



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Appalachian Research and Defense Fund of Kentucky
Compliance Review
June 17-21, 2013

Recipient No. 618030

I. EXECUTIVE SUMMARY

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

Finding 2: AppalReD's intake procedures and case management system generally support compliance-related requirements. A few inconsistencies, however, were noted and further improvement is required.

Finding 3: Sampled cases evidenced that AppalReD fails to maintain the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions.

Finding 4: AppalReD fails to maintain asset eligibility documentation as required by 45 CFR § § 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4 and revisions to its policy may be warranted.

Finding 5: Sampled cases evidenced that AppalReD is in non-compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

Finding 6: AppalReD is in substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements) and revision to its policy is warranted.

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

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

Finding 9: AppalReD is in non-compliance with the CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

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

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

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

Finding 13: Interviews conducted during the on-site review demonstrated that AppalReD is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law); however, AppalReD's policies are in need of further improvement.

Finding 14: A limited review of financial records and sampled files, as well as interviews conducted with management and staff, evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Finding 16: A limited review of accounting and financial records evidenced that AppalReD appears to be in compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity), including 45 CFR § 1610.5 (Notification).

Finding 17: AppalReD is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, additional information is required concerning VLAK's ethical obligations under Kentucky law concerning its treatment of conflicts.

Finding 18: AppalReD is in non-compliance with the requirements of 45 CFR Part 1627 (membership fees or dues) and is required to adopt a subgrant policy pursuant to 45 CFR § 1627.8; however, AppalReD is in compliance with approval of payments made to attorneys in excess of \$25,000.00.

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

Finding 20: Sampled files, as well as interviews with management and staff members, evidenced compliance with the requirements of former 45 CFR Part 1642 (Attorneys' fees).

Finding 21: Review of sampled files, as well as a limited review of financial and other records, and interviews with management and staff members evidenced compliance

with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

Finding 23: Review of sampled files, as well as interviews with management and staff members, evidenced that AppalReD is in compliance with the requirements of 45 CFR Part 1617 (Class actions). A review of the recipient's policies, however, evidenced that AppalReD was required to revise its policies consistent with LSC regulation.

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

Finding 25: Review of sampled files, as well as interviews with management and staff members, evidenced that AppalReD is in compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings). A review of the recipient's policies, however, evidenced that AppalReD was required to revise its policies consistent with LSC regulation.

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

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

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

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

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

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

Finding 32: Review of the recipient's fidelity bonding records evidenced that AppalReD is in compliance with the requirements of 45 CFR Part 1629 (Bonding of recipients).

Finding 33: Review of the recipient's financial records evidenced compliance with the requirements of 45 CFR Part 1630 (Cost standards and procedures).

Finding 34: A limited fiscal review, as well as interviews evidenced that AppalReD is in non-compliance with the requirements of 45 CFR § 1628.5.

Finding 35: A limited review of AppalReD's internal control policies and procedures demonstrated that they compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.). However, a few exceptions were noted and further improvement is required.

Finding 36: Interviews and a limited review of procedures, practices, and documents related to TIG No.08361 evidenced partial compliance with TIG grant assurances and other applicable LSC regulations, rules, and guidelines.

Finding 37: Interviews and a limited review of procedures, practices, and documents related to TIG No.09361 evidenced partial compliance with TIG grant assurances and other applicable LSC regulations, rules, and guidelines.

Finding 38: Interviews and a limited review of procedures, practices, and documents related to TIG No.09362 evidenced partial compliance with TIG grant assurances and other applicable LSC regulations, rules, and guidelines.

Finding 39: A limited review of financial documents evidenced that AppalReD has an unexpended fund balance in its TIGs.

II. BACKGROUND OF REVIEW

On June 17-21, 2013, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Compliance Review on-site visit at Appalachian Research and Defense Fund of Kentucky ("AppalReD"). The visit was conducted by a team of two (2) attorneys and two (2) fiscal compliance specialists. OCE visited AppalReD's Prestonsburg office and the Volunteer Lawyers for Appalachian Kentucky's ("VLAK") office located in Prestonsburg, Kentucky. Due to significant staffing level changes occurring at the program, a wider compliance review, with visits to all offices, did not occur.

The purpose of the visit was to assess the recipient's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Ed.), and the Property Acquisition and Management Manual, as well as considering the changes implemented by AppalReD after OCE's October 16-20, 2012 Technical Assistance Review ("TAR"). On December 20, 2012, by letter, OCE issued several recommendations designed to improve AppalReD's compliance related activities. On February 20, 2013, by email, AppalReD advised OCE that it was in the process of implementing OCE's recommendations.

Overview of CSRICMS Visit

The on-site review was designed and executed to assess AppalReD's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that AppalReD correctly implemented the 2008 CSR Handbook, as amended in 2011. Specifically, the review team assessed AppalReD for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 Private attorney Involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); former 45 CFR Part 1642 (Attorneys' fees);² 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); 45 CFR Part 1644

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

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

(Disclosure of information); 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.).

In preparation for the visit, on April 19, 2013, OCE requested that AppalReD provide certain fiscal information and case lists and notified AppalReD that OCE contemplated a review of all of its offices. Case lists requested included all cases reported in its 2012 CSR data submission ("closed 2012 cases"), a list of all cases closed between January 1, 2013 and May 1, 2013 (closed 2013 cases), and all cases which remained open as of May 1, 2013 ("open cases"). OCE requested that two (2) sets of lists be compiled- one (1) for cases handled by AppalReD staff and the other for cases handled through AppalReD's PAI component. OCE requested that each list contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closure category assigned to the case, the funding code assigned to the case, and an indication of whether the case was handled by staff or by a private attorney pursuant to 45 CFR Part 1614. AppalReD was advised that OCE would seek access to case information consistent with § 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 AppalReD to notify OCE promptly, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure. On May 16, 2013, AppalReD notified OCE that it was in the process of closing its Harlan and Pikeville offices and reducing its non-attorney staff by 12 positions (including eliminating the Director of Information Technology position and contracting out these services) because of funding cuts to its LSC basic field grant. In light of these challenges, OCE agreed to reduce the scope of the Compliance Review and agreed cases would be sampled from all offices but that all sampled cases would be reviewed at the Prestonsburg and Volunteer Lawyers for Appalachian Kentucky ("VLAK") offices. AppalReD agreed that the on-site review would include interviews with management and staff from Prestonsburg and VLAK offices.

Thereafter, AppalReD supplied the materials. OCE made an effort to create a representative sample of cases that the team would review during the visit. OCE distributed the sample proportionately among open and closed cases and among AppalReD's various offices. The sample consisted largely of randomly selected cases, but also included cases selected to test for compliance with those CSR instructions relative to timely closings, ACMS data integrity, application of the CSR case closure categories, and duplicate reporting.

Overview of Compliance Visit and Review

During the visit, AppalReD cooperated fully and supplied the requested materials. AppalReD afforded access to information in the case files through staff intermediaries. AppalReD 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 AppalReD agreement executed on June 11, 2013. During the on-site review, AppalReD displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and 45 CFR Part 1636 statements. OCE reviewed a sample of 201 case files during the visit;³ 176 files were randomly selected, 24 were targeted files, and one (1) file was pulled on-site. OCE also interviewed members of AppalReD's upper and middle management, fiscal personnel, staff attorneys, and support staff. OCE assessed AppalReD's (staff and PAI) case intake, case acceptance, case management, and case closure practices and policies in the VLAK, Prestonsburg, and the centralized intake and advice hotline ("CI Hotline") located in the Prestonsburg office. OCE fiscal staff reviewed AppalReD's compliance with the LSC grant, conducting a limited review of internal controls, prohibited political activities, fee-generating cases, lobbying activity, AppalReD' 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. AppalReD's compliance with the Technology Initiative Grant ("TIGs") program was also reviewed. A limited sampling of informational pamphlets and brochures was collected and reviewed.

Overview of Findings

During the course of the visit, OCE attempted to advise AppalReD of any compliance issues as they arose. OCE notified members of 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 AppalReD of its preliminary findings. During the exit conference, OCE explained to AppalReD that the findings were merely preliminary, that OCE may make further and more detailed findings in the Draft Report, and that AppalReD would have 30 days to submit comments to the Draft Report. AppalReD was advised that a Final Report would be issued that would include AppalReD's comments. AppalReD was further advised that OCE may request additional documentation or a demonstration that the required corrective action items have been implemented.

During the exit conference, OCE advised AppalReD that its staff members were familiar with the LSC regulations, the CSR Handbook, and the Frequently Asked Questions disseminated by LSC. OCE further advised AppalReD, that although OCE detected limited patterns of non-compliance, there were instances of non-compliance concerning certain regulatory and reporting requirements; these included the failure to obtain attestations of citizenship/alien eligibility status and the failure to obtain documentation evidence the provision of legal assistance. Additionally, the sampled cases reflected a few instances of untimely closed or dormant files, some automated case management system ("ACMS") defaults and other programming inconsistencies, missing retainer agreements, duplicate case reporting, and limited patterns of case closure category errors. Interviews determined that a few inconsistencies existed with respect to screening for income prospects and income eligibility. A review of AppalReD's policies reflected some need for revision in order to bring them

³ During the visit, AppalReD was unable to locate open Case Nos. 07E-84005578, 09E-93001628, and 08E-93000800.

into compliance with LSC regulations. A limited fiscal review identified some weaknesses in internal controls, timekeeping, fund balance deficit spending, and the payment of non-mandatory membership fees and dues with LSC funds.

With a few significant exceptions, AppalReD exhibited processes and practices which support regulatory and fiscal compliance-related activities. Based on OCE's document review and interviews with staff, it appears that AppalReD has worked diligently to implement policies, procedures, and practices that promote fiscal accountability and regulatory compliance. OCE's October 2012 TAR assisted the program to identify various compliance weaknesses, and options for change, that the program then partially addressed. Based on the current on-site review, AppalReD should now focus its efforts on developing and implementing additional oversight and follow-up practices to ensure it is implementing LSC regulations based upon the revised policies, procedures, and practices. AppalReD responded favorably to OCE's assessment and advised they will be identifying and implementing additional oversight methods to further increase compliance with the LSC Act, regulations, and other authorities. Most significantly, AppalReD advised that it had promoted a staff member to the Director of Advocacy position whose duty it would be to direct and oversee AppalReD's compliance-related efforts.

By letter dated October 8, 2013, OCE issued the Draft Report ("DR") detailing its findings, recommendations, and Required Corrective Actions regarding the on-site CSR/CMS Review. AppalReD was asked to review the DR and provide written comments within 30 days. AppalReD requested and was granted an extension and submitted its comments on December 2, 2013. See Letter from Lance A. Daniels, AppalReD, to Lora M. Rath, LSC, dated December 2, 2013.

Based on a description of the actions taken by AppalReD in response to the DR, OCE finds that all Required Corrective Action items have not been implemented and that further action is needed. Given the nature and complexity of the corrective actions required, OCE finds it reasonable that additional time is necessary in order to complete these items. AppalReD's comments are reflected in this Final Report and have been attached as an appendix hereto.

III. FINDINGS

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

Recipients are required to utilize automated case management systems 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.

ACMS fields critical to the determination of eligibility contain defaults.

LSC has determined that the ACMS fields for income, assets, citizenship/alien eligibility status, and number in household are critical to the determination of eligibility. Accordingly, these fields cannot have defaults because it would tend to reduce the accuracy of CSR data submissions. Accuracy is reduced as there is no way to determine whether staff entering information into these fields made an inquiry and decision regarding what should be entered in the field or simply skipped over the field, allowing the default value to be recorded. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.6 and Program Letter 02-6, "Limitation of Defaults in Case Management Software" (June 6, 2002).

While assessing AppalReD's ACMS, the Compliance Review team observed that the "Eligibility" fields in the ACMS ("Total Income," "Total Assets," and "Total Expenses") display "\$0.00" when the fields reserved for staff to enter individual amounts pertaining to income and assets, were left blank. Testing of the ACMS by the Compliance Review team evidenced that staff could move to the next Eligibility field without screening for income, assets, or expense, allowing the default value of "0.00" to be recorded. A review of Program Letter 02-6, "Limitation of Defaults in Case Management Software" (June 6, 2002) and CSR Handbook (2008 Ed., as amended 2011), § 3.6, indicates that the "\$0.00" in the "Eligibility Total" fields are impermissible defaults and must be removed. During the TAR, AppalReD was alerted that the TAR team identified impermissible defaults in its ACMS and advised LSC that it would remove them. Subsequently, AppalReD advised LSC on February 20, 2103, that the defaults had been removed. During the Compliance Review, AppalReD expressed surprise that its ACMS still contained defaults in "Total Eligibility" fields because they believed the ACMS had been modified. At the conclusion of the Compliance Review, AppalReD indicated it would contact its vendor to modify its ACMS.

Prior to the TAR, and as evidenced by errors identified in the cases sampled during the Compliance Review, AppalReD recorded food stamp amounts as an income source or as an asset in the ACMS. *See* open Case Nos. 09E-93001628 (food stamp information recorded as an income source on April, 2009) and 11E-96002859 (food stamp information recorded as an income source on May 4, 2011), and closed 2013 Case No. 12E-93001025 (food stamp

information was recorded as an income source on December 10, 2012). After the TAR team advised AppalReD that the value of food stamps is not an income source and, thus, cannot be included as income or as an asset pursuant to 45 CFR § 1611.2(i), AppalReD advised LSC that it ceased its practice of including the value of food stamps during eligibility screenings. *See* AppalReD Response to the TAR (February 20, 2013). Interviews conducted during the on-site Compliance Review and review of sampled cases evidenced that AppalReD has in fact ceased this practice and no longer includes the value of food stamps when determining an applicant's financial eligibility. A review of the ACMS, however, evidenced that AppalReD has not removed food stamps as an option in its asset drop-down menu. This concern was communicated to AppalReD's management which advised, during the on-site Compliance Review, that it deleted "food stamps" as an asset source on its drop-down ACMS menu.

AppalReD has implemented automated computer generated procedures to ensure that LSC compliance related requirements are met and that CSRs are accurate, however, additional case management reports are needed to identify other error types.

AppalReD generates automated case management reports to check for duplicate cases and for timeliness as required by the CSR Handbook (2008 Ed., as amended 2011), §§ 3.2, 3.3, and 3.4. The on-site review evidenced that AppalReD's automated compliance efforts concerning duplicate and timely closed files are adequate as there were few duplicate and untimely closed files identified during the review. *See* Findings 10 and 11, *infra*. Additional case management reports may be needed to identify over-income files because closed 2012 Case Nos. IIE-96007121 and 12E-96004186, were rejected in paper file as exceeding income guidelines, but nonetheless erroneously reported to LSC in the 2012 CSRs. As AppalReD's compliance efforts failed to identify and correct all types of compliance errors, its systems could be strengthened with the implementation of additional automated case management reports that check income and LSC reportable information.

The ACMS defaults certain cases handled by a staff attorney to PAI.

The Centralized Intake ("CI") attorney, who is now a staff member, was a former PAI attorney, and is still listed in the ACMS as a PAI attorney rather than as a staff attorney. The CI attorney began her employment with AppalReD on April 1, 2013, and legal assistance provided by her to eligible clients after this date is more properly characterized as staff assistance rather than as private attorney assistance. The on-site review identified a few cases that were designated as PAI cases when the files reflected that the CI attorney provided legal assistance since her employment as an AppalReD staff attorney such as closed 2013 Case Nos. 13E-96002429 (legal assistance provided on April 9, 2013), 13E-96001989 (legal assistance provided on April 16, 2013), 13E-96002J 77 (legal assistance provided on April 29, 2013), and 13E-96001903 (legal assistance provided on April 29, 2013). AppalReD was advised that it must review all cases opened by the CI attorney since April 11, 2013, to ensure the proper designation of her cases as staff or PAI assistance.

AppalReD's use of identical letter codes for rejected and accepted case closures lacks clarity and may be leading to compliance errors.

A review of the ACMS rejection drop-down menu reveals that AppalReD's "de-selection/rejection" closure categories are lettered from "A through H" with each letter being a different reason for excluding files from the CSRs (for example, "A-Client withdrew before assistance provided," "B-Erroneous Information," "F-Missing Documentation," "G-Other," and "H-Subsequent Ineligible"). Many of the "de-select/reject" non-case closure category letters chosen by AppalReD are the same letters used by LSC for case closures (for example, "A-Counsel and Advice," "B-Brief Services/Limited Actions," "F-Negotiated Settlement without Litigation," "G-Negotiated settlement with Litigation," and "H-Administrative Agency Decision"). The on-site review identified several cases reported in the CSRs that were closed with the "A-Counsel and Advice" closure category when file reflected it should have been assigned the "A-Client withdrew before assistance provided," reject closure category because the applicant withdrew before AppalReD provided legal assistance. *See* closed 2013 Case Nos. 12E-81002649 (unable to contact applicant) and 12E-82004742 (unable to contact applicant), and closed 2012 Case Nos. 12E-96006283 (unable to contact applicant), 11E-96008386 (unable to contact applicant), and 12E-91004473 (applicant withdrew before legal assistance provided). It is possible that staff mistakenly selected the A case closure category in ACMS rather than the A de-selection closure category during the case closings. AppalReD should revise its "de-select/reject" closure categories as the use of the identical letters for reportable case closure and rejected closure categories may be causing case closure categories errors that result in non-LSC reportable files being included in the CSRs.

Based on a comparison of the information elicited from the ACMS to information contained in the files sampled, AppalReD's ACMS was generally sufficient to ensure that information necessary for the effective management of cases is timely and accurately recorded. While the on-site review found few data entry or other human errors, there were programming errors identified. Accordingly, and as a Required Corrective Action, AppalReD was advised that it must remove ACMS defaults in the critical eligibility fields of "Total Income," "Total Assets," and "Total Expenses." In addition, to assist with compliance, it was recommended that AppalReD revise its "de-select/reject" closure categories so that these non-case closure category letters are distinct from the LSC-reportable case closure category letters, provide its staff with training, and generate additional automated case management reports to check a case to determine whether it is LSC reportable, as well as whether it is within income and asset guidelines.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that the defaults in the ACMS fields of "Total Income," "Total Assets," and "Total Expenses" have been removed. In addition, "food stamps" as a pick list option has been removed from the asset drop down menu. Finally, AppalReD noted that the revisions to its "de-select/reject" closure categories have been implemented.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 1; however, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its ACMS screens reflecting the modifications that have been made.

Finding 2: AppalReD's intake procedures and case management system generally support compliance-related requirements. A few inconsistencies, however, were noted and further improvement is required.

Assessment of Intake Procedures and Forms.

The intake procedures of AppalReD's centralized intake and advice hotline ("CI Hotline"), as well as the walk-in and outreach intake processes of the Prestonsburg office (the VLAK office does not conduct intake) were assessed by interviewing and observing selected intake, attorney, and managing attorney staff members. A former CI intake screener, who performs intake for the Richmond office, was interviewed as she was present in the Prestonsburg office to conduct intake training for staff during the Compliance visit. The interviews and observations revealed that intake procedures performed by staff, as well as the forms used to conduct intake, generally support the recipient's compliance-related requirements, concerning the CSR Handbook (2008 Ed., as amended 2011), § 3.2 (Duplicates and Conflicts), 45 CFR §§ 1611.4, 1511.6, 1611.7, and 1611.8 (income and asset eligibility), 45 CFR Part 1620 (Priorities in use of resources), and 45 CFR § 1626.3. However, the oversight practices demonstrated weaknesses and further targeted training of staff and management is recommended.

A sampling of forms used by AppalReD to determine eligibility were obtained on-site and evaluated to determine whether they were in compliance with LSC regulations and authorities so as to ensure that applicants for services are screened for eligibility in a uniform and consistent manner throughout the program. These forms included: citizenship and alienage attestation forms, release of information forms, client grievance forms, over income and over asset approval forms, printed ACMS intake sheets, and retainer agreement forms. These forms were evaluated for consistency and compliance with LSC regulations and authority. With the exception of the citizenship and alienage attestation forms discussed *infra* in Finding 5, each of these documents complies with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5. Additionally, pro bono and compensated PAI paper intake forms were identified and reviewed. These forms are discussed *infra* in Finding 17. The CI Hotline and Prestonsburg office do not use paper intake forms to conduct intake; all intakes are conducted using the ACMS.

AppalReD staff reported that they obtain a written citizenship attestation for all applicants appearing in-person to apply for services. The over income and over asset approval form, "Record of Authorized Exception to Income Limitations and/or Asset Limitations Waiver," only appears to be used by the CI Hotline.

Determining Eligibility: Hotline and In-Person Intake.

The on-site review found that a majority of AppalReD intake is conducted by telephone through its program-wide CI Hotline that accepts calls from anywhere in the AppalReD service area. AppalReD advised that the limited intake conducted by the main and branch offices is conducted in-person and by telephone and focuses on work in the counties served by

that particular office.

The CI Hotline recently relocated from the Richmond office to the Prestonsburg office and is staffed by full and part-time intake screeners (“intake staff”) and an attorney who provides telephone legal assistance. Two (2) intake screeners provide walk-in intake services for the Prestonsburg office. They are supervised by the managing attorney of the Prestonsburg’s office. As noted above, the current CI attorney was recently hired as a staff attorney and previously participated in AppalReD’s PAI component as a compensated private attorney on the CI Hotline.

Intake calls are answered by any of the intake screeners and the CI attorney is being trained to conduct intake. The CI Hotline hours of operation are Monday through Friday from 8:00 am to 4:00 pm. Most calls are answered immediately but, if intake staff members are answering other calls, the caller is provided with the option of leaving a message to be called back within two (2) days. Calls, by order of time called, are automatically routed to the next available CI Hotline staff member who conducts an eligibility screening guided by the ACMS screens. Beginning with a duplicate check, intake staff report that they obtain demographic, program-wide conflict, household, income, asset, over-income factors, and citizenship information. Reasonable income prospect information is asked by a standard question that is maintained in the ACMS. AppalReD staff demonstrated familiarity with program priorities. The CI attorney reviews the applications for completeness and LSC citizenship, financial, and priority eligibility, as well as conflicts and potential duplicate reporting, prior to providing legal assistance. If found ineligible or the application is missing information, the application will be returned to intake staff to either reject the application or, as appropriate, to obtain the necessary information so that the application can be re-routed to the CI attorney where the application is once again reviewed. Observation of the CI Hotline included many instances of applicants who were repeat callers. In all but one (1) of these instances, the intake staff member reviewed citizenship and financial eligibility with the repeat caller to ensure the applicant remained eligible and that the file was not a duplicate before the CI attorney provided legal assistance.

Acceptance or Denial of Service, the Provision of Legal Advice, and Closing of the File.

If the caller is eligible for services, the facts concerning the nature of the legal problem are recorded. If the review determines that the case should be rejected, the applicant is so advised and the applicant is rejected and the file closed, and assigned a closure category by the intake screener. If the review determines that the applicant should be provided with legal information or referral, the intake screener will provide the information or referral orally. If the review determines the applicant should be accepted for legal assistance, intake staff will transfer the call to the CI attorney who will discuss the facts relevant to the legal problem, analyze the legal issue(s), and then provide advice that may be brief or quite lengthy. AppalReD reports that CI attorney(s) documents the factual and legal assistance provided to the client in the ACMS notes field and in written correspondence.

At the conclusion of the CI Hotline advice, the case may be closed. If so, the CI attorney

assigns the case closure category and closes the electronic file. After receiving brief assistance, if the case is not closed, it is referred to the main or branch offices for staff or PAI assistance. The cases are electronically transferred from the CI Hotline according to case acceptance and distribution protocols. Except in the few instances when an applicant is screened in-person, main and branch office staff members are responsible for obtaining citizenship attestations or reviewing eligible alien status documentation prior to accepting CI Hotline applicants for further services.

Training of Staff.

Overall, the staff members of AppalReD report having access to the CSR Handbook (2008 Ed., as amended 2011). AppalReD is conducting on-going intake and CSR training. The Executive Director and experienced intake staff are providing the training.

Outreach Services.

The intake staff member in the Richmond office reports that she conducts outreach by distributing information pamphlets and brochures at community events. The Executive Director speaks about AppalReD and its services at community events. Both report that they do not conduct intake or provide legal assistance during their outreach efforts.

Group Case Eligibility Procedures.

While AppalReD has now adopted a group eligibility policy, AppalReD reports that they have not performed group eligibility and do not have experience representing groups. *See* Finding 3 for a discussion of AppalReD's group eligibility policy.

Government Benefits Eligibility.

AppalReD has not adopted a Government Benefits exemption to the asset and income eligibility requirements and AppalReD staff report that all applicants are screened for income and asset eligibility.

Issues Related to Financial Eligibility Screening:

Income Eligibility.

While AppalReD staff is familiar with the income ceilings set by AppalReD and the authorized exceptions to income for those applicants with incomes between 125% and 200% of the Federal Poverty Guidelines ("FPG"), a staff member reported that when considering these factors, they are applied as a "spend down" rather than applying a factor analysis to determine eligibility. AppalReD's policies and 45 CFR § 1611.5(a)(4) only require the program to conduct a factor analysis. Additionally, the on-site Compliance Review evidenced that AppalReD fails to apply the authorized exception factors as numerous sampled files were identified lacking eligibility documentation for clients whose income exceeded 125% of the

FPG. *See Finding 3.* Finally, some staff members were not aware of the authorized exceptions for applicants whose household incomes exceed 200% of FPG, indicating that those applicants would be over LSC income guidelines and would not be eligible for LSC funding. The implementation of LSC regulations should be consistent throughout the program. While 45 CFR § 1611.5(a) does not require recipients to adopt policies to qualify individuals with incomes that exceed 125% of FPG, the board has chosen to require staff to consider the regulatory factors and, accordingly, program staff are bound by such a policy.

Asset Eligibility.

There appears to be confusion amongst staff as to the amount of AppalReD's maximum asset ceiling, as staff members interviewed reported the maximum asset ceiling limit as being \$8,500.00 and another staff member produced a copy of an AppalReD asset eligibility policy that showed the liquid asset ceiling to be \$5,000.00 instead of the Board-approved amount of \$8,000.00. Furthermore, staff members were not familiar with the asset exemptions contained in AppalReD's policy. Interviews revealed that most of the staff does not adequately screen applicants according to the Board-approved asset policy categories, as some staff does not ask certain questions at all while others ask about assets but are not aware of the specific exemptions. For example, an intake screener excluded one (1) car rather than the vehicles used for transportation pursuant to AppalReD policy and another intake screener did not know whether an IRA was an exempt or non-exempt asset. Finally, observation of intake screening evidenced that asset screening is not expansive and is limited to a few of asset categories. For example, an intake staff member asked "Do you have checking, savings, debit cards, ownership in real property or a piece of land?" This AppalReD staff member did not inquire into the applicant's ownership of other common asset types described in AppalReD's asset policy, such as cash, Certificates of Deposit, stocks, bonds, and household goods and furnishings during intake observations. The lack of knowledge concerning the types of assets that are considered and excluded during eligibility, and knowledge of the maximum annual asset ceiling, raises questions as to whether AppalReD is screening applicants consistent with their asset policy and 45 CFR Part 1611 and may lead to differing eligibility results for the same applicant depending on who conducts the eligibility screening. It is recommended that AppalReD develop at least one (1) additional "catch all" question to capture any such additional assets and that AppalReD provide training to its staff to develop a consistent program-wide understanding and treatment of exempt and non-exempt assets.

Citizenship and Alien Eligibility.

Staff members are familiar with the requirements of 45 CFR Part 1626 and intake observations revealed that applicants are screened for 45 CFR Part 1626 eligibility during CI Hotline calls. However, interviews revealed that staff members lacked knowledge of the requirements of LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006). A few staff members were unaware that they do not have to inquire into an applicant's legal status if the applicant meets the requirements of the Program Letter. It is recommended that AppalReD provide training to its staff concerning the

requirements of LSC Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006).

Documentation of Legal Assistance.

As noted previously, CI Hotline callers are provided with legal assistance which is documented in the ACMS notes field and/or in advice letters that are mailed to the callers. As discussed, *infra*, in Finding 10, the Compliance Review identified numerous instances where the legal assistance provided by CI Hotline staff failed to meet the requirements of the CSR Handbook (2008 Ed., as amended 2011) because the file was rejected, referred, no legal assistance was documented, or the advice that was documented was legal information. Examples include closed 2013 Case Nos. 13E-96002777, 13E-96000283, and 13E-96001922, and closed 2012 Case Nos. 11E-96007121, 11E-96008386, 12E-96005393, 12E-96005578, and 12E-96005349. It should be noted that this is not just an issue identified in CI Hotline cases, but is program-wide and was an issue identified during the TAR. It does, however, indicate that staff members understanding of the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.6, should be strengthened and it is recommended that AppalReD enhance its review of files upon acceptance and closure.

Case Acceptance and Oversight.

The Managing Attorney of the Prestonsburg and Richmond office regularly reviews cases and holds case acceptance meetings. Although, all CI Hotline staff members are supervised by the Executive Director, the CI staff attorney appears to work quite independently. There are no case acceptance meetings or reviews. The Executive Director does not review every accepted and rejected file upon closure. The failure to review intakes and cases generated by the CI Hotline limits AppalReD's ability to detect error in its files, as well as limit its ability to understand the individual and collective knowledge of its staff so as to develop appropriate trainings for its staff that will enable its staff to prevent error.

AppalReD's intake procedures and case management system generally support the program's compliance-related requirements. However, as discussed above, a few weaknesses were identified which relate to training of staff and oversight of files and further improvement was required. It is recommended that AppalReD develop protocols for the review of files upon closure to ensure the files contains evidence of the legal assistance provided to the client, as well as citizenship, income and asset screening, and that AppalReD then provide targeted training to staff members concerning the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6, 45 CFR Part 1611, and 45 CFR Part 1626 as discussed herein. In its comments in response to the DR, and as discussed below, AppalReD indicated that it had developed additional oversight procedures, modified its ACMS, and provided training to its staff.

Finding 3: Sampled cases evidenced that AppalReD fails to maintain the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions.

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 *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.2.⁴

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

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2008 Ed., as amended 2011), § 4.3.

AppalReD's revised income policy was found to be in compliance with LSC regulations.

During the TAR, AppalReD was advised that the establishment of a new 45 CFR Part 1611 policy was an urgent compliance requirement. On February 23, 2013, AppalReD revised its income eligibility and group eligibility policy and provided LSC with a copy of its Client Eligibility Guidelines ("eligibility policy"). Review of this policy confirmed that AppalReD implemented the TAR recommendations. AppalReD adopted a group representation policy, replaced the word "poor" with "low-income individuals or families," replaced the phrase "national eligibility level" with "Federal Poverty Guidelines," clarified the requirements for screening victims of domestic violence, and included language limiting the use of LSC funds to clients eligible under LSC regulation. The revised eligibility policy sets forth the income requirements to receive LSC funded assistance, establishes an annual income ceiling of 125% of the FPG, and specifies that, when assessing the financial eligibility of a victim of domestic

⁴ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

violence, AppalReD will consider only the income and assets of an applicant and will not consider assets jointly held with the perpetrator. A comparison of this policy with 45 CFR Part 1611 indicates that AppalReD's income eligibility policies are in compliance with LSC regulations.

AppalReD only properly maintains income eligibility documentation for some clients.

With the exception of LSC-funded open Case No. 10E-84006943 (file contained no evidence of income screening), all case files reviewed contained income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG.

For those files reviewed in which the client's income was in excess of the 125% of the FPG threshold, the Compliance Review identified a few files lacking documentation that AppalReD had considered any of the authorized factors adopted by its Board of Directors. *See* open Case Nos. 12E-96007259 (applicant's household income was 149% of the FPG and there was no evidence that authorized exceptions were considered) and 12E-96007723 (the applicant's household income was 127% of the FPG and there was no evidence that authorized exceptions were considered), closed 2013 Case No. 13E-96002777 (the applicant's household income was 173% of the FPG and there was no evidence that authorized exceptions were considered), and closed 2012 Case No. 09E-93002518 (the applicant's household income was 142% of the FPG and there was no evidence that authorized exceptions were considered). Although LSC funds were not used to support the legal assistance provided to these clients, these files were either reported to LSC in the 2012 CSR data submission or were designated to be reported in future CSRs submissions. As discussed in Finding 1, *supra*, AppalReD does not prepare automated case management reports to compare income source fields with expense/authorized exception fields, and LSC reportable fields. The generation of such case management reports may assist AppalReD in identifying and correcting these income error types.

Accordingly, the Compliance Review determined that AppalReD is in non-compliance with the income eligibility documentation required by 45 CFR § 1611.4, the CSR Handbook (2008 Ed., as amended 2011), § 5.3, and the applicable LSC instructions for clients whose income exceeds 125% of the FPG. As a Required Corrective Action, AppalReD was advised that it must require staff to screen all applications for income eligibility consistent with the requirements of its policy and 45 CFR § 1611.5(a), and must maintain adequate documentation of such screening and eligibility determinations.

It was recommended that AppalReD provide staff training on the program's policies regarding 45 CFR § 1611.5 (exceptions to annual income ceiling) and that management develop a protocol to ensure that no cases exceeding 125% of the FPG are accepted without consideration of the policy factors denoted in its Board-approved policy.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that it now requires that every file in which an applicant's income exceeds 125% of the FPG to

be reviewed by the CI attorney prior to acceptance and shortly thereafter by the Litigation Director. Prior to closing, these files are then reviewed by a member of AppalReD's management team. In addition, staff has been trained and AppalReD intends to remind staff concerning the importance of income eligibility screening.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 2; however, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of the Executive Director's instruction to staff, its training agenda(s), the attendance list(s), and a statement or statements describing the information provided to staff as part of the training.

Finding 4: AppalReD fails to maintain asset eligibility documentation as required by 45 CFR § 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4 and revisions to its policy may be warranted.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-approved asset eligibility policies.⁵ *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4. In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d)(2).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets, to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

AppalReD's revised asset policy was found to be in need of further revision.

During the TAR, AppalReD was advised that its asset policy was inadequate under the current regulation as the policy exempted numerous assets that were outside of the

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

exemptions listed by LSC regulation and there was no evidence that the exempted asset categories were permissible as "other assets" exempt from attachment under state or Federal law under 45 CFR § 1611.1(d)(1). The TAR team recommended that AppalReD define the "other assets" exempt from attachment under state and federal law and end the distinction between liquid and non-liquid assets.

In advance of the Compliance Review, AppalReD supplied its revised asset eligibility policy to LSC. Review of this policy confirmed that AppalReD implemented many, but not all, of the recommendations made during the TAR. The revised policy establishes a maximum asset ceiling (\$8,000.00 for an applicant, with increases of \$3,000.00 for each additional household member), exempts vehicles used for transportation and work related equipment essential for work or self-employment, ends the distinction between liquid and non-liquid assets, and provides that the Executive Director or his designee may waive the established ceilings in unusual circumstances and that the decision is to be documented and included in the client's file.

Upon review, however, the revised asset policy is in need of further revision: 1) the policy excludes "household goods and furnishings up to \$3,000.00." This asset exemption category is inconsistent with LSC guidance as it is LSC's intention that recipients set its asset ceiling to include the value of ordinary household goods. *See* 70 Fed. Reg. 45550 (Aug. 8, 2005); 2) the "other asset" exception for "assets that are exempt from attachment under state or federal law," while technically compliant, may be too broad to be applied effectively. The Compliance Review, consistent with the TAR, found that the lack of a more clear definition as to the specific items that are exempt from attachment make it difficult for intake staff to understand the assets that are or aren't included under the exception. For example, open Case No. 10E-85002869 contained evidence that \$400.00 in an exempted IRA account was included during the assets eligibility determination and intake interviews demonstrated that intake staff were not familiar with "other assets" and that they failed to inquire about all of these "other assets" during asset eligibility screenings; and 3) while the exception of a primary residence is consistent with LSC regulation, it is not clear whether the exception for "contiguous property" is necessary. If the contiguous property is part of the primary residence, then the inclusion of this property is superfluous, and, if the contiguous property is not part of the primary residence, than the inclusion of this property is inconsistent with LSC regulation.

As LSC considers the lists of excludable assets in the regulation to be exhaustive, as a Required Corrective Action, AppalReD was advised that it must review its exempt asset policy to ensure that it is consistent with LSC regulation and should re-draft it to be specific enough for staff to understand what assets could or could not be included under this exception.

One (1) sampled file failed to contain compliant asset eligibility documentation.

One (1) LSC funded file contained documentation that the client exceeded AppalReD's maximum asset ceiling limits. *See* closed 2013 Case No. 13E-96003463 (assets for one (1) member household were recorded to be \$8,300.00, when AppalReD's maximum asset ceiling

limit for this household was \$8,000.00). AppalReD was advised that this case is not CSR reportable and must be excluded from future CSR submissions.

AppalReD was in non-compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. Accordingly, as a Required Corrective Action, AppalReD was advised that all cases funded with LSC funds or reported to LSC in the CSRs must contain evidence of asset screening consistent with LSC regulation. AppalReD was also advised that clarifications to its asset eligibility policy may be necessary to ensure adequate asset screenings.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that it has determined that its asset policy is consistent with LSC regulation and authorities. AppalReD has further provided its staff with training and has determined that staff understands the assets to be included and excluded during eligibility screening. AppalReD indicated that it now requires the asset eligibility determination in every file to be reviewed by a member of its management team. In addition, a field containing a “catch all” question was programmed into the ACMS. Finally, AppalReD reported that it intends to remind staff concerning the importance of asset eligibility screening.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action items 3 and 4; however, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of the Executive Director’s instruction to staff, its training agendas, the attendance lists, and a statement describing the information provided to staff as part of the trainings, as well as a copy of its ACMS screens reflecting the modifications that have been made.

Finding 5: Sampled cases evidenced that AppalReD is in non-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.⁶ 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.

During the on-site review, files were sampled and written citizenship attestations forms were obtained to assess whether AppalReD was in compliance with the restrictions contained in 45 CFR Part 1626, as well as the documentation requirements of 45 CFR Part 1626 and the CSR Handbook (2008 Ed., as amended 2011), § 5.5.

A few of AppalReD's citizenship attestation forms were not compliant with LSC requirements.

Consistent with the observations of the TAR team, the Compliance Review team observed that while most AppalReD offices use a standard compliant citizenship attestation form ("I am a citizen of the United States: Signature of applicant: _____ Date: _____."), the "Determination of Eligible Status" form used by the Prestonsburg, VLAK, and Jackson offices and the "US Citizenship Determination" form used by the Jackson office, do not conform to the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5, because the signature line is tied to the citizenship attestation and the applicant's verification of eligible alien status. Although AppalReD advised OCE by email on February 20, 2013, that it took action to stop the use of non-compliant attestation forms, these forms were found to be in use during the on-site Compliance Review evidencing that AppalReD is in need of further improvement to ensure that all of its offices use compliant attestation forms. *See* open Case Nos. 13E-96002360, 12E-96005285, 12E-96007552, 12E-85007834, and 12E-96007400, and closed 2013 Case No. 12E-89007280 (opened during 2013 and citizenship attestation form non-compliant). *See* also open Case Nos. No. 13E-85003012, 13E-93000314, 13E-93000552, 13E-93000475, and 13E-93000444, and closed 2013 Case No. 13E-96001932 (opened during 2012 and citizenship attestation forms non-compliant). The identified files must contain compliant citizenship attestations in order to be reported in the CSRs.

Finally, in a few sampled files it was difficult to discern whether the attestations were obtained before legal assistance was provided to the client because the forms were not dated. *See* open Case Nos. 12E-96007723, 13E-96000957, and 13E-81001823, and closed 2013 Case Nos. 11E-84001197 and 07E-84004872.

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

Several files failed to contain executed citizenship attestations when required, including cases in which AppalReD serves as guardian ad litem.

Consistent with the observations of the TAR team, the Compliance Review team observed that AppalReD does not always obtain executed citizenship attestations, when required. Although AppalReD advised OCE by email on February 20, 2013, that it had provided training to its staff and clarified its procedures, cases sampled during the on-site Compliance Review, such as open Case Nos. 12E-91001400, 13E-96002383, and 07E-84004455 and closed 2013 Case No. 13E-90000680, failed to contain executed citizenship attestations when the file reflected that AppalReD had in-person contact with the client. *See also* open Case No. 09E-84005964 (opened on September 30, 2009 and no attestation in the file).

Additionally, a few sampled *guardian ad litem* cases, such as open Case No.13-90000039 and closed 2012 Case No. 06E-88005039, contained no documentation of citizenship or eligible alien status screening nor did they contain information that an exception to the attestation requirement applied. These non-LSC funded cases involved the representation of minors pursuant to court appointment in juvenile dependency cases. While LSC understands the difficulty of obtaining citizenship or eligible alien status documentation for minors in dependency cases because these applicants are wards of the state and the state is not always willing to provide citizenship or eligible alien status documentation on their behalf, AppalReD is advised that it is still required to obtain citizenship or eligible alien information consistent with 45 CFR Part 1626⁷ or AppalReD may determine that the minor falls within LSC's alien eligibility requirements and exceptions, including an exception for representation in some situations involving domestic violence in a family.⁸ In those instances, AppalReD is not required to obtain citizenship or alien status information. Moreover, when a parent or legal guardian is unavailable to provide a citizenship attestation for a minor, LSC has recently advised that it is permissible to obtain a citizenship attestation directly from the minor so long as it is reasonable to believe the minor has the ability to represent his or her citizenship status and the minor is not prohibited by state law from making such an attestation. *See* Advisory Opinion #AO 2013-005 (July 30, 2013).

AppalReD was in non-compliance with the documentation requirements of 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5. As a Required Corrective Action, AppalReD was advised that it must obtain written documentation of citizenship or verify eligible alien status for every client with whom there is in-person contact regardless of funding source - unless such case falls within a regulatory exception. AppalReD was

⁷ An attestation of a minor's citizenship may be made by a parent, legal guardian, or other legal representative of the minor, by review of the minor's birth or baptismal certificate, by review of another authoritative document from a court or governmental agency, or by obtaining a notarized statement by a third party attesting to the citizenship of the minor applicant. *See* 45 CFR § 1626.6(b) and External Opinion # EX-2008-1003 (September 10, 2008). *See* Program Letter 05-2 (re: TPVA) and 06-2 (re VAWA 2006 Amendments). *See also* Advisory Opinion #AO-2009-1008 (December 4, 2008) and the CSR Handbook (2008 Ed., as amended 2011), § 5.5, Question 1 Revised Answer (September, 2010).

⁸ 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.

additionally advised that all attestations comply with the requirements of CSR Handbook (2008 Ed., as amended 2011). It was recommended that AppalReD provide staff with further training on the requirements of 45 CFR Part 1626 and develop additional procedures for the review of citizenship and eligible alien status information upon case opening and closing.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that it now requires the 45 CFR Part 1626 information in every file be reviewed by a member of its management team. Furthermore, AppalReD has provided training to its staff concerning the requirements of 45 CFR Part 1626, and LSC Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006). Finally, AppalReD supplied OCE with a copy of a citizenship attestation form which is to be used in offices including VLAK. The form states: "I certify that I am a United States Citizen. Name: _____ Date: _____."

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action items 5 and 6; however, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its training agenda(s), the attendance list(s), and a statement describing the information provided to staff as part of its trainings.

Finding 6: AppalReD is in substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements) and revision to its policy is warranted.

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.⁹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

A few files failed to contain retainer agreements when required.

Prior to the TAR, and as evidenced by errors identified in the cases sampled during the Compliance Review, AppalReD failed to describe the scope and subject of the litigation when executing retainer agreements. *See* open Case No. 11E-96002859 (opened during 2011 and lacking an adequate description of the scope of the litigation), closed 2013 Case No. 12E-96005609 (opened during 2012 and lacking a description of the scope or subject matter of the litigation), and closed 2012 Case No. 10-85002725 (opened during 2010 and lacking a

⁹ 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.

description of the scope or subject matter of the litigation). The TAR team recommended that staff be provided with training regarding the purpose and applicability of retainer agreements, as well as LSC requirements. AppalReD subsequently advised LSC that it had provided this additional guidance and instruction to its staff. Interviews conducted during the on-site Compliance Review and review of sampled cases evidenced that, with the exception of open Case Nos. 13E- 96003594, all cases contained a sufficient a description of the scope and subject matter of the litigation. However, the Compliance Review identified that open Case Nos. 13E-96001264 and 13E-96002383 failed to contain executed retainer agreements when the intermediary described a level of service which required a retainer agreement to be executed. The Compliance Review demonstrated that, with limited exceptions, AppalReD has implemented the recommendations of the TAR, but should develop additional oversight procedures to review files to ensure they contain executed retainer agreements when required.

AppalReD's policy prohibiting the disclosure of client names is inconsistent with LSC regulation and other authorities.

A review of AppalReD's eligibility policy concerning retainer agreements identified a policy compliance concern. The policy provides that if the Legal Services Corporation seeks to review a retainer agreement executed by AppalReD and its client, "under no circumstances can the identity of the client be revealed." See Client Eligibility Policy, § E (2). This policy provision is not in accordance with LSC authority which provides for the disclosure of client names along with retainer agreements. See Grant Assurances, Numbers 10, 11, and 12, § 509(h), P.L.104-134, 110 Stat. 1321 (1996), and Protocol Regarding Access to Information in Grant Recipients' Files (January 5, 2004). Although AppalReD afforded the on-site Compliance Review team with access to retainer agreements with client names during the compliance visit, the DR required that AppalReD remove this language from its eligibility policy as it is inconsistent with § 509(h) P.L. 104-134, 110 Stat. 1321 (1996) and other LSC authority. It was recommended that AppalReD conduct compliance reviews to ensure that retainers agreements are executed consistent with the requirements of 45 CFR § 1611.9.

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Disclosure of Information Policy which was found to comply with LSC authorities.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 7.

Finding 7: AppalReD 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).

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).

The TAR identified that AppalReD was failing to obtain statements of fact when required. The on-site Compliance Review, however, evidenced that all sampled files contained these statements, where required, and that AppalReD now is in compliance with the requirements of 45 CFR Part 1636. There are no recommendations or required corrective actions necessary.

Finding 8: Sampled files and interviews evidenced compliance with the requirements of 45 CFR § § 1620.3(a) and 1620.4 (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 review, AppalReD supplied its Priorities in the Allocation of Resources 2013 (December 1, 2012). AppalReD's priority focus is on providing representation, prose assistance, and legal information to assist clients in obtaining the basic necessities of life. AppalReD's priorities are to preserve the home, maintain economic stability, safety, stability and health, as well as to assist those populations with special vulnerabilities. AppalReD's priority statement establishes standards and procedures for the acceptance of emergency clients.

Sampled cases and interviews evidenced compliance with the requirements of 45 CFR § 1620.3(a) and 45 CFR § 1620.4. There are no recommendations or required corrective actions necessary.

Finding 9: AppalReD is in non-compliance with the CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

LSC regulations specifically define “case” as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a “case”, reportable in the CSR data depends, to some extent on whether the case is within the recipient's priorities and whether the recipient has provided some level of legal assistance, limited or otherwise.

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not

provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2008 Ed., as amended 2011), § 7.2.

Recipients are instructed to record client and case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, inter alia, the level of service provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.6.

The on-site Compliance Review confirmed the findings of the TAR that AppalReD staff were closing files that lacked evidence of legal assistance as cases. While AppalReD advised that it took action to clarify the requirements of a case and to instruct staff as to how to document legal assistance, the Compliance Review identified numerous files closed during 2013 and 2012 in which no legal assistance had been provided. A review of these files indicated that many of these applicants' failed to contact the attorney, or AppalReD referred the matter, rejected the case, or otherwise failed to perform legal work so there was no notation in the files as to any conducted legal activity. Examples include closed 2013 Case Nos. 12E-81007940, 12E-96002777, 13E-96000022, 13E-82001052, 13E-90000680, 12E-81002649, 12E-82004742, 13E-96000530, 13E-96001922, 13E-96000283, 13E-93000077, 12E-96006283, and 12E-96008183. *See* also closed 2012 Case Nos. 09E-93002518, 11E-96004754, 11E-96007121, 11E-96008386, 12E-96005393, 12E-96005578, 12E-91004473, 12E-96005349, and 12E-88000759. AppalReD was reminded that legal assistance must actually be provided to the client in order for the assistance to be reported as a case in the CSRs. *See* CSR Handbook (2008 Ed., as amended 2011), §§ 2.1, 2.2, and 2.3.

Additionally, the on-site Compliance Review identified numerous files in which the client was only provided with legal information. The first category was files that contained evidence of the factual basis for the client's legal problem but not the advice provided to the client. *See* open Case No. 13E-96001088 and closed 2013 Case Nos. 12E-96002429 and 12E-96008023.

The second category of cases was “warning order” cases. AppalReD attorneys are regularly appointed by the Kentucky judiciary to serve in the capacity as a “warning order” attorney for the court. This appointment is designed to ensure that a defendant in a civil suit is provided with notice that a lawsuit has been initiated against them. The appointed attorney is required to make diligent efforts to inform the defendant, by mail, concerning the pendency and nature of the action against him, and must report the result of his or her efforts to the court. If the “warning order” order attorney cannot inform the defendant concerning the action, he is required to make a defense by answer or report to the court the reasons why a defense cannot be made. Nothing done by the “warning order” order attorney acting in such capacity is treated as an appearance by the defendant. The court awards the “warning order” attorney a reasonable fee for his services which is paid by the plaintiff. *See* Kentucky Rules of Civil Procedure, Rule 4.07. The “warning order” attorney is a “representative” of the defendant, but does not “represent” the defendant. The attorney does not establish an attorney-client relationship with any parties and may

possibly be considered an “officer of the court.”

Several “warning order” files were sampled during the on-site Compliance Review. *See* open Case No. 13E-84001807, closed 2013 Case No. 12E-82002265, and closed 2012 Case Nos. 12E-82003900, 10512E-82002611, 12E-89003232, and 12E-89003075. The review evidenced that AppalReD treats these activities as cases and assigns them limited action or uncontested court decision case closure categories upon closure. These activities are then reported in the CSRs as cases. AppalReD supports these activities with non-LSC funds and assigns them “KY Filing Fees” funding codes. AppalReD does not collect financial or citizenship/eligible alien status information because AppalReD has no contact with the defendant and does not represent the plaintiff. The Compliance Review determined that the activities documented in the sampled files were not legal assistance activities because AppalReD only provided notice and a court report of its successes and failures to locate the defendants. As only legal information and support services to the court were provided, the files should more properly have been designated as “matters” and reported to LSC in the Other Services Reports. AppalReD was reminded, however, that the determination of whether the “warning order” attorney provides legal assistance is made through consideration of the state law, as well as the nature of the service performed, and is a case-by-case determination. If legal assistance is provided then compliant 45 Part 1626 screening must then be performed.

AppalReD was reminded that legal assistance is specific to the client’s unique circumstances and involves a legal analysis that is tailored to the client's factual situation and involves recommending the client pursue a specific course of action. *See* CSR Handbook (2008 Ed., as amended 2011), §§ 2.2 and 2.3. AppalReD was further reminded that the identified files would need documentation of legal advice in order to be reported in the CSRs.

Sampled cases evidenced that AppalReD was in non-compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). As a Required Corrective Action, AppalReD was advised that it must require that all cases reported in the CSRs contain a description of the legal assistance rendered to the client. It was recommended that AppalReD develop additional procedures to review every file upon closing to determine whether the file contains a description of the legal assistance provided. It was further recommended that AppalReD provide its staff with training on the requirements of CSR Handbook (2008 Ed., as amended 2011), §§ 2.1, 2.2, 2.3, and 5.6.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that a member of AppalReD’s management team now reviews every file to ensure that it contains documentation of the legal assistance that was provided to the client. In addition, on December 6, 2013, AppalReD conducted training for staff concerning the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 8; however, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its training agendas, the attendance lists, and a statement describing the information provided to staff as part of the trainings.

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

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

The review assessed whether AppalReD's application of the CSR case closure categories is consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). The sampled files contained numerous examples of correctly used case closure categories, including more complex case closure categories. Sampled cases further evidence that AppalReD has implemented the recommendations of the TAR team and no longer assigns the B case closure category when the more appropriate action is to close the file with an "L-Extensive Services ("L") because the level of service exceeded that of a limited services case (the TAR team noted that there were a few "limited action" level cases that would more accurately have been closed as "extensive service").

The Compliance Review identified no incorrect assignments of the B case closure category. The Compliance Review team, however, identified a few cases that were assigned case closure categories inconsistent with the CSR Handbook (2008 Ed., as amended 2011) and determined that this reflected AppalReD's misunderstanding of the G and L case closure case categories. There were closed 2013 Case Nos. 13E-88002189 (which was closed with an F case closure category when the more appropriate action would have been to close the file with as G because a settlement was negotiated for the client after litigation was initiated) and 12E-82008239 (was closed with a G closure category when the more appropriate action would have been to close the file as L because the parties reconciled after litigation was initiated and the case was dismissed). Additional examples were identified in the closed 2012 sampled cases, such as closed 2012 Case Nos. 12E-89000500 (which was closed with an "Ia Court Decision: Uncontested" ("Ia") case closure category when the more appropriate action would have been to close the file as L because the client withdrew from the litigation before a settlement was reached or a ruling was issued) and 12E-89005520 (which was closed with an "Ib-Court Decision: Contested" ("Ib") case closure category when the more appropriate action would have been to close the file with as "G" because settlement was negotiated for the client after litigation was initiated).

AppalReD's application of the CSR case closure categories is generally consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). As the CSR Handbook requires cases be closed in the category that best reflects the level of service provided, it was recommended that AppalReD review its assignment of case closure categories G and L and provide training to staff consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). In its comments to the DR in response to this recommendation, AppalReD indicated it has provided staff with closure code training.

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

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a).¹⁰ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the grant year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

The review assessed compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 and evidenced that, with two (2) exceptions, the files reviewed were timely closed. *See* closed 2013 Case No. 05E-81005338 (This staff case was opened during 2005 and the last legal work documented in the file was in 2010, with no notations in the file of any further legal assistance needed or provided since 2010, and therefore was untimely closed) and closed 2012 Case No. 10E-84000069 (This PAI case was opened in 2010 and the last legal work documented in the file was in 2010, with no notations in the file of any further legal assistance needed or provided since 2010, and therefore was untimely closed). These cases and similar cases should be denoted in the ACMS as not being LSC reportable and should not be included in future CSR data submissions.

AppalReD is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3. As no pattern of error was identified, no recommendations or required corrective actions were necessary.

Finding 12: AppalReD is in substantial compliance with the requirements of the 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

¹⁰ The time limitation of the 2001 Handbook that a brief service case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed., as amended 2011), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

recorded and reported to LSC more than once. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.2.

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

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

The Compliance Review targeted several files to test for duplicate reporting of cases. One (1) set of duplicates was identified. *See* closed 2013 Case Nos. 1396001989 (opened March 21, 2013) and open Case No. 13E-93000314 (opened on March 22, 2013). The files were identified as duplicates because in each file the same client was provided with advice concerning a divorce. It is likely these duplicate files were not identified by AppalReD because Case No. 13E-96001989 was opened by AppalReD's PAI component and Case No. 13E-93000314 was opened by AppalReD's VLAK component. For confidentiality purposes for conflict cases, and in order to implement the recommendations of the TAR, AppalReD and VLAK each have its own site on the ACMS server and users are assigned access rights limited to their own component. VLAK and AppalReD do not share case information, so it is difficult for AppalReD to discern when files are duplicates.

AppalReD was advised that it must develop a process by which VLAK cases and program cases are reviewed to prevent duplicate reporting.

In its comments in response to the DR and this Required Corrective Action, AppalReD reported that the CI attorney and the Directing Attorney of VLAK meet monthly to review cases for potential duplicate reporting.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 9.

Finding 13: Interviews conducted during the on-site review demonstrated that AppalReD is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law); however, AppalReD's policies are in need of further improvement.

This part is intended to provide guidance to recipients in adopting written policies relating to the

outside practice of law by recipients' full-time attorneys. Under the standards set forth in 45 CFR Part 1604, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

The limited interviews with management and selected staff members disclosed that no attorneys were granted permission to engage in outside practice activities from January 1, 2012 through May 1, 2013. The review of AppalReD's Policy on the Outside Practice of Law evidenced that it does not contain LSC's regulatory restrictions against an attorney identifying AppalReD or LSC with outside practice of law activities nor does it include the restrictions concerning the use of AppalReD's resources. *See* 45 CFR §§ 1604.4(b) and 1604.6.

Based on the interviews conducted during the on-site Compliance Review, AppalReD was in compliance with the requirements of 45 CFR Part 1604; however, AppalReD's outside practice policy was in need of further improvement. As a Required Corrective Action, AppalReD was required to revise its Policy on the Outside Practice of Law so that that it conforms to 45 CFR §§ 1604.4(b) and 1604.6.

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its proposed Policy on Outside Practice of Law. This policy had not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 10. It is recommended that AppalReD define "Special Counsel" to clarify that these attorneys are not full-time employees of AppalReD. It is further recommended that AppalReD include the language of 45 CFR § 1604.4(c)(4) in its policy.

In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its revised 45 CFR Part 1604 policy, with the date of the policy's adoption by the Board of Directors included.

Finding 14: A limited review of financial records and sampled files, as well as interviews conducted with management and staff, evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

A limited review of AppalReD's pamphlets, brochures, flyers, etc. and inspections of waiting areas and other public spaces in the Prestonsburg and VLAK offices were conducted to assess compliance with 45 CFR Part 1608. The materials were found to be free of any prohibited

political message, expression, symbol, image, or allusion, and in compliance with 45 CFR Part 1608. A limited review of the vendor list, chart of accounts, cash receipts and cash disbursement journals, as well as a review of AppalReD's 990 Internal Revenue Service tax form, demonstrated that from January 1, 2012 through May 1, 2013, AppalReD had not expended LSC grant funds, personnel, or equipment in prohibited political activities and that, for that period, AppalReD was in compliance with 45 CFR § 1608.3(b). A limited fiscal review, as well as review of sampled cases, disclosed no evidence that staff members, while engaged in legal assistance activities supported under the Act, engaged in any political activity, provided voters with transportation to the polls, or provided similar assistance in connection with an election or voter registration activity. Finally, interviews with management disclosed no evidence that AppalReD employees have intentionally supported or identified the Corporation with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office.

Based on a limited review, it appears that AppalReD is in compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities). There are no recommendations or required corrective actions necessary.

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

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two (2) private attorneys; neither the referral service nor two (2) private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one (1) that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.2(a) and 1609.3.

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. AppalReD has a written policy governing fee-generating cases. This policy was found to be in compliance with 45 CFR Part 1609.

Review of sampled cases, as well as a limited review of the 2012 Audited Financial Statement ("AFS") and cash receipt journal, evidenced that AppalReD receives and collects attorneys' fees for its participation in fee-generating activities, such as participating black lung, social security (SSI), housing, and guardian ad litem litigation. Such participation is in compliance with LSC regulation as sampled cases evidenced that all such files contained executed fee-generating acceptance forms and/or these activities were supported with non-LSC funds. *See* open Case Nos. 12E-96006608 and 13-90000039.

AppalReD is in compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). There are no recommendations or required corrective actions necessary.

Finding 16: A limited review of accounting and financial records evidenced that AppalReD appears to be in compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity), including 45 CFR § 1610.5 (Notification).

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

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

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

- i) Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include: the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;
- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

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

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

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

Based upon a limited review, AppalReD appears to maintain program integrity.

The Board of Directors certified compliance with 45 CFR § 1610.8(b) by executing a program integrity letter on December 31, 2012. AppalReD does not appear to be engaged in any restricted activities which would present 45 CFR Part 1610 compliance issues based upon a limited review of trial balances for the review period, chart of accounts, the vendor's list, observation of the physical location of the Prestonsburg and VLAK offices, and from interviews. A limited review of the cash trial balances for the review period identified no inappropriate transfers pursuant to 45 CFR § 1610.7, or expenditures pursuant to 45 CFR § 1610.4 of its LSC

and non-LSC funds by the recipient. A limited review of fiscal activities, as well as the review of sampled cases, disclosed no instances where non-LSC funds were used for any purpose prohibited by 45 CFR Part 1610.

Funders are being provided with notification of LSC restrictions.

The TAR disclosed that funders who provided \$250.00 or more were not sent notification letters pursuant to 45 CFR § 1610.5. In addition, the language in the letters in AppalReD's possession informing funders of the restrictions and prohibitions on those funds was identified as insufficient during the TAR. The on-site Compliance Review demonstrated that AppalReD has implemented the TAR recommendations and revised its acceptance of funds letter, to adequately provide funders written notification of the prohibitions and conditions which apply to the funds in compliance with 45 CFR § 1610.5. The letter now states:

AppalReD Legal Aid is funded by the Legal Services Corporation. As a condition of the funding it receives from LSC, it is restricted from engaging in certain activities in all of its legal work, including work supported by other funding sources. AppalReD Legal Aid may not expend any funds for any activity prohibited by Legal Services Corporation Act, 42 U.S.C. 2996 et seq. or by Public Law 104-134. Public Law 104-134 §504(d) requires that notice of these restrictions be given to all funders of programs funded by the Legal Services Corporation. For a copy of these laws or for any other information or clarifications, please contact AppalReD Legal Aid at 606-886-9876.

There are no recommendations or required corrective actions necessary.

Finding 17: AppalReD is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, additional information is required concerning VLAK's ethical obligations under Kentucky law concerning its treatment of conflicts.

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

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors.

See 45 CFR §§ 1614.3(a), (b), (c), and (e)(3). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term “private attorney” is defined as an attorney who is not a staff attorney. *See* 45 CFR § 1614.1(d). Further, 45 CFR 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

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

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

AppalReD failed to seek a waiver of its 2011 PAI Requirement.

A review of the AFS for Fiscal Year 2011 determined that there was not adequate compliance with 45 CFR Part 1614 in the allocation of direct and indirect expenses to the PAI requirement as the 2011 AFS reported a shortfall of \$25,338.00. A review of the AFS for Fiscal Year 2012, however, determined that there was adequate compliance with 45 CFR Part 1614 in the allocation of direct and indirect expenses to the PAI requirement. The 2012 AFS reported expenditures dedicated to the PAI effort in the amount of \$271,459.00 which exceeded the 2012 12.5% PAI requirement of \$238,960.00 in the amount of \$32,499.00. If the shortfall of 2011 (\$25,338.00) is subtracted from the 2012 excess amounts (\$32,499.00), AppalReD's PAI expenditure exceeded the required amount by \$7,161.00.

AppalReD failed to request a waiver pursuant to 45 CFR § 1614.7 in 2011 when it experienced a shortfall in its PAI expenditures. Pursuant to LSC regulation, and as Required Corrective Action, the Draft Report directed AppalReD to show good cause why it failed to seek such a waiver of its 2011 PAI requirement consistent with LSC regulations.

In its comments in response to the DR and this Required Corrective Action, AppalReD explained that at the end of the fiscal year 2011 it believed it had expended 12.5% of its basic field funding on its PAI activities. However, “after an in depth review of all of the allocations to PAI,” it discovered that it had incorrectly allocated some salaries to the PAI effort. After the errors were corrected, it became apparent that the 12.5% PAI requirement was not met and that the time period in which AppalReD was to have requested a waiver had passed. Nonetheless, a waiver

was requested. However, it was denied and the shortfall was added to the program's 2012 PAI requirement. AppalReD indicated that in "the fiscal year 2012, the PAI requirement was met, as well as the additional unmet amount for 2011." As noted above, review of AppalReD's AFS for 2012 confirmed this fact.

Based on the comments provided, OCE finds that AppalReD has established good cause for why it failed to seek a waiver of its 2011 PAI requirement and that AppalReD has taken sufficient action to satisfy Required Corrective Action item 14.

Accounting Manual should be revised.

AppalReD has established PAI as a cost center in its Sage 100 accounting system and as a time use designation in its ACMS management system.

The Compliance Review evidenced that AppalReD uses a system for accounting for PAI related costs which generally complies with the requirements of 45 CFR § 1614.3(e), however these procedures are not fully documented by AppalReD. It is recommended that AppalReD revise its Accounting Manual to document its accounting system for PAI related costs.

AppalReD failed to allocate direct costs consistent with LSC regulation.

The AppalReD Accounting Manual provides that AppalReD must expend an amount equal to 12.5% of the LSC annualized basic field award involving private attorneys in the delivery of legal assistance to eligible clients. The on-site Compliance Review observed that AppalReD allocates direct costs its PAI requirement, in part through its VLAK component which is a Pro-Bono/Reduced Fee Program that is designed to increase the availability of direct civil legal services to the areas low income community. Other costs, not associated with VLAK, that are directly involved with PAI efforts are allocated directly to PAI expenses as well and are recorded in the general ledger. A review of 2011 and 2012 AFS revealed that the financial reporting of PAI activity, support for PAI activities, and expenses related to the PAI effort, were reported separately in the AFS'. A review of 2012 year-end Adjusting Journal Entry revealed that a substantial portion of VLAK expenses are funded with Kentucky IOLTA and Filing Fee grants.

The AppalReD Accounting Manual defines PAI costs as direct expenditures for the VLAK component and other direct costs as appropriate. This limited description is not sufficient to preclude errors. For example, a limited review of timesheets for pay periods ending March 15 and March 30, 2013 for VLAK's attorney-director evidenced that this staff member, appointed in June 2012, has begun to assign herself cases. In March of 2013, approximately 10% of her time, as reflected on Kemps time reports, was case related. As a staff attorney, the time spent working on these cases does not constitute PAI costs although they are direct costs to the VLAK component.

As a Required Corrective Action, the Draft Report advised AppalReD to undertake a review of all cases assigned to the VLAK attorney-director to ensure that the costs related to her providing legal assistance in those cases are not allocated to PAI. The VLAK Directing Attorney's salary

should be restated after that review is completed. It was recommended that AppalReD revise its Accounting Manual so that unallowable costs are eliminated and that such revisions include a full description of the processes used to allocate PAI direct and indirect costs.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that, after review of PAI time allocations, its journal entries have been revised to include only properly allocated charges. In addition, AppalReD reported that it has revised its Accounting Manual to include a written procedure for the allocation of PAI direct and indirect costs. As evidence of the actions taken, AppalReD supplied OCE with a copy of its Journal Entry and a copy of its Cost Allocation procedures.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 15.

AppalReD maintains financial documentation in its contract files, but a forms change is recommended.

In a review of five (5) contracts and payments to private attorneys for 2012 through May 2013 no exceptions were noted. Vendor files were documented with itemized billings, appropriate reviews, and approvals.

It was noted, however, that AppalReD employs two (2) different private attorney contracts, a "Private Bar Referral Contract" (which includes an "Acknowledgement of PAI Fee Restrictions") and a "Part-Time PAI Contract." The latter references itself as a "part-time employment agreement" and states that duties will be performed under the direction of the Directing Attorney of one of AppalReD's offices. The wording of the Part-Time PAI Contract could lead to confusion as to the employment status of the attorney-contractor.

It was recommended that AppalReD require that the Private Bar Referral Contract that incorporates the "Acknowledgement of PAI Fee Restrictions," be used as the standard Private Bar Referral contract in all AppalReD offices and VLAK.

In its comments in response to the DR, AppalReD indicated that it has revised its Private Bar Referral Contract so that private attorneys must acknowledge the PAI fee restrictions in all of its Private Bar Referral Contracts. A copy of this form was supplied to OCE as part of AppalReD's comments.

PAI Plan

AppalReD's 2013-2014 PAI Plan is designed to ensure that AppalReD involves private attorneys in the delivery of legal assistance to eligible clients through both pro bono and compensated mechanisms, via contracts with private attorneys and law firms on a reduced fee plan. To accomplish this, AppalReD established an in-house unit, the VLAK, to coordinate with the Kentucky Volunteer Lawyers Program and others to develop and implement PAI programs and relationships.

PAI Program

AppalReD involves private attorneys in the delivery of legal services to eligible clients through pro bono opportunities and through contract legal assistance by compensated private attorneys out of individual offices and through the stand-alone VLAK program (AppalReD does not use a clinic model in its PAI program). The referral, placement, and oversight process for a contract case is the same for pro bono cases except that attorneys bill AppalReD monthly and an invoice is sent to the financial office requesting payment. The forms and PAI activities of the Prestonsburg and VLAK offices were assessed for compliance with 45 CFR Part 1614. The Directing Attorney presently has access only to the VLAK database (although at the time of the TAR she had access to both the main program database and the VLAK database). However, the Directing Attorney is supervised by the Executive Director who has access to both the main program's and VLAK's databases.

The Intake Process

The intake screening process for a private attorney case is no different from the intake process for a staff case. As discussed in Finding 2, intake is conducted by the CI Hotline, or by the main or branch office, and these staff members will identify cases for the PAI component based upon the AppalReD protocols, private attorney availability, and the county of an applicant's residence. If the case is appropriate for private attorney activity, an applicant will be interviewed, as discussed below, to determine suitability for referral, either to a compensated private attorney or pro bono. The decision to refer a case to an attorney or clinic is made at daily group case meetings for the Prestonsburg office and by the Directing Attorney for VLAK.

Referral, Placement, Oversight, and Closure

The intake, referral, placement, oversight, and case closure processes for a compensated contract case and a pro bono case are the same except that, in compensated cases, AppalReD executes a Pro Bono Referral Contract and remits compensation.

If an applicant is accepted for referral to a private attorney for compensated or pro bono services, he/she is mailed a packet of information that must be returned to AppalReD before referral will be attempted. The packet includes an information letter, a client grievance form, and both a citizenship attestation and a retainer agreement to execute and return. This retainer agreement properly advises the applicant that they will be the client of a volunteer attorney and that their representation is specifically limited. If the applicant fails to return the documents within 14 days, the application will be closed.

After receipt of these documents by AppalReD, the case is placed with a private attorney by a telephone call and/or email. As some counties have only one (1) attorney participating in the PAI Programs (compensated or pro bono), most referrals are made by email. The compensated private attorney is provided with a sample Private Bar Referral Contract specifying AppalReD's contract terms, as well as the applicant and opposing party's names so that conflicts can be checked. The pro bono attorney is just provided with the conflict contact information. If

placement is successful, the pro bono attorney is mailed a referral letter while the compensated private attorney is mailed a referral letter, a copy of the completed contract for the attorney to execute and return, along with instructions to bill monthly and maintain accurate records of all time spent on the case, complete all forms required by AppalReD, and provide AppalReD with copies of pleadings, orders, and other relevant documents. The attorney is advised that LSC regulations prohibits compensation from exceeding 50% of the amount of the attorney's annual professional income and may not, in any event exceed \$25,000.00 in any calendar year. The attorney cannot bill for compensation that will result in a violation of LSC regulations and by submission of billing, the attorney has verified that LSC regulations will not be violated. The applicant is then sent written notification that his case has been accepted for referral to a private attorney (compensated or pro bono) and provides instructions to contact the attorney. The private attorney is notified that the applicant will be in contact and instructed to return an acknowledgement form indicating whether he has been contacted and whether he has accepted or rejected the case after meeting with the applicant.

If the applicant does not contact the private attorney (compensated or pro bono) to which they have been referred, ceases communication with the PAI Program, or if the case is resolved by affirmative steps taken by the applicant and no further assistance is required, the case will be closed. The PAI staff member will review the available information and determine the level of assistance, if any that was provided. The case will be excluded from the CSRs if no assistance was provided. If assistance was provided, the case will be closed as a staff or PAI case, depending upon which case handler provided the highest level of legal service. If the private attorney fails to remain in contact with the client, every effort will be made to secure another private attorney for the client. If the client has failed to contact the attorney, a "no-contact" letter will be mailed and the file will be closed within 14 days if the client fails to contact either the private attorney or AppalReD. Once a compensated case is placed with a private attorney, the case is transferred to the Directing Attorney for approval and opened for billing with the finance department. The case is then set for a 90 day status reviews.

To obtain the status of a compensated or pro bono case, PAI staff emails every attorney a list of all open cases and requests a status report. If the private attorney does not respond, PAI staff will send several reminder emails and/or telephone the attorney to obtain a status which then is entered into ACMS in the "Update Status" notes section. If a PAI file fails to have case status notes within the last 90 days, an error message will alert staff that the file is dormant.

PAI staff report that many compensated cases do not require status reviews because the private attorney bills AppalReD monthly. The private attorney supplies the time spent on the case, a description of the legal assistance provided, and copies any relevant documents and/or court orders. PAI staff review the information provided and transfers the information to finance to remit payment. Once a private attorney has been paid the maximum compensation pursuant to the contract, he/she is encouraged to continue to provide documentation of the legal assistance which is forwarded to the finance department and the case is flagged as paid out.

At the conclusion of a case, the private attorneys provide compensated attorneys AppalReD with a final billing and final court order or documentation which then is sent to Finance for payment.

The pro bono attorney is mailed a “Case Closing Card” that requests the attorney describe the services rendered, final outcome, time spent, and the attorney's normal hourly rate. The PAI staff then review the file to ensure that compliance-related information is present, assign a case closure category, and complete a closing information checklist in the ACMS. When appropriate, a PAI staff member may contact a private attorney in order to obtain further information. AppalReD may prepare closing letters and surveys for clients and private attorneys. Managing Attorneys do not review every file upon closure.

Interviews and sampled files demonstrated that AppalReD’s PAI systems are designed to ensure that PAI cases are active and that current and accurate information is maintained within these files. As discussed in Finding 9, a few cases allocated to the PAI component failed to yield evidence that legal assistance was provided and, as discussed above in Finding 11, only one (1) PAI case was identified as untimely closed.

AppalReD is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

VLAK Conflict Determinations.

LSC is required to insure the maintenance of the highest quality of professional standards and insure that attorneys, while engaged in legal assistance activities supported in whole or in part of by LSC funds, refrain from any activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association. *See* 42 USC 2996f §§ 1007 (a)(1) and (10). The Kentucky Supreme Court has adopted rules that govern conflicts of interest. *See* SCR 3.130 (1.7-1.11).

During the TAR, it was explained by AppalReD that VLAK was established so that conflict cases could be handled by pro bono referral placements done through a separate entity and separate computer system so as to maintain any conflicts cases separate from the main program database. However, the staff members of VLAK are the employees of AppalReD.¹¹ The TAR team questioned whether such an arrangement was permissible under Kentucky rules and recommended that AppalReD obtain a bar opinion on the arrangement, including advice as to how to ensure an appropriate “Chinese wall,” is established, and whether the arrangement is allowable. After the TAR, AppalReD sought a legal opinion from the state bar of Kentucky and was advised that the Bar does not provide advisory opinions. AppalReD supplied a copy of an article published in the Advocate to support its position that its VLAK arrangement is

¹¹ The TAR further questioned the cost and overall effectiveness of VLAK as the VLAK component is a separate facility and AppalReD pays rent and database charges for this component. Further, VLAK staff had no clear idea as to the number of applicants referred to it that are conflict cases. VLAK staff members were also unclear as to the historical number of actual conflicts cases that obtain a pro bono attorney placement, and receive actual services. VLAK staff members were clear that a majority of applications received either directly, or by referral from AppalReD, never get any legal services as there is no pro bono attorney available to handle the case. The number of non-placements was estimated at 80-90% of the total number of applications received.

permissible under Kentucky rules. *See* Providing Conflict Counsel to Kentucky Indigent Criminal Defendants: Balancing Ethical, legal, and Fiscal Realities to Provide Quality Representation, Volume 26, No. 1, (January 24, 2004).

The on-site Compliance Review team reviewed the materials submitted by AppalReD, as well as the actions it has taken since the TAR to strengthen its “Chinese wall” (such as eliminating VLAK's access to the main program database and eliminating the main program’s access to the VLAK database). However, the on-site Compliance Review team discovered that, since the TAR, VLAK staff has begun accepting main program cases that are then entered into the VLAK database and subsequently disclosed to the main program during CSR reporting. Further, the on-site Compliance Review team discovered that the “Chinese wall” does not exist for the Executive Director as he has access to both databases and may review all information concerning both main program and VLAK conflict information for all applicants and clients of AppalReD and VLAK. Finally, VLAK reports that clients are supplied with AppalReD's standard Client Grievance Procedure and that grievances are resolved by the Executive Director and/or its Board of Director’s Client Grievance Committee.

Based upon this new information and AppalReD's inability to obtain a bar opinion concerning its conflicts practices, AppalReD was requested, with its comments to this Draft Report, to provide further information as to whether VLAK's conflicts practices and procedures and "Chinese wall" satisfy the requirements of the Kentucky Supreme Court. It was recommended that AppalReD obtain an assessment of its practices and procedures from a disinterested third party who has expertise in the Canons of Ethics and Code of Professional Responsibility of the state of Kentucky.

In its comments in response to the DR and this recommendation, AppalReD indicated that a disinterested third party would be hired to provide an assessment of AppalReD’s conflict practices and procedures.

Based on the comments provided, OCE requests that AppalReD submit, within 90 days of the issuance of this Final Report, a copy of the third party’s assessment of AppalReD’s conflict practices and procedures.

Finding 18: AppalReD is in non-compliance with the requirements of 45 CFR Part 1627 (membership fees or dues) and is required to adopt a subgrant policy pursuant to 45 CFR § 1627.8; however, AppalReD is in compliance with approval of payments made to attorneys in excess of \$25,000.00.

LSC has developed rules governing the transfer of LSC transfer funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's

programmatic activities.¹² Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, e.g., accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000.00 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

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

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

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

A review of AppalReD's policies evidenced that AppalReD has failed to adopt policies concerning 45 CFR Part 1627. The adoption of such a policy is required by 45 CFR § 1627.8.

The limited fiscal review of AppalReD's AFS and LSC's 2012-2013 list of approved subgrantees, as well as discussions with members of fiscal management, disclosed compliance with the financial reporting requirements of 45 CFR § 1627.3. The review noted no evidence of LSC funded payments to private attorneys that required subgrants, as none of the program's judicare attorneys had received LSC funded payments approaching \$25,000.00 for any year during the review period. The Compliance Review, however, did identify that non-LSC funded

¹² Programmatic activities includes those that might otherwise be expected to be conducted directly by the Recipient, such as representation of eligible clients, or which provides direct support to a Recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a Recipient's clients on a contract or judicare basis, except that any such arrangement involving more than \$25,000.00 is included.

payments in excess of \$25,000.00 were paid to private attorneys during 2012 but, as these payments were not made with LSC funds, no subgrant was required pursuant to 45 CFR Part 1627.

The fiscal review of invoices, which include fees and dues payments from January 1, 2012 through May 1, 2013, disclosed that mandatory dues and fees, including dues to the Kentucky Bar Association (\$8,632.00) and the United States District Court Eastern District of Kentucky (\$88.00) were paid with non-LSC funds. The fiscal review further evidenced that non-mandatory dues and fees, including dues to a local bar association (\$150.00) were paid with LSC funds. The local bar organization is a non-governmental organization, that is not mandated by the state of Kentucky and, thus the payment was in non-compliance with LSC regulation. Since AppalReD used significantly more non-LSC funds to pay the mandatory dues (\$8,720.00) than it used in LSC funds to pay non-mandatory dues (\$150.00), no corrective action is required.

Although the Compliance Review determined that AppalReD is in compliance with 45 CFR § 1627.2, it also determined that AppalReD is in non-compliance with 45 CFR §§ 1627.4 and 1627.8. As a Required Corrective Action, AppalReD was advised that it must develop and implement a policy to ensure that no LSC funds are used to pay non-mandatory membership fees or dues in the future. AppalReD was further advised that it must also develop and implement a policy related to 45 CFR Part 1627.

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its revised Cost Allocation policy and procedures (December 7, 2013) and a copy of its revised subgrant policy (December 7, 2013).

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 12 and has taken partial action to satisfy Required Corrective Action item 13. It is recommended that in its policy that AppalReD define subrecipient (pursuant to 45 CFR § 1627.2(b)(1)), that it include provisions for the orderly termination of the grant in the event that AppalReD's funding is terminated, suspended, or reduced, and that it specify its audit responsibilities (pursuant to 45 CFR §§ 1627.4(c) and 1627.6).

In order for OCE to close out this Required Corrective Action item 13, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its revised 45 CFR Part 1627 policy, with the date of the policy's adoption by the Board of Directors included.

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

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases,

matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

Requirements for Timekeeping for Payroll purposes are established in the AppalReD's Employee Handbook. AppalReD uses its Kemps Prime ACMS as its timekeeping system. Attorney and paralegal staff members enter timekeeping records into the ACMS and the system electronically accounts for time spent on cases, matters, and supporting activities. Attorney and paralegal staff members also enter the funding source for each case, matter, and supporting activity into the ACMS to electronically reflect the funding sources to be charged. AppalReD's procedures require all staff members to submit payroll timesheets for pay periods ending the 1st and 15th of every month. Legal staff must generate and attach a separate Kemps Prime report for each pay period. Payroll is processed and individual employee earnings and leave statements and summaries are generated.

AppalReD's 2011 and 2012 AFS documented that that not all AppalReD case handlers were documenting their time contemporaneously. The Independent Auditors recommended that AppalReD use the electronic record in its ACMS as the basis for all employee pay.

During the on-site Compliance Review, case handler timekeeping records were sampled for the pay periods ending January 1, 2012 and May 1, 2013. A review of these records disclosed that, with the exception of one (1) staff member, AppalReD staff were electronically and contemporaneously recording the time spent on each case, matter, and/or supporting activity in compliance with 45 CFR §§ 1635.3(b) and (c). The staff member who failed to keep time was recently hired. Interviews disclosed that, although this staff member did not use Kemps to record case time, he did maintain a calendar with case, matter, and supporting activity related information. During the on-site Compliance Review visit, the staff member implemented corrective action by retroactively entering his timekeeping information into Kemps Prime.

AppalReD is in substantial compliance with the timekeeping requirements of 45 CFR Part 1635. By way of general advice, AppalReD may consider exploring the use of its ACMS to provide electronic contemporaneous timekeeping for all staff to eliminate the need for dual recordkeeping by case handlers. The following site provides information relating to the use of Kemps reports for payroll timekeeping purposes: <http://www.kempscaseworks.com/node/192>.

Finding 20: Sampled files, as well as interviews with management and staff members, evidenced compliance with the requirements of former 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.13 However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.

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

The limited fiscal review of the 2012 AFS and cash receipt journal evidenced instances in 2012 and 2013 in which AppalReD recognized and/or reported the receipt of attorneys' fees or court-awarded payments for its participation in black lung, social security (SSI), housing, and guardian ad litem litigation.

AppalReD is in compliance with the requirements of former 45 CFR Part 1642. There are no recommendations or required corrective actions necessary.

¹³ The regulations defined 'attorneys' fees' as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

Finding 21: Review of sampled files, as well as a limited review of financial and other records, and interviews with management and staff members evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

AppalReD's Legislative and Administrative Activities; Training, and Related Activities, and Organizing policy (February 14, 1997) comports with 45 CFR §§ 1612.8(a)(2) and (4).

Review of sampled files, as well as a limited review of fiscal and other records, and interviews with management and staff members evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities) from January 1, 2012 through May 1, 2013. AppalReD disclosed during the on-site Compliance Review that it does not engage in 45 CFR Part 1612 activities. However, if AppalReD chooses to engage in these activities in the future, it is recommended that that AppalReD create a unique code in its timekeeping system to identify time, if any, spent on these activities and make provisions for accounting for these approved costs. Additionally, management will want to familiarize staff with the recordkeeping and accounting requirements outlined in 45 CFR § 1612.10.

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

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.

AppalReD's Policy on Criminal Cases and Policy on Restrictions on Actions Collaterally attacking Criminal Convictions comport with 45 CFR §§ 1613.3 and 1615.1.

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding or a collateral attack in a criminal conviction. Interviews with management and staff members also confirmed that AppalReD is not involved in this prohibited activity. There are no recommendations or required corrective actions necessary.

Finding 23: Review of sampled files, as well as interviews with management and staff members, evidenced that AppalReD is in compliance with the requirements of 45 CFR Part 1617 (Class actions). A review of the recipient's policies, however, evidenced that AppalReD was required to revise its policies consistent with LSC regulation.

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).¹⁴

None of the sampled files reviewed involved initiation or participation in a class action. Interviews with management and staff members also confirmed that AppalReD is not involved in this prohibited activity and is in compliance with the requirements of 45 CFR Part 1617.

The review of AppalReD’s Policy on Class Actions (February 16, 1998), however, evidenced that the policy does not fully comport with LSC regulation. The policy states that AppalReD may not be involved in any stage of an existing class action *prior to an order granting relief*, however, LSC regulation provides that a recipient cannot be involved in any stage of an existing class action *prior to or after an order granting relief*. *See* 45 CFR § 1617.2(b)(1).

As a Required Corrective Action, AppalReD was advised that it must revise its policy to conform to 45 CFR § 1617.2(b)(1).

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Class Action Policy. This policy had not yet been adopted by AppalReD’s Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 16. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its revised 45 CFR Part 1617 policy, with the date of the policy’s adoption by the Board of Directors included.

¹⁴ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

Finding 24: Review of recipient's policies and sampled files and, as well as interviews with management and staff members, evidenced that AppalReD is in 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.

AppalReD's Redistricting Policy (February 14, 1998) comports with LSC Regulation.

None of the sampled files reviewed involved initiation or participation in redistricting activities. Interviews with management and staff members confirmed that AppalReD is not involved in this prohibited activity. There are no recommendations or required corrective actions necessary.

Finding 25: Review of sampled files, as well as interviews with management and staff members, evidenced that AppalReD is in compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings). A review of the recipient's policies, however, evidenced that AppalReD must revise its policies consistent with LSC regulation.

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. Interviews with management and staff members confirmed that AppalReD is not involved in this prohibited activity and is in compliance with the requirements of 45 CFR Part 1633.

The review of AppalReD's Policy for Representation in Certain Eviction *Proceedings* (February 12, 1998) evidenced that the policy fails to prohibit representation in public housing eviction actions where the person has been charged or convicted of the *manufacture* of a controlled substance.

As a Required Corrective Action, AppalReD was advised that it must revise its policy to conform to 45 CFR § 1633.3(b).

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Part 1633-Restriction on Representation in Certain Eviction Proceedings Policy and 45 CFR § 1633.4 form. This policy had not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 17. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its revised 45 CFR Part 1633 policy, with the date of the policy's adoption by the Board of Directors included.

Finding 26: Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that AppalReD is in 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.

AppalReD's Program Policy-Representation of Incarcerated Persons (February 14, 1998) comports with the requirements of 45 CFR Part 1637.

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

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁵ This restriction has been contained in all subsequent appropriations acts. This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "[t]his part is designed to ensure that recipients and their employees do not solicit clients."

AppalReD's Policies for Restrictions on Solicitation (February 14, 1998) comports with the requirements of 45 CFR Part 1638.

¹⁵ *See* Section 504(a)(18).

None of the sampled files reviewed evidenced solicitation. There are no recommendations or corrective actions required.

Finding 28: Review of the recipient's policies and sampled files, as well as interviews with management and staff members, evidenced that AppalReD is in 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. Nor 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.

AppalReD's Restriction on Assisted Suicide, Euthanasia, and Mercy Killing (August 22, 1998) comports with the requirements of 45 CFR Part 1643.

None of the sampled files reviewed evidenced involvement in these activities. Interviews with management and staff members, as well as review of the recipient's policies also confirmed that AppalReD is not involved in this prohibited activity and is, therefore, in compliance with the requirements of 45 CFR Part 1643. There are no recommendations or required corrective actions necessary.

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

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution. Additionally, Public Law 104-134, § 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 under the Military Selective Service Act or law, prior to July, 1, 1973, that he was improperly classified.

None of the sampled files evidenced involvement with these prohibited activities. Interviews with management and staff members confirmed that AppalReD is not involved in the aforementioned prohibited activities and is in compliance with these requirements. There are no recommendations or required corrective actions necessary.

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

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

Interviews with the Executive Director and a limited review of signed written agreements evidenced that one (1) case handler failed to execute a written agreement pursuant to the requirements of 45 CFR § 1620.6. During the on-site Compliance Review, the case handler executed a 45 CFR Part 1620 written agreement.

AppalReD is in substantial compliance with the requirements of 45 CFR § 1620.6.

It is recommended that AppalReD develop a procedure for the annual review of 45 CFR § 1620.6 written statements to ensure that all case handlers execute such statements. In its comments in response to the DR and this recommendation, AppalReD indicated that it now reviews written statements annually to ensure compliance with 45 CFR § 1620.6.

Finding 31: Review of the recipient's policies and sampled files 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. LSC regulations, at 45 CFR § 1644.3, require that the following information be disclosed for all actions filed on behalf of plaintiffs or petitioners who are clients of the recipient:

- a. the name and full address of each party to a case, unless the information is

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

AppalReD's Policy on Disclosure of Case Information and submission of these reports comports with the requirements of 45 CFR Part 1644. There are no recommendations or required corrective actions necessary.

Finding 32: Review of the recipient's fidelity bonding records evidenced that AppalReD is in compliance with the requirements of 45 CFR Part 1629 (Bonding of recipients).

LSC regulations, at 45 CFR Part 1629, requires that recipients carry fidelity bonds or insurance at a minimum level of 10% of their annualized LSC funding level for the previous fiscal year and that the bond or insurance not be less than \$50,000.00. AppalReD maintains a Commercial Crime Bond in the amount of \$500,000.00.

Based on its current level of insurance coverage, AppalReD is in compliance with 45 CFR Part 1629 and the Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII, § A(6).

Finding 33: Review of the recipient's financial records evidenced compliance with the requirements of 45 CFR Part 1630 (Cost standards and procedures).

The purpose of 45 CFR Part 1630 is to provide uniform standards for allowance of costs as recipient costs are required to be adequately and contemporaneously documented in business records accessible to the Corporation. *See* 45 CFR §§ 1630.1 and 1630.3(a)(9). Accordingly, any derivative income resulting from LSC funding shall be allocated to the fund in which the recipient's LSC grant is recorded. *See* 45 CFR § 1630.12(a)

A limited review of the recipient's accounting records evidenced that while the AppalReD has a Revenue Recognition Policy and a Cash Receipts policy which is contained in its Accounting Manual; however, there is no policy concerning the fund allocation of derivative income that is consistent with requirements of 45 CFR § 1630.12(a).

As a Required Corrective action, AppalReD was advised that it must develop a procedure to require that derivative income from LSC funding is allocated to the fund in which the recipient's LSC grant is recorded.

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its proposed Cost Allocation procedures (revised on December 7, 2013).

Based on the comments provided and a review of the procedures provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 11. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, evidence of the date on which the revised cost allocation procedures went into effect.

Finding 34: A limited fiscal review, as well as interviews evidenced that AppalReD is in non-compliance with the requirements of 45 CFR § 1628.5.

Sound financial management practices such as those set out in Chapter 3 of the LSC Accounting Guide for LSC Recipients (2010 Ed.) should preclude deficit spending. Use of current year LSC grant funds to liquidate a deficit balance in the LSC fund from a preceding period requires the prior written approval of the Corporation. LSC fund balance requirements are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

A review of AppalReD's 2012 AFS evidenced that AppalReD used 2012 LSC grant funds to liquidate a deficit balance in the LSC fund from 2011. The review further determined that AppalReD liquidated the deficit balance in the LSC fund without obtaining the prior written approval of the LSC. The 2012 AFS indicated a \$0 fund balance; however, this zero fund balance was only achieved because AppalReD used a portion of 2012 current year excess funds of \$3,034.00 to offset the net asset deficit balance of \$317,891.00 (as re-stated in the AFS).

As a Required Corrective Action, AppalReD must ensure that \$6,068.00 is returned to the LSC fund. To facilitate this transaction, AppalReD must transfer \$6,068.00 to the Basic Field fund using non-LSC funds. As AppalReD has not established a fund balance policy, it is recommended that AppalReD adopt a policy consistent with 45 CFR Part 1628.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that it intends to transfer \$6,068.00 to its LSC Basic Field fund using non-LSC funds. The amount will be corrected on the 2012 AFS. AppalReD further supplied OCE with a copy of its proposed 45 CFR Part 1628 policy which had not yet been adopted by its Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has not taken sufficient action to satisfy Required Corrective Action item 19. Given that it is now 2013, it is no longer advisable to report the return of the liquidated deficit balance (when made) on the 2012 AFS; therefore AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of documentation evidencing that it has returned the 2011 liquidated deficit balance (\$6,068.00) to the LSC basic field fund using non-LSC funds to correct the amount reported on the 2013 AFS. OCE further requests that, after its Board of Directors adopts its 45 CFR Part 1628 policy, a copy of it be provided to OCE, with the date of the policy's adoption by the Board of Directors included.

Finding 35: A limited review of AppalReD's internal control policies and procedures demonstrated that they compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.). However, a few exceptions were noted and further improvement is required.

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 (2008 Ed., as amended 2011), the Property Acquisition and Management Manual ("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* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed.).

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

Financial Structure and Review

AppalReD is funded in part by the LSC, the Commonwealth of Kentucky, Kentucky IOLTA Funds, other federal funds, and private donations. LSC Basic Grant Funding for AppalReD was \$2,341,056.00 for 2010; \$2,244,277.00 for 2011; \$1,915,271.00 for 2012 and was expected to be \$1,734,851.00 for 2013. AppalReD's financial department consists of the Director of Finance, who has overall fiscal and accounting responsibilities, the Fiscal Manager, and the Benefits and Payables Administrator. The Director of Finance reports to the Executive Director.

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

Personnel/Payroll Controls.

The LSC Accounting Guide for LSC Recipients (2010 Ed.), § 3.5.5 (a) (Payroll Records) requires recipients to maintain compensation records. The records must identify the employee to whom the payment was made, include the check number, the amount of gross and net pay, as well as describe the nature and the amount of any withholdings. The Accounting Guide for LSC Recipients (2010 Ed.), further requires that recipient's maintain an attendance or time record for each employee and that these records must be approved by a supervisor. Recipients also are required to maintain payroll and personnel files for each employee that includes documentation concerning the employee's hire, salary, and position, as well as information concerning reclassifications, evaluations, promotions, and terminations. The Accounting Guide for LSC Recipients (2010 Ed.), § 3.5.5 (b) (Payroll Payments) further requires that an authorized person approve salary and wage rates in writing and that an authorized individual (independent of payroll preparation) approve any adjustments to payroll disbursements. Payrolls are to be disbursed from an imprest bank account restricted to that purpose. Deposits to the payroll account must be controlled by an authorizing procedure which prevents duplicate deposits and over deposits. Finally, if recipients permit salary advances as "interest free loans" they must maintain policies and procedures governing these advances and ensuring timely repayment. *See* Advisory Program Letter 08-2, "Fiscal Management and Use of LSC Funds" (March 20, 2008).

A limited review of the Accounting Manual (February 25, 2012, as amended 2013) ("Accounting Manual") evidenced that AppalReD has established written policies and procedures for payroll processing. A fiscal review of five (5) AppalReD personnel files evidenced that the sampled files contained hire information (employment offer and salary documentation), state and federal payroll tax forms, photo identifications, and student loan repayment information, as well as employee evaluation and termination documentation.

A limited review of the Accounting Manual evidenced that AppalReD has established written policies and procedures for salary advances. AppalReD allows employees in emergency situations to request salary advances in an amount that does not exceed the value of the employee's accrued vacation and unpaid wages. The 2012 AFS indicated that total outstanding salary advances were \$2,977.00.

There are no recommendations or required corrective actions necessary.

Credit Card Controls.

The TAR review identified incorrect credit card usage and the presence of untimely paid invoices.

The on-site Compliance Review evidenced that, in response to the TAR, AppalReD instituted a policy of requiring staff to sign a written agreement, the "Corporate Credit Card and Gas Card Use Deduction Authorization Agreement" regarding the proper use of corporate gas and credit cards. The agreement limits credit and gas card use to business expenses only and requires vouchers and documentation be submitted monthly. Failure to submit documentation results in

the charges being designated as “personal” and the value of these charges may be deducted from an employee's paycheck. AppalReD now considers the failure to submit timely and accurate expense reports a ground for discipline and termination.

A limited review of Bank of America Credit Card Services documentation sampled during 2012 and 2013, found all charges were supported by appropriate receipts and supporting documents reflecting a business purpose.

A limited review of credit card charges and interviews with fiscal staff evidenced that AppalReD has implemented additional policies and practices to strengthen its internal credit card controls.

There are no recommendations or required corrective actions necessary.

Check Controls.

The TAR reviewed the check register reports generated by Sage 100 fund accounting software system (the system is used for check writing purposes) and detected check numbers missing from the numerical sequence of the check register report. Review of these missing check numbers determined they were void checks resulting from a system anomaly. The anomaly occurs when the “Invoice” descriptive voucher portion of the check exceeds 12 line items. The Sage 100 Fund system prints the “extra” descriptive voucher items onto the next check number in the system which creates the appearance of “missing” checks.

The Compliance Review evidenced that, after the TAR, AppalReD learned to better use its Sage 100 software system so that the system now designates all checks with more than 12 line items of description as “overrun” and records them with a zero amount. The system notes that the next check number in the sequence is “spoiled,” and that the “spoiled” check is the result of lengthy invoice items.

A limited review of revisions made to AppalReD's Sage 100 fund accounting software system, as well as interviews with fiscal staff, evidenced that AppalReD has implemented additional policies and practices to strengthen its internal check controls.

There are no recommendations or required corrective actions necessary.

Bank Reconciliation and Stale Check Controls.

The Accounting Guide for LSC Recipients (2010 Ed.) recommends 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. *See* The Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.1 (Fundamental Criteria: Control, Roles and Responsibilities, Reconciliations), at page 31. The review must be appropriately documented, signed, and dated. The Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII, § I (7), recommends that all checks outstanding for over six (6) months should be resolved. AppalReD's reconciliation policy, as established in its Accounting Manual, provides that statements must be delivered

(unopened) to the Executive Director or his designee for review, signature, and date. They are then to be reconciled to the general ledger by the Chief Fiscal Officer, and such reconciliation is thereafter to be reviewed and approved by the Executive Director or his designee.

A review of the reconciliations for 20 financial accounts currently maintained by AppalReD for the period January 1, 2013 through May 31, 2013, evidenced that reconciliations are carried out in a timely and proper manner as all statements were found to be initialed and dated upon receipt, and indicated that an appropriate review and approval of the reconciliations had been made. There were no instances of balances that were not reconciled and only one (1) instance of a check being outstanding for six (6) months. The on-site Compliance Review further found that AppalReD had contacted the vendor to resolve the stale check issue within the six (6) month period that the check had been outstanding.

A limited review of AppalReD's bank statement reconciliations demonstrated that AppalReD's policies and procedures compare favorably to the elements outlined in Chapter 3-Internal Controls/Fundamental Criteria of an Accounting and Financial Reporting System, § 3-5.1 of the Accounting Guide for LSC Recipients (2010 Ed.).

There are no recommendations or required corrective actions necessary.

Unclaimed Property Controls.

AppalReD's Accounting Manual contains a procedure mandating the escheat of client funds after the accounts have been inactive for seven (7) years. The Accounting Manual does not appear to conform to the requirements of Kentucky law that specify the amount of time that must elapse before unclaimed property is considered to be abandoned. The amount of time varies with the type of property that is unclaimed. The property may escheat in as little as three (3) years or as long as 15 years and some classes of property, such as class action distributions, have no specified time period for escheatment. See <http://www.wbsonline.com/resources/abandoned-property-dormancy-periods-in-kentucky>.

The on-site Compliance Review sampled 20 financial accounts maintained by AppalReD for the period January 1, 2013 through May 31, 2013, and identified three (3) instances of unclaimed deposit funds dating as far back as 1980 that likely should have been escheated within three (3) years. After AppalReD was advised by OCE during the on-site visit, that it may be in possession of unclaimed funds that should be escheated, AppalReD initiated action to escheat these funds by mailing the owners the notification letters that are required by Kentucky law.

A limited review of AppalReD's fiscal documentation demonstrated that AppalReD's policies and procedures do not compare favorably to the elements outlined in Chapter 3 - Internal Controls/Fundamental Criteria of an Accounting and Financial Reporting System, Key Elements, § 3-5.7 of the Accounting Guide for LSC Recipients (2010 Ed.). As a Required Corrective Action, AppalReD was advised that it must take all actions required under applicable law to escheat unclaimed property in its possession. It was recommended that AppalReD develop a procedure and revise its Accounting Manual in conformance with state law regarding the

escheatment of property.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that all unclaimed property had been disclosed to the state of Kentucky and escheated as required under applicable law. In addition, AppalReD reported that it has revised its Accounting Manual to include procedures for the escheatment of unclaimed property under Kentucky law. Finally, AppalReD supplied OCE with a copy of its revised General Policies and Bank Reconciliation procedures.

Based on the comments and documentation provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 18; however, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of documentation evidencing that it has made the applicable disclosure(s) and/or escheatment(s).

Cash Receipt Controls.

The TAR review disclosed that some cash receipts were not posted to the cash receipts log in a timely manner, client trust deposits were posted with the general operating deposits to the cash receipts log, electronic deposits were not posted to the cash receipts log. The Compliance Review evidenced that electronic deposits are now recorded in the cash receipts log consistent with the Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.4 (Cash Receipts). Electronic deposits are recorded in the cash receipts journal and cash and checks received in the mail or tendered in person are recorded in the cash receipts log.

Interviews with members of the fiscal staff and review of AppalReD's revised Accounting Manual evidenced that current fiscal staff appear knowledgeable, understand the current software, and is well versed in required documentation and has become increasingly familiar with LSC cash receipt control requirements.

There are no recommendations or required corrective actions necessary.

Petty Cash Controls.

AppalReD maintains nine (9) \$200.00 petty cash bank accounts (one (1) for each of office). These accounts are reconciled monthly when the statement is received, during replenishment, and when a Petty Cash Reimbursement Request Form, invoice, and receipts are submitted.

There are no recommendations or required corrective actions necessary.

Board Governance

The LSC Accounting Guide for LSC Recipients (2010 Ed.) recommends that recipient's Board of Directors, in the exercise of its fiduciary responsibilities, establish a Finance Committee which should, consistent with state law, review and revise budgets and make recommendations to the full Board of Directors; review monthly financial management reports with the Chief

Financial Officer, controller, and/or Certified Public Accountant; review accounting and control policies; review the audited financial statements, management letters, and response with the recipient and auditors; regularly review and advise the recipient about investment policies; coordinate training on financial matters for the governing body; and act as liaison between the governing body and the recipient for financial matters.

The Accounting Guide for LSC Recipients (2010 Ed.) also recommends that a recipient's Board of Directors should establish an Audit Committee, consistent with state law, for the purpose of hiring, compensating, and overseeing the activities of audits; establishing rules and processes for complaints concerning accounting practices and internal control practices; and reviewing the annual IRS Form 990 for completeness, accuracy, and on-time filing. The Audit Committee also should provide assurances of audit compliance; and ensure the recipient's operations are conducted and managed in a manner that emphasizes ethical and honest behavior; compliance with applicable laws, regulations, and policies; effective management of resources and risks; and the accountability of persons within the organization.

While it is recognized that some governing bodies because of their small size and other considerations will not have separate Audit Committees, nevertheless it is generally considered a best practice for governing bodies to have both. The critical point is that all of the finance and audit committee duties listed above must be performed by a single financial oversight committee or a finance and audit committee. It is also critical, and considered a best practice, that the financial oversight committee(s) have at least one (1) member who is a financial expert or for the governing body to have access to a financial expert.¹⁶

Interviews with the Executive Director and the Board Chair for AppalReD's governing body evidenced that AppalReD's Board of Directors performs its fiduciary duties through its Finance Committee and that such committee performs the vast majority of the responsibilities of a financial oversight committee, as described in the Accounting Guide for LSC Recipients (2010 Ed.), § 1-7 (Responsibilities of the Financial Oversight Committee).¹⁷ The Compliance Review, however, noted a few areas of weakness. First, the Independent Public Accountant failed to present the results of the 2012 Audit and the Management Letter to the governing body. As a result, the governing body failed to review and approve the 2012 AFS prior to its release. Second, the governing body has failed to establish criteria to evaluate and measure the performance of the Executive Director (OCE advises that such criteria may be found at lri.lsc.gov). Third, the governing body has not engaged in efforts to participate in the development of the AppalReD's Strategic Plan (October 2011 thru October 2013) or oversee its implementation. Fourth, the Compliance Review revealed that the governing body has not established a conflict of interest policy. Additionally, AppalReD may benefit from recruiting Board members with financial and/or accounting expertise.

¹⁶ A financial expert has an understanding of Generally Accepted Accounting Principles ("GAAP") and financial statements, the capacity to apply GAAP in connection with preparing and auditing financial statements, familiarity with developing and implementing internal financial controls and procedures, and the capacity to understand the implications of different interpretations of accounting rules.

¹⁷ AppalReD established an Audit Committee on February 25, 1989; however, it is not active.

A limited review of AppalReD's Board of Director Finance Committee structure demonstrated weaknesses in AppalReD's internal controls relating to its board governance. It was recommended that the internal controls policies and procedures be reviewed and strengthened in the areas of financial statement review, performance evaluations of the Executive Director, strategic plan development and oversight, and board composition, as well as that a Conflict of Interest policy be adopted.

In its comments in response to the DR and this recommendation, AppalReD indicated that it has reviewed and strengthened its internal controls policies for its Board of Directors. In support of its review, AppalReD supplied OCE with a copy of its proposed Responsibilities of its Board of Directors and Board Members and Appalachian Research and Defense Fund of KY., Inc. policy and its Board of Directors Conflict of Interest Policy and Acknowledgement and Disclosure Form. These policies appear to address the concerns raised in the DR.

Finding 36: Interviews and a limited review of procedures, practices, and documents related to Technology Initiative Grant (“TIG”) No.08361 evidenced partial compliance with TIG grant assurances and other applicable LSC regulations, rules, and guidelines.

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 examines a sampling of TIG-related activities and expenditures to ensure their compliance with applicable law, rules, regulations, policies guidelines, instructions, and other directives of LSC, including, but not limited to the LSC Audit Guide for Recipients and Auditors, the Accounting Guide for LSC Recipients (2010 Ed.), certain LSC TIG Assurances, the PAMM, and with any amendments of the foregoing adopted before or during the period of the TIG grant.

A limited review of relevant materials and interviews concerning AppalReD's TIG No. 08361 was conducted. AppalReD's grant award for TIG Grant No. 08361 was approved on September 10, 2008. AppalReD received a TIG award from LSC in the amount of \$60,000.00 but this amount was later revised to \$49,000.00 with a term from January 2009-December 2009. Prior to the start of the term, AppalReD received \$16,000.00 of the grant funds in 2008 to assist it with expenses necessary to attend a TIG Conference, as well as to purchase live help software and licenses. As of June 21, 2013, AppalReD's TIG reconciliation report, showed payments made by LSC to AppalReD totaling \$36,000.00 of which \$12,700.00 was spent and \$23,300.00 was unspent by AppalReD. As of this report date, LSC's Office of Program Performance (“OPP”) is still assessing AppalReD s TIG liability.

The purpose of the TIG No. 08361 was to create an automated domestic violence document preparation service that would enable unrepresented litigants to complete their own petitions from any computer in AppalReD's service area and obtain legal information from AppalReD by virtue of a Live Chat function. The TIG was not able to be implemented because of a change in Kentucky law. AppalReD was forced to abandon the project and LSC terminated the TIG on November 7, 2012. AppalReD's objectives for the TIG were to attend a TIG Conference,

purchase live help software and licenses, incorporate LiveHelp chat function into its document preparation service, obtain additional funding for non-LSC portion of the project, in conjunction with other stakeholders create pleadings and A2J Interview templates and forms, test, market, revise, and implement project, and conduct trainings of staff and with community, as well as submit evaluation plans and final reports to LSC.

According to OPP's Close-Out Evaluation Report (November 7, 2012), prior to the cessation of activity on the TIG, AppalReD attended the 2009 TIG Conference, submitted and received LSC approval for its evaluation plan, obtained additional project funding from outside sources, incorporated Pro Bono Net and the use of LiveHelp into its project plan, collaborated with stakeholders regarding the creation of a statewide pleading form, and developed A2J Interview templates and forms. AppalReD failed to implement the LiveHelp chat feature of this project or submit final evaluations and reports.

Re-Programming of Funds

AppalReD agreed to certain restrictions concerning the use of grant funds as part of its receipt of TIG No. 08361 as set forth in the 2008 Grant Assurances. In particular, Grant Assurance No. 5 states:

All funds disbursed by LSC pursuant to this grant shall be used solely for the project for which this grant is being made. In some cases, the ultimate cost of project implementation will be less than the originally approved budget because of reductions in the anticipated costs of hardware, software or other factors. The recipient may reprogram these budgetary savings only upon the written approval of the assigned LSC TIG staff person. Absent such written approval, all remaining funds must be returned to LSC no later than 60 days from completion of the project.

In accordance with Grant Assurance No.5, AppalReD was required to seek LSC's approval before re-programming TIG funds. A comparison between the TIG budget and reconciliation report, evidences that AppalReD used LSC funds totaling \$111.50 by re-programming fund for TIG software expenses, without seeking LSC approval.

As a Required Corrective Action, AppalReD was advised that it must adopt a TIG "re-programming" policy that requires AppalReD to seek LSC approval before the re-programming of any TIG funds.

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Policy on Reprogramming of TIG (Technology Initiative Grant) funds. This policy had not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 22. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance

of this Final Report, a copy of its Policy on Reprogramming of TIG (Technology Initiative Grant) funds, with the date of the policy's adoption by the Board of Directors included.

Subgrant Agreements/Vendor Contracts

A limited review of AppalReD's invoices and contracts, as well as related payments made to vendors and/or consultants, evidenced that AppalReD is in compliance with 45 CFR Part 1627 for this TIG, because all agreements were considered to be vendor agreements and/or were not programmatic in nature.

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, OMB Circular A-122 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. Interviews with the Financial Administrator, as well as a review of related timekeeping records, disclosed compliance with the timekeeping requirements of 45 CFR § 1635.1, 45 CFR Part 1630, and OMB Circular A-122.

Interviews with the Deputy Director, as well as a limited review of related timekeeping records, evidenced that AppalReD is in partial compliance with the timekeeping requirements of 45 CFR § 1610.2(b)(6) and OMB Circular A-122, as related to its TIG, because one (1) staff member who worked on the Kentucky Domestic Violence Petition for Protection project, failed to maintain their time through AppalReD's timekeeping system.

As a Required Corrective Action, AppalReD was advised that it must adopt a TIG timekeeping policy that enables AppalReD to identify the portion of time its employees devote to TIG projects.

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Policy of TIG (Technology Initiative Grant) Timekeeping Requirement. This policy had not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 23. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its Policy of TIG (Technology Initiative Grant) Timekeeping Requirement, with the date of the policy's adoption by the Board of Directors included.

PAMM

A review of asset acquisitions in relationship to TIG No. 08361 evidenced that AppalReD was in compliance with PAMM and 45 CFR Part 1630 because no assets were purchased using TIG funds.

Accounting Guide for LSC Recipients (2010 Ed.).

Review of AppalReD's 2012 AFS revealed that TIG No. 08361 was not separately reported in accordance with the Accounting Guide for LSC Recipients (2010 Ed.), § 2-2.1, and 45 CFR § 1628.3(g). As a result, the unspent TIG balance was determined from OPP's reconciliation report.

AppalReD was advised that, in the future, it must separately report all TIG funds on its AFS, and establish a separate funding code for each TIG grant and/or, at a minimum, account for each TIG by maintaining a sub-ledger schedule.

Finding 37: Interviews and a limited review of procedures, practices, and documents related to TIG No. 09361 evidenced partial compliance with TIG grant assurances and other applicable LSC regulations, rules, and guidelines.

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 on-site review of TIGs, OCE staff examines 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 Accounting Guide for LSC Recipients (2010 Ed.), certain LSC TIG Assurances, the PAMM, and with any amendments of the foregoing adopted before or during the period of the TIG grant.

A limited review of relevant materials and interviews concerning AppalReD's TIG No. 09361 was conducted. AppalReD's grant award for TIG Grant No. 09361 was approved on September 21, 2009. AppalReD received a TIG award from LSC in the amount of \$174,440.00 this amount which was later revised to \$89,996.00 with a term date from January 2010 (December 2010). Prior to the start of the term, AppalReD received \$37,176.00 of the grant funds in 2009 to purchase Polycom Video Conferencing equipment and full video conference system set-ups. As of June 21, 2013, AppalReD's TIG reconciliation report, showed payments made by LSC to AppalReD totaling \$72,396.00 of which \$67,277.94 was spent and \$5,118.06 was unspent by AppalReD. As of this report date, OPP still is assessing AppalReD's TIG liability.

The purpose of TIG No. 09361, as stated in the TIG Grant Award (September 21, 2009), was the creation of a video conferencing and web camera system to link AppalReD offices to the main office in Prestonsburg. AppalReD's objectives were to purchase and install a video conferencing system and web cameras, provide user training, and develop policies,

procedures, protocols for video conferencing. According to the draft TIG Evaluation Report (March 8, 2013), AppalReD purchased and installed video conference equipment and web cameras, increased the bandwidth as needed for video conferencing implementation (traditional point-to-point configuration), and submitted an evaluation report; however, it failed to implement training or adopt policies, procedure, and protocols for video conferencing.

Re-Programming of Funds

AppalReD agreed to certain restrictions concerning the use of grant funds as part of its receipt of TIG No. 09361 as set forth in the 2009 Grant Assurances. In particular, Grant Assurance No. 5 states:

All funds disbursed by LSC pursuant to this grant shall be used solely for the project for which this grant is being made. In some cases, the ultimate cost of project implementation will be less than the originally approved budget because of reductions in the anticipated costs of hardware, software or other factors. The recipient may reprogram these budgetary savings only upon the written approval of the assigned LSC TIG staff person. Absent such written approval, all remaining funds must be returned to LSC no later than 60 days from completion of the project.

In accordance with Grant Assurance No. 5, AppalReD was required to seek LSC's approval before re-programming TIG funds. A comparison between the TIG budget and reconciliation report, evidences that AppalReD used LSC funds totaling \$794.00 by re-programming TIG expenses, without seeking LSC approval.

As a Required Corrective Action, AppalReD was advised that it must adopt a TIG “re-programming” policy that requires AppalReD to seek LSC approval before the re-programming of any TIG funds.

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Policy on Reprogramming of TIG (Technology Initiative Grant) funds. This policy had not yet been adopted by AppalReD’s Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 22. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its Policy on Reprogramming of TIG (Technology Initiative Grant) funds, with the date of the policy’s adoption by the Board of Directors included.

Subgrant Agreements/Vendor Contracts

A limited review of AppalReD's invoices and contracts, as well as related payments made to vendors and/or consultants, evidenced that AppalReD is in compliance with 45 CFR Part 1627

for this TIG, because all agreements were considered to be vendor agreements and/or non-programmatic in nature.

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, OMB Circular A-122 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. Interviews with the Financial Administrator, as well as a review of related timekeeping records, disclosed compliance with the timekeeping requirements of 45 CFR § 1635.1, 45 CFR Part 1630, and OMB Circular A-122.

Interviews with the Deputy Director, as well as a limited review of related timekeeping records, evidenced that AppalReD is in non-compliance with the timekeeping requirements of 45 CFR § 1610.2(b)(6) and OMB Circular A-122, because no staff members who worked on the video conferencing project maintained their time through AppalReD's timekeeping system or through the use of project activity reporting.

As a Required Corrective Action, AppalReD was advised that it must adopt a TIG timekeeping policy that enables AppalReD to identify the portion of time its employees devote to TIG projects.

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Policy of TIG (Technology Initiative Grant) Timekeeping Requirement. This policy had not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 23. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its Policy of TIG (Technology Initiative Grant) Timekeeping Requirement, with the date of the policy's adoption by the Board of Directors included.

PAMM

A review of asset acquisitions in relationship to TIG No. 09361 evidenced that AppalReD obtained prior approval to purchase assets in the amount of \$64,332.14. AppalReD, however, included both the purchase of the asset (\$58,987.14), and installation costs (\$5,335.00), as the total acquisition costs on its inventory schedule of assets. Installation costs should not have been included. AppalReD overstated its asset costs and as a Required Corrective Action was advised that it must make an adjusting entry to properly record to report the transaction. Additionally,

AppalReD failed to tag these assets when purchased. As an additional Required Corrective Action, AppalReD was required to perform a physical inventory and tag all assets purchased with funds from TIG No. 09361.

In its comments in response to the DR and this Required Corrective Action, AppalReD indicated that it had not completed the physical inventory and had not tagged all assets as required. AppalReD further indicated that once the physical inventory was completed (during the month of December, 2013), it would make the adjustment to its property records.

Based on the comments provided, OCE finds that AppalReD has not taken sufficient action to satisfy Required Corrective Action items 20 and 21; therefore, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of documentation evidencing the completion of its physical inventory and the tagging of its TIG assets, as well as of the adjustments made to its property records.

Accounting Guide for LSC Recipients (2010 Ed.)

Review of AppalReD's 2012 AFS revealed that TIG No. 09361 was not separately reported in accordance with the Accounting Guide for LSC Recipients (2010 Ed.), § 2-2.1 and 45 CFR § 1628.3(g). As a result, the unspent TIG balance was determined from OPP's reconciliation report.

AppalReD was advised that, in the future, it must separately report all TIG funds on its AFS. In addition it must establish a separate funding code for each TIG grant and/or account for each TIG by maintaining a sub-ledger schedule.

Finding 38: Interviews and a limited review of procedures, practices, and documents related to TIG No. 09362 evidenced partial compliance with TIG grant assurances and other applicable LSC regulations, rules, and guidelines.

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 examines 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 Accounting Guide for LSC Recipients (2010 Ed.), certain LSC TIG assurances, the PAMM, and with any amendments of the foregoing adopted before or during the period of the TIG grant.

A limited review of relevant materials and interviews concerning AppalReD's TIG No. 09362 was conducted. AppalReD's grant award for TIG Grant No. 09362 was approved on September 21, 2009. AppalReD received a TIG award from LSC in the amount of \$41,500.00 with a term date from January 2010 – December 2010. Prior to the start of the term, AppalReD received

\$17,500.00 of the grant funds in 2009. As of June 21, 2013, AppalReD's TIG reconciliation report showed AppalReD spent \$5,125.00 of those funds.

The purpose of TIG No. 09362, as stated in the TIG Grant Award (September 21, 2009), was the creation of an effective employee online performance evaluation system ("AWARDS") integrated into AppalReD's ACMS. AppalReD's objectives were to select a Quality Management team, develop performance criteria evaluation criteria and job descriptions for integration into the system, purchase and install the system (Pro Line), and implement the AWARDS system after staff training, as well as submitting an evaluation plan and final reports to LSC. According to the Milestones (January- June 2010) AppalReD purchased and installed the Pro Line system selected a Quality Management team and began working with a vendor to develop performance criteria evaluation criteria and job descriptions for integration into the system; however, it failed to implement the AWARDS system and provide staff training on its use. Based on this information OPP determined that AppalReD's progress was incomplete (LSC Grants, Payment Summary, September 30, 2010 and January 30, 2011 Milestones).

Re-Programming of Funds

AppalReD agreed to certain restrictions concerning the use of grant funds as part of its receipt of TIG No. 09362 as set forth in the 2009 Grant Assurances. In particular, Grant Assurance No. 5 states:

All funds disbursed by LSC pursuant to this grant shall be used solely for the project for which this grant is being made. In some cases, the ultimate cost of project implementation will be less than the originally approved budget because of reductions in the anticipated costs of hardware, software or other factors. The recipient may reprogram these budgetary savings only upon the written approval of the assigned LSC TIG staff person. Absent such written approval, all remaining funds must be returned to LSC no later than 60 days from completion of the project.

In accordance with Grant Assurance No. 5, AppalReD was required to seek LSC's approval before re-programming TIG funds. A comparison between the TIG budget and reconciliation report, evidences that AppalReD did not re-program TIG expenses and therefore is in compliance with Grant Assurance No. 5 for this TIG.

Subgrant Agreements/Vendor Contracts.

A limited review of AppalReD's invoices and contracts, as well as related payments made to vendors and/or consultants, evidenced that AppalReD is in compliance with 45 CFR Part 1627 for this TIG, because all agreements were considered to be vendor agreements and/or non-programmatic in nature.

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, OMB Circular A-122 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. Interviews with the Financial Administrator, as well as a review of related timekeeping records, disclosed compliance with the timekeeping requirements of 45 CFR § 1635.1, 45 CFR Part 1630, and OMB Circular A-122.

Interviews with the Deputy Director, as well as a limited review of related timekeeping records, evidenced that AppalReD is in non-compliance with the timekeeping requirements of 45 CFR § 1610.2(b)(6) and OMB Circular A-122, because no staff members who worked on the state-of-the-art performance evaluation project maintained their time through AppalReD's timekeeping system or through the use of project activity reporting.

As a Required Corrective Action, AppalReD was advised that it must adopt a TIG timekeeping policy that enables AppalReD to identify the portion of time its employees devote to TIG projects.

In its comments in response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Policy of TIG (Technology Initiative Grant) Timekeeping Requirement. This policy had not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 23. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its Policy of TIG (Technology Initiative Grant) Timekeeping Requirement, with the date of the policy's adoption by the Board of Directors included.

PAMM

A review of asset acquisitions in relationship to TIG No. 093762 evidenced that AppalReD was in compliance with the PAMM and 45 CFR Part 1630 because no assets were purchased using TIG funds.

Accounting Guide for LSC Recipients (2010 Ed.)

Review of AppalReD's 2012 AFS revealed that TIG No. 09362 was not separately reported in accordance with the Accounting Guide for LSC Recipients (2010 Ed.), § 2-2.1, and 45 CFR § 1628.3(g). As a result, the unspent TIG balance was determined from OPP's reconciliation report.

AppalReD was advised that, in the future, it must separately report all TIG funds on its AFS. In

addition it must establish a separate funding code for each TIG grant and/or account for each TIG by maintaining a sub-ledger schedule.

Finding 39: A limited review of financial documents evidenced that AppalReD has an unexpended fund balance in its TIGs.

LSC's fund balance policies are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients. According to 45 CFR § 1628.3(g), no funds provided under a one-time or special purpose grant may be expended subsequent to the expiration date of the grant with-out prior written approval of the LSC and all unexpended funds under such grants shall be returned to LSC.

A review of AppalReD's AFS evidenced that AppalReD ended the 2012 fiscal year with a fund balance of zero dollars. However, without LSC's approval, AppalReD used \$1,074.00 of 2012 current year excess funds to offset the net asset deficit balance of \$38,670.00 (as re-stated in the AFS).

According to 45 CFR § 1628.5(a), LSC funds cannot be used to offset a deficit balance without LSC's approval. Because of this accounting transaction, AppalReD was advised that it must return \$1,074.00 to the TIG fund. As of this report date, OPP is still assessing AppalReD's TIG liability, currently reported as \$23,300.00 (#08361), \$5,188.06 (#09361), and \$12,375.00 (#09362) for a total of \$40,863.06 (which includes the \$1,074.00 2012 year excess TIG funds that AppalReD used to offset that year's deficit balance that was discovered during reconciliations).

IV. RECOMMENDATIONS¹⁸

Consistent with the findings of this report, it was recommended that AppalReD implement the following recommended actions:

1. Revise its “de-select/reject” closure categories so that these non-case closure category letters are distinct from the case closure category letters and train staff. In addition, ACMS reports that check LSC reportable and income information should be periodically prepared and reviewed;
2. Review all cases opened by the CI attorney during 2013 to ensure the proper designation of her cases as PAI or staff;
3. Develop a protocol to ensure that no cases exceeding 125% of the FPG are accepted without consideration of its policy factors and develop at least one (1) additional “catch all” question to capture all of the assets owned by an applicant;
4. Conduct compliance reviews and develop additional oversight methods and practices for obtaining and documenting evidence of the legal assistance provided to the client, income and assets screening, execution of citizenship attestations and retainer agreements;
5. Provide training to staff on the program's policies regarding 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR Part 1626, and LSC Program Letter 06-2, “Violence Against Women Act 2006 Amendment” (February 21, 2006), as well as AppalReD's exempt and non-exempt asset policy and Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011);

AppalReD advised that trainings have been conducted.

6. Revise its Accounting Manual to include a full description of the processes used to allocate PAI direct and indirect costs so that unallowable costs are eliminated and to document its accounting system for PAI related costs;

AppalReD revised its Accounting Manual to include a written procedure for the allocation of PAI direct and indirect costs. In support of its review, AppalReD supplied OCE with a copy

¹⁸ 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.

of its Journal Entry and a copy of its Cost Allocation procedures.

7. Require that the Private Bar Referral Contract that incorporates the “Acknowledgement of PAI Fee Restrictions,” be used as the standard Private Bar Referral contract in all AppalReD offices and VLAK;
8. Develop a procedure for the annual review of 45 CFR § 1620.6 written statements to ensure that all case handlers execute such statements;

AppalReD report that this has been accomplished.

9. Adopt a policy consistent with the requirements of 45 CFR Part 1628;
10. Review and strengthen internal controls policies and procedures for the Board of Directors in the areas of financial statement review, Executive Director performance evaluations, strategic plan development and oversight, and board composition, as well as adopting a Conflict of Interest policy; and
11. Develop a procedure and revise its Accounting Manual in conformance with state law regarding the escheatment of property.

In its comments to the Draft Report, AppalReD advised that it had revised its Accounting Manual to include procedures for the escheatment of unclaimed property under Kentucky law. Finally, AppalReD supplied OCE with a copy of its revised General Policies and Bank Reconciliation procedures.

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, AppalReD was required to implement the following corrective actions:

1. Remove defaults in in the critical eligibility fields of “Total Income,” “Total Assets,” and “Total Expenses” and remove “food stamps” as an option on the asset drop-down menu;

In response to the DR and this Required Corrective Action, AppalReD indicated that the defaults in the ACMS fields of “Total Income,” “Total Assets,” and “Total Expenses” have been removed. In addition, “food stamps” as a pick list option has been removed from the asset drop down menu. Finally, AppalReD noted that the revisions to its “de-select/reject” closure categories have been implemented.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 1; however, AppalReD must submit within 90 days of the issuance of this Final Report, a copy of its ACMS screens reflecting the modifications that have been made.

2. Require staff to screen all applications for income eligibility consistent with the requirements of its policy and 45 CFR § 1611.5(a);

In response to the DR and this Required Corrective Action, AppalReD indicated that it now requires that every file in which an applicant’s income exceeds 125% of the FPG to be reviewed by the CI attorney prior to acceptance and shortly thereafter by the Litigation Director. Prior to closing, these files are then reviewed by a member of AppalReD’s management team. In addition, staff has been trained and AppalReD intends to remind staff concerning the importance of income eligibility screening.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 2; however, in order to close this item completely, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of the Executive Director’s instruction to staff, its training agenda(s), attendance list(s), and a statement describing the information provided to staff as part of the training.

3. Require that all cases funded with LSC funds or reported to LSC in the CSRs contain evidence of asset screening consistent with LSC regulation;

In response to the DR and this Required Corrective Action, AppalReD indicated that it now requires the asset eligibility determination in every file to be reviewed by a

member of its management team. In addition, a field containing a “catch all” question was programmed into the ACMS to enhance its asset screening process. Finally, AppalReD reported that it has conducted training for staff and intends to remind staff concerning the importance of asset eligibility screening.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 3; however, in order to completely close this item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of the Executive Director’s instruction to staff, its training agenda(s), attendance list(s), and a statement describing the information provided to staff as part of the training, as well as a copy of its ACMS screens reflecting the modifications that have been made.

4. Review its financial eligibility policy to ensure that it is consistent with LSC regulation and § 509(h), P.L.104-134, 110 Stat. 1321 (1996) and that it is specific enough for staff to understand what assets should be considered when making an eligibility determination;

In response to the DR and this Required Corrective Action, AppalReD indicated that it has determined that its asset policy is consistent with LSC regulation and authorities. AppalReD has further provided its staff with training and has determined that staff understands the assets to be included and excluded during eligibility screening.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 4; however, in order to completely close this item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its training agenda(s), attendance list(s), and a statement describing the information provided to staff as part of this training.

5. Require that all cases contain evidence of verification of citizenship/eligible alien status as required by 45 CFR §§ 1626.6 and 1626.7, including signed citizenship attestations or evidence of eligible alien status when required;

In response to the DR and this Required Corrective Action, AppalReD indicated that it now requires the 45 CFR Part 1626 information in every file be reviewed by a member of its management team. AppalReD has further provided its staff with training concerning the requirements of 45 CFR Part 1626, and LSC Program Letter 06-2, “Violence Against Women Act 2006 Amendment” (February 21, 2006).

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 5; however, in order to completely close this

item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its training agenda(s), attendance list(s), and a statement describing the information provided to staff as part of its training.

6. Require all offices, including VLAK, to utilize citizenship attestation forms which comply with CSR Handbook (2008 Ed., as amended 2011);

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of a citizenship attestation form which is to be used in offices including VLAK. The form states: "I certify that I am a United States Citizen. Name: _____ Date: _____."

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 6.

7. Revise § E (2) of AppalReD's Client Eligibility policy so that its disclosure of information provisions are consistent with LSC authority;

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Disclosure of Information Policy.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 7.

8. Require that all cases reported in the CSRs contain a description of the legal assistance provided to the client consistent with the CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided);

In response to the DR and this Required Corrective Action, AppalReD indicated that a member of AppalReD's management team now reviews every file to ensure that it contains documentation of the legal assistance provided to the client. In addition, on December 6, 2013, AppalReD conducted training for staff concerning the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 8; however, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its training agenda(s), attendance list(s), and a statement describing the information provided to staff as part of the training.

9. Develop a process by which VLAK cases and program cases are reviewed to prevent duplicate reporting;

In response to the DR and this Required Corrective Action, AppalReD reported that the CI attorney and the Directing Attorney of VLAK meet monthly to review cases for potential duplicate reporting.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 9.

10. Revise its Outside Practice of Law (Attorneys) policy so that it conforms to 45 CFR §§ 1604(b) and 1604.6;

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its proposed Policy on Outside Practice of Law. This policy had not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 10. It is recommended that AppalReD define "Special Counsel" to clarify that these attorneys are not full-time employees of AppalReD. It is further recommended that AppalReD include the language of 45 CFR § 1604.4 (c)(4) in its policy.

In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its revised 45 CFR Part 1604 policy, with the date of the policy's adoption by the Board of Directors included.

11. Develop a procedure to require that LSC funding is allocated to the fund in which the recipient's LSC grant is recorded consistent with 45 CFR § 1630.12;

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its proposed Cost Allocation procedures (revised on December 7, 2013).

Based on the comments provided and a review of the procedures provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 11. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, evidence of the date on which the revised cost allocation procedures went into effect.

12. Develop and implement policies to safeguard that no LSC funds are used to pay for non-mandatory membership fees or dues;

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its revised Cost Allocation policy and procedures (December 7, 2013). The policy provides that LSC funds will only be used to pay Kentucky Bar Association dues and that LSC funds cannot be used to pay for other “optional” membership fees.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 12.

13. Develop and implement a subgrant policy pursuant to 45 CFR § 1627.8;

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its proposed subgrant policy (December 7, 2013). This policy had not yet been adopted by AppalReD’s Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 13. It is recommended that in its policy that AppalReD define subrecipient (pursuant to 45 CFR § 1627.2(b)(1)), that it include provisions for the orderly termination of the grant in the event that AppalReD’s funding is terminated, *suspended*, or reduced, and that it specify its audit responsibilities (pursuant to 45 CFR §§ 1627.4(c) and 1627.6).

In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its 45 CFR Part 1627 policy, with the date of the policy’s adoption by the Board of Directors included.

14. Provide information showing good cause why AppalReD failed to seek a waiver of its 2011 PAI requirement;

In response to the DR and this Required Corrective Action, AppalReD explained that at the end of the fiscal year 2011 it believed it had expended 12.5% of its basic field funding on its PAI activities. However, “after an in depth review of all of the allocations to PAI,” it discovered that it had incorrectly allocated some salaries to the PAI effort. After the errors were corrected, it became apparent that the 12.5% PAI requirement was not met and that the time period in which AppalReD was to have requested a waiver had passed. Nonetheless a waiver was requested; however, it was denied. AppalReD indicated that in “the fiscal year 2012, the PAI requirement was met, as well as the additional unmet amount for 2011.” OCE review of the 2012 AFS confirmed this statement.

Based on the comments provided, OCE finds that AppalReD has established good cause for why it failed to seek a waiver of its 2011 PAI requirement and that AppalReD has taken sufficient action to satisfy Required Corrective Action item 14.

15. Review PAI costs apportioned to the VLAK Directing Attorney's salary and ensure that they are restated after a review;

In response to the DR and this Required Corrective Action, AppalReD indicated that, after review of PAI time allocations, its journal entries have been revised to include only properly allocated charges. In addition, AppalReD revised its Accounting Manual to include a written procedure for the allocation of PAI direct and indirect costs. In support of its review, AppalReD supplied OCE with a copy of its Journal Entry and a copy of its Cost Allocation procedures.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 15.

16. Revise its Policy on Class Actions to ensure the policy conforms to 45 CFR § 1617.2(b)(1);

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Class Action Policy. This policy has not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 16.

In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its revised 45 CFR Part 1617 policy, with the date of the policy's adoption by the Board of Directors included.

17. Revise its Policy for Representation in Certain Eviction Proceedings on Redistricting to ensure the policy conforms to 45 CFR § 1633.3(b);

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Part 1633-Restriction on Representation in Certain Eviction Proceedings Policy and 45 CFR §1633.4 form. This policy had not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 17. In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its revised 45 CFR Part 1633 policy, with the date of the policy's adoption by the Board of Directors included.

18. Take all actions required under applicable law to escheat unclaimed property in its possession;

In response to the DR and this Required Corrective Action, AppalReD indicated that all unclaimed property has been disclosed to the state of Kentucky and escheated as required under applicable law. In addition, AppalReD has revised its Accounting Manual to include procedures for the escheatment of unclaimed property under Kentucky law. Finally, AppalReD supplied OCE with a copy of its revised General Policies and Bank Reconciliation procedures.

Based on the comments provided, OCE finds that AppalReD has taken sufficient action to satisfy Required Corrective Action item 18; however, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of documentation evidencing that it has made the applicable disclosure(s) and/or escheatment(s).

19. Return the 2011 liquidated deficit balance in the amount of \$6,068.00 to the LSC fund. To facilitate this transaction, AppalReD must transfer of \$6,068.00 to the Basic Field fund using non-LSC funds to correct the amount reported on the 2012 AFS;

In response to the DR and this Required Corrective Action, AppalReD indicated that it intends to transfer \$6,068.00 to its LSC Basic Field fund using non-LSC funds. The amount will be corrected on the 2012 AFS.

Based on the comments provided, OCE finds that AppalReD has not taken sufficient action to satisfy Required Corrective Action item 19. Given that it is now 2013, it is no longer advisable to report the return of the liquidated deficit balance (when made) on the 2012 AFS; therefore AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of documentation evidencing that it has returned the 2011 liquidated deficit balance (\$6,068.00) to the LSC basic field fund using non-LSC funds to correct the amount reported on the 2013 AFS.

20. Perform a physical inventory and tag assets purchased with funds from TIG No. 09361;

In response to the DR and this Required Corrective Action, AppalReD indicated that its physical inventory would be completed during the month of December 2013.

Based on the comments provided, OCE finds that AppalReD has not taken sufficient action to satisfy Required Corrective Action item 20; therefore, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of documentation evidencing that its physical inventory has been completed and all assets purchased with funds from TIG No. 09361 have been tagged.

21. Make an adjusting entry to the property record to accurately report the property asset acquisition costs on TIG No. 09361's inventory schedule of assets;

In response to the DR and this Required Corrective Action, AppalReD indicated that it will make the adjustment to its property records upon completion of its physical inventory.

Based on the comments provided, OCE finds that AppalReD has not taken sufficient action to satisfy Required Corrective Action item 21; therefore, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of documentation evidencing that the adjustment to AppalReD's property records have been made.

22. Adopt a TIG "re-programming" policy that requires AppalReD to seek LSC approval before the re-programming of any TIG funds; and

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Policy on Reprogramming of TIG (Technology Initiative Grant) funds. This policy has not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 22.

In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its Policy on Reprogramming of TIG (Technology Initiative Grant) funds, with the date of the policy's adoption by the Board of Directors included.

23. Adopt a TIG timekeeping policy that enables AppalReD to identify the portion of time its employees devote to TIG projects.

In response to the DR and this Required Corrective Action, AppalReD supplied OCE with a copy of its Policy of TIG (Technology Initiative Grant) Timekeeping Requirement. This policy has not yet been adopted by AppalReD's Board of Directors.

Based on the comments provided and a review of the policy provided, OCE finds that AppalReD has taken partial action to satisfy Required Corrective Action item 23.

In order for OCE to close out this Required Corrective Action item, AppalReD must submit, within 90 days of the issuance of this Final Report, a copy of its Policy of TIG (Technology Initiative Grant) Timekeeping Requirement, with the date of the policy's adoption by the Board of Directors included.

VI. ADDITIONAL INFORMATION REQUIRED

To resolve open questions involving the relationship of AppalReD and VLAK, AppalReD was required, with its comments to this Draft Report, to provide further information as to whether VLAK's conflicts practices and procedures and "Chinese wall" satisfy the requirements of the Kentucky Supreme Court. It was recommended that AppalReD obtain an assessment of its practices and procedures from a disinterested third party who has expertise in the Canons of Ethics and Code of Professional Responsibility of the state of Kentucky.

In response to the DR and this recommendation, AppalReD indicated that a disinterested third party would be hired to provide an assessment of AppalReD's conflict practices and procedures.

Based on the comments provided, OCE requests that AppalReD submit, within 90 days of the issuance of this FR, a copy of the third party's assessment of AppalReD's conflict practices and procedures.

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December 2, 2013

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

**Re: Response to LSC's Draft Report for Compliance Review Visit June 17-21, 2013
Recipient No. 618030**

Dear Ms. Rath:

Please regard this correspondence as our response to LSC's Office of Compliance and Enforcement Draft Report for Compliance Review Visit June 17-21, 2013. Our response is as follows:

Response to Section IV. Recommendations:

1. Revise its "de-select/reject" closure categories so that these non-case closure category letters are distinct from the case closure category letters and provide its staff with training and generate additional automated case management reports that check LSC reportable and income information;

Response #1:

The revision to our "de-select/reject" closure categories within our ACMS has been made. Further, the Directing Attorney of each individual office will be trained as recommended and then will serve as the trainer for the staff in each respective Directing Attorney Office. Automated case management reports that check LSC reportable and income information will be generated on a quarterly basis with the goal of making it monthly reporting.

2. Review all cases opened by the CI attorney during 2013 to ensure the proper designation of her cases as PAI or staff;

Response #2:

All cases opened by the CI attorney during 2013 have been reviewed and proper designations have been made within our ACMS.

3. Develop a protocol to ensure that no cases exceeding 125% of the FPG are accepted without consideration of its policy factors and develop at least one (1) additional "catch all" question to capture all of the assets owned by an applicant;

Response #3:

For every case exceeding 125% of the FPG will not be accepted without consideration of its policy factors and this will be ensured by the central intake attorney being held responsible to review every case exceeding 125% of the FPG and then comparing those facts with the policy factors of AppalReD. The CI Attorney will then make a decision as to whether or not such case will be accepted by AppalReD. This matter shall then be reviewed by the Litigation Director. An additional "catch all" question to capture all of the assets owned by the applicant has been implemented into ACMS.

4. Conduct compliance reviews and develop additional oversight methods and practices for obtaining and documenting evidence of the legal assistance provided to the client, income and assets screening, execution of citizenship attestations and retainer agreements;

Response #4:

Heightened awareness by the Directing Attorneys for each respective office of this issue is being directed by the Executive Director to ensure strict file compliance with all LSC regulations and laws. Further, the Deputy Director/Litigation Director has been tasked by the Executive Director to make it a priority in regard to that person's job responsibility to conduct compliance reviews and develop additional oversight methods in regard to obtaining documentation of legal assistance provided to the client, income and assets screening, execution of citizenship attestations and retainer agreements.

5. Revise its "de-select/reject" closure categories so that these non-case closure category letters are distinct from the case closure category letters and provide its staff with training and generate additional automated case management reports that check LSC reportable and income information;

Response #5:

Please see response to **Recommendation #1**. It seems that this may be a duplicate of that Recommendation.

6. Provide training to staff on the program's policies regarding 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR Part 1626, and LSC Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), as well as AppalReD's exempt and non-exempt asset policy and Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011);

Response #6:

Training has been provided.

7. Revise its Accounting Manual to include a full description of the processes used to allocate PAI direct and indirect costs so that that unallowable costs are eliminated and to document its accounting system for PAI related costs;

Response #7:

Revisions are being made within our Accounting Manual and will be presented for approval at our regularly scheduled Board Meeting in December. *See the attached marked "Response #7 Section IV Recommendations"*.

8. Require that the Private Bar Referral Contract that incorporates the "Acknowledgement of PAI Fee Restrictions," be used as the standard Private Bar Referral contract in all AppalReD Offices and VLAK;

Response #8:

Private Bar Referral Contract has been prepared. A copy of which is attached hereto marked as "*Response #8 Section IV Recommendations*".

9. Develop a procedure for the annual review of 45 CFR § 1620.6 written statements to ensure that all case handlers execute such statements;

Response #9:

A procedure has been developed and the following language added to our current "Procedures for Establishment of Priorities": "G) 4. The Director/Directing/Managing Attorney of each office will review documentation of written statements by staff/case handlers annually so as to verify that each

staff/case handler have executed and understand the current year program priorities.”

10. Adopt a policy consistent with the requirements of 45 CFR Part 1628;

Response #10:

Policy prepared. Awaiting Board approval at the December 2013 Board Meeting. A copy of which is attached hereto marked as “*Response #10 Section IV Recommendations*”.

11. Review and strengthen internal controls policies and procedures for the Board of Directors in the areas of financial statement review, performance evaluations of the Executive Director, strategic plan development and oversight, and board composition, as well as adopting a Conflict of Interest Policy; and

Response #11:

Policies have been prepared. Awaiting Board approval at the December 2013 Board Meeting. A copy of which is attached hereto marked as “*Response #11 Section IV Recommendations*”.

12. Develop a procedure and revise its Accounting Manual in conformance with state law regarding the escheatment of property.

Response #12:

Prepared and Accounting Manual revised. Manual will be presented at the December 2013 Board Meeting. See the attached marked as “*Response #12 Section IV Recommendations*”.

Response to Section V. Required Corrective Actions:

1. Remove defaults in the critical eligibility fields of “Total Income,” “Total Assets,” and “Total Expenses” and remove “food stamps” as an option on the asset drop-down menu;

Response #1:

These defaults have been removed as well as “food stamps” as an option on the asset drop-down menu.

2. Require staff to screen all applications for income eligibility consistent with the requirements of its policy and 45 CFR § 1611.5(a);

Response #2:

A directive and mandate will be made by the Executive Director requiring and emphasizing that all staff screen all applications for income eligibility consistent with the requirements of its policy and 45 CFR § 1611.5(a).

3. Require that all cases funded with LSC funds or reported to LSC in the CSRs contain evidence of asset screening consistent with LSC regulation;

Response #3:

This requirement is being reemphasized and mandatory training for all employees will be conducted by the Directing Attorney or Managing Attorney in each respective office.

4. Review its financial eligibility policy to ensure that it is consistent with LSC regulation and § 509(h), P.L. 104-134, 110 Stat. 1321 (1996) and that it is specific enough for staff to understand what assets should be considered when making an eligibility determination;

Response #4:

Financial eligibility policies have been reviewed and are consistent with LSC regulation and § 509(h), P.L. 104-134, 110 Stat. 1321 (1996) and it is specific enough for staff to understand what assets should be considered when making an eligibility determination. Training will be conducted to educate the staff and all employees concerning this requirement.

5. Require that all cases contain evidence of verification of citizenship/eligible alien status as required by 45 CFR § 1626.6 and 1626.7, including signed citizenship attestations or evidence of eligible alien status when required;

Response #5:

The requirement has now been met and implemented. Additional training will be provided.

6. Require all offices, including VLAK, to utilize citizenship attestation forms which comply with CSR Handbook (2008 Ed., as amended 2011);

Response #6:

This requirement has now been met and implemented. A copy of the verification of Citizenship/Eligible Alien Form is attached hereto marked as "***Response #6 Section V Recommendations***".

7. Revise § E (2) of AppalReD's Client Eligibility policy so that disclosure of information provisions are consistent with LSC authority;

Response #7:

The following language will be added to § E (2) of AppalReD's Client Eligibility policy: "Also incorporated herein verbatim and attached hereto is AppalReD's "Disclosure of Information Policy" as well as the requirements of 45 CFR 1619 et. seq.

Attached hereto is AppalReD's Disclosure of Information Policy marked as "***Response #7 Section V Recommendations***".

8. Require that all cases reported in the CSRs contain a description of the legal assistance provided to the client consistent with the CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided);

Response #8:

Requirement is now being met and implemented and additional training on such will be conducted with the Directing Attorney of each respective office on or about December 9, 2013.

9. Develop a process by which VLAK cases and program cases are reviewed to prevent duplicate reporting;

Response #9:

A process has been developed that the VLAK Directing Attorney and the Central Intake Attorney meet once per month to ensure that cases are not being duplicated in reporting.

10. Revise its Outside Practice of Law (Attorneys) policy so that it conforms to 45 CFR §§ 1604(b) and 1604.6;

Response #10:

See the attached revised policy marked as "*Response #10 Section V Recommendations*".

11. Develop a procedure to require that LSC funding is allocated to the fund in which the recipient's LSC grant is recorded consistent with 45 CFR § 1630.12;

Response:

Procedure prepared and Accounting Manual revised. Manual will be presented for approval at the December 2013 Board Meeting. See the attached marked as "*Response #11 Section V Recommendations*".

12. Develop and implement policies to safeguard that no LSC funds are used to pay for non-mandatory membership fees or dues;

Response:

Prepared and Accounting Manual revised. Manual will be presented for approval at the December 2013 Board Meeting. See the attached marked as "*Response #12 Section V Recommendations*".

13. Develop and implement a subgrant policy pursuant to 45 CFR § 1627.8;

Response:

Prepared and Accounting Manual revised. Manual will be presented for approval at the December 2013 Board Meeting. See the attached marked as "*Response #13 Section V Recommendations*".

14. Provide information showing good cause why AppalReD failed to seek a waiver of its 2011 PAI requirements;

Response:

It was believed at the end of fiscal year 2011 that the PAI requirements had been met. However, after an in depth review of all of the allocations to PAI, it was discovered that there had been some salaries allocated to the PAI efforts that were posted incorrectly. Reclassification of these salaries to the proper accounts resulted in the PAI requirement not being met for 2011. The discovery of the

erroneous classifications was past the required deadline to request a waiver. However, a request was still sent and denied due to it being after the deadline. In fiscal year 2012 the PAI requirement was met as well as the additional unmet amount for 2011.

15. Review PAI costs apportioned to the VLAK Directing Attorney's salary and ensure that they are restated after a review;

Response:

A review of all of the VLAK Pro Bono Coordinator's (Mary Going) salary was reviewed and a journal entry prepared and posted to restate any time that was incorrectly recorded as PAI costs. Journal entry attached and marked as "***Response #15 Section V Recommendations***".

16. Revise its Policy on Class Actions to ensure the policy conforms to 45 CFR § 1617.2(b)(1);

Response:

See the attached revised policy marked as "***Response #16 Section V Recommendations***".

17. Revise its Policy for Representation in Certain Eviction Proceedings on Redistricting to ensure the policy conforms to 45 CFR § 1633.3(b);

Response:

See the attached revised policy marked as "***Response #17 Section V Recommendations***".

18. Take all actions required under applicable law to escheat unclaimed property in its possession;

Response:

Unclaimed property has been escheated and reported to the state of Kentucky as required by law.

19. Return the 2011 liquidated deficit balance in the amount of \$6,068.00 to the LSC fund. To facilitate this transaction, AppalReD must make a transfer of \$6,068.00

to the Basic Field fund using non-LSC funds to correct the amount reported on the 2012 AFS;

Response:

Transfer will be made during the month of December 2013 to the Basic Field fund using non-LSC funds to correct the amount reported on the 2012 AFS.

20. Perform a physical inventory and tag assets purchases with funds from TIG No. 09361;

Response:

Inventory is in progress and will be completed in December 2013. Travel distance to all office locations have hindered a speedy inventory.

21. Make an adjusting entry to the property record to accurately report the property asset acquisition costs on TIG No. 09361's inventory schedule of assets;

Response:

Adjusting entry will be completed in December when the inventory process (which is in progress) has been completed.

22. Adopt a TIG "re-programming" policy that requires AppalReD to seek LSC approval before the re-programming of any TIG funds; and

Response:

TIG Reprogramming Policy has been prepared and will be presented to the Board for approval at its December 2013 meeting. See the attached marked as "*Response #22 Section V Recommendations*".

23. Adopt a TIG timekeeping policy that enables AppalReD to identify the portion of time its employees devote to TIG projects.

Response:

TIG Timekeeping policy has been prepared and will be presented to the Board for approval at its December 2013 Board meeting. See the attached marked as "*Response #23 Section V Recommendations*".

Section VI. Additional Information Required

To resolve open questions involving the relationship of AppalReD and VLAK, AppalReD is required, with its comments to this Draft Report, to provide further information as to whether VLAK's conflicts practices and procedures and "Chinese Wall" satisfy the requirements of the Kentucky Supreme Court. It is recommended that AppalReD obtain an assessment of its practices and procedures from a disinterested third party who has expertise in the Canons of Ethics and Code of Professional Responsibility of the state of Kentucky.

Response:

A disinterested third party will be hired to investigate and prepare an assessment of its practices and procedures relative to AppalReD and VLAK conflicts.

Sincerely,



Lance A. Daniels
Executive Director
Attorney at Law

Local Travel – Where possible, charge to programs directly.

Conferences & Trainings – Charge directly to the program involved where possible.

Dues & Admissions – Charge directly to the program involved where possible. LSC only pays for KBA dues since they are required. LSC does not pay for optional dues.

Law Library – Charge directly where possible, balance to LSC.

Litigation – Charge directly where possible; a program expense.

Community Relations – Charge to unrestricted income.

Client Training – Charge to Unrestricted Funds. (Client Council expenses)

Board Expense – Charge to LSC and Unrestricted Funds.

Meeting Expense – Charge directly where possible, otherwise charge to LSC and to Unrestricted Funds.

Other Operating Expenses – Charge directly where possible; otherwise, allocated based on number of staff. Charge to LSC and Unrestricted Funds.

Insurance – This line item covers both professional liability and casualty insurance. Charged directly where possible, otherwise allocated based on number of staff.

Interest Income - Prior to 2003, LSC had excess LSC funds so interest was credited to LSC on the audit. Now with using all LSC monies and having excess unrestricted income, credit LSC with only 1/3 checking account interest income. Interest income is recorded to LSC unless it is derived from an account that does not contain any LSC funds, in such case the interest income is then allocated to the grant which funds generated the interest.

Interest and Bank Fees – Charge to Unrestricted Funds

PAI Expense – An amount equal to 12.5% of the LSC annualized basic field award is devoted to the involvement of private attorneys in the delivery of legal assistance to eligible clients. AppalReD Legal Aid allocates direct cost associated with VLAK (Volunteer Lawyers of Appalachia KY), which is a Pro-Bono Program that is designed to increase the availability of direct civil legal services to the areas low income community by networking attorneys and law firms that wish to donate their expertise and resources to the community. Other cost not associated with VLAK that are directly involved with PAI efforts are allocated directly to PAI expense as well. Only direct cost is charged to PAI expense. The financial reporting of PAI activity, support and expenses related to the effort are reported separately in our annual financial statements by either a separate schedule in the financial statements reporting on grant activity or a note to the financial statements that accounts for the entire PAI allocation.

PRIVATE BAR REFERRAL CONTRACT

This agreement, made and entered into this _____ day of _____, 20____, by and between _____, hereinafter called the "Attorney" and Appalachian Research and Defense Fund of KY, Inc., hereinafter called "ARDF." ARDF hereby employs and retains the attorney to represent _____ hereinafter called "Client," and provide necessary legal services regarding a _____ in accordance with the following conditions:

ARDF agrees to compensate the Attorney for legal services in connection with the representation of client at \$50.00 per hour billed in 1/10 hourly increments; or \$70.00 per court appearance, whichever is greater. The maximum fee for all services shall not exceed \$ _____ without the prior written consent of the Director.

LSC regulations prohibit Attorney PAI compensation from exceeding 50% of the amount of the Attorney's annual professional income, and may not in any event exceed \$25,000 in any calendar year. Attorney shall not bill for any compensation if that compensation will result in a violation of these regulations. By submission of any billing, Attorney represents that the Attorney has verified that the LSC fee restrictions have not been violated.

ARDF will not be responsible for court costs or litigation expenses except in limited cases with the prior written approval of the Director. The Attorney agrees to move the court to proceed In Forma Pauperis to relieve the Client of court costs when factually appropriate, or when requested to do so by ARDF.

The Attorney agrees to maintain accurate records of all time spent on cases pursuant to this contract in one-tenth hourly increments, on forms furnished by ARDF, and to complete any other forms which might be required of the Attorney by ARDF pursuant to his/her representation of Client under this contract. These forms may include, but not limited to, acceptance forms, status forms, and case closure forms.

The Attorney agrees to routinely provide copies to ARDF of pleadings and other relevant papers and orders in the case handled pursuant to this contract.

The Attorney agrees to bill ARDF on a monthly basis, and to submit all time records and other forms that might be required by ARDF at such time. ARDF agrees to pay the Attorney within two weeks of receipt and approval of the Attorney's billing.

The Attorney agrees and represents that he/she will not bill and/or be paid in excess of amounts listed in this contract without prior written approval by the Director.

The Attorney agrees to represent Client specifically referred to him/her pursuant to this contract only after ARDF has screened the client's eligibility and referred to the client to the Attorney.

The Attorney agrees not to charge any fees for services performed under this contract to the client.

The Attorney agrees to inform ARDF whenever it appears to him/her that a conflict of interest or the appearance of one exists, for any case referred to the Attorney by ARDF pursuant to this contract.

If the Attorney feels that he/she can no longer continue representation of the client in a manner consistent with the Code of Professional Responsibility the Attorney may discontinue representation, file an appropriate motion to withdraw, and if granted refer the client back to ARDF. Any such referral shall include the Client's complete file.

The Attorney agrees not to seek Attorney fees in cases under this contract except with prior written approval of the Director, or in connection with sanctions imposed by court rules, including Rule 11. An Attorney may seek reimbursement of costs and expenses paid by the Attorney or ARDF.

The ARDF agrees to maintain sufficient professional liability insurance to cover any claims which may arise out of Attorney's representation of Client under this contract.

This contract is not assignable by either party.

This contract is revocable by either party upon receipt of written notice at least ten (10) days in advance, so long as the Client is not prejudiced thereby, and not a violation of the Rules of Court, or the Canons of Professional Responsibility.

The Attorney retains the right to decline representation of Clients referred by ARDF under extenuating or special circumstances.

Equal Opportunity in the Provision of Legal Services Contract attorneys understand and agree it is the policy of the Appalachian Research and Defense Fund of Kentucky, Inc., to make no distinction in the provision of legal assistance to eligible persons because of race, color, religion, sex, national origin or any other consideration prohibited by law.

ACKNOWLEDGMENT OF PAI FEE RESTRICTIONS

45 CFR §1627.2(b)(1) restricts PAI participants fees to an annual maximum of \$25,000. The \$25,000 maximum fee ceiling is further restricted by 45 CFR §1600.1, in that notwithstanding the \$25,000 ceiling, the participant's fees may not be greater than fifty (50%) of their professional income, which is determined without regard to other non-professional income. For example, if an attorney's is retired, disabled, or otherwise not practicing law full-time, and has an annual income from professional services of \$30,000, and non-professional income of \$20,000, 45 CFR §1600.1 limits the attorney's annual PAI income to \$14,700 (or 49%) of the professional income.

I agree that I will not submit any PAI statements for fees which violate 45 CFR §1600.1 or 45 CFR §1627.2(b) (1).

PBI FEE SCHEDULE

For documented time, in the representation of a client, including travel: \$50.00/hr; or \$70.00 per court appearance, whichever is greater; subject to the following limitations:

UNCONTESTED DIVORCE¹.....Maximum \$275.00

CONTESTED DIVORCES².....Maximum \$600.00

SEPARATE CUSTODY
PROCEEDINGS³.....Maximum \$600.00

UNCONTESTED CUSTODY⁴.....Maximum \$275.00

POST-JUDGMENT MOTION.....Maximum \$140.00

BANKRUPTCY

Chapter 7Maximum \$750.00

Chapter 13Maximum \$1,000.00

CONSUMER DEFENSE⁵Maximum \$600.00

STATED MAXIMUM MAY BE EXCEEDED ONLY BY PRIOR WRITTEN APPROVAL OF THE DIRECTOR. NOTE: Effective for cases contracted after June 11, 2012

Appalachian Research & Defense
Fund of Kentucky, Inc
120 North Front Avenue
Prestonsburg, KY 41653

By: _____
_____, Attorney-at-Law

KBA No. _____

S.S. #: _____

Or, Federal I.D.#: _____

(Email) _____

() _____

By: _____
LANCE A. DANIELS,
Executive Director

¹ Defined as a divorce which is finalized without a response having been filed, FCRPP, Rule 3.

² Defined as a divorce which is finalized with a response having been filed and includes contested issues regarding children, visitation, property issues, and/or support.

³ This requires a separate custody petition and not a part of a dissolution of marriage.

⁴ Defined as a matter which is finalized without a response having been filed, but includes issues such as custody, visitation and child support.

⁵ Includes matters such as debt collections; deficiency claims; landlord-tenant; check cashing services/claims, etc.

POLICY ON
RECIPIENT FUND BALANCE
45 CFR 1628

Appalachian Research and Defense Fund of Ky, Inc. (AppalReD Legal Aid), herein referred to as "RECIPIENT", hereby adopts the following policy according to 45 CFR Part 1628:

- a. RECIPIENT is permitted to retain from one fiscal year to the next LSC fund balances up to 10% of its LSC Support.
- b. RECIPIENT may request a waiver to retain a fund balance up to a maximum of 25% of its LSC support only for the following extraordinary and compelling circumstances.
- c. RECIPIENT may request a waiver to retain a fund balance in excess of 25% of RECIPIENT's LSC support only for the following extraordinary and compelling circumstances when it receives an insurance reimbursement, the proceeds from the sale of real property, or a payment from a lawsuit in which it was a party.
- d. RECIPIENT understands that a waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(d).
- e. In the absence of the waiver, a fund balance in excess of 10% of LSC support shall be repaid to the Corporation. If a waiver of the 10% ceiling is granted, any fund balance in excess of the amount permitted to be retained shall be repaid to the Corporation.
- f. A recovery of an excess fund balance pursuant to this part does not constitute a termination under 45 CFR part 1606.
- g. One-time and special purpose grants awarded by the Corporation are not subject to the fund balance policy set forth in this part. Revenue and expenses relating to such grants shall be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the expiration date of the grant without prior written approval of the Corporation. Absent approval from the Corporation all unexpended funds under such grants shall be returned to the Corporation.

PROCEDURES

Procedures to carry out this Policy shall be in accordance with 45 CFR § 1628.4.

**RESPONSIBILITIES OF THE
APPALACHIAN RESEARCH AND DEFENSE FUND OF KY., INC.
(APPALRED LEGAL AID) BOARD OF DIRECTORS
AND BOARD MEMBERS**

approved by the Board of Directors _____

What are the basic responsibilities of the APPALRED board?

Ten Basic Responsibilities:

1. Determine APPALRED's mission and purpose. It is the board's responsibility to create and review a statement of mission and purpose that articulates the organization's goals, means, and primary constituents served.
2. Select the Executive Director. The board must reach consensus on the Executive Director's responsibilities and undertake a careful search to find the most qualified individual for the position.
3. Provide proper financial oversight. The board must assist in developing the annual budget and ensuring that proper financial controls are in place.
4. Ensure adequate resources. One of the board's foremost responsibilities is to provide adequate resources for the organization to fulfill its mission.
5. Ensure legal and ethical integrity and maintain accountability. The board is ultimately responsible for ensuring adherence to state and national legal standards including laws and contract provisions concerning the Legal Services Corporation and the Legal Services Corporation of Kentucky, and ethical norms including the Kentucky Rules of Professional Conduct.
6. Ensure effective organizational planning. The board must actively participate in an overall planning process and assist in implementing and monitoring the plan's goals.
7. Recruit and orient new board members and assess board performance. The board has a responsibility to articulate prerequisites for candidates, orient new members, and periodically and comprehensively evaluate its own performance.
8. Enhance APPALRED's public standing. The board should clearly articulate the organization's mission, accomplishments, and goals to the public and garner support from the community.
9. Determine, monitor, and strengthen APPALRED's programs and services. The board's responsibility is to determine which programs are consistent with the organization's mission and to monitor their effectiveness.

10. Support the Executive Director and assess his or her performance. The board should ensure that the Executive Director has the moral and professional support he or she needs to further the goals of the organization.

What are the responsibilities of individual APPALRED board members?

Individual Board Member Responsibilities:

- Attend all board and committee meetings and functions, such as special events.
- Be informed about the organization's mission, services, policies, and programs.
- Review agenda and supporting materials prior to board and committee meetings.
- Serve on committees or task forces and offer to take on special assignments.
- Make a personal financial contribution to the organization
- Assist staff by identifying, and contacting as requested, local residents who can make or influence significant contributions or allocations to the organization.
- Inform others about the organization.
- Suggest possible nominees to the board who can make significant contributions to the work of the board and the organization
- Keep up-to-date on developments in the organization's field.
- Follow conflict of interest and confidentiality policies.
- Refrain from making special requests of the staff.
- Assist the board in carrying out its fiduciary responsibilities, such as reviewing the APPALRED's annual financial statements.

Personal characteristics to consider

- Ability to: listen, analyze, think clearly and creatively, work well with people individually and in a group.
- Willing to: prepare for and attend board and committee meetings, ask questions, take responsibility and follow through on a given assignment, contribute personal and financial resources in a generous way according to circumstances, open doors in the community, evaluate oneself.
- Develop certain skills if you do not already possess them, such as to: cultivate and solicit funds, cultivate and recruit board members and other volunteers, read and understand financial statements, learn more about the work of APPALRED.
- Possess: honesty, sensitivity to and tolerance of differing views, a friendly, responsive, and patient approach, community-building skills, personal integrity, a developed sense of values, concern for your nonprofit's development, a sense of humor.

Appalachian Research and Defense Fund of Ky., Inc.
Board of Directors Conflict of Interest Policy,
Acknowledgement and Disclosure Form

In their capacity as Board of Directors ("BODs"), the members of the Board of the Appalachian Research and Defense Fund of Ky., Inc. ("APPALRED") must act at all times in the best interests of the APPALRED. The purpose of this policy is to help inform the Board about what constitutes a conflict of interest, assist the Board in identifying and disclosing actual and potential conflicts, and help ensure the avoidance of conflicts of interest where necessary.

I. Policy

BODs have a fiduciary duty to conduct themselves without conflict to the interests of the APPALRED. In their capacity as Board of Directors, they must subordinate personal, individual business, third-party, and other interests to the welfare and best interest of the APPALRED.

It is the policy of the BODs to assure that the affairs of APPALRED are managed in an ethical manner, free from the temptations for personal gain that conflicting interests may provide, and that BODs be free of significant individual or institutional conflicts of interest with APPALRED or its client community.

It is the policy of BODs to conduct its business affairs fairly and impartially. BODs should avoid conduct that may raise questions as to APPALRED's honesty, integrity, or reputation, or activities that could cause embarrassment to APPALRED or damage its reputation. The BODs have a responsibility to manage, reduce, or eliminate any actual or potential conflicts of interest. Effective implementation of this policy requires that actual or potential conflicts of interest be promptly and fully disclosed.

II. Existence of a Conflict of Interest

A BOD has a conflict of interest if the BOD's judgment and discretion are, or may be, influenced by a relationship, considerations of personal gain or benefit, or gain or benefit to a third party. All business decisions of the BODs are to reflect the independent judgment and discretion of the BOD or officers, uninfluenced by any consideration other than what is honestly believed to be in the best interests of the APPALRED.

III. Addressing a Conflict of Interest

If a BOD believes that an actual or potential conflict exists, the BOD should make a full and timely disclosure of the material facts relating to the conflict to the President and the Executive Director.

If a conflict of interest exists with respect to an issue before the BODs, the interested BOD should not participate during discussion of and vote on the matter that gives rise to the potential conflict. However, the Board may give the interested BOD an opportunity to make a presentation to the Board before such discussion and vote. An interested BOD will not make or second motions concerning, or vote on, the matter that gives rise to the potential conflict. The Board shall approve the transaction or arrangement at issue by a majority vote of the disinterested BOD present at the meeting during which the matter giving rise to the conflict is raised, even if disinterested BOD constitutes less than a quorum.

IV. Client Conflicts of Interest

Note that a conflict of interest may also exist between clients of attorney BODs and clients of APPALRED. It is the policy of APPALRED that BODs in such a situation will not, in their BOD capacity, seek to influence the conduct of legal work pursued by APPALRED attorneys on behalf of clients. Therefore, representation of clients by BODs or their law firms, in cases or transactions where other parties are represented by APPALRED attorneys, will not create a conflict of interest as between the BODs and APPALRED, unless such representation affects the BOD's judgment regarding APPALRED's best interests.

V. Acknowledgement and Disclosure

Upon appointment to the Board, and annually thereafter, all BODs shall be provided with a copy of this policy, and be required to complete and sign the acknowledgement and disclosure form below.

Acknowledgement and Disclosure Form

I have read the APPALRED Board Conflict of Interest Policy set forth above and agree to comply fully with its terms and conditions at all times during my service as a member of the APPALRED Board of Directors. If at any time following the submission of this form, I become aware of any actual or potential conflicts of interest, or if the information provided below becomes inaccurate or incomplete, I will promptly notify the Executive Director and President.

Disclosure of Actual or Potential Conflicts of Interest:

Board of Director Member Signature: _____

Board of Director Member Printed Name: _____

Date: _____

BANK RECONCILIATIONS

POLICY:

- | The Chief Fiscal Officer will be responsible for reconciling all AppalReD bank accounts to the General Ledger on monthly basis. The Executive Director or Deputy Director will review and approve the reconciliations.
- | All AppalReD bank statements are delivered unopened, to the Executive Director or Deputy Director or his/her designee, who will review the returned checks for unauthorized signatures, unusual endorsements and other such matters as may come to his/her attention. After reviewing the statements the Executive Director or Deputy Director will sign and date them.

PROCEDURE:

The Executive Director, Deputy Director or his/her designee will give the bank statements to the Chief Fiscal Officer after initial review. Bank Statements will be reconciled after receipt. Once the Bank Statements are reconciled, the Chief Fiscal Officer will sign and date them.

The Chief Fiscal Officer is responsible for ensuring that the reconciled bank statements are in agreement with the General Ledger balances. Any differences must be fully explained in the completed reconciliation. If a variance is due to a banking error, the bank is contacted to resolve the discrepancy.

Reconciled Bank Statements are attached to the reconciliations and filed by date in a binder. Investment Statements are filed in a binder as well.

Checks that are stale dated (120+ days old) are moved to Stale Dated Checks line item. During the dormancy period of 3-5 years attempts are made to locate the owners. If these attempts fail and there has been no owner initiated contact made, the face amount of each unclaimed check (with the exception of payroll checks that are \$50 or less) is then remitted to the Kentucky State Treasurer as Unclaimed Property in accordance with the Kentucky Unclaimed Property Law.

General Policies:

The Executive Assistant maintains the receipts in a secure location and writes the receipt for the case handler who accepts funds from and issues a receipt to the client. The Executive Assistant will deposit the monies to the bank. It is the policy of AppalRedAppalReD that "cash" should not be accepted from clients.

If a client is unable to pay for filing fees, AppalRedAppalReD may pay such fees from the General Checking Account (NOT the Client Trust Account) and charged to Litigation Expense.

- **Signatories:** Client Trust account will have signatories approved by the Board. The Signatories will be the same as the General Checking Account signatories.
- **Client Records:** Each client with funds in the Client Trust Account will have a separate record that reflects their deposit of funds and disbursement of those funds from their account. The Client Trust record will be balanced monthly bringing forward the balance in the client account. An entry will be made every time a client deposits funds into their account and every time a check is issued on behalf of the client for costs and fees. The Chief Fiscal Officer is responsible for these activities.
- **Client Receipts:** A receipt will be issued to each client for funds received that will be deposited to the Client Trust Account. Receipts will be numerical and issued in sequence. The case handler will be responsible for issuance of the receipt.
- **Cash Disbursements:** A Check Request must be presented for disbursement of client funds. The check request must indicate the client name; purpose of the check and be approved by the Attorney or paralegal and forwarded to the Chief Fiscal Officer for processing. The check request will be included with the check when signatures are obtained. All supporting documents will be filed with the Client Trust Account.
- **Deposits:** Endorse checks/money orders "For Deposit Only, ARDF of KY, Inc". The Client Trust account pays interest earned to the KY IOLTA Fund. AppalRedAppalReD Legal Aid, along with the other legal services programs in KY, receives funding from this Fund.
- **Monthly Reconciliations:** Within ten (10) working days of the receipt of the bank statement, the Chief Fiscal Officer will perform the monthly Bank Reconciliation and reconcile the bank balance to the Client Records. After the bank statement has been reconciled, outstanding checks will be reviewed. The Monthly Reconciliation will include reconciling a total of Client Trust Records to the Reconciled Bank balance. A Client Trust Accounting sheet will be printed monthly showing the total of the Client Records and the Bank Statement. This form along with the Bank Statement, Cash Receipts, Check Request/invoices and cancelled Checks and Cash Deposits forms will be maintained by the Chief Fiscal Officer.
- **Refunding Funds to the Client:** Any funds left on a client account after the case has been resolved will be refunded to the client in a timely manner. A check will be issued to the client for the balance in his/her account. If the check has not been cashed within one month of the date of issue, the client will be contacted. If the check was lost, a stop payment will be issued and a new check will be sent to the client.
- **Escheating Funds to the State of Kentucky:** The Chief Fiscal Officer will be responsible for reviewing all client funds and escheat to the State of KY as required by law.

I CERTIFY THAT I AM A UNITED STATES CITIZEN

NAME

DATE

DISCLOSURE OF INFORMATION POLICY

Pursuant to 45 CFR, Part 1619, Appalachian Research and Defense Fund of Kentucky, Inc. adopts the following program policy to apply to any requests for the disclosure of information by members of the general public-or other third-parties.

The general policy of this program will be to make available to members of the public and other third parties, non-privileged information so long as the information sought is readily available from program files. Information will be made available during normal business hours, upon reasonable notice.

Privileged information will consist of 1) all information directly relating to the representation of a particular client or client group; 2) any information which would normally be considered to be the product of an attorney or paralegal; 3) all memoranda and materials prepared for internal program use, or communications between staff, other than adopted directives or guidelines for program administration; 4) program personnel, medical, or similar files.

Requests for the inspection of documents will be forwarded to the director; and examination of the information will normally be carried out in the program's administrative office in Prestonsburg. It will be permissible for the director to arrange for inspection in the office closest to the person seeking the information, if those documents are available in the local office, or can be made available there without undue inconvenience to the administrative staff. The program will furnish copies of the information sought on the request of the applicant at a cost of .15 cents per page, so long as copying is carried out at times which do not interfere with normal office needs.

Statistical and financial information to be furnished will be limited to information which has been compiled for reports to the Legal Services Corporation or other funding agency. Unless requested to do so by the Legal Services Corporation, the Office of the Comptroller, or other agency with the appropriate authority to do so, the program will not independently compile information for third-parties requesting information.

If a person requests information not required to be disclosed under this policy which the Legal Services Corporation may be required to disclose pursuant to 45 CFR Part 1602 implementing the Freedom of Information Act, Appalachian Research and Defense Fund of Kentucky, Inc. will either provide the information or inform the person seeking it, how to request it from the Legal Services Corporation.

POLICY ON OUTSIDE PRACTICE OF LAW

REG. 1604

Definitions

"**Full-time Attorney**", as used in this part, means a person who is employed full time in legal assistance activities supported in major part by the LSC funds, and who is authorized to practice law in the jurisdiction where assistance is rendered.

"**Outside practice of law**" means the provision of legal assistance to a client who is not receiving that legal assistance from the employer 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.

"**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.

Policy:

No attorney employed by APPALRED, except Special Counsel, shall engage in the practice of law for anyone other than an eligible client, unless

Exceptions:

- The attorney is newly employed and has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible;
- The attorney is acting pursuant to an appointment made under a court rule to practice of equal applicability to all attorneys in the jurisdiction and remits to APPALRED all compensation received, or
- The attorney is acting on behalf of a close friend or family member, employee, or a religious, community, or charitable group, for no compensation, and such representation does not interfere or conflict with the attorney's professional responsibilities to APPALRED.

Procedure

Newly Employed Attorney

A newly employed attorney shall submit in writing to the Executive Director a list of current cases in which he/she continues to be the attorney of record and a plan detailing efforts to withdraw or substitute counsel or the anticipated date of completion of his/her representation.

Acting pursuant to an appointment

An attorney pursuant to an appointment made under a court rule to practice of equal applicability to all attorneys in the jurisdiction shall submit a copy of the court order of appointment and a copy of the local rule to the Executive Director and maintain a copy of same in the client case file. Any compensation received pursuant to such an appointment shall be remitted directly to APPALRED and identify the case and court appointment.

Acting on behalf of family, friend, etc.

Prior to engaging in any uncompensated outside practice of law on behalf of a close friend or family member, employee, or a religious, community, or charitable group, an attorney must request permission in writing from the Executive Director stating the nature of the legal assistance to be provided, the name of the parties to be assisted, and the relationship of the parties to the attorney.

All outside practice of law except pursuant to court appointment must be conducted on the employees own time and without benefit of program resources.

Fully incorporated herein and in accordance with Reg. 1604(b) and 1604.6, AppalReD amends its policy to include the following:

AppalReD may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and this part, but may impose additional restrictions as necessary to meet AppalReD's responsibilities to its clients.

1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to § 1604.4(c)(1), it is AppalReD policy to permit a full-time attorney to use *de minimis* amounts of the AppalReD's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as AppalReD's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited. (b) For cases undertaken pursuant to § 1604.4(c) (2) through (4), it is AppalReD's policy that a full-time attorney use limited amounts of its resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the its resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

Adopted and Amended: _____

COST ALLOCATION

POLICY:

Direct costs are allocated to a particular grant to the degree that the costs were incurred to achieve the objectives of the grant. Direct costs can be identified to benefit a specific activity.

Administrative costs are costs that benefit the operations of the entire agency, but cannot be identified to specific activities. Overhead (Indirect Expenses aka Management and General Expenses) are those specifically relevant to management and ~~charged to programs based~~ allocated among funding sources as agreed by the applicable funding organization. In the event a particular funding source will not sustain the cost of Management and General expense, allocation will be to LSC funds and unrestricted KY Filing Fees funds based on percentage of income. ~~on the number of staff.~~ Expenses include salaries, related benefits, travel and training costs, professional services, Management Errors and Omissions Insurance and audit costs. Management includes areas of administrative, personnel, financial, public relations and technology.

Such indirect costs are common expenses allocated among funding sources based on percentage of income, agreed by the applicable funding ~~number of personnel and/or square footage for each funding source.~~ The allocation will be fair, consistent and in an equitable manner to the individual cost centers and funds, most generally on ~~the basis of full-time professional staff equivalent and the percentage of total of funds received.~~

Allocable-direct costs are costs that benefit more than one activity. Expenses that are program related will be charged more heavily to various programs/grants rather than to the management functions.

If the funding for a program is not sufficient to cover the total cost, the short-fall is paid from ~~AppalRed~~AppalReD unrestricted funds (filing fees, KY general fund, donations, etc.) and LSC funds when applicable.

PROCEDURE:

Personnel - Salaries and related benefits are charged directly to the applicable grant.

Occupancy – Rent, utilities and bldg related expenses are allocated based on the number of staff.

Office Supplies & Expense – Where possible, programs are charged directly. Otherwise, allocate to programs bases on number of staff in a program.

Telephone – Where possible, charge to programs directly. Otherwise, allocate to programs based on number of staff in program.

Contract Services – Where possible, charge to programs directly. Payroll processing, computer support, retirement fund maintenance charges are spread out among the various programs/grants based on number of staff.

Local Travel – Where possible, charge to programs directly.

Conferences & Trainings – Charge directly to the program involved where possible.

Dues & Admissions – Charge directly to the program involved where possible. LSC only pays for KBA dues since they are required. LSC does not pay for optional dues.

Law Library – Charge directly where possible, balance to LSC.

Litigation – Charge directly where possible; a program expense.

Community Relations – Charge to unrestricted income.

Client Training – Charge to Unrestricted Funds. (Client Council expenses)

Board Expense – Charge to LSC and Unrestricted Funds.

Meeting Expense – Charge directly where possible, otherwise charge to LSC and to Unrestricted Funds.

Other Operating Expenses – Charge directly where possible; otherwise, allocated based on number of staff. Charge to LSC and Unrestricted Funds.

Insurance – This line item covers both professional liability and casualty insurance. Charged directly where possible, otherwise allocated based on number of staff.

Interest Income - Prior to 2003, LAS had excess LSC funds so interest was credited to LSC on the audit. Now with using all LSC monies and having excess unrestricted income, credit LSC with only 1/3 checking account interest income. Interest income is recorded to LSC unless it is derived from an account that does not contain any LSC funds, in such case the interest income is then allocated to the grant which funds generated the interest.

Interest and Bank Fees – Charge to Unrestricted Funds

PAI Expense – An amount equal to 12.5% of the LSC annualized basic field award is devoted to the involvement of private attorneys in the delivery of legal assistance to eligible clients. AppalReD Legal Aid allocates direct cost associated with VLAK (Volunteer Lawyers of Appalachia KY), which is a Pro-Bono Program that is designed to increase the availability of direct civil legal services to the areas low income community by networking attorneys and law firms that wish to donate their expertise and resources to the community. Other cost not associated with VLAK that are directly involved with PAI efforts are allocated directly to PAI expense as well. Only direct cost is charged to PAI expense. The financial reporting of PAI activity, support and expenses related to the effort are reported separately in our annual financial statements by either a separate schedule in the financial statements reporting on grant activity or a note to the financial statements that accounts for the entire PAI allocation.

AppalRedAppalReD will pay employees a per diem when traveling. The prevailing IRS rate for the primary destination will determine the amount of the per diem. The per diem covers meals and incidentals not included in the the registration fee. For example, if conference registration includes a continental breakfast the per diem will be reduced by the amount allocated by the IRS for breakfast. The agenda of the training/conference must accompany this request. The full per diem may not be paid on travel days. The amount paid will be based upon the meals needed for that day. For example an employee leaving for a conference on a mid-morning flight will not receive the portion of the per diem applicable to breakfast. Similarly an employee who returns home on a flight that arrives in the mid afternoon will not receive the portion of the per diem applicable to dinner.

AppalRedAppalReD Legal Aid may pay other extraordinary incidental expenses such as the cost of a shuttle or taxi from the airport to the hotel in the destination city. Employees are encouraged to seek prior approval of known expenses before incurring the expense.

AppalRedAppalReD reserves the right to define policy regarding reimbursement of payment for expenses in situations not defined by existing policy.

PROFESSIONAL DUES AND MEMBERSHIPS:

AppalRedAppalReD will pay employees Kentucky Bar Association dues, as required for attorneys to practice law in the Commonwealth of Kentucky. LSC funds will not be used to pay membership fees or dues to any private or non-profit organization. However, LSC funds may be used for the payment of such fees or dues mandated by a governmental organization to engage in a profession.

Individual KBA invoices may be submitted for payment, directly to the Assistant Fiscal Officer, without an Expense Request Form. An Expense Request Form accompanied with an application for memberships for all other associations shall be submitted to the Executive Director for approval.

CLIENT TRUST ACCOUNT:

All funds received by AppalRedAppalReD by or on behalf of a AppalRedAppalReD client for litigation and escrow expenses must be given to the Executive Assistant for deposit in a separate bank account as outlined in SCR 3.120(1.15). Failure to do so may result in an ethics charge and/or disciplinary action by the Kentucky Bar Association against AppalRedAppalReD.

Case handlers will be responsible for coordinating with the Executive Assistant and the Chief Fiscal Officer to receive, disburse and refund escrow funds. Receipts for monies received from or on behalf of a client may be issued by the Executive Assistant.

A case handler requests funds by completing the Client Trust Disbursement Requisition form and submitting it to the Chief Fiscal Officer. No funds shall be paid out prior to receipt of funds.

An AppalRedAppalReD employee may never, under any circumstance, establish a client escrow account with his or her personal funds, nor in his or her own name. Doing so may result in disciplinary action by both AppalRedAppalReD and the Kentucky Bar Association.

Derivative Income-AppalReD will allocate derivative income according to LSC regulation 45 CFR §1630.12 as follows:

“(a) Derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient’s LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the activity.”

“(b) Derivative income which is allocated to the LSC fund in accordance with paragraph (a) of this section is subject to the requirements of this part, including the requirement of 45 CFR 1630.3(a)(4) that expenditures of such funds be in compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC recipients, the terms and conditions of the grant or contract, and other applicable law.”

Subgrants-Any subgrants that involve the use of any LSC Funds must be submitted in writing to the Legal Service Corporation for prior, written approval. This will include the terms and conditions and the amount of funds to be transferred. A subgrant of LSC Funds may not be for a period longer than one year. Any remaining funds at the end of the grant period will be considered part of AppalReD’s Fund Balance. All subgrants shall contain a provision for allowing orderly termination of the subgrant in the event that AppalReD’s funding is terminated or reduced.

**PART 1633- RESTRICTION ON REPRESENTATION
IN CERTAIN
EVICTION PROCEEDINGS POLICY**

This policy is designed to ensure that in certain public housing eviction proceedings AppalReD refrains from defending persons charged with or convicted of illegal drug activities.

Controlled substance has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

Public Housing project and public housing agency have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

Charged with means that a person is subject to a pending criminal proceeding instituted by a governmental entity with authority to initiate such proceeding against that person for engaging in illegal drug activity.

AppalReD is prohibited from defending any person in a proceeding to evict that person from a public housing project if: (a) The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and (b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

Recordkeeping

1. Pursuant to 45 C.F.R. § 1633.4, the recipient shall maintain written policies and procedures to guide its staff in complying with 45 C.F.R. Part 1633.
2. Maintain a list of all cases which involve an eviction from public housing and there is an allegation of drug sale, distribution or manufacture, or possession with intent to sell or distribute.
3. In each clients file for such cases, maintain documentation which demonstrates why the representation is permissible.

Approved: _____

FORM

(Please include in each case file involving these issues)

45 C.F.R. § 1633.4

(REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS)

CASE NO: _____

This case involves an allegation of drug sale, distribution or manufacture, or possession with intent to sell or distribute. However, representation is permissible because:

1. _____ This case involves a client who is neither currently charged with, nor has been convicted of either: the illegal sale, distribution or manufacture of a controlled substance, or with the possession of a controlled substance with the intent to sell or distribute it; or

2. _____ The housing authority in the eviction proceeding does not allege that the illegal drug activity for which the client is charged or convicted threatens the health or safety of other tenants or employees of the housing authority.

Casehandler Signature: _____ Date: _____

POLICY
ON
REPROGRAMMING OF
TIG (Technology Initiative Grant) FUNDS

AppalReD Legal Aid hereby adopts the following policy with regard to the reprogramming of TIG Funds:

It is the policy of AppalReD with regard to any TIG funds that all funds disbursed by LSC pursuant to the TIG Grant Assurances and Grant Award shall be used solely for the project for which the grant is being made. AppalReD hereby understands that no TIG funds may be reprogrammed without prior written LSC approval. Absent such written approval, all remaining funds must be returned to LSC no later than 60 days from completion of the project. AppalReD further understands that reprogramming requests must demonstrate that surplus TIG funds would be applied in a manner related to the original purpose of the grant. Reprogramming will not be allowed between TIG projects or to fund other recipient activities.

It is AppalReD's policy to further consult LSC's Accounting Guide for LSC Recipients for guidance on financial accounting and reporting standards with regard to any reprogramming of TIG Funds.

Approved by the Board: _____

POLICY
ON
TIG (Technology Initiative Grant)
TIMEKEEPING REQUIREMENT

AppalReD Legal Aid hereby adopts the following policy with regard to staff timekeeping for TIG funded activities:

It is the policy of AppalReD with regard to any TIG funds that all employees shall maintain adequate records within the KEMPS Automated Case Management System for any work contributed toward a TIG approved project. The timekeeping activity shall be in accordance with the Technology Initiative Grant Assurances and proper timekeeping and recordkeeping will be maintained to track all time and costs charged to each TIG separate from other funds in accordance with 45 C.F.R. § 1628.3(g), 45 C.F.R. Part 1635, and 45 C.F.R. § 1630.3.

Approved by the Board: _____

CLASS ACTION POLICY
45 CFR 1617

It is impermissible for any individual, while engaged in legal assistance activities funded by AppalReD to initiate or participate in any class action suit. For purposes of this policy, "Class action" means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

This limitation does not preclude the representation of multiple parties or eligible groups; nor does it proscribe the use of other relevant judicial or statutory procedures, including those related to: third-party practice; joinder; interpleader; intervention; consolidation; mandamus; declaratory judgment; or injunctive relief.

Initiating or participating in any class action means any involvement at any stage of a class action prior to or after an order granting relief. "Involvement" includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action.

To initiate or participate in any class action means that any individual, while engaged in legal assistance activities funded by AppalReD, may not file a class action or be involved at any stage of an existing class action prior to an order granting relief, including acting as an amicus curiae, co-counsel or providing legal assistance to an individual client who seeks to intervene in, modify, or challenge the adequacy of the representation of a class.

However, participating in a class action does not include (1) representation of an individual client seeking to withdraw from or opt out of a class or (2) representation of an individual client seeking to obtain the benefit of relief already ordered by a court. Nor does participation include non-adversarial activities, consisting of efforts to remain informed about, or to explain, clarify, education or advise others about, the terms of an order granting relief.

Approved: _____