,402,895; in 2012, total LSC funding was \$2,083,267; and in 2013 total funding was \$1,830,950.² In addition to its LSC funding, LASMNY receives grant and contract support from local, state and federal, and/ or private sources. LSC and non-LSC grant support totaled \$ 4,714,901 in 2011 and \$4,479,332 in 2012.

For 2011, LASMNY reported 6,818 closed cases, including 706 PAI cases. Family law accounted for 36.2% of all cases; housing, 25.9%; income maintenance, 17.3%; consumer, 8.4%; miscellaneous, 5.1%; employment 2.6%; juvenile, 2.1%; health, 1.4%; individual rights, 0.8%; and education, 0.2%. Approximately 52.4% of all closed cases were closed after counsel and advice; 12.9% were limited action services; 15.3% were settled cases; 11% were court decisions; 6.5% were agency decisions and 1.7% extensive services. In that same year's self-inspection, LASMNY reported an error rate of 5.6%. Exceptions were noted with respect to CSR Handbook (2008 Ed., as amended), §§ 5.3, 5.4, 5.6, and 3.3.

For 2012, LASMNY reported 5,688 closed cases, including 818 PAI cases. Family law accounted for 37.9% of all closed cases; housing, 22.8%; income maintenance, 15.85%; consumer 10.7%; miscellaneous, 6.3%; juvenile, 2.5%; employment, 1.8%; health, 1.3%; individuals rights, 0.7%; and education 0.3%. Approximately 53.8% of all closed cases were closed after counsel and advice; 9.7% were limited action services; 16.5% were settled cases; 11.6% were court decisions; 6.9% were agency decisions; and 1.2% were extensive service cases. In that same year's self-inspection, LASMNY reported an error rate of 3.24%. Exceptions were noted with respect to CSR Handbook (2008 Ed., as amended), §§ 5.3, 5.4, 5.6 and 3.3.

In preparation for the visit, on July 18, 2013, OCE requested that LASMNY provide certain case lists. Case lists requested included all cases reported in its 2011 CSR data submission ("closed 2011 cases"), all cases reported in its 2012 CSR data submission ("closed 2012 cases"), all cases closed between January 1 and July 31, 2013 ("closed as 2013 cases"), and all cases which remained open as of July 31, 2013 ("open cases"). OCE requested that two (2) sets of lists be compiled - one (1) for cases handled by LASMNY staff and the other for cases handled through LASMNY's PAI component. OCE requested that each list contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closure category assigned to the case, the case problem code, the funding code assigned to the case, and an indication of whether the case was handled by staff or by a private attorney pursuant to 45 CFR Part 1614. LASMNY was advised that OCE would seek access to case information consistent with Section 509(h), Pub. L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC Access to Records protocol (January 5, 2004). OCE instructed LASMNY to notify OCE promptly, in writing, if it believed

² In 2011, LASMNY received a LSC basic field grant in the amount of \$1,944,131 and a migrant grant in the amount of \$305,516. In 2012, it received a basic field grant in the amount of \$1,659,126 and a migrant grant in the amount of \$260,728. In 2013, it received a basic field grant in the amount of \$1,575,568 and a migrant grant in the amount of \$255,382. Between the period of 2005 and 2010, LSC awarded LASMNY two (2) Technology Initiative Grants, respectively, TIG No. 05065 for \$52,900, and TIG No. 10064 for \$81,100. At the time of the visit, TIG No. 05065 was closed and TIG No. 10064 was still open. TIG No. 10064 was evaluated as a part of this review.

that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on-site visit. The sample was developed proportionately among 2011, 2012, 2013 (specifically those closed from January 1 through July 31 of that current year) and open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, LASMNY cooperated fully and provided the requested materials. LASMNY afforded access to information in the case files through staff intermediaries. LASMNY maintained possession of the files and disclosed financial eligibility information, problem code information, and information concerning the general nature of the legal assistance provided to the client pursuant to the OCE and LASMNY agreement of September 12, 2013. LASMNY displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and 45 CFR Part 1636 statements. OCE reviewed a sample of 844 case files during the visit. OCE also interviewed members of LASMNY's upper and middle management, fiscal personnel, staff attorneys, and support staff. OCE assessed LASMNY's case intake, case acceptance, case management, and case closure practices and policies in all offices for staff and PAI programs. OCE fiscal staff reviewed LASMNY's compliance with LSC grants, conducted a limited review of internal controls, prohibited political activities, fee-generating cases, lobbying activity, as well as LASMNY's use of non-LSC funds, its PAI component allocations, its use of LSC funds to pay membership dues and fees, timekeeping, attorney fees, cost standards and procedures, and other fiscal activities. A limited sampling of informational pamphlets and brochures were also collected and reviewed.

During the course of the visit, OCE visited seven (7) of LASMNY's eight (8) office locations.³ The OCE team, as the visit was ongoing, notified members of LASMNY's upper and middle management and fiscal personnel of compliance issues identified during the review. At the conclusion of the visit, OCE held a brief exit conference during which OCE advised LASMNY of its preliminary findings. During the exit conference, OCE explained to LASMNY that the findings were merely preliminary, that OCE may make further and more detailed findings in the Draft Report, and that LASMNY would have 30 days to submit comments to the Draft Report. LASMNY was advised that a Final Report would be issued that would include LASMNY's comments. LASMNY was further advised that OCE may request additional documentation or a demonstration that the Required Corrective Action ("RCA") items have been implemented.

By letter dated June 6, 2014, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions. LASMNY was asked to review the DR and provide written comments. On June 27, 2014, LASMNY requested, and received, an extension of time to provide their response to the DR. Pursuant to that extension, LASMNY agreed to submit its response on or before August 11, 2014. By letter dated August 11, 2014, LASMNY submitted its comments to the DR. OCE has considered LASMNY's comments and has either

³ Case files from the Oneonta Office were reviewed at the Utica office.

accepted and incorporated them within the body of the report, or responded accordingly. LASMNY's comments, in their entirety, are attached to this Final Report.

III. FINDINGS

Finding 1: With a few exceptions, sampled cases evidenced that LASMNY's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Recipients are required to utilize 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.

LASMNY utilizes Kemps Clients for Windows as its ACMS.⁴ The program's Technology Administrator is responsible for database management and the Grant Administrator is responsible for generating data error, oversight, and annual CSR reports.

The program has two methods to deselect cases from CSR. Cases financially ineligible for LSC assistance and supported by non-LSC funds are deselected from CSRs using non-LSC funding codes. Each funding source that has no financial eligibility guidelines, or guidelines in excess of LSC, has two funding codes; one LSC eligible and the other non-LSC eligible. Cases with non-LSC funding codes are not included in CSRs. Cases ineligible for CSR reporting due to compliance defects are coded in the ACMS with a Case Type N (Non-CSR) code. Only cases coded with Case Type S (Staff) or P (PAI) are reported to LSC. Interviews reveal that staff have been properly trained on the use of these fields and understand the difference between rejecting and deselecting a case.

All case handlers have been trained to generate open and closed case lists. Generally, case oversight at the managerial level is achieved through case review by managing attorneys twice per year. The managing attorneys review open and closed case lists, select cases for review, and discuss cases with the case handler. The Grant Administrator generates a number of error reports throughout the year, including, but not limited to, reports to identify duplicates, cases identified as LSC Eligible with a non-LSC funding code, over-income cases without documentation, cases that remains open after a prolonged period of time, and cases with blank income and asset fields.

The ACMS does not have defaults in fields critical to compliance, consistent with Program Letter 02-06.

⁴ LASMNY and its "twin" program Legal Services of Central New York ("LSCNY") maintain separate databases and transfer cases between programs during intake as dictated by case acceptance protocols. Staff have access to their own program's database except that the Helpline Managing Attorney, shared staff, and technology staff have access to both databases. The conflict portions of the databases are linked and conflicts are checked against data for both programs. Eligibility screeners identifying a possible conflict from a case handled by the other program contact the Helpline Managing attorney who checks the appropriate databases and makes a conflict determination.

Based on interviews and a comparison of the information yielded by the ACMS to information contained in the case files sampled, LASMNY's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, some instances of inconsistent information were identified. *See* Oneonta Staff Closed 2012 Case No. 11E-4047532 (a funding source discrepancy was detected where the file indicated the a TANF (28) funding code, but where the ACMS indicated a United Way-Chenango County (43) funding code); Utica Staff Closed 2013 Case No. 12E-1062892 (a sampled case included on the list of Utica's 2013 closed cases and marked as non CSR reportable, but which met LSC's CSR and regulatory requirements); Oneonta Staff Open Case No. 12E-8062480 (a rejected case that was reported in the ACMS as open); Utica Helpline Staff Closed 2013 Case No. 13E-1067494 (coded with a 99 (Other Miscellaneous) problem code where the case should have been closed as 69 (Other Housing)). In the last case cited, it appears that the HelpLine eligibility screening staff initially coded the case with a 99, uncertain as to the legal problem, and it was not changed once the HelpLine attorney determined the proper code.

OCE recommended that LASMNY's HelpLine staff attorneys should always review the case problem code before closing a case, particularly when a 99 (Other Miscellaneous) problem code has been assigned to the case. Additionally, OCE recommended that it should ensure that its ACMS system contains accurate case type information,⁵ and that all cases that meet LSC eligibility criteria are reported in the CSR, irrespective of the funding source.⁶

In its response to the DR, LASMNY stated that it has implemented the recommendations related to this Finding:

LASMNY has reviewed all open cases and 2014 closed cases for problem Code 99 and ha[s] changed the problem codes to more appropriate and more accurate problem codes in those cases if warranted. HelpLine attorney staffs have been directed to review all case problem codes before each HelpLine case is closed or transferred. ACMS and problem code identification training will occur at the next all staff meeting scheduled for November 14, 2014. In order to reduce case problem code errors with respect to Code 99, all LASMNY staff have been informed that Code 99 should be used only with management approval. The HelpLine Intake and Procedural Manual has likewise been revised to reflect this change. LASMNY's ACMS Problem Code 99 now reads: "Other Miscellaneous: NEED MANAGEMENT APPROVAL."

⁵ *See* CSR Handbook (2008 Ed., as amended 2011), at § 3.1(a).

⁶ *See* CSR Handbook (2008 Ed., as amended 2011), at § 2.1.

Finding 2: LASMNY's intake procedures and case management system generally support the program's compliance related requirements. However, there were exceptions noted with respect to screening for asset eligibility and obtaining timely approval to assist over-income HelpLine cases. In addition, the program's eligibility policy did not fully comply with 45 CFR Part 1611.

To assess LASMNY's intake procedures and case management policy for compliance with LSC requirements, intake, case handler, and management staff were interviewed. In addition, paper and electronic documents used to support the intake process were evaluated. The review revealed that staff's understanding of compliance requirements is consistent and generally support the program's compliance related requirements. However, a few changes and some additional training may be required to improve compliance.

Since its establishment in 2007, a significant portion of LASMNY's program-wide intake is conducted telephonically by the Central New York Legal HelpLine ("HelpLine"). It is a general intake, advice, and referral toll-free line that conducts intake both for LASMNY and for Legal Services of Central New York ("LSCNY"), which together encompass the Justice Alliance of Central New York ("JACNY"). The Helpline is staffed by LASMNY and LSCNY screening and attorney staff. In addition, LASMNY's Utica office conducts intake for walk-in applicants as necessary. Case handlers also receive direct referrals from partner agencies pursuant to projects funded by non-LSC sources. No outreach intake is conducted in Utica. LASMNY holds a number of clinics staffed by volunteer attorneys for which all attendees are screened prior to the clinic through normal intake streams described above. A small number of applicants contact the program by email through a link on the LASMNY website. The emails are answered by one (1) of the two (2) full-time LASMNY eligibility screeners. They respond with legal information if it is clear the program cannot assist the applicant, or call the applicant to conduct a telephonic eligibility screening. Given the multiple ways in which cases enter the program, a large number of staff is involved in conducting the initial eligibility screening.

Description of the HelpLine Model

The HelpLine is open Monday-Friday from 9:00am-3:00pm.⁷ It is staffed by screeners from both LASMNY and LSCNY. One (1) LASMNY full-time screener is based in Binghamton and one (1) in Utica. A third full-time screening position is shared by six (6) LASMNY support staff spread throughout the program who are responsible for staffing the HelpLine one (1) day per week, in addition to their other support duties. These six (6) staff also answer calls directed to Spanish or Bosnian queues. The fourth full-time screening position is staffed by a LSCNY Intake Specialist, though the position was vacant as of a few weeks prior to the review.⁸ In addition, a .3 full time equivalent ("FTE") paralegal is assigned to the HelpLine to identify cases appropriate for referral to the Private Attorney Involvement ("PAI") program. Four (4) attorneys are also assigned to the HelpLine. Two (2) HelpLine attorneys are employed by LASMNY and based in Utica. In addition, four (4) private attorneys have been recruited by the Binghamton office to answer HelpLine calls. All HelpLine staff have access to the Central New York Legal

⁷ The HelpLine ceases to accept new callers at 3:00pm although staff returns calls until close of business.

⁸ Interviews with senior management revealed that LSCNY recently received additional funding, some of which may be used to staff a fifth screener position.

HelpLine Intake and Procedure Manual, which was last updated on August 19, 2013 and describes the HelpLine operations, intake procedures, and advocate responsibilities.

Callers to the HelpLine are prompted to select one (1) of five queues: Emergencies, General, Legal Screenings (for divorce and consumer), Spanish, or Bosnian. Screeners answer calls in the queues, giving priority to emergencies.⁹ They conduct a full eligibility screening using the ACMS as a guide and data is contemporaneously entered into the system. Applicants who are eligible for legal assistance are interviewed about their legal problem.

Some accepted clients are transferred to a HelpLine queue to speak with a HelpLine attorney. Others bypass the HelpLine to be directed to a case handler working under a special project grant or to the PAI program. A 119-page electronic JACNY Central Intake Chart ("Intake Chart"), details how each case type should be handled, including guidance on selecting a funding code and case handler, determining LSC eligibility and documentation requirements, and special intake instructions for each case type.

There are 12 HelpLine legal issue queues: Emergencies, Consumer, Education, Employment, Family/Juvenile, Health, Housing, Income Maintenance, Individual Rights, Miscellaneous, LASMNY Attorney, and LSCNY Attorney. Cases prohibited by LSC regulations or cases for which LSCNY receives special funding are transferred by eligibility screeners to the LSCNY queue, which is staffed only by the LSCNY attorneys. Cases transferred to LSCNY by eligibility screeners are closed as matters.

Due to the high volume of HelpLine calls, most applicants are prompted to leave callback information and staff attempts to return the calls within 48 hours. Messages to the emergency queue receive the highest priority. Attorneys review all eligibility and conflict information with the applicant, conduct a more thorough interview regarding their legal problem, and provide legal advice which is documented in the ACMS case notes. Advice letters are sent at the discretion of the attorney and may also include informational brochures. While a number of form letters are available to staff, the attorneys interviewed stated that they modify the letters to reflect the client's individualized circumstance.

Cases may be closed after advice or Limited Action is provided by a HelpLine attorney, or the case may be referred to the PAI program, LSCNY, or a LASMNY case handler in a branch office for extended service. If appropriate for LSCNY, cases are electronically transferred by selecting a transfer field in the ACMS. These transferred cases are closed in the LASMNY database based upon the Counsel and Advice provided by the HelpLine attorney.¹⁰ According to interviews with the HelpLine Managing Attorney and the Grant Administrator, cases which are closed based upon advice provided by LSCNY attorneys are not reported to LSC as they are closed in the LSCNY database. If a case is referred to a LASMNY branch office for extended representation, an e-mail is sent to the office. That office is then responsible for providing

⁹ The Utica Intake Paralegal is solely assigned to the Legal Screenings queue and has been trained to screen divorce and bankruptcy applicants for clinic eligibility. He also assists with the emergency queue as necessary.

¹⁰ As described above, cases identified by eligibility screeners as LSC prohibited bypass the HelpLine attorneys and are transferred to the LSCNY queue for assistance by a HelpLine attorney employed by LSCNY. Accordingly, applicants with prohibited cases do not speak with HelpLine attorneys employed by LASMNY unless misdirected or misunderstood by eligibility screeners.

additional assistance and obtaining any required compliance documents. Uncontested divorces, certain bankruptcies, and estate planning cases are transferred to the Utica paralegal to be considered for a clinic or referral to a pro bono private attorney.

Walk-in Intake

LASMNY's offices encourage walk-in applicants to contact the HelpLine to expedite assistance. Applicants are directed to a telephone in a cubicle off the waiting area to call the HelpLine. If an applicant has been directed to the program from a Refugee Center or if they do not want to use the HelpLine, an in-person intake screening is conducted by the Bilingual Intake Specialist who also serves as the front desk receptionist. Citizenship attestations are obtained or, if the applicant is not a citizen, eligible alien screening is conducted.

Referrals from Community and Partner Agencies

In addition to the HelpLine, LASMNY receives referrals directly from community and partner agencies for projects supported with non-LSC funds. Some projects are program-wide; others are county specific, depending upon the funding. Designated case handlers assigned to projects receive the referrals, call the applicant, and conduct a full eligibility screening using the ACMS as a guide. Data is contemporaneously entered. Interviews revealed no discrepancies between eligibility screener and project case handler screening practices. Case handlers have the authority to accept cases within project case acceptance protocols.

Compliance and Case Management

Financial Eligibility Policy: While generally compliant, revisions to the program's Eligibility Policy, which was dated February 28, 2006, are required so that the policy fully conforms with the current version of 45 CFR Part 1611. Such revisions were discussed with the Executive Director and include the addition of provisions regarding screening for income prospects, the prohibition of including an alleged perpetrator of domestic violence's income and assets in the eligibility calculation, elimination of the distinction between liquid and non-liquid assets, revisions to the authorized factors to be considered when conducting eligibility determinations for individuals with gross annual income between 125 and 200% of Federal Poverty Guidelines ("FPG"), and a review of the categories of assets excluded from the eligibility calculation to comply with the regulations. It was also recommended that the program delete the requirement for the evaluation of factors to disqualify, included in Section IV (A) of LASMNY's Eligibility Policy, applicants whose income is under the maximum income level. The Executive Director was encouraged to review the preamble to the 2005 regulation prior to revising its policy and invited to submit a draft to LSC for review. *See* 70 Fed. Reg. 45545 (August 8, 2005).

Compliance Forms: LASMNY's Citizenship Declaration, Eligible Alien Determination, Retainer Agreement, Statement of Facts, and paper Application for Service are standardized throughout the program. Forms signed by clients are available in Spanish and Bosnia. The Application for Service meets LSC's basic eligibility requirements. Though the form does not include a question as to the applicant's status if not a citizen, the bottom portion of the form

includes a checklist of questions to be completed by staff and includes an inquiry as to whether the documentation needed to show alien eligibility has been checked.

Reasonable Inquiry Regarding Income Prospects: Recipients are required to make reasonable inquiry into each applicant's income prospects, pursuant to the requirements of 45 CFR § 1611.7(a). A majority of the staff interviewed was aware of this requirement and stated they make appropriate inquiry as required. The ACMS contains a required field specific to this inquiry. The inquiry is also included in the standardized Application for Service. However, observation of a HelpLine screening in the Syracuse Office revealed that the applicant was not asked about income prospects, as required by 45 CFR § 1611.7(a)(1). Additionally, interviews indicated that intake staff was not aware of the applicability of the VAWA Amendments to LSC funded cases. The on-site visit to other program offices also revealed that some HelpLine screeners did not have a sufficient understanding of the applicable VAWA Amendments to LSC funding.

Income screening: Although a large number of staff conduct intake, interviews and file review revealed that income inquiry and recordation are conducted in a consistent manner. Staff demonstrated a strong understanding of the program's financial eligibility policy and LSC funding guidelines. While the ACMS includes food stamps in the income source drop-down list, interviews in the Utica office, as well as in other program's offices, reveal that staff is aware that food stamps are not income and should not be included in the eligibility determination. Nevertheless, to prevent the potential for future errors, it was recommended that LASMNY remove this option from the drop-down list.

Authorized Exceptions to Income Ceiling: In accordance with 45 CFR § 1611.3(c)(2), LASMNY has adopted authorized exceptions to its annual income ceiling, consistent with 45 CFR § 1611.5. Certain of the authorized factors to consider when conducting an eligibility determination for individuals with gross annual income between 125 and 200% of FPG do not match the language of the regulation and could be misinterpreted. LASMNY's policy permits consideration of current income prospects; fixed debts and obligations, including unpaid federal, state, and local taxes from prior years; child care, transportation, and other expenses necessary for employment; expenses associated with age or physical infirmity of resident family members; other significant factors relating to the financial inability to afford legal assistance, including the unavailability of affordable legal counsel; and medical expenses. Four (4) factors match the language of the regulation: current income prospects, fixed debts and obligations, employment expenses and other significant factors, authorized by 45 CFR § 1611.5(a)(4)(i), 45 CFR § 1611.5(a)(4)(iii), and 45 CFR § 1611.5(a)(4)(vii), respectively. Two (2) factors are closely related to factors authorized by the regulation but need additional language to accurately match the regulation. The policy lists medical expenses as a factor though the corresponding regulatory factor allows unreimbursed medical expenses and medical premiums. *See* 45 CFR § 1611.5(a)(4)(ii). In addition, the policy lists expenses associated with age or physical infirmity of resident family members. However the regulation only allows exceptions for non-medical expenses associated with age or disability. In addition, the current tax-related authorized exception is not included in program policy. *See* 45 CFR § 1611.5(a)(4)(vi). While the program is not required to adopt all of the factors listed in 45 CFR § 1611.5(a)(4), the policy must reflect the language of the regulation for those that are adopted, to ensure accurate and consistent

application by all staff conducting financial eligibility screening. As discussed above, LASMNY was asked to review and revise its Eligibility Policy to fully comply with the most current requirement of 45 CFR Part 1611.

To qualify individuals with income between 125 and 200% of FPG for LSC funded services, program policy requires staff to electronically record expenses during screening on the "Expense" tab and check a box indicating income within the range. The policy does not require staff to subtract allowable expenses from gross annual income to establish net income at or below 125%. In addition, program policy instructs attorneys to complete a paper Request for Income/Asset Waiver identifying the regulatory exception permitting assistance with LSC funds. The waiver must be submitted and approved by the Executive Director or a Managing Attorney, and scanned and electronically attached to the client record in the ACMS.

However, in the Watertown office, the Waiver form is pre-completed with the following statement:

Client cannot afford legal assistance because after paying monthly fixed debt and obligations client does not have sufficient funds remaining.

Although not a regulatory violation, it was recommended that the Watertown office discontinue employing the pre-completed waiver forms and make a determination of income eligibility each time an over income Applicant is screened. The use of the pre-completed form risks that an over-income applicant could be accepted as a matter of course absent a determination that the applicant meets the requirements of one of LSC's authorized exceptions. If LASMNY chooses to accept and incorporate this recommendation, then it also recommended that intake screening staff in the Watertown office be provided training on how to complete the waiver during intake screening.

It was noted that, for over-income applicants, the paper waiver lists all the factors consistent with the Eligibility policy. However, the ACMS Expense tab does not include the full list of factors contemplated in the Eligibility Policy.¹¹ The ACMS options should be consistent with LASMNY's policy.

Another particular screening issue was identified. As discussed in Finding No. 3, six (6) closed HelpLine cases included late waivers, which were obtained after the cases were closed. Interviews revealed that while expenses are screened and recorded on the Expense tab in the ACMS during eligibility screening, it is impractical to complete the paper form and obtain the authorizing signature before providing advice. Several options were discussed with the program and it was recommended that in accordance with its review of its Eligibility Policy, LASMNY should revise its policy to permit HelpLine staff to obtain over-income authorization in an efficient and timely manner. Management was amenable to the suggestions and stated they would review LASMNY's policy.

¹¹ The expense tab drop-down box includes medical, work transportation, other employment, child support and other factors. It does not list current income prospects, fixed debts except for child support, or expenses associated with age or infirmity.

Asset Screening/Authorized Exceptions to Asset Ceiling: LASMNY's Eligibility Policy differentiates between liquid and non-liquid assets. The liquid asset ceiling for a single individual is \$5,000 with an additional \$1,000 for each household member. The policy further states that by definition non-liquid assets are not readily available but should be considered as liquid assets if they become available at a later time. Excluded from consideration is equity in an individual's principal residence, personal and household effects, one (1) car, trusts from household funds for education and medical expenses, value of farmland essential to employment or self-employment, work-related equipment essential to employment or self-employment, cash value or IRA or Keough Plans, and assets excluded under Food Stamp, AFDC, HR and SSI programs. As discussed above, it is necessary for LASMNY to revise its financial eligibility policy with respect to the differentiation of liquid and non-liquid assets, and the eligibility of its categories of assets excluded from consideration. The regulation includes an exclusive list of the categories of assets that may be excluded from consideration. It is questionable whether some of the categories of assets in LASMNY's current policy are exempt from attachment under State or Federal Law and whether certain exemptions would conflict with other categories of exemptions in the policy. *See* 45 CFR § 1611(3)(d)(1).

As noted above, LASMNY's intake policy and procedures exclude one (1) car per applicant household, whether or not the car is used for transportation. LSC regulations, at 45 CFR § 1611.3(d)(1), require that an excluded vehicle be used for transportation but in the regulation said exception is not limited to only one (1) vehicle.

When an Applicant exceeds LASMNY's asset ceiling, staff must complete a "Request for Income/Asset Waiver" form before accepting the applicant. According to LASMNY's Eligibility Policy and intake procedures, that applicant would be considered financially ineligible unless:

The executive director or his/her designee grants a waiver because the personal circumstances of the applicant and the particular request for services represent an extremely meritorious or unusual case. *See* LASMNY's Eligibility Policy, Section VI Assets Ceilings, B (1).

This standard, "unusual or extremely meritorious case," was the standard used by LSC in the previously applicable regulation; the current standard to be applied is "unusual circumstances." *See* 70 Fed. Reg. 151, 45551 (August 8, 2005). The standard was revised and abandoned because the Working Group determined that the "extremely meritorious or unusual case" standard was ". . . unnecessarily stringent and it [was] unclear what the difference is intended to be between "unusual" and "extremely meritorious." Therefore it is noted that LASMNY has the option or adopt the less stringent "*unusual circumstances*" standard.

Some related screening concerns were identified. During interviews, staff was able to articulate liquid asset ceilings, but was unable to describe a screening practice to determine whether there are any non-liquid assets that could become available at a later time. In addition, there was inconsistency in staff's understanding as to whether one (1) vehicle is exempted per household or household member. Lastly, screening staff were generally unable to articulate the assets excluded under the Food Stamp, AFDC, HR, and SSI programs. Revisions to the financial

eligibility policy should clarify these issues and training should be conducted to ensure consistent application. This issue should also be clarified during the program's review of its Financial Eligibility Policy.

Financial Eligibility Determination of an Applicant who is a Victim of Domestic Violence: Recipients are required to specify in their financial eligibility policies that only the assets and income of the applicant and household members shall be considered during a financial eligibility determination of a victim of domestic violence. Further, the income and assets of the alleged perpetrator of the domestic violence, any income or assets jointly held by the applicant with the alleged perpetrator, or assets jointly held with other members of the household and the alleged perpetrator, also shall not be considered. *See* 45 CFR § 1611.3(e). LASMNY's Eligibility Policy does not include such a provision; however, it is included in the Central New York Legal HelpLine Intake and Procedure Manual. *See* Eligibility Policy, dated February 28, 2006. This provision must be included in the program's revised Eligibility Policy.

Government Benefits Exemption: In accordance with 45 CFR §§ 1611.3(f) and 1611.4(c), a recipient's governing body is permitted to determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families. LASMNY's Eligibility Policy does not contain such an exemption.

Group Clients: LASMNY's Eligibility Policy permits LSC-funded assistance to groups in accordance with 45 CFR § 1611.6 although no group cases were identified within the review period. On-site interviews at several offices revealed that HelpLine screeners did not have adequate knowledge of LASMNY's procedures for accepting group cases.

Citizenship and Eligible Alien Status Screening: In general, most of the interviewees demonstrated sufficient understanding of the citizenship and alien eligibility documentation requirements of 45 CFR Part 1626, including those for Kennedy Amendment, T-Visa and U-Visa cases. In most cases, citizenship status is initially assessed during HelpLine or special project telephone screening and recorded in the ACMS. Citizen clients screened by telephone who later have in-person contact with LASMNY, who receive extended representation, or who are screened in-person, are asked to sign a standardized Citizenship Declaration which complies with the requirements of the CSR Handbook (2008 Ed., as amended 2011) § 5.5. Non-citizens are asked to provide documentation of eligible alien status. Attorneys are responsible for reviewing the eligible alien documentation, making a determination of eligibility, and completing a standardized paper Eligible Alien Determination form. The Utica office has walk-in applicants which are referred to a cubicle to contact the HelpLine. Interviews and observations revealed that such applicants sign Citizenship Declarations or must provide eligible alien documentation as described above. However, neither the Binghamton HelpLine Screeners nor the Syracuse secretary who does intake screenings were aware of the applicability of the VAWA Amendments to LSC funded cases. It was recommended that LASMNY review with staff primarily responsible for screening applicants in the Oswego and Watertown offices 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act ("VAWA") 2006 Amendments. Specifically, staff should be made aware that LASMNY is not required to obtain a

signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien who falls under the domestic violence exceptions.

Conflict Checks: During the first step of the eligibility screening process, conflicts are checked for both LASMNY and LSCNY. The conflict portions of the databases for the two (2) programs are linked. When eligibility screeners identify a possible conflict with a case handled by the other program, they contact the HelpLine Managing Attorney to check the appropriate database and make a conflict determination. This could mean that if an LASMNY's applicant for services request assistance in relation to a problem that could entail a potential conflict against an LSCNY's client, then that application would be rejected due to such conflict.

Duplicate Checks: During conflict checks described above, screeners determine whether the applicant has previously contacted LASMNY. Screeners have been properly trained when to reopen a case in accordance with LSC requirements. If in doubt, the original case handler is contacted.

Compliance Training: During interviews staff reported that they receive training at least once per year on the ACMS and once per year on compliance issues.

Case Management: Acceptance, Oversight and Closing of Cases

Utica Office

HelpLine attorneys are permitted to accept cases for limited assistance pursuant to program priorities. The Intake Chart determines when cases are transferred to a branch office or special project for extended representation. In the Utica office, there are no case acceptance meetings. Instead, case handlers are permitted to accept cases for extended representation pursuant to the Intake Chart. In most cases, case handlers are able to immediately advise the client of the nature of representation that can be provided. If there are any questions regarding acceptance, the Managing Attorney of the Utica office is consulted and the client notified of the decision as soon thereafter as possible.

When a case is ready for closure, case handlers complete the closing fields in the ACMS, select the closing code, complete the required CLASP Audit tab in the ACMS,¹² and send a closing letter. While the Utica office Managing Attorney developed a LSC Case Closing Form Checklist, a paper form containing compliance requirements, it is not used by all case handlers. Interviews revealed that case handlers generally close cases between a week and a month after the case has ended. Cases in the Utica office are not reviewed by a supervisor, but are randomly checked for compliance by the Grant Administrator who files the closed cases.

The Managing Attorney of the Utica office and the HelpLine Managing Attorney do not review cases upon closure. As required by program policy, case review is conducted twice a year. The Managing Attorneys are responsible for reviewing lists of open and closed cases and selecting a

¹² The CLASP Audit tab consists of a brief checklist of basic compliance requirements. Case handlers indicate yes or no to indicate if the requirement has been documented in the file and are expected to correct any deficiencies. The checklist is not printed but is preserved in the electronic file.

sample to review and discuss with the case handler. The Grant Administrator randomly checks Utica cases for compliance prior to filing. She also generates a number of error reports to identify inconsistencies and incomplete ACMS data.

Syracuse and Cortland Offices¹³

HelpLine screeners and other staff interviewed did not always have an understanding of how the HelpLine functions, in terms of the transferring or assigning of applications and cases between LASMNY and LSCNY.¹⁴ Staff interviewed indicated that staff meetings are not held with any regularity and that there was little formal case oversight.

The Managing Attorney, however, exhibited a thorough understanding of the HelpLine process and was able to explain how cases were assigned and closed. The Managing Attorney indicated that he did not have regular staff meetings or case review meetings with individual staff and that he only conducted “aged case report” reviews with staff in mid-January in order to ensure that cases were properly closed out. The Managing Attorney further stated that he occasionally looks at case handlers’ case lists and follows-up with them as necessary, but that there was no set method of case oversight other than his end-of-year aged case report review.

Binghamton Office

Once referred to the Binghamton office, the supervising attorney will assign cases to individual case handlers. The Managing Attorney indicated that she conducts quarterly case reviews with case handlers where she reviews a random selection of open and recently closed cases to ensure that they are LSC compliant. The Managing Attorney also conducts yearly work performance evaluations where she again reviews the work of the case handlers.

New Paltz Office

The New Paltz office handles only migrant cases. Applicants contact the office as a result of outreach efforts by the Managing Attorney and two (2) paralegals. Each New Paltz paralegal is assigned specific counties in which to conduct outreach. Typically, the paralegals will conduct presentations providing general education regarding migrant worker rights. The office employs a Clerical Translator who returns calls from applicants and records intake eligibility screening information on a paper intake form. Telephone applications, however, are not considered complete until the Managing Attorney has reviewed them and verified the information collected directly with the applicant. Similarly, the paralegals may have applicants complete a paper intake form while in the field, but the applications are not considered complete until they have been reviewed by the Managing Attorney. The Clerical Translator will enter the information from all paper applications into the ACMS and will double-check for completeness, bringing any missing information to the attention of the Managing Attorney. The office utilizes LASMNY’s Eligible Alien Determination Form, per LASMNY’s procedures, when verifying an applicant’s

¹³ These offices share the same Managing Attorney.

¹⁴ The Central New York Legal Helpline conducts intake screening for both programs. When a case may require or involve some LSC restricted or prohibited activity or service, or is a case for which LSCNY receives special funding, then that case would be transferred or referred to the LSCNY.

eligible alien status. The Managing Attorney evidenced an understanding of VAWA's applicability to LSC funding. Other than the Clerical Translator's completion of the paper-first intake form explained above, intake eligibility screening in the New Paltz office is conducted in the same manner as the other LASMNY offices reviewed.

The Managing Attorney decides which cases will be accepted for services and handles most of the accepted cases herself, whereas the paralegals are primarily responsible for outreach. Only the Managing Attorney is authorized to provide limited services on-site at outreach efforts. The paralegals can only provide limited services to eligible clients after the Managing Attorney has reviewed the cases and advised the paralegals about what services should be provided. Telephone calls to the clients are made after case acceptance, and a follow-up letter will be sent, if possible, to summarize any advice or limited services provided. Cases are closed in the same manner as the other LASMNY offices reviewed.

Oswego Office

If an applicant is eligible for legal assistance, the case is coded as an "H" in the ACMS. The Attorney to which the intake is transferred makes the decision whether to accept a case for legal assistance. Walk-in applicants are usually seen by an attorney that day; however if an attorney is unavailable, then the applicant is provided with an appointment to return at a future date.

Watertown Office

Generally, eligible walk-in applicants meet with an attorney and receive legal assistance that day. The Watertown office is a small and is comprised of a Managing Attorney who does public assistance cases, a Staff Attorney who does foreclosure cases, a Paralegal who does social security and disability cases, and a Secretary who is responsible for intake screening.

Due to the office size, formal meetings are impractical as the Managing Attorney explained that he and his staff communicate daily regarding accepted cases. The Staff Attorney and Paralegal are responsible for assigning closing codes to their cases. The Managing Attorney indicated during case review that he would implement a more formal case review process in which he reviewed closed case files for compliance issues. It was recommended that LASMNY Management follow-up with Watertown regarding this process in order to offer suggestions for improvement regarding case oversight as necessary.

As such, it was recommended that:

- LASMNY should remove from its ACMS the food stamps option that is included in the income source drop-down list.

In its response to the DR, LASMNY informed OCE that "it has removed the food stamp option from the income source drop-down list in its ACMS."

- LASMNY's Watertown office should discontinue the practice of employing a pre-completed waiver form (which includes conclusive language concerning the applicant

inability to afford legal assistance) and instead make an objective determination of income eligibility each time an over income applicant is screened.

In its response to the DR, LASMNY informed OCE that the “Watertown branch office has discontinued using a pre-completed waiver form.”

- LASMNY’s ACMS Expense Tab should be modified to include the full list of factors contemplated in the program’s Eligibility Policy.

In its response to the DR, LASMNY informed OCE of the following:

[LASMNY] will no longer use the existing paper waiver approval form for individuals whose gross annual income is between 125%-200% of the Federal Poverty Guidelines and the corresponding existing approval process. LASMNY is developing an electronic waiver form and process which is being integrated into LASMNY’s case management system. The "Expense" tab drop-down list will be eliminated in the ACMS waiver approval. Paper waiver forms will become information gathering forms only to allow staff who are in the field, off site from a LASMNY office, to gather the information to insert into the ACMS as soon as practicable so that the approval decision can occur as soon as possible. However, all factors in the ACMS will be the same as all factors in the paper waiver information gathering form and the same as in LASMNY's proposed revised Financial Eligibility Policy.

- LASMNY should revise its policy to allow the HelpLine staff to obtain an over-income applicant authorization in a timely manner.

In its response to the DR, LASMNY informed OCE that:

...LASMNY’s Technology Administrator is in the process of streamlining and automating LASMNY’s waiver-approval procedures. LASMNY will no longer use the existing paper waiver approval form for individuals whose gross annual income is between 125%-200% of the Federal Poverty Guidelines and the corresponding existing approval process. LASMNY is developing an electronic waiver form and process which is being integrated into LASMNY’s case management system. A "Waiver" tab is being added to LASMNY’s existing electronic eligibility data entry form. HelpLine attorneys, managing attorneys, and the Executive Director will be responsible for performing the waiver approvals on the day of intake or as soon as practicable thereafter. The "Expense" tab drop-down list will be eliminated in the ACMS waiver approval.

LASMNY anticipated that the necessary changes and modifications to its case management system would be completed by October 1, 2014.

- LASMNY should review and discuss with all the staff primarily responsible for screening applicants, to make them aware that under 45 CFR §1626.4, and Program Letter 06-2, LASMNY is not required to obtain citizenship attestation or alien eligibility documentation from an otherwise ineligible alien who falls under the domestic violence exceptions.

In its response to the DR, LASMNY informed OCE that it "...has reviewed with all staff primarily responsible for applicant screening the applicability of 45 CFR Section 1626.4 and Program Letter 06-2[.]”

- LASMNY should ensure that a more formal case review oversight process be implemented in all its branch offices.

In its response to the DR, LASMNY informed OCE that "...at its next Management Meeting, LASMNY will review its current case review oversight process, especially as it relates to its branch offices, and will plan to implement a more formal case review process, which will include at least 2 formal case reviews per case handler per year using a standardized procedure and process to be developed by LASMNY management.”

LASMNY was required to:

- Ensure its Financial Eligibility Policy conforms to the requirements of the current version of 45 CFR Part 1611. The required revisions to the policy should include: the adoption of provisions regarding screening for income prospects; the prohibition of including an alleged perpetrator of domestic violence’s income and assets in the eligibility calculation; elimination of the distinction between liquid and non-liquid assets; revision of factors to be considered when conducting eligibility determinations for individuals with annual income between 125%-200%; and a revision of the categories of assets excluded from the eligibility calculation.

In its response to the DR, LASMNY sent OCE a revised Financial Eligibility Policy for OCE's review prior to its submission to LASMNY's Board of Directors for adoption pursuant to 45 CSR §1611.3(a). After review and analysis of the revised policy, OCE determined that the policy conforms to the requirements of 45 CFR Part 1611, and sufficiently addresses the concerns raised in Finding 2 of the DR.

Accordingly, OCE requests LASMNY submit a status report concerning this RCA, within 60 days of the release of this Final Report, indicating whether this revised Financial Eligibility Policy has been adopted by its Board of Directors, including a copy of the Board approved Financial Eligibility Policy and documentation showing its Board approval.

Finding 3: Sampled cases evidenced that LASMNY was in 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 exceed 125% of the Federal Poverty Guidelines (“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.¹⁵ *See* 45 CFR § 1611.3(c)(1), and CSR Handbook (2008 Ed. as amended 2011), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.2.

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

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.

In several reviewed case files the applicant was over the income limit but the file contained no evidence that the applicant qualified for an over-income exemption. *See* Binghamton PAI Helpline Closed 2013 Case No. 13E-1068608; Binghamton Staff Closed 2013 Case No. 12E-8061083; Binghamton Staff Open Case No. 09E-1022440; Binghamton Staff Open Case No. 13E-8067155; Binghamton Staff Closed 2013 Case No. 12E-8059775; Utica PAI Open Case No. 11E-1043449; and Utica Staff Closed 2012 Case No. 09E-1021576. Although non-LSC funding was applied to these cases, since the clients were not LSC eligible, these cases should not have been reported to LSC.

In several other reviewed case files the applicants’ income was also over the income limits, but the required over-income exception authorization was obtained late, either after the assistance was provided or after it was commenced. *See* Binghamton Staff Closed 2013 Case No. 13E-11066335; Utica Helpline Staff Closed 2013 Case No. 13E-11063505; Utica Helpline Staff Closed 2013 Case No. 13E-8068585; Utica Helpline Staff Closed 2013 Case No. 13E-1063692; Utica Helpline Staff Closed 2013 Case No. 13E-8066002; Utica Helpline Staff Closed 2013 Case

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

No. 13E-8067993; Utica Helpline Staff Closed 2013 Case No. 13E-1068065; Utica Open Staff Case No. 13E-1067920 (where the waiver was approved after the provision of legal assistance for the client had started); Utica Open Staff Case No. 12E-1058856 (where the waiver was also approved after the provision of legal assistance had commenced); Utica Helpline Staff Closed 2012 Case No. 12E-8055710; Utica Helpline Staff Closed 2012 Case No. 12E-1058266; Utica Helpline Staff Closed 2012 Case No. 12E-8058445; Utica Helpline Staff Closed 2012 Case No. 12E-8059711; and Utica Helpline Staff Closed 2012 Case No. 12E-12053053.

It was recommended that LASMNY develop procedures to ensure that in all applicable cases, the facts that support authorized over-income exceptions are timely and properly documented.

In response to this recommendation, LASMNY stated it has developed an electronic waiver form and process that has been integrated to its case management system. This process is expected to improve the timely and accurate documentation of facts to support authorized over income exceptions. LASMNY planned to train all staff on this feature at its mandatory all staff meeting on November 14, 2014.

Policy Review

During the onsite review, LASMNY's Financial Eligibility Policy was reviewed for compliance with 45 CFR Part 1611 and discussed with the Executive Director. As indicated in Finding No. 2, and as a summary:

(i) LASMNY's policy lacked a statement specifying [as required under 45 CFR § 1611.3(e)] that in assessing the income or assets of an applicant who is a victim of domestic violence, only the income or assets of the applicant and of members of applicant's household will be considered, but not the income or assets belonging to the alleged perpetrator of the domestic violence, or that may be held in common with such alleged perpetrator;

(ii) LASMNY's policy also lacked a statement specifying [as required under 45 CFR § 1611.3(b)] that only individuals and groups determined to be financially eligible under the policy and LSC regulations may receive LSC funded legal assistance;

(iii) One of LASMNY's authorized exceptions to provide assistance to persons whose income exceeds the maximum income levels [as contemplated under Section III (B) of LASMNY's Financial Eligibility policy] provide that, with the written approval of the Executive Director, a person may be served even if that person's gross income exceeds 200% of the Official Poverty Guidelines, "if that person's income is primarily committed to medical or nursing home expenses." It should be specified that such exception would be applicable only when, after excluding that portion of the applicant's income committed to such medical or nursing home expenses, the applicant's remaining income rendered him or her financially eligible for service;

(iv) With respect to group eligibility, under LASMNY's Financial Eligibility Policy Part V, section (C), a group, corporation, or association could be represented, with the authorization of the Executive Director, whenever the group's primary purpose "is to further the interests of low income persons and lacks the practical means of obtaining funds to retain private counsel." But

according to the policy, this can only be approved if non-LSC funds are available. LASMNY should note that, under 45 CFR § 1611.6(2)(ii), such representation can also be supported with LSC funds, provided that the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance, and the assistance sought relates to such activity of the group.

(v) Under a section titled “Ineligibility of Persons Whose Income Does Not Exceed the Legal Aid Society of Mid-New York, Inc. Maximum Income Guidelines,” Section IV of the Eligibility Policy, several factors are required to be considered, in addition to income, before a determination of financial eligibility of an applicant is made. For example, LASMNY’s policy included as Factor No. 5: “*Other significant factors related to the financial inability to afford legal assistance which result from the person’s willful decision to refuse, without good cause, [sic.] financial circumstances which exceed the maximum income level of the Legal Aid Society of Mid-New York, Inc.*” The consideration of certain factors to determine eligibility when the applicant is under the program’s maximum income level was a requirement dating back to 1983, that has been subsequently abandoned and is not in the current version of the LSC regulation on financial eligibility, 45 CFR Part 1611, which has been effective since September 7, 2005.

As such, it was recommended that LASMNY consider whether it would like to delete the application of factors to disqualify applicants, included in Section IV of the Eligibility Policy, which is a process that is not required by LSC in the current version of 45 CFR Part 1611.

LASMNY was required, under the exception providing for assistance to an applicant whose income exceeds the 200% of the FPG when that applicant’s income is primarily committed to medical or nursing home expenses, to specifically require in its policy that it will be approved by the Executive Director only if, when excluding that portion of the applicant’s income committed to medical or nursing home expenses, the applicant’s remaining income is at or below the program maximum income level for eligibility.

In its response to the DR, LASMNY sent OCE a revised Financial Eligibility Policy for review prior to its submission to LASMNY’s Board of Directors for adoption pursuant to 45 CFR § 1611.3(a). After a review of the revised policy, OCE has determined that it conforms to the requirements of 45 CFR Part 1611, and sufficiently addresses the concerns raised at Finding 3 of the DR.

In order to close out this RCA, OCE requests LASMNY submit a follow-up report within 60 days of receipt of this Final Report providing evidence that the revised policy has been adopted by its Board of Directors.

Finding 4: Sampled cases evidenced that LASMNY was in compliance with the asset eligibility documentation as 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. *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 prior version of the regulation and 45 CFR § 1611.3(d)(1) as 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) for the prior version of the regulation and 45 CFR § 1611.3(d)(2) for the revised version. Both versions require that such exceptions be documented and included in the client's files.

All sampled case files reviewed contained the required documentation to comply with LSC's asset eligibility requirements.

Policy Review

As mentioned above, during the onsite review, LASMNY's Financial Eligibility Policy was reviewed for compliance with 45 CFR Part 1611 and discussed with the Executive Director. As also discussed, in part, under Finding No. 2, the following issues were noted:

(i) It was noted that LASMNY's asset policy distinguishes between liquid and non-liquid assets. *See* LASMNY's Eligibility Policy, Part VI, Section C-Liquid Assets Ceiling, and section D-Non-liquid Assets Ceiling. LASMNY was advised that this distinction was abandoned by LSC in favor of language that focuses on the availability of the asset and the ease of converting the asset to cash. The actual language of 45 CFR Part 1611 is intended to require that recipients consider all assets upon which an applicant might draw in obtaining private counsel. In revising Part 1611, LSC determined that "liquid" and "non-liquid" terminology obscured this understanding and, consequently, the terms were eliminated. *See* 70 Fed. Reg. 45545, 45547 (August 8, 2005). LASMNY must revise its policy to reflect the current 45 CFR Part 1611.

(ii) It was also noted that LASMNY excluded certain assets from consideration, namely:

- (1) Equity in an individual's principal residence;
- (2) Personal and household effects;
- (3) Trusts from household funds for education and medical expenses;
- (4) Value of farmland essential to employment or self-employment;
- (5) Work related equipment essential to employment or self-employment;
- (6) Cash value of IRA or Keough Plans; and
- (7) Assets excluded under Food Stamp, AFDC, HR and SSI programs.

LASMNY was advised that the list of excludable assets stated at 45 CFR § 1611.3(d)(1) is exhaustive. Recipients may not include additional categories of assets as excludable. The categories of excludable assets that a program can have are:

- (1) Applicant's principal residence;
- (2) Vehicles used for transportation;
- (3) Assets used in producing income; and
- (4) Assets exempt from attachment under Federal and State law.

Accordingly, LASMNY was advised that it can exclude only any of the four (4) above-mentioned categories of assets recognized in § 1611.3(d) (1) from its asset calculation.

(iii) It was also recommended that LASMNY may also consider whether it would like to continue to require that an applicant's case be "an extremely meritorious or unusual case" before applying the over-asset exception contained in 45 CFR § 1611.3(d)(2) or whether it would like to adopt the less stringent standard of "unusual circumstances." *See* 70 Fed. Reg. No.151, 45551 (August 8, 2005).

In its response to the DR, and as explained above, LASMNY sent OCE a revised Financial Eligibility Policy for review prior to its submission to LASMNY's Board of Directors for adoption pursuant to 45 CFR § 1611.3(a). After a review of the revised policy, OCE has determined that it conforms to the requirements of 45 CFR Part 1611, and sufficiently addresses the concerns raised at Finding 3 of the DR.

In order to close out this RCA, OCE requests LASMNY submit a follow-up report within 60 days of receipt of this Final Report providing evidence that the revised policy has been adopted by its Board of Directors.

Finding 5: Sampled cases evidenced that LASMNY was not in compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5; *See 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.¹⁶ 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.

LASMNY has developed a policy and procedure to guide its staff in complying with Part 1626. That policy is consistent with Part 1626 and incorporates LSC Program Letters 05-2 and 06-2. Accordingly, LASMNY has developed a citizenship that is consistent with the requirements of CSR Handbook (2008 Ed., as amended 2011) §5.5. For eligible aliens, LASMNY has developed a form, consistent with § 1626.5 (which identifies the applicants alien status and the documents submitted by the applicant to verify his/her eligibility), to be completed as part of the established intake procedure when it is concluded that the applicant is not an US citizen.

However, LASMNY is in non-compliance with the documentation requirements of 45 CFR Part 1626 as seven (7) reviewed case files did not contain the required citizenship documentation. *See* Syracuse Staff Closed 2013 Case No. 12E-12053377; Syracuse Staff Closed 2012 Case No. 12E-12057252; Cortland Staff Closed 2013 Case No. 11E-9043758; Binghamton Staff Closed 2011 Case No. 10E-8040550; Watertown Staff Open, Case No. 05E-1300214W; Syracuse Open PAI Case No. 12E-8053821; and Binghamton Open PAI Case No. 08E-4013087.

Another seven (7) reviewed case files contained defective citizenship attestations. In five (5) of them, the attestation form was signed but not dated by the applicant. *See* Norwich Staff Closed 2011 Case No. 08E-1215168; Oneonta Open Staff Case No. 12E-10056759; Binghamton Staff Closed 2011 Case No. 10E-8033321; Watertown Staff Closed 2011 Case No. 07E-13008970; and Oneonta Staff Closed 2011 Case No. 11E-4042433. In the remaining two (2) cases, the attestation was found defective due to other reasons. *See* Oneonta Open Staff Case No. 13E-4066065 (where the citizenship attestation contained only the printed name of the applicant, was dated but not signed) and Syracuse Staff Closed 2011 Case No. 07E-12000444S (where the citizenship attestation was signed in on old form, which only contained a signature line but no date line beside it and did not meet the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.5). Although when the last case cited commenced in 2008 all the requirements contained in § 5.5, were not technically applicable, when the case was closed during 2011, those requirements were in effect. Therefore, in order to report that case in the CSR, LASMNY should have obtained a new citizenship attestation from the client that was in compliance with §5.5.

LASMNY was required to take corrective action to ensure that all case files, where necessary, contain the required citizenship attestation in the proper format. LASMNY was asked to take

¹⁶ *See* Kennedy Amendment at 45 CFR § 1626.4.

targeted corrective action to identify all older open cases which have the old superseded citizenship form discussed above, and obtain updated citizenship attestations in the proper format. As part of this corrective action, LASMNY should adopt additional ongoing case management oversight protocols to ensure that citizenship attestations, when required, are obtained during initial screening, or when a case is opened. Further, none of the above-mentioned case files that were closed during 2013 should have been reported to LSC in the LASMNY's CSR submission for 2013.

In its response to the DR, LASMNY developed and began to implement "...a plan consisting of: (1) identification of all cases still open with an opening date of December 31, 2007 or earlier; (2) if citizenship forms in any file are not in the proper format, a vigorous attempt to contact those clients to attempt to obtain citizenship attestation in the proper format will be made, [sic.] and (3) if unable to do so, those cases will be flagged so they will not be counted in future LASMNY CSR reports." LASMNY also stated that, "[t]o date, LASMNY has identified all open cases with an opening date of December 31, 2007 or earlier and is in the process of contacting those clients whose citizenship forms might not be in the correct format."

LASMNY also submitted evidence of past Mandatory Staff Meeting Agendas to show that it routinely trains staff on the requirements of 45 CFR Part 1626. Furthermore, a 45 CFR Part 1626 training was scheduled to be held on November 14, 2014 (at LASMNY's next mandatory all staff meeting). Finally, it is indicated that as part of the contemplated changes to implement a more formal case review process, a 45 CFR Part 1626 review will be included for all case review oversight.

In order to close out this RCA, OCE requests LASMNY submit a follow-up report within 60 days of receipt of this Final Report updating LSC on the above-described plan and providing support to show that LASMNY held the referenced training (*e.g.*, meeting agenda, notification emails, etc.).

Finding 6: Sampled cases evidenced that LASMNY was in substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements). A retainer was missing from eight (8) reviewed case files, and three (3) reviewed case files contained defective retainer agreements.

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The

lack of a retainer does not preclude CSR reporting eligibility.¹⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Case review demonstrated that LASMNY was in substantial compliance with the requirements of 45 CFR Part § 1611.9. A retainer agreement was missing in eight (8) case files reviewed. *See* Syracuse Staff Closed 2013 Case No. 13E-12066077; Syracuse Staff Closed 2013 Case No. 12E-12053377; Syracuse Staff Closed 2012 Case No. 12E-12058719; Syracuse Staff Closed 2011 Case No. 10E-12030744; Binghamton Staff Closed 2013 Case No. 12E-8059962; Binghamton Staff Closed 2011 Case No. 10E-8037731; Watertown Staff Open Case No. 05E-1300214W; and Syracuse Staff Open Case No. 08E-12011050.

In three (3) other reviewed case files, the retainer agreement was defective. *See* Norwich Staff Closed 2011 Case No. 08E-1215168 (where the retainer scope didn't indicate the legal problem, it only stated "brief services" but the client was represented in an administrative hearing); Norwich Staff Closed 2011 Case No. 10E-10039954 (in which the retainer did not reference the client's legal problem and merely indicated the services to be provided); and Syracuse Staff Closed 2012 Case No. 12E-12057011 (in which the retainer document, although signed by the client, was not dated).

As such, it was recommended that LASMNY provide training and oversight to help ensure that retainer agreements, when required, are adequately executed in all case files pursuant to 45 CFR § 1611.9.

In its response to the DR, LASMNY stated:

LASMNY is committed to providing training and oversight with regard to retainer agreements and management oversight of this issue will become more formalized as a result of LASMNY's revised case review oversight process[.] Also, retainer agreement training will occur at the LASMNY mandatory all staff meeting to be held on November 14, 2014.

Finding 7: Sampled cases evidenced that LASMNY is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

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

¹⁷ 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.

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

All sample case files reviewed contained the required documentation to comply with 45 CFR Part 1636, where required.

Based on the foregoing, there were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 8: Sampled cases evidenced that LASMNY is in compliance with the requirements of 45 CFR § 1620.4 and 1620.6(c) (Priorities in use of resources).

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

Prior to the visit, LASMNY provided OCE with a statement of its priorities for the years 2011, 2012, and 2013. Those priorities, generally described, consistently include the categories of consumer, education, employment, family, juvenile, health, housing, income maintenance, individual rights and other miscellaneous law problems.

All of the case files reviewed during the on-site review were within LASMNY's priorities.¹⁸

Based on the foregoing, there were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 9: Sampled cases evidenced LASMNY was in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). There were nine (9) reviewed case files in which no legal assistance was provided or documented.

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

¹⁸ LASMNY's Priorities document includes the following statement: "*It shall also be a priority for services for staff to provide advice and counsel in as many different types of cases, so long as the advice and counsel provide a discernible benefit to the client.*" Under this broad priority provision, all LASMNY's reviewed Helpline Staff case files closed as counsel and advice, which were coded with problem code 94 (tort claims cases), can be considered to be under LASMNY's priorities.

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.

With nine (9) exceptions, the files examined during the onsite visit contained a description of the legal assistance provided. In three (3) of these cases, the person was provided with referral information but no specific legal advice. *See* Binghamton PAI Helpline Closed 2013 Case No. 12E-12057775; Binghamton PAI Helpline Closed 2013 Case No. HL13E-1010835; and Binghamton PAI Helpline Closed 2013 Case No. 13E-11066335. As such, those files should be counted as a matter and not as case for CSR Purposes.¹⁹ Two (2) cases lacked documentation of legal work and should not have been reported to LSC. *See* Binghamton PAI Helpline Closed 2013, Case No. 13E-1068608 and Watertown Staff Closed 2012 Case No. 12E-13058022. In three (3) cases on the open test, in which no initial advice was provided, LASMNY was not able to contact the client. *See* Binghamton Staff Open, Case No. 13E-8069481; Binghamton PAI Open Case No. 09E-8018051; and Binghamton PAI Open, Case No. 08E-4013087. All three cases should be deselected for CRS reporting. In the last case, the client chose to use another legal services provider, so the case was rejected, but it was still reported as an open case. *See* Syracuse PAI Open Case No. 12E-12055157.

Since there was no systematic pattern of error noted, there were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

¹⁹ *See* CSR Handbook (2008 Ed., as amended 2011) § 2.3, "Definition of Legal Information", which provides; For CSR purposes, legal information is defined as the provision of substantive information not tailored to address a person's specific legal problem. As such, it is general and does not involve applying legal judgment and does not recommend a specific course of action For example, providing only a pamphlet or brochure is legal information and not legal assistance. The provision of legal information does not create an attorney-client relationship. Legal information alone is not legal assistance and the provision of legal information may not be reported as a case.

Finding 10: Sampled cases evidenced that LASMNY’s application of the CSR case closure categories is in non-compliance with Chapter VIII and IX of the CSR Handbook (2008 Ed., as amended 2011).

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

The files reviewed demonstrated that LASMNY’s application of the closing categories is in non-compliance with chapter VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). A total of 45 reviewed case files were found with closing code errors.

In 29 of the cases found with errors, the CSR Closure Category “K” (Other) was incorrectly applied. *See* Oneonta Staff Closed 2012 Case No.12E-8055293 (a case file wrongly closed as “K,” where no legal work or assistance ever could be done because the client was severely ill, and passed away); Oneonta Staff Closed 2012 Case No.12E-1055623 (a case file wrongly closed as “K,” no legal work or assistance could be done because it was the same client as in the previous case , but with a different legal problem, that was severely ill, and passed away); Oneonta Staff Closed 2012 Case No. 12E-4057085 (a case file closed as “K,” where before losing contact with the client, advise was provided thus “A” (Counsel and Advice) would be a more appropriate closing code); Oneonta Staff Closed 2013 Case No.11E-40500297 (a file closed as “K,” probably because client didn’t show up at the hearing, but since there was legal work done on behalf of the client before that moment, Closing Category “L” (Extensive Service), was more appropriate); Oneonta Staff Closed 2012 Case No. 11E-4047532 (a case file closed as “K, probably because the client withdrew, but since before that happened the client had received some legal advice, it should be more appropriately closed as “A”); Syracuse Staff Closed 2012 Case No. 12E-12058721 (a public housing case in which the program devoted 10 hours of service before the client withdrew, thus “L” would be a better closing code); Syracuse Staff Closed 2011 Case No. 10E-12040637 (a case file involving the appeal of an SSI determination in which the program expended nine (9) hours of work prior to the client going missing, and where “B” (Limited Action) would be a better closing code); Binghamton Staff Closed 2013 Case No. 12E-8060350 (a custody case in which the program devoted several hours of service prior to the client failing to appear at trial, thus “L” could be a better closing code); Binghamton Staff Closed 2013 Case No. 11E-8044108 (a child neglect case in which the program devoted 78 hours of service prior to the client failing to appear at the hearing, thus “L” could be a better closing code); Binghamton Staff Closed 2013 Case No. 08E-8016670 (a child neglect case in which the program expended 49 hours of service prior to the client’s death, thus “L” would be a more appropriate closing code); Binghamton Staff Closed 2011 Case No. 09E-8024251 (a child neglect case in which the program represented the client extensively prior to the client asking the court for and obtaining a new attorney, thus ‘L’ would be a more appropriate closing code); Binghamton Staff Closed 2011 Case No. 10E-8040550 (a case closed as “K” where no service was provided to the client and it was acknowledged that the case should have been rejected and not included in its CSR reporting); Watertown Staff Closed 2012 Case No. 12E-13057997 (case file closed with a “K,” where the more appropriate action would have been to close the case with a “B” because it was an eviction case for non-payment, in which an answer to the petition was

prepared by the advocate and filed pro se by the client); Watertown Staff Closed 2012 Case No. 12E-13055831 (case file closed as “K,” but the more appropriate closing code would be “A” because client was advised on custody and visitation as well as referred to another legal services program in the state where the divorce took place); Watertown Staff Closed 2012 Case No. 12E-13054861 (case file closed “K” when the more appropriate closing code was “B”); Oneonta Staff Closed 2011 Case No. 10E-4039833 (case file closed as “K” when the more appropriate closing code was “B”); Watertown Staff Closed 2012 Case No. 09E-13021675 (case file closed as “K,” but there was legal work done in preparation to a scheduled Social Security hearing to which the client didn’t show up, thus closing code “L” was more appropriate to the level of service provided); Watertown Staff Closed 2011 Case No. 11E-13042256 (case file closed as ‘K,’ where a lawsuit was prepared and filed on behalf of client, who disappeared when the case was in the discovery process, so ‘L’ would be a more appropriate closing code); Watertown Staff Closed 2011 Case No. 11E-13044955 (case file closed as ‘K,’ where a Petition for Child Custody was filed on behalf of client, but due to jurisdictional problems had to be discontinued, thus “L” would be a more consistent closing code according to the level of service); Oneonta Staff Closed 2011 Case No. 10E-4036555 (case file closed as “K,” where legal work was made in preparation for the scheduled administrative hearing before the client disappeared, thus “L” would be a closing code more consistent with the level of service documented on file); Oneonta Staff Closed 2011 Case No. 10E-10039853 (case file closed as “K,” where some legal work was done in preparation for the administrative hearing before client moved and disappeared, thus “L” would be a closing code more consistent with the level of service documented on the case file); Cortland Staff Closed 2011 Case No. 08E-9010676 (a case closed as “K” but the level of assistance was more consistent with closing code “H” (Administrative Hearing Decision), because the case was an administrative agency representation and a decision was rendered); Binghamton PAI Closed 2011 Case No. 10E-8037701 (a case closed as “K,” but should have been closed as “A,” because some advice was provided); Binghamton Staff Closed 2012 Case No. 12E-8058518 (a case closed as “K,” but since some advice was provided it should be closed as “A”); Binghamton Staff Closed 2012 Case No. 12E-8058519 (a case was closed as “K” but since some advice service was provided it should have been closed as “A”); Binghamton Staff Closed 2011 Case No. 11E-8046252 and Binghamton Staff Closed 2012 Case No. 12E-8054018 (cases closed as “K,” which should have been closed as an “L” or deselected, where a conflict was either discovered or developed over the course of case); Binghamton Staff Closed 2012 Case No. 11E-8045706 (a case that was closed as “K,” but the notes in the file revealed that the client did not show up at court, but since some advice was previously provided, the applicable closing code should be “A”); Oswego Staff Closed 2011 Case No. 11E-11041798 (closed as “K,” where the case file notes indicated that a verified complaint was signed and filed, then the client decided to obtain private counsel, thus LASMNY filed a motion to withdraw its representation, therefore this case should had been more correctly closed as ‘L’).

Additionally, there were 16 case files that evidenced inappropriate use of different closing codes. *See* Norwich Staff Closed 2011 Case No. 09E-10024635 (case closed as “A,” but according to the level of assistance documented on the file “L” would be the correct closing code); Norwich Staff Closed 2011 Case No. 10E-10037390 (a case closed as “A,” but according to the level of assistance documented on file “L” would be the correct closing code); Oneonta Staff Closed 2013 Case No. 11E-40500297 (a case closed as “A,” but “L” would be the correct closing code); Oneonta Staff Closed 2012 Case No. 11E-4047532 (case closed as “A,” where the client

withdrew from the case, but before that happened there was legal work done more consistent with a closing code "L"); Syracuse Staff Closed 2011 Case No. 10E-12030744 (an income maintenance case closed under closure category "F" (Negotiated Settlement without Litigation) where there was no evidence in the file of a negotiated settlement, and according to the level of service documented the case should have been closed under closure category "L"); Binghamton Staff Closed 2011 Staff, Case No. 10E-8033321 (case was closed as "B," but the level of assistance was more consistent with "L"); Watertown Staff Closed 2012 Case No. 12E-13058022 (a file closed as "A" when the case should have been de-selected since no advice or counsel was given and no work was performed for the client); Watertown Staff Closed 2011 Case No. 08E-13011326 (case was closed as "A," but considering the extensive work done before the client withdrew and the length of time the case was open and active closing code "L" was the more appropriate closing code); Utica Staff Closed 2013 File No. 12E-1053880 (closed using closing code "G" (Negotiated Settlement with Litigation), but closing it as "Ia" would be a more appropriate closing code); Binghamton PAI Closed 2012 Case No. 12E-8062290 (case closed as "B," but the file documentation indicated that the program's attorney represented the client in a landlord and tenant matter; therefore more appropriately, the case should have been closed as "G"); New Paltz Staff Closed 2012 Case No. 12E-6062941 (a case closed as "H" but the notes in the file indicate the matter never went to hearing, therefore since there was only advice provided to the client, the applicable closing code should be "A"); Oswego Staff Closed 2011 Case No. 10E-11035217 (case was closed with a closing code "F" but case review indicated that the parties entered a settlement agreement on the record on December 5, 2011 therefore closing code "G" would be more accurate); and Utica Staff HelpLine Closed 2011 Case No. 11E-8052097 (case closed as "B" but "A" would be the more accurate closing code). Finally, from the New Paltz Office, three (3) reviewed case files were found closed with closing code "H," when "L" would be more consistent according to the level of service provided. *See* New Paltz Staff Closed 2012 Case No. 08E-6009576; New Paltz Staff Closed 2012 Case No. 10E-6039763; and New Paltz Staff Closed 2012 Case No. 08E-6014130. In all three (3) cases, after providing limited services to the client, LASMNY referred the clients to the local bar association in order for them to be placed with private attorneys who would provide representation at future workers compensation hearings. As the clients were migrant workers with H2A visas who had returned to their home countries, LASMNY provided support to the private attorneys by, for example, working to obtain foreign medical records, facilitating required special assessments of the clients, and by providing document preparation and submission assistance. Based on the amount of legal work that LASMNY evidenced in these cases and the fact that they did not provide representation at any of the administrative hearings, the cases should have been closed utilizing the CSR closure category "L."

LASMNY was required to ensure proper application of the CSR Handbook case closure categories by, for example, providing training to staff consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011).

In its response to the DR, LASMNY stated that:

[It] has taken steps that should substantially reduce case closing errors, particularly those regarding K closings. LASMNY has modified its ACMS so that the K closing on the case closing pull down now reads: "Other - NEED

MANAGEMENT APPROVAL". [sic.] Staff has been informed of this change. Further, case closure training will be on the agenda for LASMNY's mandatory all staff meeting on November 14, 2014. LASMNY Management will include systematic use of case management reports with respect to case closure review in its revised case review oversight process. Finally, LASMNY's Intake and Procedure Manual [] has been revised to remind the HelpLine attorneys that a K closing can only occur with management approval.

OCE has determined that this RCA has been sufficiently addressed; therefore no additional action is necessary.

Finding 11: Sampled cases evidenced LASMNY is in substantial compliance with the requirements of CSR Handbook (2008 Ed. as amended 2011), § 3.3 (dormancy and untimely closure of cases). However, case review revealed several untimely closed or dormant cases.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, limited action, or a referral after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, limited action, or referral was provided. There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed. as amended 2011), § 3.3(a). All other cases (CSR Categories "F" through "L," CSR Handbook (2008 Ed. as amended 2011) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (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).

Case review revealed eight (8) reviewed case files that were found to have been untimely closed. One (1) example was a SSI case in which the client was provided with some advice, the program attempted to obtain more information, and on May 8, 2007, the Social Security Administration was advised that the program was representing the client. After May, 2007, there was no documented activity in the file. The case was untimely closed on September 12, 2011. *See* Syracuse Staff Closed 2011 Case No. 07E-12000444S. Another example was a case involving a workman's compensation claim opened in October 2004. The client was a seasonal worker who subsequently returned to his homeland. The program provided advice to the client and attempted to obtain medical records in 2004-05. A workman's compensation worksheet and chronology of his treatment was developed on 2006. After 2008, there was no documented activity in the file. The case was untimely closed on May 3, 2011. *See* New Paltz Staff Closed 2011 Case No. 04E-6000032. *See also* Watertown Staff Closed 2012 Case No. 10E-13036975 (the client was just advised at the day when the case was opened, August 6, 2010, but subsequently no further service was provided and thus it was untimely closed during 2012); Watertown Staff Closed

2011 Case No. 10E-13034793 (case was opened on May 11, 2010, was closed on December 12, 2011 as “A” where the only documented work on the case was done in May 2011); Watertown Staff Closed 2011 Case No. 09E-13028710 (case file’s last entry note reflecting case activity in October, 2009, when the eviction process was explained to the client, and no further legal work is documented in the case file); Watertown Staff Closed 2011 Case No. 09E-13020304 (case was opened on March 30, 2009, the last documented case activity was from May, 2009, but the case was not closed until December 12, 2011); Watertown Staff Closed 2011 Case No. 08E-13011326 (the last documented case work activity is dated December 18, 2009, when the client was advised to withdraw the request for administrative hearing for denial of SSI benefits, and case was untimely closed on December 12, 2011); Watertown Staff Closed 2013 Case No. 11E-13042503 (case was opened on January 26, 2011 and was closed on January 2, 2013, with a closing code B, where the last activity in this case occurred on April 13, 2011).

Another eight (8) case files were found to be dormant. *See* Watertown Staff Open Case No. 07E-13008432 (the last work on the client’s SSI problem was done in 2008); Watertown Staff Open Case No. 07E-13006053 (the last case file work on the client’s SSI problem was done in December, 2009); Watertown Staff Open Case No. 06E-13005099 (the last work on the client’s SSI problem was done in January 22, 2009); Syracuse PAI Open Case No. 12E-8061071 (case was opened in 2012 and still has not been referred to a PAI attorney); Binghamton PAI Open Case No. 09E-8018051 (PAI case that was opened in 2009 and the client never followed up or contacted the private attorney to whom the case was referred); Binghamton PAI Open Case No. 08E-4013087 (PAI case that was opened in 2008 and there was a note in the file indicating that the client never contacted or followed up with the private attorney); New Paltz Staff Open Case No. 11E-6043070 (a staff case that was opened in 2011, advice was provided in 2012, and the last contact with the client occurred during 2012); and New Paltz Staff Open Case No. 11E-6049060 (staff case which has been opened since 2011 where there has been no contact with the client since 2012).

In order to help ensure LASMNY’s compliance with the requirements of the CSR Handbook (2008 Ed., as amended 2011) § 3.3, it was recommended that LASMNY run periodic case management reports in order to ensure that all cases are closed in a timely manner and to detect dormant cases.

In its response to the DR, LASMNY stated that it “...does run periodic case reports to search for dormant cases and to foster the timely closings of cases[,]” and that “LASMNY will continue to run such case management reports on a periodic basis and will consider how best to use this information in its revised case review oversight process.”

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

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

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

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

Case files reviewed indicate that LASMNY is in substantial compliance with the requirements of the CSR Handbook (2008 Ed., as amended 2011), §3.2, regarding duplicate cases. OCE identified two (2) sets of duplicates during the onsite review. For the first set of duplicates, two (2) cases were for the same client and for a similar legal problem, whether client's medical condition has improved for SSI benefits purposes. *See* Oneonta Staff Open Case No. 13E-9067074, and Oneonta Staff Open Case No.13E-4067591. The last one of these cases (Case No.13E-4067591) was opened in error a few days after the first was opened, and as such will and should be deselected. The second set of duplicate cases also involved the same client with the same legal problem. The two (2) cases relate to a foreclosure action which had been initially opened in May of 2009 as Case No. 09E-1022440. The original court action became inactive, and because the inactivity was advantageous to the client, the program did not make a motion to be relieved as counsel and close the file. However, when the foreclosure procedure became active again in 2013, the program opened it as a new case, which is Case No. 13E-8067155. *See* Binghamton Open Staff Case No.13E-8067155 and Binghamton Open Staff Case No. 09E-1022440. This set of cases is still open, but since the client is also over-income, LASMNY does not intend to include either case in its CSR report.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 13: Review of LASMNY's policies and the list of attorneys who have engaged in the outside practice of law revealed that LASMNY is in compliance with the requirements of 45 CFR Part 1604 (Outside Practice of Law). However, LASMNY should revise its outside practice of law policy to be fully consistent with 45 CFR Part 1604.

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

With the sole exception of one (1) attorney who is no longer working with LASMNY, whose whereabouts were not known at the time of the compliance visit review, all attorneys included in LASMNY's list of attorneys who have engaged in the outside practice of law were interviewed. Interviews evidenced that in every instance the outside practice had been approved and conducted according to LASMNY's procedure. An interview with the Executive Director concerning the program's outside practice of law, also indicated that LASMNY is in compliance with the requirements of 45 CFR Part 1604.

Policy review

LASMNY's outside practice of law policy was reviewed during the course of the on-site visit for compliance with 45 CFR Part 1604. The policy was silent with respect to the *use of the program resources*. LASMNY was required to incorporate in its policy the provisions of 45 CFR §§ 1604.6(a) and (b). While onsite, LASMNY was also informed that the policy should be revised to incorporate the requirement that attorneys authorized to conduct outside practice shall not intentionally identify the case or matter either with LSC or with the program, as required under 45 CFR § 1604.4(b).

In its response to the DR, LASMNY stated that it has revised its Outside Practice of Policy, and provided a copy of the revised policy to OCE. After reviewing it, OCE determined that the concerns related to the policy had been sufficiently addressed within the revised policy. Accordingly, no additional action is necessary.

Finding 14: Interviews with program management and a limited review of LASMNY's policies and fiscal documentation indicated that the program is in compliance with 45 CFR Part 1608 (Prohibited political activities) which is designed, in part, to ensure Corporation funds will not be used to support or promote political activities or interests.

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

The program has a written policy entitled "Prohibited Political and Other Activities 45 CFR 1608" to ensure that all employees are aware of, and comply with, LSC requirements regarding political activities as set forth in 45 CFR Part 1608. The Executive Director advised that periodic training on the policy has been provided to staff.

A limited review of fiscal records reflected in LASMNY's Chart of Accounts and its cash disbursements provided no indication that the program was involved in any prohibited political activity during the review period. In discussions with the Chief Financial Officer ("CFO"), it was also confirmed that LASMNY and its staff were not involved in any restricted political activities.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 15: Sampled cases evidenced LASMNY is in compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009, will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action. Attorneys' fees received by a recipient for representation supported in whole or in part with LSC funds shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the LSC funds expended bears to the total amount expended to support the representation. Further, attorneys' fees received shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other applicable law at the time the money is received. *See* 45 CFR § 1609.4.

Sampled files reviewed indicated that LASMNY is in compliance with the requirements of 45 CFR Part 1609.

Policy review

LASMNY's Part 1609 policy was reviewed during the course of the on-site review. According to program's policy, three (3) types of fee generating cases can be accepted without first attempting referral: (a) cases brought under federal or state civil rights statutes; (b) Black Lung cases; and (c) cases where expected damages are less than \$1,000.00.²⁰ LASMNY was advised that before any fee generating cases could be accepted without attempting to referral, under 45CFR§1609.3(b)(2), they needed to maintain documentation demonstrating consultation with the private bar, showing that the case was the type of case that private attorneys in the area do not accept, or do not accept without pre-payment of a fee. That documentation could be a Memorandum containing the names of appropriate representatives of the private bar with whom LASMNY has discussed fee-generating cases, and the basis on which it has concluded that private attorneys in its service area do not accept, or do not accept without prepayment of a fee, the above mentioned three types of cases. In our interview with the program's Executive Director, he stated he was not aware that LASMNY maintained such documentation. In the absence of the existence of such appropriate documentation, LASMNY's policy should not list any fee generating cases that can be accepted without first attempting referral.

In its response to the DR, LASMNY stated that it has revised its Fee Generating Case Policy. A copy of the revised policy was sent to OCE, which reviewed it and determined that the concerns related to the policy had been sufficiently addressed. Accordingly, no further action is necessary.

²⁰ According to LASMNY's Fee-generating Policy, those three (3) cases were so determined after a consultation with appropriate representatives of the private bar. Pursuant to LSC Record Keeping Memorandum of December, 8, 1997, when said exception to the referral requirement is based on a consultation to the private bar, the following record keeping requirements would apply:

If the recipient relies on § 1609.3(b)(2), relating to consultation with the private bar, to accept a fee-generating case without first attempting referral, the recipient shall maintain:

- (a) A memorandum containing the names of appropriate representatives of the private bar with whom the recipient has discussed fee-generating cases and the bases on which the recipient has concluded that private attorneys in its service area do not accept, or do not accept without prepayment of a fee, particular types of fee-generating case; and
- (b) A list of the types of such fee-generating cases that private attorneys do not accept.

Finding 16: A limited review of LASMNY's financial records disclosed substantial compliance with 45 CFR § 1610.5 (Notification), in that the program provided the mandated funding notification letters to its donors and non-LSC funding sources of \$250 and over of the prohibitions and conditions which apply to the funds; however, the donations section of LASMNY's web site solicited donations but did not include the notifications required by 45 CFR § 1610.5.

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

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, and legal assistance to aliens.

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

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

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

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

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

engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

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

Program Integrity

There is a significantly intertwined relationship between LASMNY and LSCNY. It is so multifaceted and complex that the review team did not have sufficient time and opportunity during the course of this compliance review to evaluate the relationship under the requirements of 45 CFR Part 1610. As such, LSC may contact LASMNY at a later time to conduct a separate desk or onsite review to properly evaluate all relevant compliance aspects of the relationship.

Funding Source Notifications

LSC regulation 45 CFR § 1610.5 states:

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds 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.

(b) A recipient is not required to provide such notification for receipt of contributions of less than \$250.

Further clarification is provided in the Final Rule covering 45 CFR Part 1610, Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity published in 62 Fed. Reg. 27698 (May 21, 1997). The Final Rule states, in part: "Generally, notification should be provided before the recipient accepts the funds. Thus, notice should be given during the course of soliciting funds or applying for a grant or contract. However, for unsolicited donations where advance notice is not feasible, notice should be given in the recipient's letter acknowledging the contribution. For contracts and grants awarded prior to the enactment of the restriction, notice should be given prior to acceptance by the recipient of any additional payments. The notice requirement applies to funds received by recipients as grants, contracts or charitable donations from funders other than the Corporation, which are intended to fund the nonprofit work of the recipient. It does not include funds received from sources such as court payment to attorneys for their work under court appointments; nor does it include payments to the recipient for rent, bank interest, or sale of goods, such as manuals."

LASMNY has established a process to provide the stipulated written notification to its funding sources and individual contributors of \$250 and over. While onsite, a limited review was

conducted of the funding source notifications provided by LASMNY to donors and non-LSC funding sources of \$250 and over during the review period. In all cases reviewed, the notifications provided by LASMNY to its funding sources and individual contributors of \$250 and over, complied with the requirements of 45 CFR § 1610.5.

Limited review of LASMNY's internet site disclosed an exception related to the donations section of LASMNY's web site. This section solicited donations but did not include notification of the prohibitions and conditions which apply to the funds, as required by 45 CFR § 1610.5. LASMNY was required to add the stipulated funding source notification language to the donations section of its website.

In its response to the DR, LASMNY stated that it has added the required funding source notification to the donation section of its website. OCE has reviewed the additional language and has determined that this RCA has been sufficiently addressed and no additional action is required.

Finding 17: LASMNY is in substantial compliance with the requirements of 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

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

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

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

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

To assess compliance with 45 CFR Part 1614, PAI staff were interviewed and documents, including LASMNY's 2011, 2012, and 2013 PAI Plans and sample materials provided by LASMNY were reviewed. In addition, a sampling of 2012 and 2013 closed and open PAI cases were reviewed.

LASMNY involves private attorneys in the direct delivery of pro bono legal assistance through the provision of legal assistance through LASMNY's HelpLine, at a variety of legal clinics, at the Attorney of the Hour/Eviction Defense Program in the Binghamton City Court, and by referring cases to attorneys on Volunteer Lawyer Panels. In addition, a retired judge works from the Utica office one day per week pro bono.

The PAI program is managed by a full time Pro Bono Managing Attorney based in the Binghamton office. Day-to-day administration of these PAI components is assigned regionally to three (3) paralegals, one (1) in each of the following three (3) offices: Binghamton, Syracuse, and Utica. The paralegals in Binghamton and Syracuse are assigned full-time to PAI duties and are responsible for five (5) counties and one (1) large county respectively. In Binghamton, PAI-related duties are shared between the Pro Bono Managing Attorney, who is responsible for referrals to volunteer attorneys, and the paralegal responsible for legal clinics. The paralegal in Utica is assigned to PAI as a .7 FTE.²¹

Interviews, document review, and case review found that LASMNY is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight of PAI cases. With some exceptions, cases evidenced adequate documentation of oversight through contact with the client and/or private attorney, or a search of the online court database. However some cases were identified that lacked adequate oversight. *See* Syracuse Open PAI Case No. 12E-8061071 (case was opened on October 18, 2012, but the case had not yet been referred to a PAI attorney at the time of the onsite visit); Binghamton Open PAI Case No. 09E-8018051 (a dormant case opened since February 4, 2009 in which there was no follow up by the client with the pro bono attorney. The review team was informed that the case would be closed before the end of 2013 as a non-CSR reportable case); and Binghamton Open PAI Case No. 08E-4013087 (another dormant case, opened since July 10, 2008, in which the case file revealed no contact with the pro bono attorney, so the team was advised that the case would be closed before the end of 2013 as a non-reportable CSR case.)

Description of Model

HelpLine

At the time of the review, four (4) private attorneys were involved in providing legal assistance to eligible HelpLine callers in consumer, housing, and family law issues. Each attorney is scheduled to staff the HelpLine at least twice per month and to work from LASMNY's Binghamton office. The program is expanding and a fifth attorney in the Binghamton area has

²¹ The paralegal is assigned the remaining .3FTE to the HelpLine.

been hired and was scheduled to begin training. It is anticipated that LASMNY will allow volunteer attorneys to answer HelpLine calls at other LASMNY offices in the future.

Before answering calls, attorneys must go through training, which includes sessions on HelpLine technology and, depending upon the attorney's experience level and area of expertise, training in a substantive legal area. Volunteer attorneys must also spend time observing another attorney take HelpLine calls. All attorneys are provided a notebook with referral information, instructions on how to access and process calls, and are granted access to online question and answer documents.

For conflict and confidentiality purposes, volunteer attorneys do not have access to the full ACMS. When logging on, volunteer attorneys only have access to consumer, housing, and family law queues and select calls in the call-back queues. The attorneys are instructed to introduce themselves to clients as private attorneys volunteering for the HelpLine. After asking additional questions regarding the legal problem, advice is provided and a paper HelpLine Pro Bono Attorney Case Closing Form is completed. If the case is a child support or bankruptcy issue, volunteer attorneys complete additional screening forms so the client may be considered for a clinic. When volunteer attorneys conclude their calls for the day, they submit their forms to the Pro Bono Managing Attorney who changes the case handler name to herself, scans and attaches the Attorney Case Closing Form to the electronic record, and completes the closing information selecting the Counsel and Advice closure category. She also determines whether applicants with child support or bankruptcy issues qualify for a clinic.

Clinics

LASMNY conducts legal assistance clinics on a variety of legal topics throughout the service area. All LASMNY clinics involve the use of volunteer attorneys in the provision of legal assistance. While staff may attend in a support capacity, they do not provide legal assistance except in unusual circumstances and those cases are coded as staff cases. The Divorce Counsel and Advice and Bankruptcy Clinics were designed to be pre-requisites to the Pro Se Divorce Clinic and referrals to private attorneys for extended representation. To account for the distances some applicants would be required to travel to the clinics, eligible participants are offered the option of participating in some clinics by telephone. LASMNY management estimates that one-third of the attendees scheduled for each clinic prefer the telephone option.

Divorce Counsel and Advice Clinic

Persons with uncontested divorces, no domestic violence issues, and no children, are referred by e-mail from intake to the appropriate paralegal based upon the applicant's county of residence. These cases are fully screened, determined to be eligible, identified as appropriate for the clinic, and referred by HelpLine paralegals.

After receiving a clinic referral, the paralegals code the case as PAI, assign themselves as the case handler, and schedule the applicant for the next clinic. These clinics are generally held in the program's Binghamton, Syracuse, and Utica offices once or twice per month, depending upon the office. Eight (8) to 12 attendees are scheduled for each clinic and are asked to complete a

divorce questionnaire and bring it to the clinic. At the clinic, attendees sign the LASMNY Citizenship Declaration or provide documentation demonstrating alien eligibility. If not a citizen, a staff member completes the LASMNY Eligible Alien Determination form. In addition, attendees complete a standardized Retainer Agreement that indicates that only limited assistance is to be provided. Volunteer attorneys meet individually with applicants and provide legal advice which is recorded on a paper interview form.

At the end of the clinic, the attorneys meet with the PAI paralegal holding the clinic to determine if the client is ready for the next stage of the divorce process, which could be a Pro Se Divorce Clinic or a referral to a private attorney. If a case is not ready to proceed, staff follows up with a letter to the client reiterating the advice provided by the private attorney and explaining the next steps that must be followed before proceeding with a divorce. Clients may also contact LASMNY to be considered for additional services. After the clinic, all cases, regardless of the next step, are closed as Counsel and Advice, and the interview form documenting the advice given is scanned and attached to the electronic case file.

If a case is scheduled to proceed soon after the clinic, in Binghamton and Utica, clients are asked to stay, complete additional paperwork, and are referred to either a Pro Se Divorce Clinic or a private attorney who has volunteered to assist in divorces, depending upon the client's circumstances. These cases are closed at the conclusion of the Divorce Counsel and Advice Clinic until they return for a Pro Se Divorce Clinic or return all paperwork necessary for a referral. In Syracuse, the Onondaga County Bar Association holds pro se divorce clinics. Accordingly, the Syracuse PAI paralegal refers these cases to the bar and closes them as Counsel and Advice.

Pro Se Divorce Clinics

Pro Se Divorce Clinics are scheduled when paralegals have approximately 10 clinic participant candidates. In Binghamton and Syracuse, they are generally held two (2) to three (3) times per year. In Utica, which serves seven counties, they are held in the Utica and Oswego offices three (3) to four (4) times per year. Interviews revealed that approximately 16-20 clients attend each pro se clinic in Utica, and eight (8) to 10 in Oswego. In most circumstances, clients attending the pro se divorce clinic have previously attended the Divorce Counsel and Advice Clinic where they completed the required compliance documents and obtained individualized divorce advice, resulting in a closed advice case. When they attend a Pro Se Clinic, their cases are reopened and a notation is made in the file. At the Pro Se Clinic, attendees receive a Statement of Client's Rights and Responsibilities, Notice re: Pro Se Divorce, and are asked to enter into another Retainer Agreement.

The format of the Pro Se Divorce Clinics varies by location. In Binghamton, clinics are held in a group setting and the volunteer instructs the clients on how to complete the paperwork required to file pro se. These cases are closed as Counsel and Advice. According to those interviewed, in Utica, the clinics are also held in a group setting, but the volunteer attorneys spend additional time and provide a higher level of assistance. In addition, following the clinic, the client is invited to call the paralegal for additional guidance on next steps in the process. Accordingly, the Utica office cases are closed with Limited Action and the interview form with attorney notes

is scanned and attached to the electronic file. Interviews and review of a limited sampling of closed Pro Se Divorce Clinics in Utica revealed that the Limited Action closure category is appropriate for the Utica cases.

Consumer/Bankruptcy Clinics (Binghamton and Syracuse)

Applicants with bankruptcy and other debt-related consumer issues are referred from intake to the appropriate paralegal based upon the client's county of residence. These applicants are fully screened, determined to be eligible, identified as appropriate for, and referred to, a Consumer or Bankruptcy clinic by the HelpLine paralegal. Accordingly, these applicants do not go through the attorney queue. The paralegals obtain additional information on a Bankruptcy questionnaire. After the questionnaires are complete, applicants residing in the counties served by the Binghamton and Syracuse office are referred to monthly Consumer Clinics. At the clinics, volunteer attorneys advise attendees on general consumer issues and screen for bankruptcy eligibility, recording issues, advice, and recommendations for additional assistance on an interview sheet. Following the clinic, most cases are closed as advice and the interview form with attorney advice is scanned and attached to the electronic file. If a client is eligible for a bankruptcy, they are referred to volunteer attorneys for representation in the bankruptcy.

In Utica, bankruptcy cases are handled through the Colgate University Bankruptcy Consumer Program or direct referrals to volunteer attorneys. *See* Referrals to Volunteer Attorney section below.

Child Support Clinics

Child Support Clinics are held in the Syracuse office on a monthly basis. The HelpLine refers applicants in Onondaga County with child support issues to the Syracuse PAI paralegal for placement in the clinic. The required compliance forms are completed at the clinic. Clients meet with a volunteer attorney who provides advice and assists in completing petitions.

Clinics Co-Sponsored with Local Bar Associations

Veteran Center Talk to a Lawyer Program

The Veteran Center Talk to a Lawyer Program is co-sponsored with the Broome County Bar Association. Each month, a volunteer attorney is scheduled to provide individual assistance to veterans on a particular legal topic. The schedule is posted at the Binghamton Veterans Center and advertised throughout the community. Veterans sign up for appointments through the Center. At the clinic, LASMNY staff conducts a full eligibility screening using the standardized paper Application for Service and compliance documents. Persons ineligible for LSC assistance are referred to the bar association for assistance.²² The client's legal issues and the advice provided are recorded on an interview sheet. After the clinic, the paper Application for Service forms are provided to intake staff in the Binghamton office which opens the cases in the ACMS within

²² The letter to volunteer attorneys confirming their participation states that they will be covered by LASMNY's malpractice insurance for assistance provided on behalf of LSC eligible clients. Assistance to non-LSC eligible clients is provided by the Broome County Bar Association Lawyer Referral Service.

days, but no longer than a week. The PAI paralegal in Binghamton is responsible for closing cases in the ACMS with an Advice and Counsel Closure category. The interview form with attorney advice is scanned and attached to the electronic file. Thank you letters are sent to participating attorneys confirming earned CLE credit. In the past, the Utica office has held similar clinics at the Utica Veterans Center following the same procedures.

Broome Annual Senior Legal Clinic

LASMNY and the Broome County Bar Association co-sponsor an annual clinic to provide individualized advice to Broome County senior citizens on a variety of legal issues. Interested seniors are advised to call LASMNY to register. Ten to fifteen attorneys are recruited and serve an average of 100 seniors. At the clinic, held in the Broome County Library, LASMNY staff conducts a full eligibility screening using LASMNY's standardized paper Application for Service and compliance documents. Ineligible applicants are provided advice pursuant to LASMNY's Office For Aging ("OFA") funding and the cases are not reported to LSC. Legal issues and advice is documented on a Senior Legal Clinic Closing Form which is scanned and attached to the electronic case file.

Chenango Annual Senior Legal Clinic

LASMNY and the Chenango County Bar Association co-sponsor an annual clinic to provide individualized advice to Chenango County senior citizens on a variety of legal issues. This clinic was held in 2012 and 2013, and has been poorly attended. It follows the same procedures as the Broome Annual Senior Legal Clinic.

Referral to Volunteer Attorneys

LASMNY's PAI paralegals maintain Volunteer Lawyers Panels by case type for the counties they serve. The majority of the PAI referrals are for divorce or bankruptcy-related cases identified through the clinics described above. These cases are generally closed after the clinics and reopened when they are referred. Unemployment insurance, wills, and other estate cases, are identified during the normal intake process and referred to the appropriate PAI paralegal for referral to a volunteer attorney.²³ Cases are referred to a volunteer attorney after the applicant completes the necessary paperwork. If the case is a divorce or bankruptcy, compliance documents have been previously obtained during clinics. For other types of cases, these documents are mailed and returned prior to a referral attempt. New Retainer Agreements reflecting that the program is attempting to refer a case to a pro bono attorney are also obtained.

To place cases, paralegals, or in Binghamton, the Pro Bono Managing Attorney, contact attorneys who have volunteered to accept the relevant case type in the county of jurisdiction by telephone or email. Program procedures, as documented in an undated Memo from the Pro Bono Managing Attorney, states that cases should be referred within six (6) to eight (8) weeks after the client returns all necessary documentation. Interviews reveal that most cases can be placed

²³ LASMNY receives OFA funding to assist seniors 60 years or older in estate planning issues in-house. Persons under the age of 60 are referred to the PAI program for placement with a volunteer attorney.

within that time period, although some cases take longer to place. Once an attorney has accepted a case, referral letters are sent to the client and the attorney.

According to the Pro Bono Managing Attorney, paralegals follow consistent oversight procedures, contacting the client or the attorney, or monitoring the case through online court databases. Contact with attorneys regarding case status may be by e-mail, letter, or telephone.

Other Programs

Attorney of the Hour/Eviction Defense Program

The Attorney of the Hour/Eviction Defense Program is a joint program with the Sixth Judicial District Pro Bono Action Now Committee. At the time of the review, 12 attorneys had volunteered to participate in this program. Twice per week a private attorney staffs the Binghamton City Court eviction calendar. Attorneys are on call to represent eligible persons who request assistance. The docket is faxed to the PAI staff in Binghamton in advance of representation and LASMNY and the private attorney conducts conflict checks. If a conflict is identified, the private attorney does not take the case. LASMNY staff use the program's standardized paper Application for Service to screen applicants for eligibility and, if eligible, the case is passed to the private attorney for representation. Attorneys complete a questionnaire with the client and represent them before the court.

Staff estimates that, on average, private attorneys handle four (4) out of 20 cases on the docket each day. Intake staff members in the Binghamton office are responsible for entering intake data into the ACMS and opening the cases in the ACMS within days but no longer than a week. The Pro Bono Managing Attorney and PAI Paralegal in Binghamton share the responsibility for closing cases in the ACMS. All cases are closed within a day or two (2) of entry into the ACMS with a Court Decision or Negotiated Settlement with Litigation closure category, depending upon the outcome of the case. The questionnaire and orders are maintained in the file.

In some instances, cases are adjourned and rescheduled pending an action, for example if the judge allows the client two (2) weeks to pay back rent. Such cases may also be closed as Negotiated Settlement with Litigation or a lower level of service depending upon the circumstances. If a private attorney represents the same client at their subsequent appearance, the case is reopened and closed at the highest level of service provided, with a notation in the ACMS case notes. The Pro Bono Managing Attorney and the PAI paralegal check the ACMS for duplicates for these cases.

In-House Counsel

A retired judge volunteers at the LASMNY Utica office at least one (1) day per week. The paralegal refers cases to him that are complicated, unique, or cannot be referred. Case review identified a number of complex, lengthy cases in which he obtained positive results for the client. Oversight for these cases is conducted by the office's paralegal and was found to be sufficient to meet LSC requirements.

Intake, Case Acceptance, and Case Management

Intake: The majority of PAI cases are referred after they are screened for eligibility, conflicts, and legal issue through the HelpLine. The exceptions are the Attorney of the Hour/Eviction Defense Program, Veterans Center-Talk to a Lawyer Clinic, Broome Annual Senior Legal Clinic, and Chenango Annual Senior Legal Clinic, all of which are operated out of the Binghamton office. In such programs, the program's standardized paper Application for Service and compliance forms are completed. Conflicts are checked in advanced based upon the docket or appointment schedule. No significant compliance issue was found regarding PAI intake.

Forms: LASMNY standardized compliance forms used for staff cases are also used by for PAI clinics and referrals to volunteer attorneys. While other PAI documents such as questionnaires, interview sheets, and letters differ amongst offices, they capture the same information in a different format. No concerns with consistency were noted. Although not required by 45 CFR § 1611.9, LASMNY uses a retainer agreement for PAI clinic and referrals cases and identifies the limited nature of the assistance to be provided. No significant compliance issue was found regarding PAI's forms.

Case Acceptance: The PAI paralegals are authorized to accept cases within the scope of the PAI Plan for clinics or referral to a volunteer attorney. An undated Memo from the Pro Bono Managing Attorneys sets forth case closing, referral, and oversight procedures. The procedures state that extended service cases should be referred to a volunteer attorney within six (6) to eight (8) weeks from the time all necessary documents are returned from the client. Clinic appointments should be scheduled within four (4) weeks of intake when possible.

Case Closure: The PAI paralegals close the cases for the programs operating within their counties except that the Binghamton Paralegal and the Pro Bono Managing Attorney share the duties with the Paralegal closing the clinics, the Pro Bono Managing Attorney closing the referrals and PAI HelpLine cases, and the two splitting the Attorney of the Hour/Defense Eviction Program cases. An undated Memo from the Pro Bono Managing Attorneys sets forth case closing, referral and oversight procedures. The procedures require clinics to be closed promptly but no later than 30 days after the clinic, with advice documented either with a case note in the ACMS or scanned and electronically attached notes, such as the interview sheets. Extended representation cases are to be closed promptly but no later than one year after legal services were provided. This rule follows LSC guidance.

Case Oversight: LASMNY has adopted uniform case oversight procedures that generally support LSC requirements. An undated memo from the Pro Bono Managing Attorneys sets forth case closing, referral, and oversight procedures. The procedures require follow up on extended service referrals every four (4) to six (6) months by letter, telephone, or e-mail.

The Utica, Binghamton, and Syracuse, paralegals are responsible for conducting the follow-up. Interviews and case review reveal that the paralegal in Utica is trained and consistently complies with LASMNY's oversight procedures. An additional layer of oversight is conducted by the Pro Bono Managing Attorney, who performs a mid-year and end-year electronic review of open

cases to verify there are notes regarding the status of the case. In Binghamton, the Pro Bono Managing Attorney is responsible for referred cases and conducts such oversight.

Interviews and case review conducted in the Syracuse office, however, indicated that more frequent and formal follow up and oversight of PAI cases may be needed. It is the OCE team's understanding that follow-up after referring cases is not always done to ensure that contact and placement has occurred. Additionally, interviews indicated that, in some cases, there is no organized method of case oversight and follow-up, and closing letters are not always sent to clients upon the completion of their case.

As such, it was recommended that LASMNY improve oversight of the Syracuse office's PAI cases. This can be done by, for example, verifying that every case referral has been accepted by the private attorney and whether initial contact had been established between the referred client and the PAI attorney, the development of a tickler system to remind staff to generate telephone calls or e-mails to private attorneys requesting status and/ or closure case updates, and/or improved case management closure procedures.

In its response to the DR, LASMNY stated:

...private attorney involvement (PAI) staff are expected to follow the procedures outlined in the Memo regarding PAI Procedures for Case Closing, Referral and Oversight, which includes a section on case follow up. These procedures are reviewed and reinforced at PAI workgroup meetings and case reviews. The PAI Managing Attorney conducts case reviews of all PAI staff at least twice a year. A mid-year review is conducted at the end of June and a more extensive work performance evaluation is conducted at the end of December. For each of these reviews the Managing Attorney generates case reports, including lists of hold, open pro bono, and closed pro bono cases for the period under review. In preparation for the reviews, staff are reminded to update any cases that have not been updated in at least six months and close any cases that are ready to be closed. Staffs are also asked to carefully review their list of cases that have not yet been referred to ensure that there is recent activity on each such case (such as: client has been scheduled for a clinic). The Managing Attorney also randomly selects cases closed within the last six months of review to check for income waivers, retainers, citizenship statements, evidence of legal assistance, etc. Newly hired PAI staff are reviewed on a quarterly basis for the first year. Thereafter reviews occur every six months unless there is a need for more frequent reviews.

With respect to Syracuse case oversight, several case management issues were noted during the Syracuse paralegal's 2011 case reviews. These included the need to better manage cases that had not yet been referred to avoid long delays for applicants. The Managing Attorney determined that quarterly case reviews were necessary and these reviews were held in 2012-2013. Throughout this period, the Syracuse paralegal was instructed to generate monthly lists of cases that had not yet been referred and to close cases shortly after clinics to avoid backlogs. Other

issues addressed during that period included the continuing need to update all referred cases at least every six months and to ensure that each file contains the required documentation. By early 2013, case management had improved, especially with respect to managing cases that had not yet been referred. The quarterly reviews continued through December 2013. In 2014, the Syracuse paralegal resigned from LASMNY.

The staff person who has replaced the Syracuse paralegal is an attorney who is allocated 50% to pro bono and 50% to her own casework. The PAI Managing Attorney is conducting quarterly reviews at least through December 2014 when the staff attorney will have completed her first year in this position. The staff attorney has been provided with the Memo regarding PAI Procedures for Case Closing, Referral and Oversight, and these procedures have been reviewed extensively at each of the two case reviews she has had so far. The reviews have emphasized the need for case updates at least every six months, the need to generate monthly case reports for those cases that have not yet been referred to ensure that applicants are being timely served, and required documentation for pro bono cases.

PAI Cost Allocations

The review evidenced that the Audited Financial Statement (“AFS”) for Fiscal Year Ending December 31, 2012 reported separate expenditures for the PAI effort, as required by 45 CFR § 1614.4(e)(2). The AFS reported total PAI expenditures of \$296,692, which is 16.8% of the LASMNY’s basic field grant (\$1,770,500). This complies with the 12.5% requirement under 45 CFR Part 1614.

A review of six (6) advocates time records where time was charged to PAI evidenced compliance with 45 CFR Part 1614. The review also evidenced that non-personnel costs are being allocated on the basis of reasonable operating data in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i). A limited review of eight (8) direct cost allocations to PAI were reviewed and found to be related to PAI activities, fully documented, approved, and stamped as paid.

The review of LASMNY’s PAI expenditures and cost allocations, the 2012 AFS, and a review of the allocation of PAI staff salary for the calendar year ending December 31, 2012, however, disclosed that LASMNY has incorrectly allocated the salaries of attorneys and paralegals. The rate used to allocate staff attorney and paralegal time to LASMNY’s PAI requirement is based upon dividing the attorney/paralegal’s annual salary by the attorney/paralegal’s annual hours, less vacations, sick time, and holidays, resulting in an inflated hourly rate and over reporting of salaries to PAI. A review of the calculation of two (2) staff members’ PAI cost allocation using the staff members annual compensation compared to using their actual hours worked drew an estimated difference of 18.9% of excess salary reported as PAI cost. Nevertheless, LASMNY still met the 12.5% PAI requirement by an excess of \$40,783.22 in 2012.

LASMNY was required to take corrective action for subsequent years and calculate attorneys and paralegal salaries by dividing the attorney/paralegal's annual salary by LASMNY's standard annual hours without deductions for vacation, sick time, and holidays, which will result in a more accurate rate.

In its response to the DR, LASMNY stated:

... [B]eginning with fiscal year 2013, LASMNY begun calculating attorney and paralegal salaries by dividing the attorney/paralegal's annual salary by LASMNY's standard hours without deductions for vacation, sick, and holidays. After OCE's visit to LASMNY in September 2013, LASMNY revised its 2013 PAI calculations, which to that point had been completed up to June 2013, using the above required method without deduction for vacation, sick and holidays. Also, all of LASMNY's calculations since that time have been done by dividing the attorneys/paralegals salaries by LASMNY's standard hours without deductions for vacation, sick, and holidays.

OCE had determined that this RCA has been sufficiently addressed and no additional action is required.

Finding 18: LASMNY demonstrated compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and LASMNY has no LSC-funded subgrants.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient programmatic activities.²⁴ Except that the definition does not include transfer related to contracts for services rendered directly to the recipient, e.g., accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 9june 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

LASMNY has no LSC-funded subgrants. However, if LSC deems it necessary to further evaluate the relationship between LASMNY and LSCNY to ensure compliance with 45 CFR Part 1610, LASMNY's general transfer of funds for programmatic activities may be further evaluated.

²⁴ Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involved more than \$25,000.00 is included.

Except for the payment of membership fees or dues mandated by a government organization to engage in a profession, LSC funds may not be used to pay membership fees or dues to any private or non-profit organization, whether on behalf of a recipient or an individual. *See* 45 CFR § 1627.4. A limited review of the General Ledger (“GL”) account of membership fees or dues for 2012 and 2013 evidenced compliance with the requirement of 45 CFR § 1627.4(a). The review evidenced that in 2011, there was a non-mandatory fee or due of \$30.00 that was paid with LSC funds. This appears to be an isolated instance: therefore, no recommendations or corrective actions were required.

In its response to the DR, LASMNY agreed with this finding.

Finding 19: LASMNY demonstrated compliance with 45 CFR Part 1635 (Timekeeping requirements).

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.

LASMNY’s timekeeping policy requires all attorneys and paralegals to maintain accurate time records, entered contemporaneously, on all case and non-case related activities using the Legal Server Case Management System.

A limited review of seven (7) advocates’ timekeeping records for the pay periods of October and November 2012 evidenced that the records are electronically and contemporaneously kept. The ED’s time records for the periods of April 16 through 30, 2013, and January 1, 2012 through

December 31, 2012, were also reviewed. The time spent on each case, matter, or supporting activity was recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* former 45 CFR § 1642.3.²⁵ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).²⁶

The sampled files reviewed revealed compliance with the requirements of former 45 CFR Part 1642.

A limited review of LASMNY's fiscal records for the compliance review period, as well as audits for 2011 and 2012, revealed that there were no attorney fees awarded, collected, or retained for cases serviced directly by LASMNY that would violate this part.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

²⁵ The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* former 45 CFR § 1642.2(a).

²⁶ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

Finding 21: Review of LASMNY's financial documentation and interviews with its management indicated the program is in compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities) in that LASMNY had complied with its policy which restricts lobbying and certain other restricted activities.

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

LASMNY has a written policy which incorporates the restrictions imposed by 45 CFR Part 1612 entitled Prohibitions on Advocacy Efforts Intended to Influence Certain Legislative and Administrative Activities; Prohibited Advocacy Training, Participation in Public Demonstrations and Related Activities, and Organizing. The Executive Director advised that this policy is communicated to new employees as part of their orientation and is available on-line to all LASMNY employees. Additionally, the Executive Director demonstrated numerous instructional e-mails and periodic training sessions provided to staff on this topic.

Pursuant to 45 CFR § 1612.10(c), the program had previously notified LSC through its Semi-Annual Legislative and Administrative Activity Reports filed with LSC that the Executive Director and two (2) other staff members had reported participation in legislative activities. Through on-site interview with the Executive Director and CFO, and review of the Kemps time records for the days where legislative activities were reported, it was confirmed that in all instances the time reported was charged to non-LSC funding sources.

There were no recommendations or required corrective action.

In its response to the DR, LASMNY agreed with this finding.

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

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

None of the sample files reviewed involved legal assistance with respect to criminal proceeding, or collateral attack in a criminal conviction. LASMNY has adopted program policies concerning Part 1613 as well as Part 1615 that are consistent with the prohibitions and exceptions contained

in those Parts. Those policies are part of LASMNY's Compliance Manual, to which all program's staff member have access electronically and are trained about.

There were no recommendations or required corrective actions required.

In its response to the DR, LASMNY agreed with this finding.

Finding 23: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define "initiating or participating in any class action" as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).²⁷

None of the sampled files reviewed involved initiation or participation in a class action.

LASMNY has adopted a program policy on this matter that harmonizes with the requirements of this federal rule. This policy is part of LASMNY's Compliance Manual, on which staff is trained, and to which all staff has electronic access.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 24: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

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

None of the sampled files reviewed revealed participation in litigation related to redistricting.

LASMNY has adopted a program policy on this matter that is consistent with the requirements of this regulation. This policy is part of LASMNY's Compliance Manual, on which staff is trained, and to which all staff has electronic access.

²⁷ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 25: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

None of the sampled files reviewed involved defense of any such eviction proceeding.

LASMNY has adopted a policy on this matter that is consistent with the requirements of this regulation. This policy is part of LASMNY's Compliance Manual, on which staff is trained, and to which staff has electronic access.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

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

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

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person.

LASMNY has adopted a program on that is consistent with the requirements of this regulation. This policy is part of LASMNY's Compliance Manual, on which staff is trained, and to which staff has electronic access.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 27: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on Solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321(April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.²⁸ This restriction has been contained in all subsequent appropriations acts.²⁹ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity.

LASMNY has adopted a program policy on this matter that is consistent with the requirements of this regulation. This policy is part of LASMNY's Compliance Manual, on which staff is trained, and to which staff has electronic access.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

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

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

None of the sampled files reviewed involved such activity.

LASMNY has adopted a policy on these matters that is consistent with the requirements of this regulation. This policy is part of LASMNY's Compliance Manual, on which staff is trained, and to which staff has electronic access.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

²⁸ *See* Section 504(a) (18).

²⁹ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat.3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005), and Pub. L.109-108, 119 Stat. 2290 (2006) (FY 2006)

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

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

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

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

None of the sampled files reviewed demonstrated non-compliance with the above LSC statutory prohibitions.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 30: LASMNY is in compliance with the requirements of 45 CFR § 1620.6.

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

The Executive Director provided the signed agreements for review, for years 2012 and 2013. Although LASMNY staff did not sign 45 CFR § 1620.6 agreements for year 2011, this was corrected for the following years after it was brought to LASMNY's attention in its independent fiscal audit report for FY 2011. As such, currently LASMNY is in compliance with the requirements of 45 CFR § 1620.6.

There were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

Finding 31: Policy review evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information).

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

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

LASMNY has adopted a policy on this matter that is consistent with the requirements of this regulation. This policy is part of LASMNY's Compliance Manual, on which staff is trained, and to which staff has electronic access.

Based on the foregoing, there were no recommendations or required corrective actions.

In its response to the DR, LASMNY agreed with this finding.

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

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to, LSC Audit Guide for

Recipients and Auditors, Accounting Guide For LSC Recipients (2010 Ed.), the CSR Handbook, the LSC Property Acquisition and Management Manual, 66 Fed. Reg. 47688 (Sep. 13, 2001) ("PAMM") and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity's governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* The LSC Accounting Guide, Chapter 3.

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

Fundamental Criteria and Internal Controls

LASMNY has developed its Accounting Procedures Manual which is program-wide and incorporates the fiscal duties and responsibilities from its Board members to its staff. The Accounting Procedures Manual is updated periodically with the most recent update occurring in 2013. By updating its Accounting Procedures Manual on an ongoing basis, LASMNY has demonstrated its commitment to comply with the criteria outlined in the LSC Accounting Guide and to strengthen its internal control structure.

The review of the internal controls, segregation of duties, and interviews with the Executive Director ("ED"), Chief Financial Officer ("CFO"), Bookkeeper/Administrator ("BA"), and Grant Administrator ("GA") evidenced maintenance of adequate accounting records, and internal control procedures designed to provide reasonable assurance of achieving the following objectives:

- Safeguarding of assets against unauthorized use or disposition;
- Reliability of financial information and reporting; and
- Compliance with regulations and laws that have a direct and material effect on the program.

LASMNY has established an adequate internal control structure, which includes:

- Competent Personnel;
- Definition of Duties and Responsibilities;
- Segregation of Duties;
- Establishing Independent Checks and Proofs; and
- Establishing of an Accounting Manual.

The following sections included in the Segregation of Duties worksheet were reviewed:

Travel Costs

The LSC Accounting Guide, Appendix VII. § F, contains suggested guidelines for ensuring adequate internal controls over travel costs. The guidelines include formal written policies, including policies regarding prior approval for travel, ensuring receipt of sufficient documentation from travelers prior to reimbursement, ensuring adequate controls over the accounting for travel advances and reimbursements, and a review of prior payments before reimbursing travelers to avoid duplication, etc.

A limited review of several travel vouchers related to travel, purchases, made by the Executive Director and attorneys, evidenced that LASMNY follows its own policies as well as the LSC Accounting Guide.

Credit Cards

A limited review conducted of the usage of the company credit card indicated that LASMNY has adequate policies and procedures, which include proper internal controls for the usage of credit cards. However, the Credit Card Procedure found in the Accounting Procedures Manual is inconsistent with the policy in the Office Procedures Manual. It was recommended that LASMNY reconcile the differences between the Credit Card Procedures in the Accounting Procedures Manual and the Office Procedures Manual, and that the Authorization to Use the Legal Aid Society of Mid-New York Credit Card form should also include the purpose of the trip for charges relating to travel.

In its response to the DR, LASMNY stated:

LASMNY has reconciled the minor differences between its Credit Card Procedures in its Accounting Procedures Manual...and the Credit Card Policy in its Office Procedures Manual. LASMNY has also revised its Authorization to Use the Legal Aid Society of Mid-New York, Inc. Credit Card form to include the purpose of the trip for charges relating to travel.

Property Management

A limited review of LASMNY's property records which included two (2) policies: (a) Property Inventory Tagging and (b) Capitalization of Assets, evidenced compliance with the PAMM and the LSC Accounting Guide, as well as compliance with LASMNY's own policies.

Payroll

A limited review of payroll records for the months of October and November 2012 of seven (7) staff members evidenced compliance with LASMNY's Payroll Procedures and Reporting contained in their Accounting Procedures Manual. The limited review included comparing for

accuracy their timekeeping records and their semi-monthly-attendance and statistic record. The review evidenced no exemptions.

Payroll is processed centrally a LASMNY's fiscal office. LASMNY uses a third party payroll provider to process payroll and payroll related tax filings. Payroll registers are reviewed and approved by the Executive Director.

The review of all fiscal staff vacation time records for 2012 and 2013 evidenced compliance with the requirement in the LSC Accounting Guide that, "Each fiscal employee is required to take at least one (1) complete week of annual leave per year." However, LASMNY does not have such a policy. It was recommended that LASMNY should establish such policy as contemplated by the LSC Accounting Guide, Appendix VII, § A (14).

In its response to the DR, LASMNY stated that, as also indicated in the DR, it is in compliance with the LSC Accounting Guide requirement that "[e]ach fiscal employee is required to take at least one (1) complete week of annual leave per year." However, as per OCE's recommendation, LASMNY revised its Accounting Procedures manual to include this policy.

General Journal

The LSC Accounting Guide requires that there should not be direct entries to the GL, and that every entry to the GL from journals or any subsidiary record of original entry should initially be posted to the general journal. Additionally, each general journal entry should be:

1. Fully described;
2. Adequately documented;
3. Sequentially numbered; and
4. Approved by an authorized individual.

The limited review of the journal entries for 2013 and an interview with the CFO evidenced that the entries originated by the BA are being reviewed and approved by the CFO. However, journal entries originated by the CFO are not being reviewed and approved by the ED. LASMNY was required to take corrective action to have journal entries by the CFO approved by the Executive Director or other authorized individual pursuant to the LSC Accounting Guide § 3-5.6.

In its response to the DR, LASMNY stated that its Executive Director has been approving entries made to the GL by the CFO since December 2013.

OCE has determined that this RCA has been sufficiently addressed, and no additional action is necessary.

Bank Account Reconciliations

The LSC Accounting Guide states that bank statement reconciliations to the general ledger should be conducted on a monthly basis and should be reviewed and approved by a responsible individual. The review must be appropriately documented, signed, and dated. *See* LSC

Accounting Guide § 3-5.2(d). Outstanding checks should be investigated and resolved in accordance with the procedures detailed in the LSC Accounting Guide, Appendix VII, § I-7 (Bank Reconciliation Procedures).

The program currently maintains numerous bank accounts which are used for various purposes including its main operating account, attorney escrow account, petty cash, savings, and brokerage. LASMNY maintains its Bank Reconciliation Procedures policy in its Accounting Procedures Manual. This document states that the bank statement reconciliation process is performed monthly by the CFO and is reviewed by the Executive Director, who initials and dates the statement after the review.

A limited review of the program's bank statement reconciliations revealed that the program followed its policy, bank statements were reconciled timely, and the review was appropriately documented. It was also determined that LASMNY was clearing stale checks timely from its operating account. Based on these factors, LASMNY's bank statement reconciliations procedures appear adequate.

Cash Receipts

Pursuant to the LSC Accounting Guide, Appendix VII, §§ H8, H12, and H14, (Accounting Procedures and Internal Controls), LSC recipients must have procedures to ensure that cash received in the office is properly handled, to ensure cash receipts are not commingled, and cash receipts are reconciled to the cash receipts log on a timely basis.

LASMNY has written Cash Receipts Procedures which are maintained in its Accounting Procedures Manual. From a limited review of LASMNY's procedures, financial records, and interviews with the CFO, it was determined that LASMNY properly recorded its cash receipts to the cash receipts log including regular deposits, donor contributions, and client trust deposits. OCE on-site sampling revealed adequate segregation of financial duties. Cash receipts deposits were made regularly with the supporting documentation subsequently provided to the CFO who recorded the deposit in the register and prepared the journal entry for input into the accounting system.

Cash Receipts from Clients

LASMNY will sometimes accept cash from a client to cover anticipated fees in connection with their legal representation (Client Trust Accounts). The program has written procedures for this area entitled Client Trust Funds which are maintained in its Accounting Procedures Manual. The policy states, in part, that when the program receives client trust funds, a receipt is prepared in triplicate which contains the client name, address, case number, type of payment, and the purpose for which the money is to be used. Through an interview with the CFO it was determined that when a client wishes to make a payment they let their case handler know, who then contacts the Grant Administrator, who is the designated person to accept client trust funds. The Grant Administrator receives the payment and then issues the receipt to the client. Client Trust deposits are listed in the client account checkbook by the Grant Administrator and at

month end a reconciliation of the client account balance to the cash balance is performed by the CFO.

To strengthen a program's internal control with the goal of reducing opportunities for fraudulent activities to occur, LSC recommends that clients should be provided a notice about the program's cash receipts policy which states that the client is entitled to a receipt for cash provided, and if a receipt is not provided, that the client should see a supervisor. *See* LSC Accounting Guide, Appendix VII, § H (Accounting Procedures and Segregation of Financial Duties Worksheet - Controls over Cash Receipts). Through a review of the lobby area at the Utica office, and also through an interview with the Grant Administrator, it was determined that there was no such written notification provided to clients to inform them of the program's policy for cash receipts.

It was recommended that LASMNY place a sign in each of its office lobbies or front desks that contains a notice to its clients of its cash receipts policy. The program was encouraged to implement this recommendation as it provides a control to better inform its clients and serves as a deterrent to possible fraudulent activities.

In its response to the DR, LASMNY stated that "...it has created a Notice as recommended and it is now displayed in each of LASMNY's waiting rooms."

Petty Cash

Under the LSC Accounting Guide (2010 Ed.), § 3-4.3, "[a]ccounting duties should be segregated to ensure that no individual simultaneously has both the physical control and the record keeping responsibility for any asset, including, but not limited to cash, client deposits, supplies and property. Duties must be segregated so that no one individual can initiate, execute, and record a transaction without a second independent individual being involved in the process."

Pursuant to the LSC Accounting Guide, § 3-5.4 (Cash Disbursements, (c) Recordkeeping), a program should review petty cash reimbursements periodically to ensure required procedures are being followed. Occasional surprise counts greatly reduce the opportunities for misuse of petty cash.

A review of the Segregation of Financial Duties Worksheet, a matrix of internal controls completed by LASMNY in preparation for the on-site OCE visit, disclosed certain weaknesses related to LASMNY's petty cash procedures, whereby a proper segregation of duties had not been achieved. LASMNY's responses to the Segregation of Financial Duties Worksheet, Section C-3, Petty Cash, revealed that a single employee controlled all facets of the petty cash process including custody of the petty cash funds, maintaining the petty cash records, and keeping adequate controls of the petty cash funds. Furthermore, LASMNY's responses to the Segregation of Financial Duties Worksheet revealed that that surprise counts and internal audits of petty cash are not performed.

LASMNY was requested to expand the segregation of duties related to petty cash, incorporating surprise counts and internal audits of petty cash into its internal controls procedures.

In its response to the DR, LASMNY stated:

LASMNY has expanded the segregation of duties related to petty cash. After its September 2013 OCE compliance visit, LASMNY changed its outreach office petty cash accounts from cash accounts to checking accounts. Petty Cash envelopes (the envelope) are maintained by the petty cash custodians (the custodian). The custodian is responsible for assuring that the checking account funds and the receipts in the envelope are balanced for that particular office. The custodian reconciles the envelope and check register (if applicable) on a monthly basis requesting a reimbursement amount to replenish the fund to the authorized amount for that office. The reimbursement request and checking account balance must equal the petty cash fund for that office. The monthly expenses must be supported by signed and dated receipts. The envelope (with receipts) and check register are then forwarded to the main office for reimbursement. When a petty cash check is issued by the main office, the expenses are charged to its appropriate general ledger account. A check is made payable to LASMNY for the outreach offices by the Bookkeeper/Administrator and directly deposited into the applicable petty cash checking accounts by a designated clerical person. For the Utica office the check is made payable to the custodian for the replenishment amount. Since the Utica office maintains cash, the Executive Assistant periodically checks the petty cash to assure that receipts and cash equal the authorized amount. Said periodic checks occur on a monthly basis and are unannounced. The checking account address for monthly bank statements is the main office. When the monthly statements are received the Chief Financial Officer (CFO) reconciles the statement with the receipts and envelope received from the custodian. The CFO then presents the statement, receipts, and envelope to the Executive Director for his or her review.

To implement those changes, LASMNY revised its petty cash procedures section in its Accounting Procedures Manual, a copy of which was sent to OCE.

Accordingly, OCE had determined that this RCA has been sufficiently addressed and, therefore, no additional action is required.

Finding 33: Interviews with staff and a limited review of procedures, practices, and documents related to TIG No. 10064 evidenced compliance with reviewed TIG grant assurances, but disclosed a lack of documentation in support of a payment for a third party contract as well as a failure to follow certain terms of the contract.

TIG projects and funds are subject to TIG contract terms, the provisions of the LSC Act and regulations and any other laws, including appropriations provisions which apply to LSC funds. During the onsite review of TIGs, OCE staff examined a sampling of TIG-related activities and expenditures to ensure their compliance with applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to, the LSC

Audit Guide for Recipients and Auditors, the LSC Accounting Guide, LSC TIG assurances, the Property Acquisition and Management Manual, and with any amendments of the foregoing adopted before or during the period of the TIG grant.

LASMNY received a grant award from LSC for TIG No. 10064 in the amount of \$81,100 with a term date from January 1, 2011 through June 30, 2012. There was also a three (3) month reporting period at the conclusion of the award period. During the award term, an additional three (3) month extension was approved by the Office of Program Performance. The review evidenced that, as of August 31, 2013, LASMNY had fully expended all TIG funds received for this grant; however, it was still awaiting the final payment of \$18,000 from LSC for completion of Milestone 5.

A limited review of relevant materials and interviews with staff concerning TIG No. 10064 was conducted. According to the Evaluation Report of TIG No. 10064, the goal of the “LEP 2.0 Project” (TIG No. 10064) was to improve access to civil legal services and the quantity/quality of services provided to the Limited English Proficient (“LEP”) and other underserved groups, by developing and implementing: (1) web-based multimedia resources to improve LEP individuals' ability to pursue their legal rights; and (2) improvements in LASMNY's telephone and intake systems to enhance LEP individuals' access to LASMNY's services, as well as the quantity/quality of services LASMNY provides to LEP clients. The five (5) objectives of the LEP 2.0 Project were as follows:

Objective No. 1: Increase LEP individuals' access to legal information and services, by creating and posting video and audio content on LASMNY's website.

Objective No. 2: Increase access to civil legal services among LEP and other underserved groups, as well as the quantity/quality of services they receive, by adding "Babel notice" capacity to LASMNY's telephone system.

Objective No. 3: Increase access to civil legal services among LEP and other underserved groups, as well as the quantity/quality of services they receive, by enhancing the multilingual intake capability of LASMNY's telephone system.

Objective No. 4: Improve the quantity and quality of civil legal services to LEP clients and other underserved groups, by using LASMNY's case management system to identify language service needs, track language services provided, and make appropriate adjustments in the delivery system to enhance services to LEP groups.

Objective No. 5: Develop and make available resources that will enable other legal services providers statewide to improve access to services for LEP clients and other underserved groups, as well as the quantity/quality of services they receive.

During the course of the Project, goals and objectives expanded to include more languages and more video/audio materials than projected. The Project also expanded to include model materials usable by other civil legal services programs nationwide, rather than just statewide.

Grant Assurances

During the on-site review, OCE fiscal staff reviewed compliance with 2010 TIG Grant Assurances (in effect at the time TIG No. 10064 was awarded) 7, 8, and 9. It was determined that LASMNY had complied with these TIG Grant Assurances.

Review of the TIG Final Budget for TIG No. 10064 demonstrated compliance with TIG Grant Assurance No. 7 as the TIG Final budget detailed expenses of \$81,100 which equaled the award amount. There were no funding obligations that exceeded the grant award amount in accordance with Grant Assurance No. 8. Review of the TIG Final Budget demonstrated compliance with Grant Assurance No. 9. None of the third party contracts related to TIG No. 10064 qualified as subgrants under 45 CFR § 1627.3, and compliance was noted with respect to LSC regulations on transfers and subgrants, 45 CFR Parts 1610 and 1627, in regard to the provision of TIG funds to third-parties. Also, in accordance with Grant Assurance No. 9, no third-party contracts were entered into by the grantee prior to January 1, 2011.

Vendor Contracts

LASMNY entered into three (3) contracts with third parties related to TIG No. 10064. These included: 1) a contract not to exceed \$5,000 with Western New York Law Center for the purpose of recording and producing video and audio content for the project at a rate of \$500 per day for six (6) days' work taping and editing, ten (10) hours of coordination with LASMNY's IT staff, and reimbursement of travel expenses; 2) a contract not to exceed \$5,000 with the Empire Justice Center ("EJC") to assist LASMNY in statewide distribution of materials developed under this project to other civil legal services organizations at a rate of \$250 per hour for a projected 20 hours of services; and 3) a contract not to exceed \$15,000 with Multicultural Association of Medical Interpreters, Inc. ("MAMI") at MAMI's standard contract rates for each language for the purpose of translation of project materials as well as trained interpreters to make video and audio recordings of project materials.

From a limited review of the third party contracts associated with TIG No. 10064, it was determined that in one (1) instance LASMNY did not follow some terms of the contract and did not collect documentation in support of the hours invoiced by a vendor which exceeded the contract amount by 45 percent. These exceptions relate to the third party contract with Empire Justice Center ("EJC"). As stated previously, under the contract with EJC, LASMNY agreed to reimburse EJC for services performed under this contract in a total amount not to exceed \$5,000 over the 18 month period of the TIG grant at a rate of \$250 per hour for a projected 20 hours of services. In the contract with EJC, Article II (Time of Performance) stipulated that the services of EJC shall start no earlier than the 1st day of July 2011 and end no later than the 31st day of December 2012 unless both parties agree in writing to an extension and such extension is approved by LSC. Under Article VI (Subsequent Changes), it was also stipulated that any changes to the agreement must be in writing and signed by both parties to the agreement.

LASMNY received an invoice dated March 1, 2013 from EJC for \$7,250, which exceeded the contract amount by \$2,250. Under the description section of the invoice was a note "LEP Law Library – 29 hours @ \$250 per hour." There was no additional documentation to support when

the work was performed or how the 29 hours was determined, except for an e-mail from EJC which advised that they had worked 29 hours on this contract. LASMNY paid the invoice by check dated March 15, 2013 and the entire \$7,250 was charged to its funding code for LSC TIG.

In its response to the DR, LASMNY stated:

LASMNY obtained a time and activity report from EJC to further document EJC voucher (submitted as Exhibit 33D in its response to OCE's Additional Information Requested).

[LASMNY] has also amended its Accounting Procedures Manual requiring that with respect to the use of LSC funds, third party vendors must submit time and activity reports when vouchering for services [and] [t]he Executive Director held a formal training on the new Accounting Procedure Manual provisions on August 7, 2014, attended by LASMNY's CPA/Administrator and Utica office Managing Attorney.

OCE has reviewed the additional documentation obtained and provided by LASMNY. The documentation provided indicates that the \$7,250 cost appeared to be reasonable and necessary for the completion of the TIG project. OCE also finds that the actions LASMNY has taken to ensure that adequate documentation is collected to support similar costs in the future are sufficient to address its concerns.

Pursuant to the LSC Accounting Guide, § 3-5.16 (Contracting), the statement of work should be sufficiently detailed so that contract deliverables can be identified and monitored to ensure that the deliverables are completed. Regulation 45 CFR § 1630.3(a)(9) states, in part, that expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was adequately and contemporaneously documented in its business records. Further, on March 1, 2013, the same date as the invoice described above, a Contract Amendment allowing billing of \$7,250 was prepared by LASMNY and signed by its Executive Director. This amendment was not signed by the EJC, which is in contravention to the requirement in Article VI of the agreement between the parties that any changes to the agreement must be in writing and signed by both parties to the agreement.

As such, in the DR, LASMNY was also required to take corrective action to ensure that in the future it complies with, and properly enforces, its contracts with third parties for the use of LSC funds. LASMNY was requested to inform LSC, and provide evidence of the actions it has taken to do so (e.g., revised policies, training, etc.).

In its response to the DR, LSMNY stated:

As soon as the problem with the EJC bill was realized by LASMNY, the LASMNY Executive Director met with fiscal staff and the Utica Managing Attorney to discuss how to ensure better compliance and enforcement with its third party contracts with the use of LSC funds. At that time it was emphasized to staff that no third party payments could be made with LSC funds without a time and activity report, or other sufficient documentation, from the third party, and that all contract amendments must be in writing

and executed by all parties. The Executive Director held a formal training on the new Accounting Procedure Manual provisions on August 7, 2014, attended by LASMNY's CPA/Administrator and Utica office Managing Attorney.

OCE finds that this required RCA has been sufficiently addressed and no further action is necessary. OCE notes, however, that LASMNY's response also references a "pre-approval" from LSC to use TIG funds to support the contract overage amount. LSC does not provide such approvals. Although LSC staff can provide grantees with guidance on whether costs may appear to be properly allocable to a particular grant, LSC does not provide prior approvals for such costs.

Timekeeping

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. Additionally, the Office of Management and Budget ("OMB") Circular A-122 – Cost Principles for Non-Profit Organizations requires a non-profit to maintain records of an employee's time, account for a full day's work, and be able to identify the portion of time devoted to grant projects. Through interviews with the Managing Attorney and the CFO it was determined that LASMNY requires program personnel to maintain their time through LASMNY's timekeeping system to ensure compliance with the timekeeping requirements of 45 CFR § 1635.1 and 45 CFR Part 1630.

Property Asset Management Manual ("PAMM")

A review of assets purchased in relationship to TIG No. 10064 revealed that LASMNY was in compliance with PAMM and 45 CFR § 1630.5(b) because no purchases using LSC funds exceeded \$10,000.

LSC Accounting Guide, Section 2-2.1

A review of LASMNY's audited financial statements revealed that revenue and expenditures associated with the TIG was separately reported in accordance with Section 2-2.1 of the LSC Accounting Guide and 45 CFR § 1628.3(g).

Functionality of the TIG Project

A limited review of LASMNY's web site revealed that the site was operational and translations to various foreign languages were available and functional.

V. RECOMMENDATIONS³⁰

In view of the foregoing, it was recommended that:

1. LASMNY's Helpline staff attorneys should review case problem codes before cases are closed, particularly when problem code 99 (Other Miscellaneous) has been assigned to the case. LASMNY should also ensure that its ACMS system contains accurate case type information, and that all cases that meet LSC eligibility criteria should be reported in the CSR, irrespective of the funding source. (See Finding 1)

In its response to the DR, LASMNY stated that it has implemented the recommendations related to this Finding, indicating that:

LASMNY has reviewed all open cases and 2014 closed cases for problem Code 99 and ha[s] changed the problem codes to more appropriate and more accurate problem codes in those cases if warranted. HelpLine attorney staff have been directed to review all case problem codes before each HelpLine case is closed or transferred. ACMS and problem code identification training will occur at the next all staff meeting scheduled for November 14, 2014. In order to reduce case problem code errors with respect to Code 99, all LASMNY staff have been informed that Code 99 should be used only with management approval. The HelpLine Intake and Procedural Manual has likewise been revised to reflect this change. LASMNY's ACMS Problem Code 99 now reads: "Other Miscellaneous: NEED MANAGEMENT APPROVAL".

2. LASMNY should remove the food stamps option from the income source drop-down list in its ACMS. (See Finding 2)

In its response to the DR, LASMNY informed OCE that it "...has removed the food stamp option from the income source drop-down list in its ACMS."

3. LASMNY's Watertown office should discontinue employing a pre-completed waiver form and make a new determination of income eligibility each time an over-income applicant is screened. (See Finding 2)

In its response to the DR, LASMNY informed OCE that its Watertown branch office "...has discontinued using a pre-completed waiver form."

³⁰ Items appearing in the "Recommendations" section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors. By contrast, the items listed in "Required Corrective Actions" must be addressed by the program, and will be enforced by LSC.

4. LASMNY's ACMS "Expense" tab drop-down list should include the full list of factors that can be applied when determining the eligibility of an individual whose household gross annual income is between 125-200% of the FPG, pursuant to 45 CFR § 1611.5(a)(4). All of the factors mentioned in the paper waiver forms should also be similar to the factors included in the ACMS to ensure accurate and consistent recordation of the applicable facts at the time of any intake interview. (See Finding 2)

In its response to the DR, LASMNY informed OCE that:

[LASMNY's] Technology Administrator is in the process of streamlining and automating LASMNY's waiver-approval procedures. LASMNY will no longer use the existing paper waiver approval form for individuals whose gross annual income is between 125%-200% of the Federal Poverty Guidelines and the corresponding existing approval process. LASMNY is developing an electronic waiver form and process which is being integrated into LASMNY's case management system. A "Waiver" tab is being added to LASMNY's existing electronic eligibility data entry form. HelpLine attorneys, managing attorneys, and the Executive Director will be responsible for performing the waiver approvals on the day of the intake or as soon as practicable thereafter. The "Expense" tab drop-down list will be eliminated in the ACMS waiver approval. Paper waiver forms will become information gathering forms only to allow staff who are in the field, off site from a LASMNY office, to gather the information to insert into the ACMS as soon as practicable so that the approval decision can occur as soon as possible. However, all factors in the ACMS will be the same as all factors in the paper waiver information gathering form and the same as in LASMNY's proposed revised Financial Eligibility Policy.

LASMNY anticipates that all necessary changes and modifications to its case management system will be completed by October 1, 2014.

5. LASMNY should review with all staff primarily responsible for applicant screening, the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act ("VAWA") 2006 Amendments. (See Finding 2)

In its response to the DR, LASMNY informed OCE that it "...has reviewed with all staff primarily responsible for applicant screening the applicability of 45 CFR Section 1626.4 and Program Letter 06-2[.]"

6. LASMNY should implement a more formal case review oversight process in its branch offices. (See Finding 2)

In its response to the DR, LASMNY informed OCE that "...at its next Management Meeting, LASMNY will review its current case review oversight process, especially as it relates to its branch offices, and will plan to implement a more formal case review process, which will include at least 2 formal case reviews per case handler per

year using a standardized procedure and process to be developed by LASMNY management.”

7. LASMNY should develop procedures to ensure that the facts that support authorized over-income exceptions are timely and properly documented. (*See Findings 2 and 3*)

In response to this recommendation, LASMNY has developed an electronic waiver form and process that has been integrated to its case management system. This process is expected to improve the timely and accurate documentation of facts to support authorized over income exceptions. LASMNY planned to train all staff on this feature at its mandatory all staff meeting on November 14, 2014.

8. LASMNY should provide training and oversight to help ensure that retainer agreements, when required, are adequately executed in all case files pursuant to 45 CFR § 1611.9. (*See Finding 6*)

In its response to the DR, LASMNY stated its commitment “...to providing training and oversight with regard to retainer agreements and management oversight of this issue will become more formalized as a result of LASMNY’s revised case review oversight process[.] Also, retainer agreement training will occur at the LASMNY mandatory all staff meeting to be held on November 14, 2014.”

9. In order to help ensure LASMNY’s compliance with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 3.3, it was recommended that LASMNY run periodic case management reports in order to ensure that all cases are closed in a timely manner and to detect dormant cases. (*See Finding 11*)

In its response to the DR, LASMNY stated that it “...does run periodic case reports to search for dormant cases and to foster the timely closings of cases[]” and that “LASMNY will continue to run such case management reports on a periodic basis and will consider how best to use this information in its revised case review oversight process.”

10. LASMNY should improve oversight of the Syracuse office’s PAI cases. This can be done by, for example, verifying that every case referral has been accepted by the private attorney, determining whether initial contact has been established between the referred client and the PAI attorney, developing a tickler system to remind staff to generate telephone calls or e-mails to private attorneys requesting status and/or closure case updates, and/or implementing improved case management closure procedures. (*See Finding 17*)

In its response to the DR, LASMNY stated:

...private attorney involvement (PAI) staff are expected to follow the procedures outlined in the Memo regarding PAI Procedures for Case Closing, Referral and Oversight, which includes a section on case follow up. These procedures are reviewed and reinforced at PAI workgroup meetings and case reviews. The PAI Managing Attorney conducts case reviews of all PAI staff at least twice a year. A

mid-year review is conducted at the end of June and a more extensive work performance evaluation is conducted at the end of December. For each of these reviews the Managing Attorney generates case reports, including lists of hold, open pro bono, and closed pro bono cases for the period under review. In preparation for the reviews, staff are reminded to update any cases that have not been updated in at least six months and close any cases that are ready to be closed. Staffs are also asked to carefully review their list of cases that have not yet been referred to ensure that there is recent activity on each such case (such as: client has been scheduled for a clinic). The Managing Attorney also randomly selects cases closed within the last six months of review to check for income waivers, retainers, citizenship statements, evidence of legal assistance, etc. Newly hired PAI staff are reviewed on a quarterly basis for the first year. Thereafter reviews occur every six months unless there is a need for more frequent reviews.

With respect to Syracuse case oversight, several case management issues were noted during the Syracuse paralegal's 2011 case reviews. These included the need to better manage cases that had not yet been referred to avoid long delays for applicants. The Managing Attorney determined that quarterly case reviews were necessary and these reviews were held in 2012-2013. Throughout this period, the Syracuse paralegal was instructed to generate monthly lists of cases that had not yet been referred and to close cases shortly after clinics to avoid backlogs. Other issues addressed during that period included the continuing need to update all referred cases at least every six months and to ensure that each file contains the required documentation. By early 2013, case management had improved, especially with respect to managing cases that had not yet been referred. The quarterly reviews continued through December 2013. In 2014, the Syracuse paralegal resigned from LASMNY.

The staff person who has replaced the Syracuse paralegal is an attorney who is allocated 50% to pro bono and 50% to her own casework. The PAI Managing Attorney is conducting quarterly reviews at least through December 2014 when the staff attorney will have completed her first year in this position. The staff attorney has been provided with the Memo regarding PAI Procedures for Case Closing, Referral and Oversight, and these procedures have been reviewed extensively at each of the two case reviews she has had so far. The reviews have emphasized the need for case updates at least every six months, the need to generate monthly case reports for those cases that have not yet been referred to ensure that applicants are being timely served, and required documentation for pro bono cases.

11. LASMNY should reconcile the differences between the Credit Card Procedures in its Accounting Procedures Manual and Office Procedures Manual, and that the Authorization To Use The Legal Aid Society of Mid-New York Credit Card form should include the purpose of the trip for charges relating to travel. (See Finding 32)

In its response to the DR, LASMNY stated:

LASMNY has reconciled the minor differences between its Credit Card Procedures in its Accounting Procedures Manual...and the Credit Card Policy in its Office Procedures Manual. LASMNY has also revised its Authorization to Use the Legal Aid Society of Mid-New York, Inc. Credit Card form to include the purpose of the trip for charges relating to travel.

12. LASMNY should place a sign in each of its office lobbies that contains notice to its clients of LASMNY's cash receipts policy. (*See Finding 32*)

In its response to the DR, LASMNY stated that "...it has created a Notice as recommended and it is now displayed in each of LASMNY's waiting rooms."

13. LASMNY should establish a policy requiring annual vacations as recommended by the LSC Accounting Guide, Appendix VII, § A (14).(*See Finding 32*)

In its response to the DR, LASMNY stated that, as also indicated in the DR, it is in compliance with the LSC Accounting Guide requirement that "[e]ach fiscal employee is required to take at least one (1) complete week of annual leave per year." However, as per OCE's recommendation, LASMNY revised its Accounting Procedures manual to include this policy.

VI. REQUIRED CORRECTIVE ACTIONS

Consistent with the Findings of this report, LASMNY was required to take the following corrective actions:

1. Ensure its Financial Eligibility Policy conforms with the requirements of the current version of 45 CFR Part 1611. The required revisions to the policy should include: the adoption of provisions regarding screening for income prospects; the prohibition of including an alleged perpetrator of domestic violence's income and assets in the eligibility calculation; the elimination of the distinction between liquid and non-liquid assets; the revision of factors to be considered when conducting eligibility determinations for individuals with annual income between 125-200% of the FPG; and the revision of the categories of assets excluded from the eligibility calculation. (*See Finding 2*)

In its response to the DR, LASMNY sent OCE a revised Financial Eligibility Policy for review prior to its submission to LASMNY's Board of Directors for adoption pursuant to 45 CFR § 1611.3(a). After a review and evaluation of the revised policy, OCE determined that the policy conforms with the requirements of 45 CFR Part 1611, and sufficiently addresses the concerns raised at Finding 2 of the DR.

Accordingly, OCE requests LASMNY submit a status report concerning this corrective action, within 60 days of the release of this Final Report, indicating whether this revised Financial Eligibility Policy has been adopted by its Board of Directors, including a copy of the Board approved Financial Eligibility Policy and documentation showing Board approval.

2. Specifically include in its Financial Eligibility Policy that the Executive Director or designee can only waive income eligibility under 45 CFR § 1611.5 (a)(2) if, after excluding the portion of the applicant's income committed to medical or nursing home expenses, the applicant's remaining income is at or below the program's maximum income level. (*See Finding 3*)

In its response to the DR, LASMNY sent OCE a revised Financial Eligibility Policy for review prior to its submission to LASMNY's Board of Directors for adoption pursuant to 45 CFR § 1611.3(a). After a review of the revised policy, OCE has determined that it conforms with the requirements of 45 CFR Part 1611, and sufficiently addresses the concerns raised at Finding 3 of the DR.

In order to close out this RCA, OCE requests LASMNY submit a follow-up report within 60 days of receipt of this Final Report providing evidence that the revised policy has been adopted by its Board of Directors.

3. Ensure that all case files, where necessary, contain required citizenship documentation in the proper format. In doing so, it is recommended that, where feasible, LASMNY obtain updated citizenship attestations in the proper format in currently open cases and that LASMNY adopt additional case management oversight protocols to ensure that citizenship attestations, when required, are obtained during initial screening or when a case is opened. (See Finding 5)

In its response to the DR, LASMNY developed and began to implement "...a plan consisting of: (1) identification of all cases still open with an opening date of December 31, 2007 or earlier; (2) if citizenship forms in any file are not in the proper format, a vigorous attempt to contact those clients to attempt to obtain citizenship attestation in the proper format will be made; and (3) if unable to do so, those cases will be flagged so they will not be counted in future LASMNY CSR reports." LASMNY also stated that, "[t]o date, LASMNY has identified all open cases with an opening date of December 31, 2007 or earlier and is in the process of contacting those clients whose citizenship forms might not be in the correct format."

LASMNY also submitted evidence of past Mandatory Staff Meeting Agendas to show that it routinely trains staff on the requirements of 45 CFR Part 1626. Furthermore, a 45 CFR Part 1626 training was scheduled to be held on November 14, 2014 at LASMNY's next mandatory all staff meeting. Finally it is indicated that as part of the contemplated changes to implement a more formal case review process, a 45 CFR Part 1626 review will be included for all case review oversight.

In order to close out this RCA, OCE requests LASMNY submit a follow-up report within 60 days of receipt of this Final Report updating LSC on the above-described plan and providing support to show that LASMNY held the referenced training (e.g., meeting agenda, notification emails, etc.).

4. Ensure proper application of the CSR Handbook case closure categories, by, for example, providing training to staff consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011), as well as committing to systematic use of case management reports. (See Finding 10)

In its response to the DR, LASMNY stated that:

[LASMNY] has taken steps that should substantially reduce case closing errors, particularly those regarding K closings. LASMNY has modified its ACMS so that the K closing on the case closing pull down now reads: "Other - NEED MANAGEMENT APPROVAL." Staff has been informed of this change. Further, case closure training will be on the agenda for LASMNY's mandatory all staff meeting on November 14, 2014. LASMNY Management will include systematic use of case management reports with respect to case closure review in its revised case review oversight process. Finally, LASMNY's Intake and Procedure Manual []

has been revised to remind the HelpLine attorneys that a K closing can only occur with management approval.

OCE has determined that this RCA has been sufficiently addressed, therefore no additional action is necessary.

5. Incorporate the requirements of 45 CFR §1604.6(a) and (b) into its outside practice of law policy. The policy should also incorporate the requirement that attorneys authorized to conduct outside practice shall not intentionally identify the case or matter either with LSC or with the program, as required under 45 CFR § 1604.4(b). (See Finding 13)

In its response to the DR, LASMNY stated that it has revised its Outside Practice of Policy, and provided a copy of the revised policy to OCE. After reviewing it, OCE determined that the concerns related to the policy had been sufficiently addressed within the revised policy. Accordingly, no additional action is necessary.

6. Due to the absence of the appropriate documentation required by 45 CFR § 1609.3 (b)(2), LASMNY's Fee Generating Cases Policy should not mention any particular type of fee generating cases that can be accepted by the program without attempting a previous referral to private attorneys. (See Finding 15)

In its response to the DR, LASMNY stated that it has revised its Fee Generating Case Policy. A copy of the revised policy was sent to OCE, which reviewed it and determined that the concerns related to the policy had been sufficiently addressed. Accordingly, no further action is necessary.

7. Add funding source notifications required by 45 CFR § 1610.5 to the donations section of its website. (See Finding 16)

In its response to the DR, LASMNY stated that it has added the required funding source notification to the donation section of its website. OCE has reviewed the additional language and has determined that this RCA has been sufficiently addressed and no additional action is required.

8. For purposes of calculating PAI costs, LASMNY should calculate attorney and paralegal salaries by dividing the attorney/paralegal's annual salary by LASMNY's standard annual hours without deductions for vacation, sick, and holidays. (See Finding 17)

In its response to the DR, LASMNY stated that:

[B]eginning with fiscal year 2013, LASMNY begun calculating attorney and paralegal salaries by dividing the attorney/paralegal's annual salary by LASMNY's standard hours without deductions for vacation, sick, and holidays. After OCE's visit to LASMNY in September 2013, LASMNY revised its 2013 PAI calculations, which to that point had been completed up to June 2013, using

the above required method without deduction for vacation, sick and holidays. Also, all of LASMNY's calculations since that time have been done by dividing the attorneys/paralegals salaries by LASMNY's standard hours without deductions for vacation, sick, and holidays.

Accordingly, OCE had determined that this RCA has been sufficiently addressed, therefore no further action is required.

9. LASMNY should require that entries to the GL made by the CFO are approved by the Executive Director, or other authorized individual, pursuant to the LSC Accounting Guide, § 3-5.6. (See Finding 32)

In its response to the DR, LASMNY stated that its Executive Director has been approving entries made to the GL by the CFO since December 2013.

OCE has determined that this RCA has been sufficiently addressed, and no additional action is necessary.

10. LASMNY should expand the segregation of duties related to petty cash by incorporating surprise counts and internal audits of petty cash into its internal controls procedures (See Finding 32)

In its response to the DR, LASMNY stated:

LASMNY has expanded the segregation of duties related to petty cash. After its September 2013 OCE compliance visit, LASMNY changed its outreach office petty cash accounts from cash accounts to checking accounts. Petty Cash envelopes (the envelope) are maintained by the petty cash custodians (the custodian). The custodian is responsible for assuring that the checking account funds and the receipts in the envelope are balanced for that particular office. The custodian reconciles the envelope and check register (if applicable) on a monthly basis requesting a reimbursement amount to replenish the fund to the authorized amount for that office. The reimbursement request and checking account balance must equal the petty cash fund for that office. The monthly expenses must be supported by signed and dated receipts. The envelope (with receipts) and check register are then forwarded to the main office for reimbursement. When a petty cash check is issued by the main office, the expenses are charged to its appropriate general ledger account. A check is made payable to LASMNY for the outreach offices by the Bookkeeper/Administrator and directly deposited into the applicable petty cash checking accounts by a designated clerical person. For the Utica office the check is made payable to the custodian for the replenishment amount. Since the Utica office maintains cash, the Executive Assistant periodically checks the petty cash to assure that receipts and cash equal the authorized amount. Said periodic checks occur on a monthly basis and are unannounced. The checking account address for monthly bank statements is the main office. When the monthly statements are received the Chief Financial Officer (CFO)

reconciles the statement with the receipts and envelope received from the custodian. The CFO then presents the statement, receipts, and envelope to the Executive Director for his or her review.

To implement those changes, LASMNY revised its petty cash procedures section in its Accounting Procedures Manual, a copy of which was sent and reviewed by OCE.

OCE has determined that this RCA has been sufficiently addressed, and therefore no additional action is required.

11. LASMNY should ensure that in the future it complies with, and properly enforces, its contracts with third parties for the use of LSC funds. LASMNY is requested to inform LSC, and provide evidence, of the actions it has taken to do so (*e.g.*, revised policies, training, etc.) (*See Finding 33*)

In its response to the DR, LASMNY stated that it: "... has also amended its Accounting Procedures Manual requiring that with respect to the use of LSC funds, third party vendors must submit time and activity reports when vouchering for services, and requiring contract amendments to be signed by all parties, be in writing and executed by all parties." OCE was also informed that LASMNY's ED, on August 7, 2014, held a formal training on the new provisions of the Accounting Procedures Manual, that was attended by LASMNY's CPA/Administrator and Utica office Managing Attorney.

Accordingly, OCE has determined that this RCA has been sufficiently addressed, therefore no further action is required.

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Paul J. Lupia, Esq.
Executive Director

Reply to:
Utica Office

August 11, 2014

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

RE: Legal Aid Society of Mid-New York, Inc. (LASMNY) Response to Legal Services Corporation (LSC) Office of Compliance and Enforcement's (OCE) Draft Compliance Report
Recipient No.: 233150

Dear Ms. Rath:

Please let this letter and accompanying exhibits constitute LASMNY's response to LSC's OCE Draft Compliance Report.

Finding 1: With a few exceptions, sampled cases evidenced that LASMNY's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Response: LASMNY agrees that its ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. LASMNY has implemented OCE's Recommendation 1. LASMNY has reviewed all open cases and 2014 closed cases for problem Code 99 and have changed the problem codes to more appropriate and more accurate problem codes in those cases if warranted. HelpLine attorney staff have been directed to review all case problem codes before each HelpLine case is closed or transferred. ACMS and problem code identification training will occur at the next all staff meeting scheduled for November 14, 2014. In order to reduce case problem code errors with respect to Code 99, all LASMNY staff have been informed that Code 99 should be used only with management approval. The HelpLine Intake and Procedural Manual has likewise been revised to reflect this change. LASMNY's ACMS Problem Code 99 now reads: "Other Miscellaneous: NEED MANAGEMENT APPROVAL". Attached as Exhibit 1A are a screen shot from LASMNY's revised ACMS, as well as LASMNY's revised Intake and Procedural Manual (Exhibit 1B, Page 18).

Binghamton Office:
168 Water Street, 2nd Fl.
Binghamton, NY 13901
Tel: (607) 231-5900
Fax: (607) 724-7211

Cortland Office:
111 Port Watson St.
Cortland, NY 13045
Tel: (607) 428-8400
Fax: (607) 753-7257

Oneonta Office:
P.O. Box 887
Oneonta, NY 13820
Tel: (607) 433-2220
Fax: (607) 433-1433

Oswego Office:
108 W. Bridge Street
Oswego, NY 13126
Tel: (315) 532-6900
Fax: (315) 342-1891

Syracuse Office:
472 South Salina Street
Suite 400
Syracuse, NY 13202-2498
Tel: (315) 703-6600
Fax: (315) 671-0062

Watertown Office:
44 Public Square
Watertown, NY 13601
Tel: (315) 955-6700
Fax: (315) 785-9118

Farmworker Law Proj:
52 South Manheim Blvd.
New Paltz, NY 12561
Tel: (845) 256-9096
(800) 804-8575
Fax: (845) 256-0494

Finding 2: LASMNY's intake procedures and case management system generally support the program's compliance related requirements. However, there were exceptions noted with respect to screening for asset eligibility and obtaining timely approval to assist over income HelpLine cases. In addition, the program's eligibility policy does not fully comply with 45 CFR Part 1611.

Response: LASMNY agrees that its intake procedures and case management system generally support the program's compliance related requirements. LASMNY has implemented OCE's Recommendations 2,3,and 5 and is in the process of developing OCE Recommendations 4 and 6. Further, in response to OCE's Required Corrective Action 1, LASMNY hereby submits a proposed revised LASMNY Financial Eligibility Policy (Exhibit 2A) for OCE's review prior to submission of the proposed policy to LASMNY's Board of Directors for adoption pursuant to 45 CFR 1611.3(a). LASMNY's proposed revised Financial Eligibility Policy conforms with the requirements of the current version of 45 CFR Part 1611. Said proposed policy includes: a provision regarding screening for income prospects; the prohibition of including an alleged perpetrator of domestic violence's income and assets in the eligibility calculation; the elimination of the distinction between liquid and non-liquid assets; the revision of factors to be considered when conducting eligibility determinations for individuals with annual income between 125%-200% of the Federal Poverty Guidelines (FPG); and the revision of the categories of assets excluded from the eligibility calculation.

Although not explicitly included in LASMNY's current Financial Eligibility Policy, LASMNY has in practice complied with the requirement of inquiring into each applicant's income prospects. As noted in the Draft Report, LASMNY's ACMS contains a required field specific to this inquiry and the inquiry is also included on the standardized Application for Service. Also, by e-mail dated September 21, 2009 from LASMNY's Executive Director to all LASMNY staff, all staff performing intake were reminded to make inquiry into income prospects by asking all applicants the question suggested by the LSC Office of Legal Affairs in Advisory Opinion #A0-2009-1006. Submitted as Exhibit 2B is a copy of said e-mail.

Further, as a matter of practice, LASMNY has informed staff at all financial eligibility trainings that if the applicant is a victim of domestic violence, the income, assets, and jointly held assets of the alleged perpetrator of the domestic violence should not be considered in determining eligibility.

In response to OCE's Recommendations 2,3,5 and 6: (1) LASMNY has removed the food stamp option from the income source drop-down list in its ACMS; (2) LASMNY's Watertown office has discontinued using a pre-completed waiver form; (3) LASMNY has reviewed with all staff primarily responsible for applicant screening the applicability of 45 CFR Section 1626.4 and Program Letter 06-2; and (4) with respect to OCE Recommendation 6, at its next Management Meeting, LASMNY will review its current case review oversight process, especially as it relates to its branch offices, and will plan to implement a more formal case review process, which will include at least 2 formal case

reviews per casehandler per year using a standardized procedure and process to be developed by LASMNY management.

In response to OCE's Recommendation 4, LASMNY's Technology Administrator is in the process of streamlining and automating LASMNY's waiver-approval procedures. LASMNY will no longer use the existing paper waiver approval form for individuals whose gross annual income is between 125%-200% of the Federal Poverty Guidelines and the corresponding existing approval process. LASMNY is developing an electronic waiver form and process which is being integrated into LASMNY's case management system. A "Waiver" tab is being added to LASMNY's existing electronic eligibility data entry form. HelpLine attorneys, managing attorneys, and the Executive Director will be responsible for performing the waiver approvals on the day of intake or as soon as practicable thereafter. The "Expense" tab drop-down list will be eliminated in the ACMS waiver approval. Paper waiver forms will become information gathering forms only to allow staff who are in the field, off site from a LASMNY office, to gather the information to insert into the ACMS as soon as practicable so that the approval decision can occur as soon as possible. However, all factors in the ACMS will be the same as all factors in the paper waiver information gathering form and the same as in LASMNY's proposed revised Financial Eligibility Policy (Exhibit 2B). A screen-shot of the proposed waiver entry form in its current state is attached as Exhibit 2C.

The submitted screen-shot (Exhibit 2C) of the proposed electronic waiver is currently being developed within LASMNY's mock, "test" case management system and is likely to undergo some changes. Over the next several weeks LASMNY will test and hone this system and then begin to migrate it into our live production system. LASMNY anticipates that the migration into our live production system will be completed by October 1, 2014. Upon the complete and successful implementation into our live production case management system, LASMNY will inform OCE and would be willing to demonstrate the modifications that have been implemented.

Finding 3: Sampled cases evidenced that LASMNY was in 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 exceed 125% of the FPG.

Response: LASMNY agrees that it is in 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 exceed 125% of the FPG. LASMNY is in the process of developing an on-line waiver system which will make documentation much more timely and properly documented. See Response to Finding 2. Further, Required Corrective Action 2 has been implemented in LASMNY's proposed revised Financial Eligibility Policy submitted as Exhibit 2A. In response to OCE Recommendation 7, LASMNY believes that this ACMS system will greatly increase timely and accurate documentation of facts to support authorized over income

exceptions. LASMNY plans on training all staff on the ACMS on-line waiver system at its mandatory all staff meeting on November 14, 2014.

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

Response: Although OCE did not make any Required Corrective Actions or Recommendations with respect to the finding, it should be noted that in its proposed revised Financial Eligibility Policy LASMNY has proposed several changes with respect to its asset policy as more fully discussed in LASMNY's response to Finding 2.

Finding 5: Sampled cases evidenced that LASMNY was not in compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

Response: LASMNY is in the process of implementing OCE's Required Correction Action 3. As there were only 14 files were either missing or with defective citizenship forms, LASMNY's error rate was less than 1.7%. LASMNY respectfully submits that such a low error rate constitutes substantial compliance. However, LASMNY has developed and has begun to implement a plan consisting of: (1) identification of all cases still open with an opening date of December 31, 2007 or earlier; (2) if citizenship forms in any file are not in the proper format, a vigorous attempt to contact those clients to attempt to obtain citizenship attestation in the proper format will be made, and (3) if unable to do so, those cases will be flagged so they will not be counted in future LASMNY CSR reports. To date, LASMNY has identified all open cases with an opening date of December 31, 2007 or earlier and is in the process of contacting those clients whose citizenship forms might not be in the correct format.

LASMNY routinely trains staff on the requirements of 45 CFR 1626. For example, submitted as Exhibit 5 are agendas from LASMNY's mandatory staff meetings held on September 16, 2011, October 19, 2012, and November 8, 2013 evidencing LASMNY's commitment to compliance training. 45 CFR 1626 training will be held on November 14, 2014 at LASMNY's next mandatory all staff meeting. As part of LASMNY's more formal case review process (see Response to Finding 2), LASMNY management will include 45 CFR 1626 review in all case review oversight.

Finding 6: Sampled cases evidenced that LASMNY was in substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements). A retainer was missing from eight (8) reviewed case files, and three (3) reviewed case files contained defective retainer agreements.

Response: LASMNY agrees that it is in substantial compliance with the retainer requirements of 45 CFR 1611.9. In response to OCE recommendation 8 and as evidenced by the agendas from the mandatory staff meetings held on September 16, 2011, October 19, 2012, and November 8, 2013 (Exhibit 5), LASMNY is committed to providing training and oversight with regard to retainer agreements and management oversight of this issue will become more formalized as a result of LASMNY's revised case review oversight process (See Finding 2, OCE Recommendation 6). Also, retainer agreement training will occur at the LASMNY mandatory all staff meeting to be held on November 14, 2014.

Finding 7: Sampled cases evidenced that LASMNY is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Response: LASMNY agrees with this finding.

Finding 8: Sampled cases evidenced that LASMNY is in compliance with the requirements of 45 CFR § § 1620.4 and 1620.6(c) (Priorities in use of resources).

Response: LASMNY agrees with this finding.

Finding 9: Sampled cases evidenced LASMNY was in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). There were nine (9) reviewed case files in which no legal assistance was provided or documented.

Response 9: LASMNY agrees with this finding.

Finding 10: Sampled cases evidenced that LASMNY's application of the CSR case closure categories is in non-compliance with Chapter VIII and IX of the CSR Handbook (2008 Ed., as amended 2011).

Response: In response to OCE's Required Corrective Action 4, LASMNY has taken steps that should substantially reduce case closing errors, particularly those regarding K closings. LASMNY has modified its ACMS so that the K closing on the case closing pull down now reads: "Other - NEED MANAGEMENT APPROVAL". Submitted as Exhibit 10A is a screen shot of the new K code pull down. Staff have been informed of this change. Further, case closure training will be on the agenda for LASMNY's mandatory all staff meeting on November 14, 2014. LASMNY Management will include systematic use of case management reports with respect to case closure review in its revised case review oversight process. Finally, LASMNY's Intake and Procedure Manual (Exhibit 1B, Page 21) has been revised to remind the HelpLine attorneys that a K closing can only occur with management approval.

Finding 11: Sampled cases evidenced LASMNY is in substantial compliance with the requirements of CSR Handbook (2008 Ed. as amended 2011), § 3.3 (dormancy and untimely closure of cases). However, case review revealed several untimely closed or dormant cases.

Response: LASMNY agrees that it is in substantial compliance with the requirements of the CSR Handbook (2008 Ed. as amended 2011) regarding dormancy and untimely closure of cases. With respect to OCE's Recommendation 9, LASMNY does run periodic case reports to search for dormant cases and to foster the timely closings of cases. LASMNY will continue to run such case management reports on a periodic basis and will consider how best to use this information in its revised case review oversight process.

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

Response: LASMNY agrees with this finding.

Finding 13: Review of LASMNY's policies and the list of attorneys who have engaged in the outside practice of law revealed that LASMNY is in compliance with the requirements of 45 CFR Part 1604 (Outside Practice of Law). However, LASMNY should revise its outside practice of law policy to be fully consistent with 45 CFR Part 1604.

Response: LASMNY agrees that it is in compliance with the requirements of 45 CFR 1604 and has revised its Outside Practice of Law Policy, addressing Required Action 5. A copy of said policy is submitted as Exhibit 13.

Finding 14: Interviews with program management and a limited review of LASMNY's policies and fiscal documentation indicated that the program is in compliance with 45 CFR Part 1608 (Prohibited political activities) which is designed, in part, to ensure Corporation funds will not be used to support or promote political activities or interests.

Response: LASMNY agrees with this finding.

Finding 15: Sampled cases evidenced LASMNY is in compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Response: LASMNY agrees that it is in compliance with 45 CFR 1609 and has revised its Fee-Generating Case Policy, addressing Required Action 6. A copy of the revised policy is attached as Exhibit 15. LASMNY plans to revise the policy again, in the near future, after obtaining proper documentation, so that certain categories of cases could be accepted by LASMNY without attempting a previous referral to private attorneys.

Finding 16: A limited review of LASMNY's financial records disclosed substantial compliance with 45 CFR § 1610.5. Notification, in that the program provided the mandated funding notification letters to its donors and non-LSC funding sources of \$250 and over of the prohibitions and conditions which apply to the funds; however, the donations section of LASMNY's web site solicited donations but did not include the notifications required by 45 CFR § 1610.5.

Response: LASMNY agrees that it is in substantial compliance with 45 CFR Section 1610.5. LASMNY has added the appropriate funding source notification to the donations section of its website, addressing Required Action 7. See www.lasmny.org.

Finding 17: LASMNY is in substantial compliance with the requirements of 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

Response: LASMNY agrees that it is in substantial compliance with the requirements of 45 CFR Part 1614. In response to Recommendation 10, private attorney involvement (PAI) staff are expected to follow the procedures outlined in the Memo regarding PAI Procedures for Case Closing, Referral and Oversight, submitted as Exhibit I7, which includes a section on case follow up. These procedures are reviewed and reinforced at PAI workgroup meetings and case reviews. The PAI Managing Attorney conducts case reviews of all PAI staff at least twice a year. A mid-year review is conducted at the end of June and a more extensive work performance evaluation is conducted at the end of December. For each of these reviews the Managing Attorney generates case reports, including lists of hold, open pro bono, and closed pro bono cases for the period under review. In preparation for the reviews, staff are reminded to update any cases that have not been updated in at least six months and close any cases that are ready to be closed. Staff are also asked to carefully review their list of cases that have not yet been referred to ensure that there is recent activity on each such case (such as: client has been scheduled for a clinic). The Managing Attorney also randomly selects cases closed within the last six months of review to check for income waivers, retainers, citizenship statements, evidence of legal assistance, etc. Newly hired PAI staff are reviewed on a quarterly basis for the first year. Thereafter reviews occur every six months unless there is a need for more frequent reviews.

With respect to Syracuse case oversight, several case management issues were noted during the Syracuse paralegal's 2011 case reviews. These included the need to better manage cases that had not yet been referred to avoid long delays for applicants. The Managing Attorney determined that quarterly case reviews were necessary and these reviews were held in 2012-2013. Throughout this period, the Syracuse paralegal was instructed to generate monthly lists of cases that had not yet been referred and to close cases shortly after clinics to avoid backlogs. Other issues addressed during that period included the continuing need to update all referred cases at least every six months and to

ensure that each file contains the required documentation. By early 2013, case management had improved, especially with respect to managing cases that had not yet been referred. The quarterly reviews continued through December 2013. In 2014, the Syracuse paralegal resigned from LASMNY.

The staff person who has replaced the Syracuse paralegal is an attorney who is allocated 50% to pro bono and 50% to her own casework. The PAI Managing Attorney is conducting quarterly reviews at least through December 2014 when the staff attorney will have completed her first year in this position. The staff attorney has been provided with the Memo regarding PAI Procedures for Case Closing, Referral and Oversight, and these procedures have been reviewed extensively at each of the two case reviews she has had so far. The reviews have emphasized the need for case updates at least every six months, the need to generate monthly case reports for those cases that have not yet been referred to ensure that applicants are being timely served, and required documentation for pro bono cases.

In response to Required Action 8, beginning with fiscal year 2013, LASMNY began calculating attorney and paralegal salaries by dividing the attorney/paralegal's annual salary by LASMNY's standard hours without deductions for vacation, sick, and holidays. After OCE's visit to LASMNY in September 2013, LASMNY revised its 2013 PAI calculations, which to that point had been completed up to June 2013, using the above required method without deduction for vacation, sick and holidays. Also, all of LASMNY's calculations since that time have been done by dividing the attorneys/paralegals salaries by LASMNY's standard hours without deductions for vacation, sick, and holidays.

With respect to Required Action 9, LASMNY sought clarification from OCE and OCE responded by indicating that Required Action 9 would not be included in its final report.

Finding 18: LASMNY demonstrated compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and LASMNY has no LSC-funded subgrants.

Response: LASMNY agrees with this finding.

Finding 19: LASMNY demonstrated compliance with 45 CFR Part 1635 (Timekeeping requirements).

Response: LASMNY agrees with this finding.

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

Response: LASMNY agrees with this finding.

Finding 21: Review of LASMNY's financial documentation and interviews with its management indicated the program is in compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities) in that LASMNY had complied with its policy which restricts lobbying and certain other restricted activities.

Response: LASMNY agrees with this finding.

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

Response: LASMNY agrees with this finding.

Finding 23: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Response: LASMNY agrees with this finding.

Finding 24: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Response: LASMNY agrees with this finding.

Finding 25: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Response: LASMNY agrees with this finding.

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

Response: LASMNY agrees with this finding.

Finding 27: Sampled cases and policy review evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on Solicitation).

Response: LASMNY agrees with this finding.

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

Response: LASMNY agrees with this finding.

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

Response: LASMNY agrees with this finding.

Finding 30: LASMNY is in compliance with the requirements of 45 CFR § 1620.6.

Response: LASMNY agrees with this finding.

Finding 31: Policy review evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information).

Response: LASMNY agrees with this finding.

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

Response: LASMNY agrees that its internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to the elements outlined in Chapter 3- Internal Control/ Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed.).

In response to OCE Required Corrective Action 10, since December 2013 the LASMNY Executive Director has been approving all entries made to the General Ledger by the Chief Financial Officer (CFO).

In response to OCE Required Action 11, LASMNY has expanded the segregation of duties related to petty cash. After its September 2013 OCE compliance visit, LASMNY changed its outreach office petty cash accounts from cash accounts to checking accounts. Petty Cash envelopes (the envelope) are maintained by the petty cash custodians (the custodian). The custodian is responsible for assuring that the checking account funds and the receipts in the envelope are balanced for that particular office. The custodian reconciles the envelope and check register (if applicable) on a monthly basis requesting a reimbursement amount to replenish the fund to the authorized amount for that office. The reimbursement request and checking account balance must equal the petty cash fund for that office. The monthly expenses must be supported by signed and dated receipts. The envelope (with receipts) and check register are then forwarded to the main office for reimbursement. When a petty cash check is issued by the main office, the expenses are charged to its appropriate general ledger account. A check is made payable to LASMNY for the outreach offices by the Bookkeeper/Administrator and directly deposited into the applicable petty cash checking accounts by a designated clerical person. For the Utica office the check is made payable to the custodian for the replenishment amount. Since the Utica office maintains cash, the Executive Assistant periodically checks the petty cash to assure that receipts and cash equal the authorized amount. Said periodic checks occur on a monthly basis and are unannounced. The checking account address for monthly bank statements is the main office. When the monthly statements are received the Chief Financial Officer (CFO) reconciles the statement with the receipts and envelope received from the custodian. The CFO then presents the statement, receipts, and envelope to the Executive Director for his or her review. A copy of LASMNY's revised section of its Accounting Procedures Manual covering petty cash procedures is submitted as Exhibit 32A.

In response to OCE Recommendation 11, LASMNY has reconciled the minor differences between its Credit Card Procedures in its Accounting Procedures Manual (submitted as Exhibit 32B) and the Credit Card Policy in its Office Procedures Manual (submitted as Exhibit 32C). LASMNY has also revised its Authorization to Use the Legal Aid Society of Mid-New York, Inc. Credit Card form to include the purpose of the trip for charges relating to travel (submitted as Exhibit 32D).

In response to OCE Recommendation 12, LASMNY has created a Notice as recommended and it is now displayed in each of LASMNY's waiting rooms. A copy of said Notice is submitted as Exhibit 32E.

In response to OCE Recommendation 13, it should be noted that the draft report concluded that LASMNY is in compliance with the LSC Accounting Guide that "[e]ach fiscal employee is required to take at least one (1) complete week of annual leave per year". As recommended, LASMNY has revised its Accounting Procedures manual to include such a policy (submitted as Exhibit 32F).

Finally, on Page 58 of the Draft Report, there are two typos, one referring to LASMNY as LASNWT and another referring to LASMNY as LASNWX.

Finding 33: Interviews with staff and a limited review of procedures, practices, and documents related to TIG No. 10064 evidenced compliance with reviewed TIG grant assurances, but disclosed a lack of documentation in support of a payment for a third party contract as well as a failure to follow certain terms of the contract.

Response: LASMNY agrees with the portion of Finding 33 where OCE concludes that LASMNY complied with reviewed TIG grant assurances.

In response to OCE's Required Action 33, under the Evaluation Plan for TIG Grant No. 10064, LASMNY proposed to increase LEP individuals' access to legal information and services, by creating and posting video and audio content on LASMNY's website, as well as enhancing the multilingual capacity of LASMNY's telephone intake system and case management database. LASMNY proposed to create 4 video or audio "documents" each in 7 target languages, for a total of 28 "documents." LASMNY also proposed to make the content adaptable for other civil legal services providers statewide, and post the content online so that it would be accessible to providers across the State.

LASMNY's accomplishments under TIG Grant No. 10064 greatly exceeded the proposed scope of work. The project produced web pages in 18 languages (plus English), each with a "welcome" video introducing the viewer to civil legal services, and providing LASMNY's contact information. For 8 of these languages (plus English), LASMNY also created online "audio brochures" on the topics of "Domestic Violence" and "SSI for Noncitizens," as well as links to any available online legal resources in the target languages. See www.lasmny.org, then click on a language under Language Gateway in the left hand column. These "audio brochures" were made part of LASMNY's multilingual phone tree, as well, so that LEP clients can listen to them when they call for services. LASMNY then created 3 "audio letters" for each of the 8 languages. The 3 common client form letters are in both English and the target language, in addition to giving the caller a number to call to hear the pre-recorded letter read to him/her over the phone. The Project therefore produced a total of 19 videos, plus another 45 audio or video "documents." For other civil legal services providers, LASMNY created a "web kit," "phone kit" and "law library" kit in all of the 19 languages, with instructions on how to adapt the materials to their own use. LASMNY created both a national and a statewide version of the "kits."

For the statewide replicability component of TIG Grant No. 10064, LASMNY contracted with the Empire Justice Center, Inc. (EJC), which serves as the support center for civil legal services providers across New York State. LASMNY contracted with EJC to post the LEP "kits" on its Online Resource Center. The projected contract amount was \$5,000 (20 hours at \$250/hour).

Because LASMNY created so much more content than projected, EJC had to spend an extra 9 hours of work to post all of the content on the Online Resource Center. LASMNY staff had password access and was able to view the content on the test page as it went up. As a result, LASMNY had

Lora Rath, Director - Office of Compliance and Enforcement
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the ability to and, in fact, did track and monitor EJC's contract performance progress by periodically reviewing the content of the test page. For example, submitted as Exhibit 33A are two e-mails, one from EJC to LASMNY's TIG Coordinator, Cindy Hendrickson, dated January 18, 2013 inviting Ms. Hendrickson to review the Arabic and Bosnian sections and another from Ms. Hendrickson back to EJC dated January 25, 2013 indicating that it had been reviewed. When EJC informed LASMNY that it was 9 hours over budget, LASMNY's TIG Grant Coordinator immediately informed David Bonebrake at LSC to pre-approve EJC's request to bill for the extra 9 hours of services. Because there were sufficient funds remaining (all other vendor services had been fully billed at that time), Mr. Bonebrake advised LASMNY that the request would be approved. LASMNY's Executive Director then signed an amendment to the vendor contract with EJC, allowing EJC to voucher for the additional 9 hours. Consistent with the paid vouchers and submitted as Exhibit 33B is an e-mail from EJC to LASMNY on February 28, 2013 indicating that a total of 29 hours were expended on the project. Further, even though the paid voucher was dated March 1, 2013 and includes EJC work up to and including February 26, 2013, EJC performed more work for which they were never paid. For example, submitted as Exhibit 33C is an e-mail exchange from Ms. Hendrickson to EJC, dated March 1, 2013 requesting some more changes to materials and EJC's response dated March 4, 2013 indicating that the requested changes had been completed.

LASMNY obtained a time and activity report from EJC to further document EJC's voucher (submitted as Exhibit 33D and in response to OCE's Additional Information Requested). LASMNY has also amended its Accounting Procedures Manual requiring that with respect to the use of LSC funds, third party vendors must submit time and activity reports when vouchering for services, and requiring contract amendments to be signed by all parties (Exhibit 32F, Section 9). As soon as the problem with the EJC bill was realized by LASMNY, the LASMNY Executive Director met with fiscal staff and the Utica Managing Attorney to discuss how to ensure better compliance and enforcement with its third party contracts with the use of LSC funds. At that time it was emphasized to staff that no third party payments could be made with LSC funds without a time and activity report, or other sufficient documentation, from the third party, and that all contract amendments must be in writing and executed by all parties. The Executive Director held a formal training on the new Accounting Procedure Manual provisions on August 7, 2014, attended by LASMNY's CPA/Administrator and Utica office Managing Attorney.

LASMNY thanks you, Emiliano Irizarry-Castro and the rest of the OCE team who visited LASMNY for your courtesy, professionalism, and cooperation throughout our compliance review process. We will be happy to provide you with more information and answer any other questions you may have. In particular we would like the opportunity to demonstrate our proposed electronic waiver (see Response 2) to OCE should you so desire. We would also be very grateful for some feedback as soon possible regarding our proposed revised financial eligibility policy prior to our presentation of it to our Board for approval.

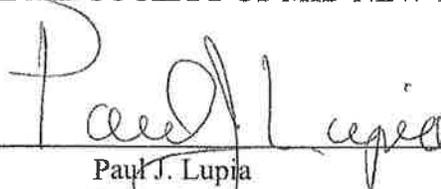
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We look forward to receiving OCE's Final Report.

Sincerely,

LEGAL AID SOCIETY OF MID-NEW YORK, INC.

By: _____



Paul J. Lupia
Executive Director

PJL:mvg

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Empire Justice Center Time and Activity Report

EXHIBIT 1A

Automated Case Management System Problem Code Screen Shot

Prime Case Management SQL C - [Client Intake Form]

Close Window

Print F3 Who last edited Save/Stay Add Close Print Undo All Duplicate Edit New New Elig.

Intake Page 1 Intake Page 2 Intake Page 3 Case Notes Family Contacts Special Programs

14E-11079688 Patrick Brogan

Disable: Yes Clinic: Group:

Race: W Language: E

Does this case involve Domestic Violence? No

Gender: M Birth Date: 11/4/1964 Age: 49

Have you or any member of your household ever served in the military, including the Reserves or National Guard? No

Adults: 2 Children: 2 Persons Helped: 4

Speak English: 1 Language Services

Income Source: H Total Monthly Income: \$2,333.33

Needs Interpreter:

Problem Code: Social Security (Not SSDI)

Advocate: 19 Susan Conn

- 91 Legal Asst to Non-Profit Org. (Incl.Incor/Disolut)
- 92 Indian / Tribal Law
- 93 Licenses (Auto and Other)
- 94 Torts
- 95 Wills and Estates
- 96 Advance Directives/Powers of Attorney
- 97 Municipal Legal Needs
- 99 Other Miscellaneous - NEED MANAGEMENT APPROVAL

1180 Kimberly Crisafulli

Transferred To LSCNY Transferred From LSCNY

Case Information, Intake Questions

Advice Other Matters Prior Case? Save/Stay first then choose Prior Case

EXHIBIT 1B

Revised Intake and Procedural Manual

CENTRAL NEW YORK LEGAL HELPLINE

INTAKE AND PROCEDURE MANUAL



THE CENTRAL NEW YORK LEGAL HELPLINE (THE "HELPLINE") IS A PROJECT OF THE LEGAL AID SOCIETY OF MID-NEW YORK, INC. ("LASMNY") IN COLLABORATION WITH LEGAL SERVICES OF CENTRAL NEW YORK, INC. ("LSCNY"), WHICH TOGETHER COMPRISE THE JUSTICE ALLIANCE OF CENTRAL NEW YORK ("JACNY").

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Chapter 1: HelpLine Operation

I. How are calls directed to the HelpLine?

- A. Calls made directly to the toll-free HelpLine number (877-777-6152) are directed to the HelpLine Intake Queue ("Intake Q"). Calls made to a Justice Alliance Office are either responded to by the intake screeners in that Office or may bounce to the Intake Q when an applicant selects an answering machine prompt that he/she is a new applicant or is seeking assistance with a new legal problem.
- B. Calls to the Intake Q are screened by a speech attendant to determine whether the applicant is seeking assistance with a time-sensitive matter (e.g., applicant has a frozen bank account). Calls involving time-sensitive issues are routed to an "emergency" intake queue and are given priority by the HelpLine.
- C. All JACNY employees who answer phones and assist with receptionist/intake duties (hereinafter "intake screeners") are responsible for completing HelpLine intakes and transferring cases to the HelpLine Attorney Queues. If an applicant for service seeks assistance during open intake hours, see below, the applicant must not be directed to call the HelpLine number; instead, an intake must be completed at the time of initial contact and referred in accordance with this Manual.
- D. Chapter 2 of this manual describes the intake and referral process.

II. Hours of operation

- A. Intake hours are Monday through Friday from 9:00AM — 3:00PM.
- B. EXCEPTION: Intake for the HelpLine will be closed the last two (2) work weeks each year and whenever JACNY offices are closed for holidays, staff meetings or legal trainings. The intake queue messages will be modified to announce HelpLine closings and will notify callers of the reopening date and time.

III. Answering intake queue calls

- A. EMERGENCY QUEUE: Calls coming into the emergency intake queue and callbacks in the emergency intake queue should be answered before those in the general intake queue.
 - 1. Emergency queue calls should be transferred to the emergency HelpLine Attorney "Q" only if they qualify as an emergency as described on pages 19—20.
 - 2. All emergency queue calls received by 3:00PM must be returned before intake screeners log out of the intake queues.

- B. GENERAL QUEUE: Calls coming into the general intake queue should be answered before callbacks in the general intake queue.
- C. CALLBACKS: If a caller leaves a callback message and indicates that a message may be left, the callback may be deleted after a message is left.
 - 1. If a caller does not indicate that a message may be left or there is no option to leave a message, a minimum of three (3) attempts must be made to contact the caller.
 - 2. If the caller is not available after the third attempt, the callback message may be deleted.
- D. INTAKE WRAP UPS: Before ending or transferring a call, intake screeners must complete the wrap-up/call resolution fields in the "Q".
NOTE: If you have determined that a caller is ineligible for service, please be sure to complete the wrap-up/call resolution fields before informing a caller that he/she is not eligible for service.
 - 1. Intake Details

Current Case (Existing Case Only – Do Not Use if Current Client but New Case)
JACNY Emergency (NewCase)
JACNY Eligible (NewCase)
Incomplete Interview
Left Message
Unable to Contact JACNY Ineligible
-Criminal Matte
-Over Income
-Conflict
-Outside of Service Area
-CallingOnBehalfOf /No PoA
-Other

2. Emergency Intake Details

Current Case (Existing Case Only - Do Not Use if Current Client but New Case
Emergency Case (NewCase)
Non-Emergency Case (NewCase)
Incomplete Interview
Left Message
Unable to Contact
JACNY Ineligible
-Criminal Matter
-Over Income
-Conflict
-Outside of Service Area
-CallingOnBehalfOf / No PoA
-Other

3. Number Dialed (How the Caller Got To Intake). Ask the caller:
WHAT NUMBER DID YOU DIAL (TO GET INTO OUR SYSTEM)?

800# (877-777-6152)
Binghamton Office
Cortland Office
New Paltz Office
Norwich Office
Oneonta Office
Oswego Office
Syracuse Office
Utica Office
Watertown Office
Other #
Client Doesn't Know
Incomplete Interview
Left Message
Unable to Contact

4. How (The Caller) Found Out About Legal Aid / 800#. Ask the caller:
HOW DID YOU FIND OUR PHONE NUMBER?

Current Client/Case
Website Phonebook Brochure/Printed Material Referred By Court
Referred By Other Legal Aid Program
Referred By Social Services Agency Internal JACNY Referral
Referred By Private Attorney
Referred By Other
Prior Experience with Legal Aid / Former Client
Client Doesn't Know
Incomplete Interview
Left Message
Unable to Contact

- E. TRANSFERRING CALLS: When processing calls from any of the Intake Queues, please be sure to note the following:
1. The wrap-up/call resolution fields MUST be completed before transferring a call to any of the Attorneys queues. If a call is transferred to a HelpLine Attorney "Q" before the wrap-up is completed, the caller will not hear any progress announcements while they are waiting for an attorney to pick up the call. The caller, instead, will hear constant ringing and will not be able to leave a callback message.
 2. Before transferring the call to the appropriate HelpLine Attorney "Q":
 - a. Place the call on hold
 - b. Complete the call wrap-up/call resolution field.
 - i. Right-click on the call within the Call Resolution pane and select Wrap-Up Call.
 - ii. If you do not see the Call Resolution pane, click the View pull-down menu on the top menu-bar of the Q-Master software and check the Call Resolution option - you will then be able complete the call wrap-up prior to transferring.
 - c. Take the call off hold.
 - d. Transfer the call to the appropriate HelpLine Attorney "Q."

Chapter 2: Intake

I. Taking an application for service

A. General considerations

1. Applicants seeking assistance from the Justice Alliance (hereinafter "JACNY") must qualify for assistance based on an examination of their income, assets, and location of their legal problem. An applicant cannot be accepted for service if doing so would create a conflict of interest. Further, applicants seeking assistance from LASMNY must meet citizenship requirements.
2. The purpose of the intake process, which is described below, is to gather information to determine whether an applicant is eligible for service. Applicants should not be screened out at intake even if it appears that the applicant is not eligible for service unless, as described more fully below in Paragraph B, the applicant: is seeking assistance with a criminal matter; has a legal problem outside of our service area; or already has a lawyer representing him/her.
3. If there is a question as to eligibility (e.g, a possible conflict of interest), refer the intake directly to the HelpLine Managing Attorney or the Managing Attorney for your Office (if call is not going through the HelpLine).

B. Screening applicants and opening an intake

1. When you receive a call from an applicant for service:
 - a) Determine whether applicant has limited English proficiency. For guidance, refer to LASMNY's LEP Policy and Service Manual, which are available on the "J" drive under the HelpLine folder. All intake screeners and HelpLine unit members must keep the instruction sheet for using the telephone interpreting service at or near their phones.
 - b) Ask whether caller is calling for himself/herself.
 - i. If yes, continue with intake.
 - ii. If no, tell the caller that the person needing assistance must contact the HelpLine him/herself. If the caller says that is not possible, consult the HelpLine Managing Attorney to determine whether intake should be completed.
 - c) Ask whether caller's legal problem is criminal or civil.
 - i. If civil, continue with the intake.

- ii. If criminal, ask whether applicant was denied assigned counsel for something other than a traffic infraction.
 - If no, refer caller to lawyer referral line to obtain private counsel.
 - If yes, continue with intake.

NOTE: *If it is not clear whether the problem is civil or criminal, contact the HelpLine Managing Attorney.*

- d) If the problem is outside of New York State, find out location of legal problem, find contact information for local legal aid program, and have the applicant contact the legal aid program directly.
 - i. The local legal aid program can be found online at <http://www.lsc.gov/map/index.php>.
 - ii. Tell the applicant to call back if the other legal aid program will not do the intake without a referral. Tell the applicant that our program will do referral.
- e) If the problem is within our thirteen-county service area, Broome County, Cayuga County, Chenango County, Cortland County, Delaware County, Herkimer County, Jefferson County, Lewis County, Madison County, Oneida County, Onondaga County, Oswego County, and Otsego County, continue with intake.
- f) If the problem is in another county within New York State, advise applicant that he/she must fall within a special population to receive service.
 - i. Determine whether the applicant has a traumatic brain injury. If yes, do an intake for LSCNY. Put case note in Kemp's.
 - ii. Determine whether the applicant has HIV/AIDS and lives in or has a problem in St. Lawrence County, Tioga County, or Tompkins County. If yes, do an intake for LSCNY. Put case note in Kemp's.
 - iii. Determine whether the applicant is disabled and has legal problem related to the disability and lives in or has a problem in Chemung County, Schuyler County, Tioga County, or Tompkins County. If yes, do an intake for LSCNY. Put case note in Kemp's.
 - iv. Determine whether the applicant is disabled with
 - aVESID-related legal problem and lives in or has a problem in Clinton County, Essex County, Franklin County, Fulton County, Hamilton County, Montgomery

County, St. Lawrence County, Tioga County, or Tompkins County. If yes, do an intake for LSCNY. Put case note in Kemp's.

- v. If no to all above, do not do an intake. Find the location of legal aid program that might serve the applicant, find contact information for the program, and have the applicant contact the legal aid program directly as above.
2. If the applicant has a civil legal problem in our service area and you have verified that you are speaking with the applicant him/herself (or you have a power of attorney form authorizing the agent to call on behalf of the applicant) and necessary language services (if applicable) have been obtained, the application should be processed in the following manner:
- a) Determine whether the applicant is a citizen or eligible alien. NOTE: even if applicant is an ineligible alien, he/she may be eligible for services from LSCNY.
 - b) Check for a conflict of interest.
 - c) Check for duplicates.
 - d) Determine household size.
 - e) Check income eligibility.
 - f) Check asset eligibility.
 - g) Make sure all required fields are completed in Kemp's.

C. Citizenship

1. LASMNY can only provide services to U.S. citizens and aliens who fall into one of the following categories:

- a) He/she is a lawful permanent resident.
- b) He/she is married to a U.S. citizen OR is the parent of a U.S. citizen OR is an unmarried child under the age of 21 who has a parent who is a U.S. citizen AND has applied for permanent resident status and application has not been rejected.
- c) He/she was admitted as a refugee, granted asylum, or granted withholding from a deportation order.
- d) He/she is an eligible agricultural worker.
- e) He/she is a victim of trafficking.
- f) He/she is a victim of domestic violence or sexual assault and the legal matter is directly related to domestic violence or sexual assault.
- g) He/she is a crime victim eligible for "U" visa relief and legal matter is directly related to his/her crime victim status.

2. If an applicant telephones JACNY for service, citizenship can be verified orally. If applicant states that he/she is a citizen or falls into one of the above categories, LASMNY can provide service.
3. If an applicant comes into an office for any purpose, including dropping off papers, the applicant must complete a citizenship form.
 - a) Intake screeners and receptionists must always have a stack of citizenship forms readily available for this purpose.
 - b) All documents required on form to prove alien's eligibility must be copied or service by LASMNY cannot be provided.
 - c) Emergency Exceptions:
 - i. If you are in the field with no copier, you can review the required documents, note on the alien eligibility form that the documents were reviewed, and record important information such as document type and date issued.
 - ii. If applicant has an emergency and cannot produce documents in time, applicant can sign the citizenship form and indicate what documents they will be able to produce to prove his/her eligibility for service.
 - **NOTE:** If the alien is undocumented or cannot provide documents necessary to prove eligibility, the applicant generally should be referred directly to LSCNY.

D. Conflicts of interest

1. JACNY cannot represent an applicant if doing so would create a conflict of interest with a current or former client of either LASMNY or LSCNY. Thus, it is critical that detailed information be obtained at the intake stage about the applicant and EACH potentially adverse party, which in family law matters, for example, may include children in the household.
2. A conflict of interest does not arise if the applicant for service—the former adverse party—is not seeking assistance in the same or substantially related legal matter as the former client/current adverse party.
3. Situations where conflicts of interest exist:
 - a) JACNY advised or represented a former client in a legal matter; and JACNY is later contacted by an adverse party who is now applying for service; and the applicant's legal matter is the same or substantially related to the first matter.
 - **EXAMPLE:** JACNY advocate advised DV victim about her legal options relating to DV and case is closed. The alleged abuser contacts JACNY for help modifying the

order of protection that is preventing him from returning to the marital residence. Providing service to the alleged abuser would create a conflict of interest.

- b) JACNY is currently representing a client and is contacted by an adverse party in that matter for representation in any matter, including an unrelated matter.

➤ EXAMPLE: JACNY advocate is representing client in a divorce against her husband, and husband contacts JACNY for representation in an SSI appeal.

- 4. Intake screeners are not responsible for determining whether a conflict of interest exists. Intake screeners, however, must perform a conflict check for each intake.
 - a) If a potential conflict exists, the intake screener must check with the HelpLine Managing Attorney, or another managing attorney, before continuing the intake process.
 - b) If a managing attorney determines that no conflict exists, the intake screener must indicate in the Case Notes that a conflict check was done and the name of the managing attorney who approved the intake (e.g., "checked with CR and there is no conflict").

E. Duplicates

- 1. If the applicant is in Kemp's already, a new intake should not be done when all of the following are true:
 - a) The applicant is the same person (check Social Security Number);
 - b) The request comes in same calendar year as the calendar year in which the prior intake was opened;
 - c) The request involves the same legal problem (if current problem has the same problem code as the prior intake, it is most likely the same legal problem); and
 - d) The request involves the same adverse party.
- 2. If all four (4) statements are true, do NOT put the call through the HelpLine. Instead, transfer the caller directly to LASMNY/LSCNY advocate who closed his/her case. If there is an emergency and the advocate is not available, refer caller to the advocate's supervisor.
- 3. If any one of the four (4) statements is not true, you may click the "Duplicate" button (third button from right when old intake is open). If the old intake is duplicated, all information contained

therein must be verified in accordance with standards set forth herein.

F. Household size

1. General Rule: All persons living in one residence are members of the same household. Each person—and the income and resources of each person—are counted and should be entered into Kemp's.
2. Exceptions:
 - a) The applicant is only in the household temporarily (e.g., recently evicted and looking for housing).
 - b) The applicant maintains a separate household from others even though the residence is shared (e.g., food bought and prepared separately, applicant receives food stamps separately from other household members, and/or applicant pays rent to others in residence).
 - c) The applicant is a victim of domestic violence.

G. Income eligibility

1. An applicant is income eligible for JACNY services when his/her income is up to 125% of the poverty guidelines.
 - a) An applicant is income eligible for services when his/her income is more than 125% and up to 200% of the poverty guidelines and should be made LSC eligible by completing an income/asset waiver form.
 - b) An applicant whose income is more than 200% of the poverty guidelines generally is not eligible for services, unless he/she is seeking assistance with a government benefit for the poor or is eligible for service under a specific grant that permits applicants to have incomes that are more than 200% of the poverty guidelines.
 - c) An applicant who is within the income guidelines may still be ineligible for service after considering other factors, including, among other things, assets, the availability of private representation, and his/her income prospects.
2. Sources of income (enter in "Applicant Info" screen in Eligibility Section of Kemp's):
 - a) Employment income: Count gross income, which means income before taxes, Social Security, or other voluntary withholdings are deducted.

- b) Public assistance/government benefits: Count Social Security retirement, Social Security Disability, Supplemental Security Income, Temporary Assistance to Needy Families, Safety Net Assistance, Unemployment Insurance benefits, Veterans Affairs benefits, and Workers' Compensation.
 - c) Other income: Count child support, spousal maintenance, retirement, pensions, trust fund payments, and other disability payments not listed above.
3. DO NOT COUNT: fuel assistance, food stamps, housing subsidies, income controlled by an abuser, lump sum injury payments (count as asset), non- cash benefits, and tax refunds.
4. Income deductions (enter deductions in "Expenses" screen of Eligibility Section of Kemp's **whenever applicant's income is between 125% and 200%** of the poverty level):
- a) Fixed debts and obligations, including unpaid federal, state, and local taxes from prior years
 - b) Child care, transportation, and other expenses necessary for employment
 - c) Expenses associated with age or physical infirmity of resident family members
 - d) Medical expenses
 - e) Other significant expenses related to the financial inability to afford legal assistance.

H. Assets

- 1. Asset guidelines: An applicant is not LSC eligible if his/her countable resources are more than \$ 5,000.00 (for one person household) plus an additional \$ 1,000.00 for each additional household member.
- 2. Exceptions to asset limits: (1) A specific grant permits representation. (2) The case has exceptional merit and an income/asset waiver form is approved by a managing attorney and a copy is submitted to the Executive Director in Utica.
- 3. Noncountable assets (DO NOT enter in Kemp's):
 - a) Assets that are controlled by an abuser (even if owned jointly by applicant)

- b) Non-liquid assets (i.e., can't easily be converted or used to secure a loan)
 - c) Exempt assets for food stamps, PA, or SSI purposes
 - d) One car
 - e) Equity in an individual's principal residence
 - f) Personal and household effects
 - g) Trusts from household funds for education and medical expenses
 - h) Value of farmland essential to employment or self-employment
 - i) Work related equipment essential to employment or self-employment
 - j) Cash value of IRA or Keough Plans
4. Countable assets (enter in "Applicant Info" screen in Eligibility Section of Kemp's): Determine equity in countable asset (e.g., a second car or a camp) by subtracting any debt owed on the asset (e.g., car loan or mortgage) from the fair market value of the property. Only the equity in the asset should be entered in Kemp's.

I. Completing the Kemp's Intake

1. Begin the Kemp's intake with a conflict check. From the main screen, click on the orange button titled "Conflicts," which is second from the top on the right-hand bar. Select the button marked "Six-Way Conflict Check" and a screen similar to the one labeled "Illustration One: Conflict Check" should appear. See page 15.

The screenshot shows a web-based form titled "Conflict Check" within a browser window. The window title is "Primer Case Management SQL - [Conflict Check]". The form has a header that says "Conflict Check (you can use first letters of first name, no period)". Below this, there are three main sections for data entry: "CLIENT", "NON-ADVERSE SPOUSE", and "ADVERSE PARTY". Each section contains two input fields labeled "FIRST NAME" and "LAST NAME". At the bottom of the form, there are six buttons: "Conflict Check", "Eligibility Table", "Close", "Transfer to Intake", "Transfer to Eligibility", and "Transfer to CallBack". The browser's address bar shows "Client: Windows" and "Server: Case Filter: Link Manager". The status bar at the bottom of the browser shows "Form View" and "1:54 PM".

Illustration One: Conflict Check

2. Ask the applicant to spell his/her first and last names, the first and last names of his/her spouse (if applicable), and the first and last names of the adverse party. Enter the information in the proper fields and press the button marked "Conflict Check." If there is more than one adverse party, repeat this process for each adverse party.
3. Scroll through the search results to determine whether a conflict of interest may exist.
 - a) If there appears to be a conflict, contact the HelpLine Managing Attorney for a conflict check.
 - b) If no conflict is apparent, determine whether the applicant has received services before and, if so, whether this call may be a duplicate.
 - If the application is a duplicate, transfer the caller back to the advocate who provided him/her service. If the advocate is not available and the applicant has an emergency, refer the caller to the advocate's supervisor.
 - If it is not clear whether the application is a duplicate, contact the HelpLine Managing Attorney for clarification.
4. If there are no conflict or duplication issues, click the button marked "Transfer to Eligibility." A light green screen titled "Eligibility Intake" will open. See "Illustration Two: Eligibility Intake" on page 16.

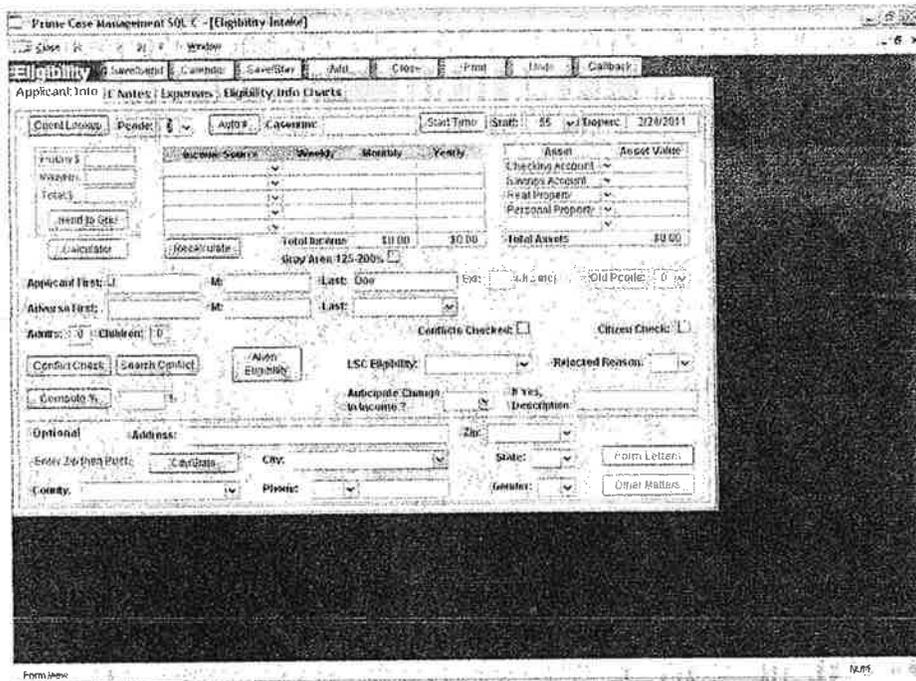


Illustration Two: Eligibility Intake

- a) Click the button marked "Auto #" to give the intake a case number. Enter the appropriate problem code. Confirm the spelling of all parties' names. If the adverse party is not a person, put the entity's entire name in the last name field. Complete the address fields for applicant at the bottom of the screen.
 - b) Complete all other fields on eligibility screen, including income, nonexempt assets, number of adults and children in household, whether applicant is a citizen or eligible alien, whether a change in income is anticipated, etc. Toggle appropriate buttons, if applicable, to indicate that there is no conflict, the applicant is LSC eligible, and is a citizen or eligible alien.
5. Do not miss the following in the eligibility section:
- a) Make sure there is a value listed in each entry on the asset column (even if entry is "0").
 - b) After the income and household size information is entered, click the "Compute %" button. Kemp's will determine the applicant's percent of poverty level based on his/her household size.
 - c) If income is up to 125% of poverty guideline, "LSC" eligibility field should be set to "yes."
 - d) If income is more than 125% and up to 200% of the poverty guidelines, move to "Expenses" screen (this is third tab on middle bar of Eligibility screen). Deduct permitted expenses. Return to first screen of the eligibility section ("Applicant Info") and toggle the

button marked "125-200%." **Make a notation in the Case Notes section that a waiver will need to be done to make applicant LSC eligible.**

- e) "LSC Eligibility" should be set to "no" in the following situations: (1) the applicant's household income is more than 200% of the poverty guideline; (2) the applicant's household has excess assets (the asset limit is \$ 5,000.00 for one person plus an additional \$ 1,000.00 for each additional household member); (3) the applicant is an ineligible alien; or (4) the applicant is otherwise not LSC eligible.
- f) "Anticipate Change In Income?" must be toggled "yes" or "no." If applicant anticipates a change in income, brief statement must be entered regarding the change.

6. After Eligibility Section is complete, click the button marked "Save/Send" (first button on left of top bar). "Intake Page 1" will open.

- a) Set the applicant type to "T" (telephone) or "W" (walk-in), as is appropriate. **Note that a citizenship form must be completed for walk-ins who may be eligible for LASMNY services.**
- b) Make sure the case type is set to "H" (hold).
- c) Obtain and enter applicant's social security number or the last four digits of his/her number. If applicant refuses, complete the SSN field using all zeroes.
- d) Make sure the citizenship button is set properly: "A" for "Citizen"; "B" for "Eligible Alien"; or "C" for "Undocumented Alien."
- e) **Enter the full names of additional adverse parties.** If, for example, the applicant is calling about a child support matter both the SCU and the adverse party in the support matter MUST be listed. If an additional adverse party is entered, click the conflict check button again on this screen. If a potential conflict exists, put a note in the Case Notes section as to whether the HelpLine Managing Attorney determined there was a conflict and why.
- f) Ask the applicant if there are any other phone numbers where he/she can be reached. Enter same with any notations about use of that number.
- g) Ask applicant whether it is safe to leave a phone message. If yes, toggle button. If no, put a note in Case Notes section explaining problem.

7. After "Intake Page 1" is completed, click the tab marked "Intake Page 2."

- a) Ask applicant to provide the following information: Race, Preferred Language, Gender, Date of Birth, and whether disabled, DV involved, or applicant or anyone in the household has ever served in the military, including the Reserves or National Guard. Determine whether the applicant needs an interpreter.
- b) Enter information and fill in other fields (e.g., location of legal problem and advocate number).

- c) **Do not use problem code "99"** without getting prior approval from the HelpLine Managing Attorney or another managing attorney.
- d) If the applicant will be transferred to the HelpLine, the advocate number should be set to "9999."
- e) After "Intake Page 2" is completed, click the tab marked "Intake Page 3." Ask the applicant whether he/she authorizes JACNY to share information between LASMNY/LSCNY and with pro bono attorneys who may be willing to assist applicant. Put a note in Case Notes section.
 - NOTE: If the applicant appears to be over the income or asset guidelines, advise applicant that he/she is probably not eligible for services because we can only help people with extremely low income and assets. Contact the HelpLine Managing Attorney for instructions on how to proceed.
 - NOTE: If there appears to be a conflict of interest, contact the HelpLine Managing Attorney for instructions on how to proceed.

II. Directing a completed application

A. Limited English Proficiency and Walk-in applicants

1. If an intake screener has determined that an applicant has limited English skills, interpretation services must be obtained to complete the intake screening—the intake screener **CANNOT** rely on the applicant's friends or family to assist—and **the call should be treated as an emergency and transferred to the Emergency HelpLine Attorney "Q", extension 5099.**
2. A walk-in applicant should not be turned away even if the only service that he/she will get will be over the phone with a HelpLine Attorney.
 - a) Have the walk-in applicant sign a citizenship form. Obtain and copy required citizenship documents.
 - b) Scan all documents the applicant brought with him/her and the citizenship forms and save on the "J" drive under the HelpLine folder.
 - c) Name the scan in the following manner: Last Name, First Name_description_date. Example: Doe, Jane_citizenship form_5Sept14.
 - d) After the documents are scanned, open the applicant's Kemp's intake and attach scanned documents to applicant's intake at "Intake Page 3" by pressing the bottom button on the left-hand side titled "Electronic Documents." See Illustration Three: Document Tracking below.
 - e) Put the original citizenship form and documents in the expandable folder marked "HelpLine Forms," which should be kept at or near the main reception desk in each Office.

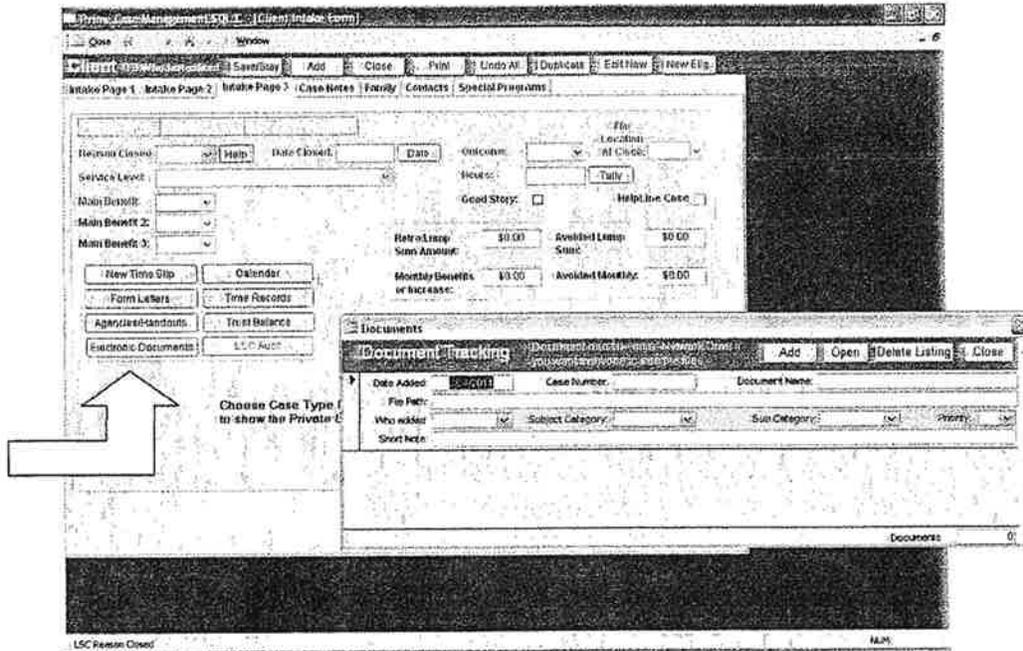


Illustration Three: Document Tracking

B. Forwarding intake

1. After the intake is completed, the intake screener should consult the JACNYCentralIntakeChart, which is available on the "J" drive at J:\Helpline, to determine where and how to direct the intake. When an applicant is being referred to a non-HelpLine advocate, an email with the words "new intake" must be sent to the advocate or unit listed in the Intake Chart.
 - a) If an advocate refuses to accept an intake or otherwise questions the Intake Chart instructions, tell the advocate to consult with his/her supervisor and inform the HelpLine Managing Attorney.
 - b) The advocate's supervisor will decide whether the Intake Chart needs to be amended or updated and, in the meantime, intake screeners should continue to follow the Intake Chart until it is updated or amended.
2. Calls to the HelpLine Attorney "Q" should be transferred in the manner described in the HelpLineAttorneyQueuesChart, which is available online at J:\Helpline.
3. For HelpLine purposes, the following are considered emergencies:
 - a) The applicant is seeking help with a utility shut off, lockout, or self- help eviction.

- b) The applicant has been served with a warrant of eviction.
 - c) The applicant's bank account has been frozen.
 - d) The applicant has a court appearance or administrative hearing scheduled.
 - e) The applicant has papers from a lawyer, court, government agency, or landlord that he/she must respond to.
 - f) The applicant is seeking help regarding a recent incident of domestic violence.
4. DO NOT transfer an applicant to a HelpLine Attorney Queue (a "HAQ") in any of the following situations:
- a) The applicant is assigned to an advocate other than "9999" in Kemp's (even if the advocate is a HelpLine Attorney). See Duplicates on pages 11–12.
 - b) The applicant is a direct referral from a court or agency under a particular grant (unless the HelpLine Managing Attorney has authorized you to do so).
5. Before transferring an applicant to a HAQ, follow the Intake Wrap Up and Call Transferring instructions on pages 4–7 and tell the applicant that:
- a) An attorney will pick up when one is available.
 - b) The HAQs have a callback feature. If the applicant cannot wait, the applicant has the option of pressing the star " * " key when prompted to leave a short message stating when he/she will be available for a callback and a callback number.
 - c) After approximately 10 minutes, if no attorney has been able to answer the call, the applicant will be required to leave a message and callback number.
 - d) If the applicant leaves a callback message, an attorney will call back within two (2) business days.
 - e) When the attorney calls back, the phone number will show up on caller ID as a one with a bunch of zeroes.

Chapter 3: Advocate Responsibilities

I. HelpLine attorneys

A. Handling an intake

1. **Callbacks:** When a HelpLine Attorney is returning a callback in a queue, he/she should make sure to resolve the callback message so that it no longer shows up as a callback in the queue. To avoid multiple attorneys trying to reach the same applicant, the HelpLine Attorney must resolve the call regardless of whether he/she has been able to communicate with the applicant. If the HelpLine Attorney attempted to contact an applicant, he/she is responsible for the disposition of the case. The HelpLine Attorney must change the advocate number from "9999" to his/her advocate number. The HelpLine Attorney must make three (3) attempts to call back the applicant, send a follow up letter, and then can reject the

case in Kemp's.

2. **When HelpLine Attorney reaches applicant:** The HelpLine Attorney should introduce him/herself. Review Case Notes. Verify information contained in Kemp's. Adjust problem code, if necessary. Change advocate number. Adjust funding code, if necessary. Make sure "HelpLine" button is toggled. Close case him/herself or refer to appropriate extended service advocate or pro bono clinic by consulting with the JACNY Central Intake Chart.
3. If the HelpLine Attorney is transferring a case to an advocate who works in the same Kemp's database he/she does, the HelpLine Attorney should simply change the advocate number to the advocate number of the advocate to whom the case will be referred. Send the advocate an email letting him/her know that the case has been transferred to him/her.
4. If the HelpLine Attorney is transferring a case from LASMNY to LSCNY (or vice versa), he/she should close the case with the highest level of service provided or, if no service provided, reject case as "transfer." Send the advocate an email letting him/her know that the case has been transferred to him/her.

B. Case closing

1. Cases that are not being referred for extended service should be closed in a timely fashion—within two weeks or less.
2. A closing letter should be sent when the case is closed.
3. If the client has come into an office for any reason, make sure there is a signed citizenship form and supporting documents (or case has been handled only by LSCNY).
4. Copies of the citizenship form, income/asset waiver, documents you reviewed, and papers you helped prepare should be scanned and saved in the "J" drive under the HelpLine folder.
 - a) Name the scan in the following manner: Last Name, First Name_description_date. Example: Doe, Jane_closing letter_5Sept14.
 - b) After the documents are scanned, open the applicant's Kemp's intake and attach scanned documents to applicant's intake at "Intake Page 4" by pressing the bottom button on the left-hand side titled "Electronic Documents."
5. Cases should be closed as either advice and counsel ("A") or limited action ("B"). Closing code "B" is to be used when some limited service beyond advice and counsel was given (e.g., assisting a client with pro se pleading, calling a third party on a client's behalf, etc.). Any case that requires more assistance should be referred to an extended service advocate, pro bono attorney, or clinic.
6. **Do not use closing code "K"** or any closing code other than "A" or "B" without getting prior approval from the HelpLine Managing Attorney or another managing attorney.

7. Prior to closing a case, the HelpLine Attorney must review the eligibility screen and all intake screens in Kemp's to make sure that all fields are completed as required by LASMNY and LSC.

II: Extended service advocates

A. Cases are referred from the HelpLine to extended service and pro bono advocates based upon the information contained in the JACNY Central Intake Chart. When a call is referred to an extended service or pro bono advocate, he/she should respond to the applicant in the manner and timeframe described in the Intake Chart. Extended service and pro bono advocates must check their "new intakes" email folder regularly.

B. If an advocate does not understand why a case was transferred to him/her, the extended service or pro bono advocate should consult the Intake Chart.

1. If an advocate believes that the information contained in the Intake Chart is inaccurate or needs to be amended (e.g., his/her intake is temporarily closed), he/she should speak with his/her supervisor.
2. If an advocate believes that the information contained in the intake chart is accurate and up-to-date but that a member of the HelpLine staff misdirected a referral to him/her or did not follow any special instructions in the Intake Chart, the advocate should contact the HelpLine Managing Attorney to deal with the situation.

EXHIBIT 2A

Proposed Revised Financial Eligibility Policy

August 7, 2014

**PROPOSED
FINANCIAL ELIGIBILITY POLICY
45 CFR 1611**

Purpose

These guidelines are to be used for determining who is financially unable to afford legal assistance pursuant to the Legal Services Corporation (LSC) Act §1002(3) and §1007(2)(B) and Regulation 1611. Only individuals and groups determined to be financially eligible under this policy and LSC regulations may receive legal assistance support with LSC funds.

Financial eligibility must be determined on a case-by-case basis in the context of the services requested and the cost and availability of private representation. Whatever name is given to the inability to afford legal representation, it is not synonymous with destitution or a total absence of means.

These guidelines shall be construed to obtain equitable and consistent determinations of eligibility for services and to limit the expenditure of public funds the Legal Aid Society of Mid-New York, Inc. receives to cases and matters where justice so requires, and to ensure the effective and efficient functioning of the civil legal system in the counties in which the Legal Aid Society of Mid-New York, Inc. (LASMNY) provides representation.

Implementation

I. Definitions

(A) “Advice and Counsel” means legal assistance that is limited to the review of information relevant to the client’s legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and Counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(B) “Applicable rules of professional responsibility” means the rules of ethics and professional responsibility generally applicable to LASMNY attorneys.

(C) “Applicant” means an individual who is seeking legal assistance supported with LSC funds from LASMNY. The term does not include a group, corporation, or association.

(D) “Assets” means cash or other resources of the applicant or members of the applicant’s household that are readily convertible to cash, which are currently and actually available to the applicant.

(E) “Brief Services” means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities such as the drafting of documents or making limited third party contacts on behalf of a client.

(F) "Extended Service" means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the recipient undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(G) "Governmental Program for Low Income Individuals or Families" means any federal, state, or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(H) "Governmental Program for Persons with Disabilities" means any federal, state, or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(I) "Income" means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash receipts include, but are not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

II. Manner of Determining Financial Eligibility

(A) In making financial eligibility determinations regarding individual applicants, a reasonable inquiry shall be made regarding sources of the applicant's income, income prospects and assets. LASMNY shall record income, income prospects, and asset information in LASMNY's electronic database. In those instances where it is necessary to initially record that information on a paper form, it shall be recorded in LASMNY's electronic database as soon as practicable.

(B) The Executive Director shall approve a paper Application for Service which shall be standardized throughout LASMNY's basic field grant offices. LASMNY's migrant farmworker project may use a paper Application for Service that must gather at least all information requested by LASMNY's basic field grant paper application, but may also gather additional information such as whether the applicant is a seasonal or migrant farmworker, or a second address/contact information in the applicant's foreign home country.

(C) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, LASMNY shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(D) When another LSC recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request LASMNY to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, LASMNY is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in 45 CFR Section 1611.8 or there is substantial reason to doubt the validity of the original determination, provided that the referring LSC recipient provides and LASMNY retains a copy of the intake form documenting the financial eligibility of the client.

III. Inquiry Into Income Prospects

LASMNY staff shall make reasonable inquiry into an applicant's income prospects by asking each applicant for services whether the applicant has any reason to believe that his or her income is likely to change significantly in the near future. Should the applicant respond affirmatively, then the applicant should be asked more detailed questions so LASMNY could make a final determination of financial eligibility.

IV. Maximum Income Level

The maximum income level for financial eligibility is 125% of the Official Poverty Income Guidelines. Upon the publication of Amended Income Levels for Individuals Eligible for Assistance, or other like material, by LSC in the Federal Register, then the maximum income level for LASMNY financial eligibility shall likewise immediately change without the need for LASMNY Board of Directors action. The Legal Aid Society of Mid-New York, Inc. has elected to establish this guideline upon an analysis that included:

- (A) The number of clients who can be served by LASMNY resources;
- (B) The population that would be eligible at and below alternative income and asset ceilings;
- (C) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area; and
- (D) The cost of living in LASMNY's service area.

V. Authorized Exceptions from Maximum Income Guidelines

(A) A person whose income exceeds the maximum income level established by the Legal Aid Society of Mid-New York, Inc. but does not exceed 200% of the Official Poverty Income Guidelines, may be provided legal assistance if:

(1) The person's circumstances require that eligibility should be allowed on the basis of one or more of the following factors as applicable to that person or to members of the individual's household:

- (a) Current income prospects, taking into account seasonal variations in income;
- (b) Unreimbursed medical expenses and medical insurance premiums;
- (c) Fixed debts and obligations;
- (d) Expenses such as dependent care, transportation, clothing, and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
- (e) Non-medical expenses associated with age or disability;
- (f) Current taxes;
- (g) Unpaid federal, state, or local taxes from prior years;
- (h) The cost of the prospective legal services;
- (i) Expenses associated with recent natural disasters; or
- (j) Active military deployment of household member;

(2) An individual is seeking legal assistance to obtain governmental benefits for low income individuals or families; or

(3) The individual is seeking assistance to obtain or maintain governmental benefits for persons with disabilities.

(B) A person whose income exceeds the maximum income guideline levels established by the Legal Aid Society of Mid-New York, Inc., even if said income is above 200% of the applicable Official Poverty Income Guidelines:

(1) The person is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The LASMNY Executive Director, or his/her designee, has determined on the basis of documentation received by the recipient, that the person's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the person's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service, or

(C) A decision to represent a person whose income exceeds the maximum income level of LASMNY shall be documented and included in the client's file. LASMNY shall document such records as may be necessary to inform LSC of the specific facts and factors relied on to make such determination.

VI. Group Representation

(A) LASMNY may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

(1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity; or

(B) (1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (A) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either:

(a) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

(b) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

(2) LASMNY shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

(C) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by LASMNY, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

VII. Asset Ceilings

(A) Purpose

To ensure that legal services are provided to those least able to obtain legal assistance, the Legal Aid Society of Mid-New York, Inc. has adopted specific asset ceilings. To ensure, however, that the special needs of the elderly, the handicapped, the institutionalized, battered victims of domestic violence, the rural self-employed, and others whose needs are great and who cannot obtain adequate representation elsewhere, the Legal Aid Society of Mid-New York, Inc. has provided waivers from these specific guidelines.

(B) Application of Asset Ceilings

If a person possesses available assets which exceed the ceilings set forth below, the applicant is financially ineligible for legal assistance unless the Executive Director or his/her designee grants a waiver of asset ceiling for specific applicants under unusual circumstances. When the asset ceiling is waived it shall be documented and included in the client's file.

(C) Assets Ceiling

After subtracting exclusions set forth in Section VII D of this policy, LASMNY will document the total value of assets held by all members of the household. Such total household assets shall not exceed \$15,000 for a one person household plus another \$5,000 for each additional household member. LASMNY shall use the equity value of the nonexcluded asset, as opposed to its fair market value in calculating asset eligibility.

(D) The following shall be excluded from consideration of a determination of an individual's assets:

- (1) Applicant's principal residence
- (2) Vehicles uses for transportation
- (3) Assets used in producing income

(4) Assets exempt from attachment under federal or state law; assets excluded from bankruptcy proceedings or other assets that may not be attached in satisfaction of a debt.

VIII. Change in Circumstances

(A) If, after making a determination of financial eligibility and accepting a client for service, LASMNY becomes aware that a client has become financially ineligible through a change in circumstances, LASMNY shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with the New York Rules of Professional Conduct.

(B) If, after making a determination of financial eligibility and accepting a client for service, LASMNY later determines that the client is financially ineligible on the basis of later discovered or disclosed information, LASMNY shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with the New York Rules of Professional Conduct.

IX. Retainer Agreements

When LASMNY provides extended service to a client, LASMNY program staff shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the New York Rules of Professional Conduct and prevailing practices in LASMNY'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 services to be provided.

X. Domestic Violence

Notwithstanding any other provision of this policy, in assessing the income and assets of an applicant who is a victim of domestic violence, LASMNY will consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence assets, jointly held by the applicant with the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

EXHIBIT 2B

Income Prospect E-mail

Paul J. Lupia

From: Paul J. Lupia <plupia@wnylc.com>
Sent: Monday, September 21, 2009 4:53 PM
To: 'Discussion for LASMNY Staff'
Cc: 'dkaufman@wnylc.com'; Sam Young
Subject: FW: Advisory Opinion AO-2009-1006

Hello all;

Below you will see a link to a recent LSC Advisory Opinion which remind us that in determining eligibility for LSC purposes we must not only make a reasonable inquiry into an applicant's income and assets, but also into "income prospects". See 45 CFR 1611.7(a). LSC has suggested in this Advisory Opinion, and every intake person is hereby directed, to ask every applicant of our services the following question: "Do you have any reason to believe that your income is likely to change significantly in the near future?" If the answer is "yes", then further questions should be asked so that the case handler can make a final determination as to financial eligibility. I have asked Terry T. to modify our KEMPS intake so that we can document our compliance with this regulation. In the meantime please make sure that you continue to comply with this regulation. If you have any questions please direct them to your Managing attorney. Thanks for your cooperation.....Paul

Paul J. Lupia, Esq.
Executive Director
Legal Aid Society of Mid-New York, Inc.
255 Genesee Street
2nd Floor
Utica, New York 13501
Tel.: 315-793-7077
Fax: 315-732-3202
E-mail: plupia@wnylc.com

From: JOHN MEYER [<mailto:meyerj@lsc.gov>]
Sent: Thursday, September 03, 2009 5:23 PM
To: MATTIE COHAN
Subject: Advisory Opinion AO-2009-1006

This is a message to all LSC grantee Executive Directors sent in "blind cc" format to foil viruses. The message follows:

This is to advise you that the Office of Legal Affairs has issued a new Advisory Opinion, AO-2009-1006, Inquiry into Income Prospects Pursuant to 45 CFR §1611.7(a). The Advisory Opinion may be found on the LSC website at: http://www.lsc.gov/lscgov4/AO_2009_1006.pdf

Mattie Cohan
Senior Assistant General Counsel
Legal Services Corporation
3333 K St., N.W.
Washington, DC 20007
202-295-1624 (phone)
202-337-6519 (fax)
mcohan@lsc.gov

EXHIBIT 2C

Screen Shot of Proposed Automated Case Management System Income Waiver

Total Monthly Income: \$216.67

Income Waiver

Type

- (Income above 200%) Seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families
- (Income above 200%) Applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service
- (Income does not exceed 200%) Seeking legal assistance to obtain governmental benefits for low income individuals and families
- (Income does not exceed 200%) Seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities.
- (Income does not exceed 200%) Applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicants household:

<input checked="" type="checkbox"/> Current income prospects, taking into account seasonal variations in income	<input type="checkbox"/> Non-medical expenses associated with age or disability
<input checked="" type="checkbox"/> Unreimbursed medical expenses and medical insurance premiums	<input type="checkbox"/> Current taxes
<input checked="" type="checkbox"/> Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment	<input type="checkbox"/> Unpaid federal, state, or local taxes from prior years
<input checked="" type="checkbox"/> Fixed debts and obligations	<input type="checkbox"/> Cost of prospective legal services
	<input type="checkbox"/> Expenses associated with recent natural disaster
	<input type="checkbox"/> Active military deployment of household member
- (Income above 200%) Non-LSC funding code.

Approved Not Approved

Room for more approval notes here

E-Signature: [] E-Date: 8/1/2014

Asset Waiver

The following "unusual circumstances" justify a waiver of LASMNY's asset ceiling in this case.

Here is where you would enter asset waiver notes

EXHIBIT 5

Mandatory Staff Meeting Agendas

LASMNY STAFF MEETING

**Friday, September 16, 2011
10:00 a.m. to 4:00 p.m.**

**Dorothy Smith Center for Advocacy
1607 Genesee Street
Utica, New York**

**PLEASE TURN OFF YOUR CELL PHONES and
SIT WITH SOMEONE YOU DO NOT KNOW**

AGENDA

- 1. Money/Budget Issues**
- 2. Conflict Policy**
- 3. Audit/LSC Compliance Training**
 - a. Kemp's
Cindy Domingue-Hendrickson, Esq.**
 - b. Eligibility/Case Closings
Arlene Sanders, Esq.**
 - c. Matters
Alice Decker, Esq.**
 - d. Lobbying and Other LSC Compliance
Paul Lupia, Esq.**

Mandatory Staff Meeting Agenda

Friday, October 19, 2012

- 1. Violence Against Women Act (VAWA) Sexual Assault Training**
- 2. LGBTQ Training**
- 3. Diversity Committee**
- 4. Technology Initiative Grant (TIG)**
- 5. Funding Update**
- 6. Client Eligible Board Member**
- 7. Legal Needs Survey Report**
- 8. Retainer Training**
- 9. Income Eligibility Training**
- 10. Alien Eligibility Training**

Utica Office Staff Meeting
AGENDA
11/8/13

- 10:00 am-10:15 am Program Update (Paul)
- 10:15 am-11:00 am Summary of SWOT Results/Way Forward (Cindy)
- BREAK**
- 11:00 am-11:45 am File Management/LSC Compliance Refresher
(Renee & Mary Beth)
- 11:45 am-12:00 pm "Matters" Reporting (Cindy)
- BREAK**
- 12:15 pm-1:00 pm Dealing With Clients Who Threaten Suicide
(Joe Carcone, MCAT)

EXHIBIT 10

K Closing Code Screen Shot

13E-1070551 Mandi Rodriguez

Ransom Closed Date Closed 8/4/2013

Service Level: GLD CODE - Court Decision

Main Benefit: Court Decision - Uncontested

Main Benefit 2: Court Decision - Appeals

Main Benefit 3: Other - NEED MANAGEMENT AFFEJUAL

New Time: Expense Service (not resulting in Settlement, Co

Form Letters: Time Records

Agencies/Handouts: Trust Balance

Electronic Documents: LSC Add

File Location: At Closed

Outsource: \$1,000.00

Hours: 15 Tally

Good Stay: HelpLine Case

Avoided Lump Sum: \$0.00

Avoided Monthly: \$0.00

Lump Sum: \$50.00

Monthly Benefits or Increase:

Choose Case Type P (PBI) on Intake Page 1 to show the Private Lawyer Referral System here.

EXHIBIT 13

Revised Outside Practice of Law Policy

August 7, 2014

PROGRAM POLICY

OUTSIDE PRACTICE OF LAW 45 CFR 1604

A. General Policy

The Legal Aid Society of Mid-New York, Inc. (LASMNY) full time attorneys are permitted to engage in pro bono legal assistance to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Legal Services Corporation (LSC) Act, so long as such legal assistance is consistent with the LSC Act, applicable LSC regulations, and the New York Rules of Professional Conduct.

B. Definitions

As used in this policy:

(1) Full-time attorney means an attorney who is employed full-time by LASMNY.

(2) Outside practice of law means the provision of legal assistance to a client who is not receiving that legal assistance from LASMNY of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

(3) Court appointment means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

C. Permissible Outside Practice

LASMNY's Executive Director may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(1) The LASMNY Executive Director or the LASMNY Executive Director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to LASMNY's clients;

(2) Except as provided in Section F of this policy, the attorney does not intentionally identify the case or matter with LSC or LASMNY; and

(3) The attorney is:

(a) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(b) Acting on behalf of him or herself, a close friend, family member, or another member of the LASMNY staff; or

(c) Acting on behalf of a religious, community, or charitable group; or

(d) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization, or religious, community, or charitable group.

D. Compensation

(1) Except as provided in paragraph (2) of this Section D of the policy and Section F(1) of this policy, LASMNY will not permit a full-time attorney to receive any compensation for the outside practice of law.

(2) When the outside practice of law is based upon Section (C)(3)(a) of this policy, LASMNY shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

(3) All outside practice of law must be done on the attorney's own time to the greatest extent possible except for de minimis amounts of time out of the control of the staff attorney.

E. Use of LASMNY Resources

(1) For cases undertaken pursuant to Section (C)(3)(a) of this policy, LASMNY will permit a full-time attorney to use de minimis amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as LASMNY's resources, whether funded with LSC or private funds, are not used for any activities for which the use of such funds is prohibited.

(2) For cases undertaken pursuant to Sections (C)(3)(b) - (C)(3)(d) of this policy, LASMNY will permit a full-time attorney to use limited amounts of LASMNY's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as LASMNY's resources, whether funded with LSC or private funds, are not used for any activities for which the use of such funds is prohibited.

F. Court Appointments

(1) LASMNY may permit a full-time attorney to accept a court appointment if the LASMNY Executive Director or LASMNY's Executive Director's designee determines that:

(a) Such an appointment is consistent with LASMNY's primary responsibility to provide legal assistance to eligible clients in civil matters.

(b) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(c) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to LASMNY any compensation received.

(2) LASMNY will permit a full-time attorney to use LASMNY resources to undertake representation pursuant to a court appointment.

(3) LASMNY will permit a full-time attorney to identify LASMNY as his or her employer when engaged in representation pursuant to a court appointment.

(4) If, under the applicable New York State or local Court Rules or Practices or New York Rules of Professional Conduct, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on behalf of LASMNY's clients, LASMNY will treat such legal assistance in the same manner as court appointments under paragraphs (1)(a), (1)(b), (2) and (3) of this section of this policy provided that LASMNY will only permit mandatory pro bono activities that are not otherwise prohibited by the LSC Act, applicable appropriations laws, or LSC regulation.

G. A request to engage in the outside practice of law should be made on a copy of a form attached to this policy and submitted to the LASMNY Executive Director or his or her designee for approval.

**REQUEST FOR PERMISSION TO ENGAGE IN OUTSIDE PRACTICE OF LAW
PURSUANT TO (1) 45 C.F.R. PART 1604 AND
(2) THE POLICY OF THE LEGAL AID SOCIETY OF MID-NEW YORK, INC.**

1. The following request is being made to engage in the outside practice of law:

A. For Compensation

_____ 1. The undersigned is newly employed and has a professional responsibility to close cases from a previous law practice. The undersigned attorney agrees to perform said legal services on his or her own time and close said cases as expeditiously as possible.

OR

_____ 2. The undersigned attorney is acting pursuant to an appointment made under the same terms and conditions as are applied generally to attorneys practicing in the Court where the appointment is made, and said undersigned attorney will remit to the Legal Aid Society of Mid-New York, Inc. any and all compensation received in this outside practice of law.

OR

B. Uncompensated Outside Practice

_____ 1. The undersigned attorney is acting pursuant to an appointment made under a Court rule or practice of equal applicability to all attorneys in its jurisdiction.

OR

_____ 2. The undersigned attorney is acting on behalf of him or herself, a close friend, family member, or another member of LASMNY's staff.

OR

_____ 3. The undersigned attorney is acting on behalf of a religious community or charitable group.

OR

_____ 4. The undersigned is participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization, or religious, community, or charitable group.

2. The undersigned Staff Attorney asserts that the proposed representation is consistent with the attorney's responsibilities to LASMNY clients.

3. If this request is being made under Section 1(A)(1) of this form (newly employed attorney who are closing cases from a previous law practice) a list of cases shall be attached.

4. Unless this request is being made under Section 1(A)(2) of this form (acting pursuant to a Court appointment) the Staff Attorney understands that he or she may not intentionally identify the case or matter with LSC or LASMNY.

5. For all requests, except for requests made under Section 1(A)(1) of this form (newly employed attorneys who are closing cases from a previous law practice), the following must be completed:

(A) Client's name and relationship to attorney (spouse, parent, close friend, family member, staff member, charitable, group, etc.)

(B) Opposing party, if any: _____

(C) Nature of legal problem: _____

(D) Proposed action to be taken on behalf of client, including litigation, Court or hearing appearances, etc.: _____

6. The undersigned attorney certifies that he or she has read and understands LASMNY's Outside Practice of Law Policy.

7. LASMNY resources expected to be used: _____

Staff Attorney

Date

Approved by:

Executive Director

Date

EXHIBIT 15

Revised Fee-Generating Case Policy

August 6, 2014

FEE-GENERATING CASES: PROGRAM POLICY AND FORM

45 CFR 1609

No individual, while employed by the Legal Aid Society of Mid-New York, Inc. (LASMNY), may provide legal assistance in any fee-generating case, except as otherwise provided in this policy. For purposes of this policy, a "fee-generating case" is any case which, if undertaken by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.

This policy does not apply to cases in which LASMNY or one of its employees is appointed by a court to provide representation pursuant to a statute or court rule or practice that applies to all attorneys in the jurisdiction; nor does this policy apply to cases that LASMNY undertakes under a contract with a government agency or other entity.

Advocates may provide representation in a fee-generating case under the following circumstances:

1. The case has either been rejected by the County or State Bar Association Lawyer Referral Service will not take the case without payment of a consultation fee;
2. The case has either been rejected by two private attorneys selected from the County or State Bar Association referral list or two attorneys from the list have indicated that they will not consider the case without payment of a consultation fee.

Advocates may provide representation in a fee-generating case without attempting to refer the cases brought to secure SSI or SSDI benefits for eligible clients.

Advocates may provide representation in a fee-generating case without first attempting to refer the case when the Executive Director of the Legal Aid Society of Mid-New York, Inc., or the Executive Director's designee, has made a determination that:

1. Documented attempts to refer similar cases in the past have been futile, or
2. Emergency circumstances compel immediate action before a referral can be made. In such a case, the client must be advised that referral will be attempted at a later time, if appropriate and consistent with professional responsibilities, or
3. Recovery of damages is not the principle object of the client's case and substantial attorneys' fees are not likely to be available.

REFERRAL PROCEDURES

When an advocate employed by LASMNY determines that a potential case would be fee-generating under the terms of LASMNY's policy on fee-generating cases, the advocate must use the following procedures before undertaking representation in the case:

1. If the case is a SSI or SSDI case, the advocate may undertake representation without first attempting a referral to the private bar.
2. If the advocate believes that (a) attempts to refer similar cases in the past have proved futile, (2) emergency circumstances compel immediate action before referral can be made, or (3) recovery of damages is not the principal object of the recipient's case and substantial statutory attorneys' fees would not be available to a private attorney handling the case, the advocate must consult with the Executive Director of LASMNY or the Executive Director's designee to determine whether or not referral of the case are required. If the Executive Director or designee determines that referral is not required in the case, the advocate and the Executive Director or designee are required to complete an "Approval for Representation in Fee-Generating Cases" form prior to undertaking representation in the case. A copy of the form must be kept in the client's file along with any additional required documentation.
3. If the advocate determines that referral is required in the case, the advocate, or other appropriate member of LASMNY staff, must seek to refer the case to a member of the private bar by one of the following methods:
 - a. Contact the County of State Bar Association Lawyer Referral Service to find a private attorney who is willing to accept the case without pre-payment of a fee;
 - b. Contact two private attorneys from a list of attorneys maintained by LASMNY who have agreed to accept referrals of fee-generating cases from LASMNY; or
 - c. Contact two private attorneys who, in the past, have accepted referrals from LASMNY of similar cases or have undertaken similar representation for clients not referred by LASMNY, or whom the advocate or other staff member have reason to believe might be willing to undertake the representation in this case.
4. If the lawyer referral service or the two private attorneys contacted by the staff will not consider the case or will not consider the case without pre-payment of a fee, the advocate may undertake representation in the case, but the advocate or other appropriate staff member must document the efforts it made to refer the case to the County or State Bar Association Lawyer Referral Service or to specified individual private attorneys, and keep such documentation in the client's file.

APPROVAL FOR REPRESENTATION IN FEE-GENERATING CASES

Date: _____

Name of Advocate: _____

Case File Number: _____

I am requesting approval to provide representation in the following fee-generating case:

Brief description of the case:

If applicable, description of emergency circumstances:

If applicable, description of past efforts to refer similar cases that have proved futile (attach documentation):

If applicable, statement of principal object of the case (if not damages for the client), and likelihood that substantial attorneys' fees would not be available if private attorney were to undertake representation:

REPRESENTATION OF THE CLIENT IN THIS FEE-GENERATING CASE IS HEREBY:

___ APPROVED ___ DENIED

___ APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

Executive Director

Date

EXHIBIT 17

Private Attorney Involvement Memo Regarding Procedures for Case Closings, Referral and Oversight

MEMO

To: PAI Workgroup
From: Arlene Sanders
Re: PAI procedures for case closing, referral and oversight

A. Case closings

1. Advice cases/clinics. Close promptly after clinics but no later than 30 days. Must include a closing case note in Kemps as to advice given. For electronic cases, case note can refer to electronically attached attorney notes. Record pro bono attorney time in Kemps. Send affirmation for CLE credit (if not obtained at the end of clinic).

Although LSC regs allow advice cases to be closed in subsequent year if opened after 9/30 or an entry in Kemps explains why cases should be kept open into the following year please try to close all advice cases within 30 days whenever possible.

Note: If advice case becomes extended service case (e.g., client attends bankruptcy or divorce screening clinics and is subsequently referred to pro bono panel for extended services) reopen case if within same year. If referral occurs in subsequent year must open a new case.

2. Extended service cases. Close promptly after pro bono attorney reports that case has been completed—but no later than the following year after legal services were provided. Cases closed beyond that time will be non CSR. Must include a closing case note in Kemps as to services rendered (e.g. client obtained uncontested divorce; client obtained ch. 7 discharge) in addition to any documentation in the file. Record pro bono attorney time in Kemps. Send closing letter/client satisfaction survey to client.

B. Case referrals

1. Extended service (e.g., bankruptcies, divorces, child support, UIB, and estate planning): Refer cases within 6-8 weeks of the time that client returns application and all necessary documentation (unless limited pro bono resources require a longer wait). Notify client if longer wait times expected. Send referral letters to attorney and client at time of referral. Include Pro Bono CLE Affirmation form with attorney referral and instructions to provide form to LASMNY when case is completed.

2. Advice clinics: Schedule appointment within 4 weeks of intake if possible. Try to add more clinics if wait times are longer. Provide clients with mobility issues or if living outside county in which clinic is held option of attending by phone.

C. Case follow-up/oversight (extended service cases)

1. If attorney has not reported on case within four months: send letter, phone call or e-mail. Try to follow up on extended service referrals within 4 months but no later than 6 months after referral. Record case status in Kemps. Record all attempts to obtain case status even if

unsuccessful. If unable to obtain cases status from attorney contact client.

2. If attorney reports that client has not contacted/followed up: send 10 day letter to client letting client know that case may be closed if they do not contact attorney by specified date. If client does not respond by specified date, notify attorney of case closure. Close with highest level of service rendered.

Example 1: If client applied for divorce and had an initial meeting with private attorney but did not follow up thereafter, close as counsel & advice.

Example 2: If the divorce client attended advice clinic in same year as referral but did not contact private attorney after referral, close as counsel & advice because client obtained advice at screening clinic prior to referral.

Example 3: If the divorce client attended advice clinic and was not referred until subsequent year to private attorney and did not contact private attorney after referral, must close as non CSR because no legal advice given since time case was opened.

EXHIBIT 32A

Revised Petty Cash Procedures Section of LASMNY's Accounting Procedures Manual

PETTY CASH PROCEDURES

Petty cash checking accounts have been established for the convenience of the outreach offices for small purchases.

Petty Cash envelopes (the envelope) (see H-1) are maintained by the petty cash custodians (the custodian). The custodian is responsible for assuring that the money and the receipts in the envelope are balanced for that particular office. Purchases will be paid by the custodian after the receipt is submitted.

The custodian reconciles the envelope and check register (if applicable) on a monthly basis requesting a reimbursement amount to replenish the fund to the authorized amount for that office. The reimbursement request and checking account balance must equal the petty cash fund for that office. The monthly expenses must be supported by signed and dated receipts. Sales tax will not be reimbursed, a sales tax exempt form (see H-2) should be signed by administration and given to the vendor to avoid the tax being charged. The envelope (with receipts) and check register are then forwarded to the main office for reimbursement.

When a petty cash check is issued by the main office, the expenses are charged to its appropriate general ledger account. A check is made payable to LASMNY for the outreach offices by the Bookkeeper/Administrator and directly deposited into the applicable petty cash checking accounts by a designated clerical person. For the Utica office the check is made payable to the custodian for the replenishment amount. Since the Utica office maintains cash, the Executive Assistant periodically checks the petty cash to assure that receipts and cash equal the authorized amount. Said periodic checks occur on a monthly basis and are unannounced.

The checking account address for monthly bank statements is the main office. When the monthly statements are received the Chief Financial Officer (CFO) reconciles the statement with the receipts and envelope received from the custodian. The CFO then presents the statement and receipts to the Executive Director for his or her review.

EXHIBIT 32B

Credit Card Procedures from LASMNY's Accounting Procedures Manual

CREDIT CARD PROCEDURES

The Legal Aid Society of Mid-New York, Inc.'s policy for the use of the corporate credit card is summarized below:

1. The card will be kept in the possession of the Executive Director or Bookkeeper/Administrator until it is needed.
2. The credit card may be used for the purchase of equipment, telephone and web services by the Technology Administrator. It may also be used by the Executive Director for travel, hotel, training, and conference expenses while he is on official business.
3. Prior written permission to use the credit card other than above must be obtained from the Executive Director who is the only authorized signer (see J-1).
4. It is the responsibility of the credit card user to obtain all receipts and appropriate documentation for each card use.
5. The Audit and Finance Committee shall establish the line of credit and must approve any changes.

EXHIBIT 32C

Credit Card Policy from LASMNY's Office Procedures Manual

CREDIT CARD POLICY

The Legal Aid Society of Mid-New York, Inc.'s policy for the use of the corporate credit card is summarized below:

1. The card will be kept in the possession of the Executive Director or Bookkeeper/Administrator until it is needed.
2. The credit card may be used for the purchase of equipment, telephone and web services by the Technology Administrator. It may also be used by the Executive Director for travel, hotel, training, and conference expenses while he is on official business.
3. Prior written permission to use the credit card other than above must be obtained from the Executive Director who is the only authorized signer (see J-1).
4. It is the responsibility of the credit card user to obtain all receipts and appropriate documentation for each card use.
5. The Audit and Finance Committee shall establish the line of credit and must approve any changes.

EXHIBIT 32D

Authorization to Use LASMNY's Credit Card

AUTHORIZATION TO USE THE
LEGAL AID SOCIETY OF MID-NEW YORK, INC. CREDIT CARD

User's Name: _____

Date of Use: _____

Purpose of Use: _____

If travel related, purpose of trip: _____

Itemized list of charges: _____

Total charges: _____

User's Signature: _____ Date: _____

Approval: _____ Date: _____

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EXHIBIT 32E

**Notice to Clients Regarding
Cash Receipts**

Notice to All Clients of the Legal Aid Society of Mid-New York, Inc.

Should you provide the Legal Aid Society of Mid-New York, Inc. (LASMNY) with funds to put into our client trust account, typically for the payment of court fees or other required fees, you are entitled to a receipt that contains your name, address, case number if applicable, type of payment (cash, check, etc.) and the purpose for which the funds will be used. Should you provide LASMNY with such funds and not receive a receipt please ask to speak to a LASMNY Supervisor.

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EXHIBIT 32F

Revised Section B of LASMNY's Accounting Procedures Manual

FINANCIAL MANAGEMENT OVERVIEW

1. Cash and Investments

Funds held for immediate operating expenses are maintained in federally-insured bank accounts. Any funds in excess of the Federal Deposit Insurance Company (FDIC) limits and not needed for immediate operating expenses are invested in U.S. Treasury bills. Any changes in bank accounts and all check signers are approved by the Board of Directors.

2. Client Trust Account

Client trust funds are received from or on behalf of a client to cover necessary costs associated with their case or to hold damage awards, rents, etc. A bank account is maintained and designated solely for these purposes.

The Grant Administrator is the assigned trust account clerk who maintains the checkbook and client trust detail. (See N).

3. Cost Allocations

The Legal Aid Society of Mid-New York, Inc. (LASMNY) receives funds from the Legal Services Corporation (LSC) and non-LSC sources. Direct costs are allocated to a particular grant to the degree that the costs were incurred to achieve the objective of the grant. Otherwise they are allocated to the LSC grant. If the costs are unallowed by LSC, then they are allocated to general funds.

When a non-LSC funding source allows overhead expenses to be expended to its program it is done so. The amount is charged to those programs on a monthly or quarterly basis.

4. Pro Bono Attorney Initiative (PAI)

LSC requires that a minimum of 12½% of their basic grant be spent under the PAI Program. Expenses are allocated based on the percentage of time individuals spend on PAI activities. Administration expenses are allocated based on the LSC 12½% required amount by the total income of the agency. Non-personnel expenses (with the exception of direct expenses) are allocated based on PAI salary expense divided by the total agency salary to determine agency-wide factor.

5. Retention of Accounting Records

LASMNY follows LSC retention times of records (see Appendix 1).

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6. Donations

Donated items may include cash, property and/or services. Donated property is recorded at their fair market value at the time donated and is depreciated over its useful life if a capital asset. Donated services are recorded at what the cost would have been if the services were purchased. Donated time by volunteers is calculated based on LASMNY's salary scale and number of hours volunteered and recorded at the end of each year.

7. Chart of Account Structure

The computer accounting system is set up with an eight digit number code and a supplemental project number and is set out as follows (see Appendix 2):

1 st and 2 nd Digit	Fund Code: 01 General 02 Fixed Assets
3 rd throughout 6 th Digit	= Asset, Liabilities, Fund Balance, Income and Expense Accounts
7 th and 8 th Digit	= Office Location
Project Number	Project or Grant

Account

Series Description

1000	Assets
2000	Liabilities
3000	Fund Balance
4000	Income - Grants & Contracts

Expense

5000	Personnel
5300	Fringe Benefits
5500	Contract Services
5600	Travel
5700	Space Costs
5800	Office Expense
5900	Litigation
7000	Capital Additions
7500	Other

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8. Each fiscal employee is required to take at least one (1) complete week of vacation/personal leave per year.

9. With respect to contracts with third parties with LSC funds, LASMNY shall ensure the following :

- (a) that any payments are made only after receiving appropriate evidence of performance such as documents or time and activity reports; and
- (b) all contract amendments must be authorized by all parties to the contract, evidenced by a written agreement signed by all parties.

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EXHIBIT 33A

**Technology Initiative Grant
Review E-mails**

Cindy Hendrickson

From: Cindy Hendrickson [cdh@wnylc.com]
Sent: Friday, January 25, 2013 6:09 PM
To: 'Nancy Krupski'
Subject: RE: LEP Law Library

Looks great!

Cindy Domingue-Hendrickson
Managing Attorney
Legal Aid Society of Mid-New York, Inc.
255 Genesee Street, 2nd Floor
Utica, NY 13501
(315) 793-7033 (phone)
(315) 732-3202 (fax)
cdh@wnylc.com

From: Nancy Krupski [mailto:NKrupski@empirejustice.org]
Sent: Friday, January 18, 2013 12:25 PM
To: cdh@wnylc.com
Cc: Anne Erickson
Subject: RE: LEP Law Library

Cindy,

I am working on the Law Library Kit – Phone Library and wanted you to take a look. I have the Arabic and Bosnian section completed and before I moved on to another section I wanted to make sure it was okay. I have granted you access to the section on the ORC so if you log in and just click on the LEP Law Library on the left side and then go to the “Law Library Kit – Phone Library” section you can view it.

Thanks,

Nancy


Empire Justice Center
Nancy C. Krupski
Manager of Information Technology
Empire Justice Center
119 Washington Avenue
Albany, NY 12210
P: 518.462.6831 F: 518.935-2852
nkrupski@empirejustice.org
www.empirejustice.org

From: Cindy Hendrickson [mailto:cdh@wnylc.com]

8/8/2014

EXHIBIT 33B

**Technology Initiative Grant
February 28, 2013 E-mail**

Cindy Hendrickson

From: Nancy Krupski [NKrupski@empirejustice.org]
Sent: Thursday, February 28, 2013 6:10 PM
To: cdh@wnylc.com
Cc: Anne Erickson
Subject: Re: call from LSC

Cindy,

The amount of total hours that I put into the LEP law library was 29.

I am cc'ing Anne on the vouchering.

Nancy
Nancy C Krupski
Manager of Information Technology
Empire Justice Center

Cindy Hendrickson <cdh@wnylc.com> wrote:

Just got a call from LSC - they are very anxious to get the report finalized and want an estimate of EJC voucher by tomorrow. EJC was budgeted \$250/hr for 20 hours. If you can e-mail me your total hours, I can just multiply it by \$250. BTW, who does the vouchering there?

Cindy Domingue-Hendrickson
Managing Attorney
Legal Aid Society of Mid-New York, Inc.
255 Genesee Street, 2nd Floor
Utica, NY 13501
(315) 793-7033 (phone)
(315) 732-3202 (fax)
cdh@wnylc.com

EXHIBIT 33C

Empire Justice Center Post Voucher Work

Cindy Hendrickson

From: Nancy Krupski [NKrupski@empirejustice.org]
Sent: Monday, March 04, 2013 11:00 AM
To: cdh@wnylc.com
Subject: RE: a few changes to materials

Cindy,

These are done.

Nancy



Nancy C. Krupski
Manager of Information Technology
Empire Justice Center
119 Washington Avenue
Albany, NY 12210
P: 518.462.6831 F: 518.935-2852
nkrupski@empirejustice.org
www.empirejustice.org

From: Cindy Hendrickson [mailto:cdh@wnylc.com]
Sent: Friday, March 01, 2013 5:31 PM
To: Nancy Krupski
Subject: a few changes to materials

When I was preparing the materials for LRI, I noticed a few that needed some small changes. Can you post these instead of the ones I previously sent?

Law Library (Phone, Karen Sgaw): Karen Sgaw DV Topic - English Translation.pdf
Law Library (Web, Burmese): English Translation-Law Library Page.pdf
Law Library (Phone, General): Instructions-Phone Law Library.pdf
Law Library (Web, Somali): Somali Law Library Page.doc and Audio Link Key.pdf

That should be it, at last! Thanks again!

Cindy Domingue-Hendrickson
Managing Attorney
Legal Aid Society of Mid-New York, Inc.
255 Genesee Street, 2nd Floor
Utica, NY 13501
(315) 793-7033 (phone)
(315) 732-3202 (fax)
cdh@wnylc.com

8/8/2014

EXHIBIT 33D

Office of Compliance and Enforcement Additional Information Request

Empire Justice Center Time and Activity Report

Empire Justice Center

One West Main Street, Suite 200
 Rochester NY 14614
 Phone (585) 295-5720

DATE: March 1, 2013
 INVOICE # 030113-1

BILL TO:
 Legal Aid Society of Mid-NY
 255 Genesee Street
 2nd Floor
 Utica NY 13501

FOR: LEP Law Library
 Technical

Rate: hourly \$250.00

DESCRIPTION	DATE Complete	HOURS	AMOUNT
Create top level document categories in Online Resource Center	1/17/13	1.00	\$ 250.00
Review levels and develop sub levels	1/18/13	1.00	250.00
Revise/adjust categories based on feedback	1/18/13	2.25	562.50
Create sub-categories of top level docs	1/22/13	1.25	312.50
Edit/revise categories	1/23/13	1.00	250.00
Receive/review videos and documents	1/24/13	2.50	625.00
Upload videos and documents	1/28/13	2.25	562.50
Develop web landing pages	2/4/13	3.50	875.00
Code and link pages	2/6/13	3.50	875.00
Reload videos and documents to landing pages	2/15/13	3.00	750.00
Review/revise based on feedback	2/19/13	3.00	750.00
Reload, check links, test	2/22/13	2.75	687.50
Check final links, reload videos and documents for final review	2/26/13	2.00	500.00
		29.00	SUBTOTAL \$ 7,250.00
			OTHER
			TOTAL \$ 7,250.00

Make all checks payable to Empire Justice Center