



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

Pine Tree Legal Assistance, Inc.

Case Service Report/Case Management System Report
September 10-14, 2012

Recipient No. 120000

I. EXECUTIVE SUMMARY

Finding 1: PTLA's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, PTLA does not report non-LSC funded, LSC-eligible cases to LSC in CSRs as required by the CSR Handbook (2008 Ed., as amended 2011), § 2.1.

Finding 2: PTLA's intake procedures and case management system generally support the program's compliance related requirements. However, there were exceptions noted with respect to screening for asset eligibility and income prospects. In addition two (2) forms with non-compliant citizenship attestations were identified.

Finding 3: Sampled cases evidenced substantial compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

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

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

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

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

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1 (Priorities in use of resources).

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

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

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (timely case closing), however, there were deficiencies noted in the open cases of one unit.

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

Finding 13: Review of the recipient's policies and interviews with staff attorneys reveal that PTLA is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Finding 16: A limited review of PTLA's accounting and financial records to determine compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) was conducted by the fiscal reviewers.

Finding 17: PTLA is in substantial compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, PTLA's compliance with 45 CFR § 1614.3 (d)(3) which requires oversight and follow up of the Private Attorney Involvement ("PAI") cases was found to need improvements to ensure compliance with the regulatory requirements.

Finding 18: PTLA is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization and 45 CFR § 1627.2(b)(1) which requires LSC approval of payments made to attorneys in excess of \$25,000.00.

Finding 19: PTLA is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

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

Finding 21: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1612.

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

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

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

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

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

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

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

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

Finding 30: PTLA is in compliance with the requirements of 45 CFR § 1620.6 (Signed written agreements).

Finding 31: Policies reviewed evidenced compliance with the requirements of their respective regulations with the exception of 45 CFR Part 1619 (Disclosure of information).

Finding 32: A limited review of PTLA's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2.

Finding 33: PTLA is in compliance with the Accounting Guide for LSC Recipients (2010 Ed.) ("AGLR") as it maintains adequate supporting documentation of payments and corresponding reviews and approvals, for travel related expenses and credit card payments.

Finding 34: A limited review of PTLA's accounting records determined that the program is in compliance with the requirements of 45 CFR Part 1630 (Cost standards and procedures) in that its bank fees are allocated amongst its various funding sources.

II. BACKGROUND OF REVIEW

During the week of September 10-14, 2012, the Office of Compliance and Enforcement (“OCE”) conducted a Case Service Report/Case Management System (“CSR/CMS”) on-site review of Pine Tree Legal Assistance, Inc. (“PTLA”), which provides legal assistance to low-income individuals throughout the state of Maine in the following cities: August, Bangor, Lewiston, Machias, Portland, and Presque Isle. Both PTLA’s administrative and central office is located in Portland. PTLA’s major operations include the Volunteer Lawyers Project (“VLP”), KIDS Legal Project in Portland, along with the Farmworkers Unit in Bangor and the Native American Unit in Machias and Bangor. The Farmworkers Unit is a multistate LSC grant (“MMX”) that provides services throughout New England. Additionally, PTLA receives LSC funding for both Maine and Connecticut to perform Native American work in both states.

LSC funding

In 2011, PTLA received four (4) different LSC funded grants:

1. Basic field funds were awarded in the amount of \$1,304,156;
2. MMX funds were awarded in the amount of \$137,847;
3. Maine Native American funds were awarded in the amount of \$71,295; and
4. Connecticut Native American funds were awarded in the amount of \$17,316.

In 2012, PTLA received the same four (4) LSC funded grants; however the amounts awarded had changed:

1. Basic field funds were awarded in the amount of \$1,112,970;
2. MMX funds were awarded in the amount of \$117,639;
3. Maine Native American funds were awarded in the amount of \$60,705; and
4. Connecticut Native American funds were awarded in the amount of \$14,744.

Scope of review

The purpose of the visit was to assess the program’s compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The review visit was conducted by a team of four (4) attorneys, two (2) fiscal analysts, and one (1) management specialist. OCE last reviewed PTLA in 2004.

The on-site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory, and statutory requirements, and to ensure that MLSA has correctly implemented the 2008 CSR Handbook, as amended 2011. Specifically, the review team assessed PTLA 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); 45 CFR former Part 1642 (Attorneys' fees)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion); and whether the program's policies and procedures compared favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.).

By letter dated July 10, 2012, OCE requested that PTLA provide a list of all cases reported to LSC in its 2010 CSR data submission (closed 2010 cases), a list of all cases closed in 2011 (closed 2011 cases), a list of all cases closed between January 1, 2012 and July 31, 2012 (closed 2012 cases), and a list of all cases which remained open as of July 31, 2012 (open cases). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case, and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by PTLA staff and the other for cases handled through PTLA's PAI component. PTLA was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). PTLA was requested to notify OCE promptly, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

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

In its 2011 CSR submission to LSC, the program reported 5,754 closed cases. PTLA's 2011 self-inspection certification revealed a 7.5% error rate in CSR reporting (15 out of 198). In its 2010

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.

CSR submission to LSC, the program reported 5,277 closed cases. PTLA's 2010 self-inspection certification revealed a 7.0% error rate in CSR reporting (15 out of 213).

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and PTLA agreement of September 4, 2012, PTLA staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.

The OCE team interviewed members of PTLA's upper and middle management, staff attorneys, and support staff. PTLA's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, case file review was conducted. The sample case review period was from January 1, 2010 through July 31, 2012. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed over 647 cases to review on site, of which nearly one-third (1/3) were targeted files.³

On-site observations

PTLA's management and staff cooperated fully in the course of the review process. As discussed more fully below, PTLA was made aware of compliance issues during the on-site visit. This was accomplished by informing intermediaries, as well as Managing Attorneys, and the Executive Director, of any compliance issues uncovered during case review. It was noted by the OCE review team that staff and management began to act promptly to make changes to rectify areas of concern; accordingly some of the items raised in the Draft Report ("DR") were corrected prior to the issuance of the Final Report. *See*, for example, the "Actions Taken to Improve Compliance Overall" section, beginning at page 2 of PTLA's Response to the DR (hereinafter the "PTLA Response," "Response to the DR," or "PTLA's Response").

At the conclusion of the visit, on September 14, 2012, OCE conducted an exit conference during which PTLA was provided with OCE's initial findings and was made aware of the areas in which compliance issues were found. OCE noted substantial compliance⁴ in the areas of 45 CFR

³ The number of targeted files reviewed on this review was a little higher than normal. This was chiefly due to the number of non-LSC funded cases which are not reported to LSC with the annual CSRs. As a result, both the randomly selected open cases and those cases closed in 2012 were also slightly higher than the normal number of cases which would be selected based on the CSR closing numbers. In addition, the LSC reviewers actually reviewed more than 647 files indicated; however the extra files reviewed were not always fully reviewed but were reviewed to ensure that there were no duplicate files being reported. It should be noted that PTLA was able to locate in excess of 650 files for review – a very large number of files – and it should be commended for this.

⁴ The term "substantial compliance" is used in this report to indicate that the program's policies and practices are intended to produce compliance with the relevant regulations, nevertheless, during the review of the files there were errors or exceptions noted. Because of the large sample size, discussed above, some of the findings of case specific non-compliance may seem large; nevertheless, in the overall scale of this review these numbers by themselves do not indicate a finding of "non-compliance."

Part 1611 (Financial eligibility policies); 45 CFR § 1611.9 (Retainer Agreements); CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided); 45 CFR Part 1636 (Client identity and statement of fact); and CSR Handbook (2008 Ed., as amended 2011), Chapters VIII and IX (Case closure categories). Non-compliance was noted in the areas of 45 CFR § 1626.6 (Verification of citizenship) and CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timely case closing).

PTLA was provided a DR on December 19, 2012 and given a 30 day opportunity to comment. Moreover, as noted in the Response to the DR, PTLA distributed copies of the LSC Draft Report to all staff and Board members. *See* Response to the DR at page 2, Item 6. The program requested, and was granted, an extension of time to submit its Response. PTLA's Response was received on February 15, 2013 and has been incorporated in this Final Report, as necessary, and is appended hereto in its entirety.

III. FINDINGS

Finding 1: PTLA’s automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, PTLA does not report non-LSC funded, LSC-eligible cases to LSC in CSRs as required by the CSR Handbook (2008 Ed., as amended 2011), § 2.1.

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

Since 2010 PTLA has utilized Legal Files as its ACMS. This is a web-based integrated information/legal document system, which includes eligibility, intake, case management, document assembly, case tracking and timekeeping components. Of particular note is the “Manage My Day” feature which lists each case handler's open cases and respective calendars to do notations. The Systems Analyst, who is based in PTLA’s administrative office in Portland, is the database administrator and is responsible for maintaining Legal Files and generating LSC CSR reports. Interviews reveal that staff has been well-trained on data entry, data management and case oversight features, and that the Systems Analyst is readily accessible to answer staff questions.

PTLA has a cooperative relationship with member organizations of the Legal Services Network where its database, Legal Files, is shared with the VLP, Legal Services for the Elderly, Cumberland Legal Aid Clinic, and Maine Equal Justice. Each organization maintains its own site on the database and compensates PTLA to serve as the site administrator. The organizations are separate and distinct entities that do not have access to content on other member’s sites. The exception is PTLA’s Systems Analyst who, in his/her capacity as the site administrator, has full access to all the sites.

VLP also uses HotDocs document generation software for intake conducted by volunteers. Users are guided by questions which match the information gathered in Legal Files. Data is imported to Legal Files twice a day. HotDocs is also used to generate mailings to volunteer attorneys.

PTLA receives funding from a number of non-LSC sources which have no financial eligibility guidelines or higher financial eligibility guidelines than LSC. PTLA cases are screened in accordance with the funding sources’ requirements. Depending upon the funding source, staff may not apply factors for cases evidencing income between 125-200% of the Federal Poverty Guidelines (“FPG”). Cases are assigned, by funding code, during intake to non-LSC funding sources based upon the substantive issues in the cases and not financial eligibility; after intake, a funding code can only be changed by the Systems Analyst. Cases with non-LSC funding sources are not reported to LSC. This method ensures that cases which are not screened or exceed LSC financial eligibility guidelines are deselected from CSRs. However, many of the non-LSC

funded cases reviewed documented asset eligibility and income at or below 125% of the FPG and these cases are not reported to LSC in CSRs as required by the CSR Handbook (2008 Ed., as amended 2011), § 2.1.⁵ See discussion, below. This was also a finding during the previous OCE review of PTLA in May 2004.⁶ LSC cannot require PTLA to screen non-LSC funded cases; however, cases which are screened and meet LSC eligibility criteria should be reported in CSRs. Interviews with management revealed that PTLA has been reluctant to report non-LSC funded LSC-eligible cases to LSC because it would require additional work by staff and PTLA does not have staff to devote to this task. It is noted that other program which use Legal Files have added a non-default LSC-Eligible field for staff to select if the case is LSC-Eligible regardless of the funding source. Interviews were conducted with a number of PTLA staff working on projects funded by non-LSC sources. Without exception, these staff were aware of the LSC requirements and appear qualified to determine whether a case is LSC-Eligible. Alternatively, it may be possible for the Systems Analyst to develop a report to capture LSC-eligible cases coded with a non-LSC source, without adding any additional steps for staff.

- a. *Single recording of cases (CSR Handbook (2008 Ed., as amended 2011), § 3.2), Timely closing of cases (CSR Handbook (2008 Ed., as amended 2011), § 3.3), and Management review of Case Services Reports (CSR Handbook (2008 Ed., as amended 2011), § 3.4).*

In accordance with CSR Handbook (2008 Ed., as amended 2011), §§ 3.2, 3.3, and 3.4 (regarding single recording of cases, timely closing of cases and management review of case service reports respectively), PTLA has developed procedures for ensuring that timely and accurate data is reported in its CSRs. The Systems Analyst generates a series of reports on a weekly, monthly, and annual basis in order to identify missing data. In addition, interviews indicated that senior

⁵ While a selection of non-LSC funded files were reviewed for the current year, the sample wasn't sufficient to determine whether or not a majority of non-LSC funded files are in fact reportable. Nevertheless, files were found for income- and asset-eligible clients which should have been reported to LSC.

⁶ See the discussion on page 7 of the 2004 report, which includes this passage:

The review indicated that a significant number of non-LSC funded cases would qualify for reporting to LSC as they are documented as LSC eligible, but at present the program is not including these cases.

CSR Handbook (2001 Ed.), ¶ 4.3 provides that recipients should report all cases in which there has been an eligibility determination showing that the client meets LSC eligibility requirements, regardless of the sources of funding supporting the cases. This is not the PTLA practice. The executive director and the Information Technology Assistant advised that only LSC-funded cases are reported to LSC. All other cases supported by non-LSC funding streams are not reported to LSC in the CSR.

PTLA should devise a mechanism to ensure that non-LSC-funded, CSR-eligible cases are also identified and reported in the CSR. This could result in a significant increase in the number of cases reported.

In its comments to the [Draft Report], PTLA stated that at this time its staff is not properly trained to adopt new methods in coding cases LSC-eligible in its case management system. The comments stated that beginning in 2005, staff will undertake a standardized documentation of the applicant's financial circumstances to enable it to report on all LSC-eligible cases, even those funded by other sources.

management generates reports of open cases with no recorded time within a 30, 60, and 90 day period. The open-cases report with no recorded time is generated once a week. The additional reports are generated at a minimum on a quarterly basis and at the end of the year. To ensure that duplicates are not reported to LSC, PTLA staff checks for closed or existing cases for the same applicant prior to entering case information into the case management system. Interviews with staff from across PTLA's branch offices revealed consistent application of this procedure and confirmed that staff is adequately trained on case reopening procedures. In addition, if staff later identifies a duplicate case in the ACMS, the Systems Analyst is contacted in order to either combine the cases in the ACMS or close the duplicate case with an "XX" closing code.⁷

b. Limitation of defaults in case management systems (CSR Handbook (2008 Ed., as amended 2011), § 3.6)

The ACMS is free of defaults in eligibility dependent fields as required by Program Letter 02-06 and CSR Handbook (2008 Ed., as amended 2011), § 3.6.⁸ These fields are income, assets, number in the household, citizenship/eligible alien status, and LSC eligibility. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.6. It is noted that PTLA's ACMS contains two (2) independent fields which capture citizenship information: the "Name Card" screen and the "Client Demographics" screen. The "Name Card" screen defaults to "other." The second field, the "Client Demographics" screen, is not a default and is a mandatory field which must be filled in from a "pick list" which includes the following three (3) options:

"Alien LSC Eligible;"
"Alien LSC Non Eligible;" and
"US Citizen." *[sic]*

The Systems Analyst advised that this mandatory field is the operative field that prints on the Client Data Sheet and is maintained in the hard files. The Systems Analyst further advised that these two (2) fields were pre-programmed in Legal Files and cannot be changed without hiring a programmer. To ensure proper use of the fields, the Systems Analyst generates a weekly report to ensure that the field on the "Client Demographics" screen is completed by intake staff. The defaulted field, the "Name Card" screen, is not used to determine eligibility with 45 CFR Part 1626, nor is this field recorded in the applicant's corresponding case file; therefore, it does not meet the definition of a default as outlined in Program Letter 02-06 and is acceptable.

While no issues were noted during case review, PTLA is cautioned that the dual fields are a weakness that could lead to documentation failures. PTLA is encouraged to monitor the use of these fields and to include this topic in on-going training.⁹

⁷ As discussed below in the section on duplicates, case review confirmed the effectiveness of the PTLA procedures.

⁸ The CSR Handbook requires that certain fields that are critical to eligibility may not have a default. CSR Handbook (2008 Ed., as amended 2011), § 3.6

⁹ As noted in the Response to the DR, PTLA has reviewed the recommendations and required corrective actions and worked on staff training. *See* page 3 of the Response. Specifically, in January 2013, the Pine Tree managers met to identify specific ways to address the concerns raised in the report. As a follow-up, staff were notified on February 5 and 11, 2013, of the actions needed to address the concerns raised in the report, including the specific concern

(This footnote is continued on the next page.)

Based on interviews and a comparison of the information yielded by the ACMS to information contained in the case files sampled, PTLA's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were no inconsistencies between the information in the case file to the information in the ACMS.

Finding 2: PTLA's intake procedures and case management system generally support the program's compliance related requirements. However, there were exceptions noted with respect to screening for asset eligibility and income prospects. In addition two (2) forms with non-compliant citizenship attestations were identified by the review team.

In order to ascertain PTLA's compliance in relation to the intake process, primary intake staff, case handlers, and management were interviewed at each branch office. In addition, written and electronic documents used to support the intake process were evaluated. The review revealed that intake procedures performed by intake staff generally support the program's compliance related requirements with respect to performing conflict and duplicate checks during the intake process, screening for income, and considering authorized exceptions and factors when screening an applicant for financial eligibility. However, exceptions were noted with respect to screening for asset eligibility and making reasonable inquiry into an applicant's income prospects as required by 45 CFR § 1611.7. In addition, two (2) forms with non-compliant citizenship attestations were identified by the review team.

Overview

Staff in each branch office is responsible for conducting intake screening for the counties for its respective service area. As previously explained, PTLA receives LSC funding for basic field, as well as Migrant and Native American grants. PTLA operates several non-LSC funded projects, where staff also conducts intake screening. Intake is conducted in accordance with the program's board adopted guidelines and policies, electronically accessible to all staff.¹⁰

LSC-funded cases are processed for intake in all offices by paralegals who conduct eligibility screening and, where appropriate, provide legal assistance in the form of advice or limited action. Cases meeting certain criteria are considered for additional assistance at weekly case meetings or referred to VLP. Non-LSC funding may cover particular counties or the entire state. The intake processes for these non-LSC funded cases vary and, as described above, are not reported to LSC. Intake screening practices were assessed to ensure that non-LSC cases do not violate entity restrictions due to the applicant's status or the nature of assistance provided by PTLA. A description of each office's intake process is provided below followed by a summary of eligibility screening.

(This footnote is continued from the prior page.)

referenced. Finally, PTLA indicated it would, as recommended, monitor the use of these fields and provide specific training, as necessary. See page 3 of the Response.

¹⁰ See PTLA's Standard of Practice (June 2010) and the File Maintenance Protocol (undated).

Intake procedures in each PTLA branch office are uniformly consistent with slight procedural variations. The Portland office, because of its size and diversity of projects, is discussed separately. There is a division in oversight between the northern tier offices (Bangor, Machias, and Presque Isle) and the more southern tier offices (Augusta, Lewiston, and Portland). So for ease of reference these offices have been grouped together by their respective tiers and discussed separately. In addition, intake for the Migrant and Native American funded cases takes place primarily in the Bangor office. Finally, employment cases, other than unemployment compensation, are reviewed through intake and referred to PTLA's Employment Law Project in Bangor; similarly, certain types of tax cases are processed through intake and referred to PTLA's Low Income Tax Clinic in Bangor.

a. Northern tier offices: Bangor, Machias, and Presque Isle

Intake – telephone and walk-in:

Each office has staff that has primary intake responsibilities. The intake screener determines whether that the applicants meet residence requirements for the respective service area, confirms that the legal problem is within the office's priorities, and verifies that there is not an apparent conflict. The screener then asks questions which capture the applicant's basic information, such as citizenship, adverse party information, financial eligibility, and facts of the case. All intake staff interviewed indicated that an intake form is completed prior to entering the applicant's information into the ACMS.

In-person applicants who are United States citizens are asked to execute a "United States Citizenship Statement." This Statement was reviewed by the members of the review team and it was determined that the Statement is compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5. Non-citizens who are eligible for assistance are asked to sign a non-Citizen Status form in addition to providing appropriate documentation demonstrating status (with the exception of those applicants who are a victims of domestic violence and are seeking a related remedy as these category of applicants are exempt from producing such documentation).

PTLA's "Financial Eligibility Policy" indicates that eligibility determinations should be based on the actual income of all persons who are resident members of the household for whom legal services have been requested. When individuals share a residence, yet have no legal obligation to support one another, the determination of who should be included in the household for financial eligibility purposes may depend upon the type of legal assistance requested or the identity of the applicant for whom legal assistance is sought. Interviews of intake staff revealed inconsistency in determining the number of persons who should be considered as part of the household for income eligibility purposes. Some intake staff consistently recorded everyone residing in the household; while others considered only the individuals applying for legal assistance. In the DR, OCE recommended that PTLA conduct additional training to ensure that staff applies its "Financial Eligibility Policy" in a manner consistent to its Policy.¹¹

¹¹ As noted in the Response to the DR, PTLA has worked on staff training. Specifically, in January 2013, the Pine Tree managers met to identify specific ways to address the concerns raised in the report. As a follow-up, staff were notified on February 5 and 11, 2013, of the actions needed to address the concerns raised in the report, including the
(This footnote is continued on the next page.)

Outreach: Presque Isle and Machias

The Presque Isle and Machias offices conduct Native American outreach clinics. The Presque Isle clinic is conducted one (1) day a week. The hours are advertised at the Aroostook Band of Micmacs Reservation. The clinic is staffed by the managing attorney of the Presque Isle office. The managing attorney indicated that intake screening is conducted on-site using the standard PTLA intake form. The managing attorney conducts conflicts checks by contacting the paralegal at the Presque Isle office so that the applicant's information may be entered into the ACMS.

The Machias Native American outreach clinic is conducted for two (2) different tribes with one (1) clinic scheduled weekly.¹² The clinics are held at a tribal building and individual appointments are scheduled through the Machias receptionist. Eligibility intake is conducted by the attorney supervising the clinic using the PTLA intake form.

For both Presque Isle and Machias, intake and oversight is conducted similarly to the in-office intakes that were reviewed. No compliance issues were noted.

Outreach: Bangor

The Bangor office has a Farmworker Outreach Unit which provides assistance to Migrant workers in the area. The attorney and a temporary outreach paralegal travel to labor camps in PTLA's service area providing legal assistance and information to workers. They go to the camps in the early evenings when the workers are usually home. Interviews revealed that the outreach paralegal and attorney go door to door providing information packets, which consist of, essentially, a calendar with information on the different types of legal issues facing Migrant farmworkers. If the worker is not home, the packet is left at the door. Additionally, according to the paralegal, in some instances, where requested, legal assistance in the form of advice or brief services is provided to the worker once the applicant is screened and found to be eligible for legal assistance. Furthermore, according to interviews, sometimes the outreach workers travel door to door informing the workers that there will be a presentation later that same evening at the center of camp. The presentation includes describing the types of assistance PTLA provides its clients and at the conclusion of the presentation PTLA staff is available to provide legal advice to eligible participants.

Interviews with outreach staff indicated that intake screening and case oversight are conducted similarly to the procedures observed and verified for in-house applicants and cases. No

(This footnote is continued from the prior page.)

specific concern referenced. In addition, local offices will follow up with specific training for staff. See page 3 of the Response.

¹² These are the Passamaquoddy Tribe of Indian Township (Motahkomikuk), Maine, and the Passamaquoddy Tribe of Pleasant Point (Sipayik), Maine.

compliance issues were noted as it relates to intake screening practice for outreach, however there appears to be possible non-compliance with 45 CFR Part 1638 (Solicitation) which will be discussed in more detail in Finding 27 below.

b. *Southern Tier Offices: Portland/Volunteer Lawyers Project (“VLP”) cases*

In addition to Portland being the main administrative offices, most of the casework originates there and it is also the primary location for VLP. Because of the uniqueness of this office, although it is part of the Southern Tier offices, it will be discussed separately in this section.

*Intake – telephone and walk-in*¹³:

¹³ *Portland/Non-LSC funded cases:* PTLA receives funding from numerous non-LSC sources. Cases meeting the requirements for other funds are coded to the appropriate source and are excluded from CSRs (however, in some instances, these may be improperly excluded from CSRs). A description of a sample of these case types are described below.

Volunteer Lawyers Project funding: VLP refers a range of Cumberland County family law cases to PTLA. A PTLA paralegal receives a written intake form and, following a conflict check, contacts the client to screen for eligibility and set an appointment with a Coffin Fellow attorney. The paralegal does not conduct a spend-down for persons with income at 125-200% of the FPG though cases within this range must be approved by the Executive Director before being accepted. During the first meeting, the attorney obtains a citizenship attestation or reviews eligible alien documentation. These cases are coded to the Coffin Fellowship funding code.

U.S. Department of Justice funding: PTLA operates a statewide KIDS Legal project funded by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (“OJJDP”). The financial eligibility limit is 200% of the FPG. The project maintains its own website and advertises its own phone number and many applicants are referred from caseworkers or school counselors. A paralegal conducts intake by phone. Following a conflict/duplicate check, the paralegal conducts an eligibility screening by taking notes and later enters the information into Legal Files. The analysis of expenses and a spend-down is not conducted for persons with income at 125-200% of the FPG. Citizenship attestation and/or other eligible alien documentation is obtained during the first meeting. The client in these cases is the child. Attestations and retainer agreements are signed by the parents. These cases are coded to the KIDS Legal/OJJDP funding code.

United Way and STOP Violence Against Women funding: PTLA receives United Way (“UW”) and STOP Violence Against Women (“STOP”) funding for which there is no financial eligibility ceiling. The majority of these cases are fax referrals from domestic violence and sexual assault community groups or agencies. Following a conflict/duplicate check, a paralegal contacts the applicant in a safe manner as specified by the referring entity and conducts a full intake following the screens of Legal Files. Appointments are set with an attorney based upon the date of the Protection from Abuse hearing. The attorney is responsible for obtaining compliance documentation. These cases are coded to the UW or STOP funding codes.

Low Income Taxpayer Clinic funding: The Low Income Taxpayer Clinic (“LITC”) project is based out of Bangor. The grant has an income ceiling of 250%. If a call comes into the Portland Office, staff completes an intake and forwards it to Bangor. These cases are coded to the LITC funding code.

HPRP funding: PTLA receives U.S. Department of Housing and Urban Development Homelessness Prevention and Rapid Re-Housing Program funding from the Maine State Housing Authority (“HPRP”). The financial eligibility limit is 50% of the Area Median Income. An attorney is on-site at local courthouses during the eviction docket. The judge announces their presence and people are to obtain legal assistance prior to their case being called. PTLA staff obtains the docket list the day before and check conflicts so that they know in advance if they cannot assist someone. HPRP requires specific paperwork which is completed with the assistance of a PTLA paralegal who usually accompanies the attorney. It is noted that this paperwork contains an attestation that does not comply with LSC requirements. Cases are entered into Legal Files when the paralegal returns to the office. These cases are coded to the MSHA funding code.

The Portland Office conducts intake Monday, Wednesday, and Thursday from 8:30 am-12:30 pm. Three (3) paralegals log into the phone system and receive calls on a rotating basis.¹⁴ After a pre-screen of the legal problem is conducted, paralegals refer the case to the VLP¹⁵ (or, if the applicant is not eligible, provide alternative information for assistance) or conduct a full intake depending upon the legal problem. A full intake is generally conducted for applicants with housing, benefits, employment, and third-party collection cases. A conflict/duplicate check is followed by a full eligibility screening guided by the Legal Files screens. Based on the applicant's responses, the paralegals make an eligibility determination and are authorized to accept the case and provide limited assistance to the client in form of advice or brief services, and/or accept the case for investigation.¹⁶ The advice may be confirmed in a letter with pamphlets or other relevant legal information. If unsure of the proper advice, paralegals discuss the issue with the Regional Directing Attorney or another staff attorney located in close proximity. Depending on the type of case, clients are asked to bring in any case related paperwork and sign compliance documents prior to the provision of legal services.

PTLA conducts walk-in intake when an applicant has an emergency legal issue, has traveled a great distance, has telephone accessibility issues, or has been referred by an agency; otherwise an appointment is scheduled for a time when telephone intake is closed.¹⁷ If there is in-person contact, a citizenship attestation is signed at that time. If the applicant is a non-citizen, eligible alien documentation must be produced and the paralegal completes and signs a Citizen/Eligible Alien Determination form.

The majority of the cases are closed following the limited assistance. In such instances, the paralegal enters closing notes and places the case in "To Be Closed" status. Files for cases which have documents (*i.e.*, signed citizenship attestation or case related documentation) are given to a designated staff attorney for review and closure. Electronic advice only cases, without documentation, are reviewed by the Regional Directing Attorney. Cases are reviewed for proper legal advice, funding code, and execution of proper documents if there was in-person contact. Interviews disclosed that such closures occur at least once per month.¹⁸

Cases appropriate for extended representation and cases with unique issues are presented at a weekly case meeting held by video-conference with the Lewiston and Augusta Offices. The meetings are attended by case handlers from all offices and are run by the Regional Directing Attorney or the Director of Training and Litigation. Cases are reviewed and discussed, though management has the final decision. If accepted for additional assistance, the case is assigned to a case handler, which, depending upon the issue, may be a paralegal. The case handler is responsible for immediately notifying the client of the decision.

¹⁴ The paralegals have 5-15 years of experience; two (2) work full-time, and one (1) works part-time.

¹⁵ Certain types of cases are referred to VLP after intake screening without advice; such as, family without domestic violence, bankruptcy, and unemployment cases. The intake screen is scanned and attached to an email, and the PTLA record is closed as a matter. VLP does not have access to PTLA's portion of the database and, accordingly, the intake must be re-entered by VLP.

¹⁶ If cases are accepted for investigation, the paralegal either sets an in-person appointment or mails a citizenship attestation and retainer for investigation.

¹⁷ Many walk-in applicants have emergency eviction cases and are accommodated.

¹⁸ The Regional Directing Attorney was out of the office during the week of review. Information regarding closure was obtained from the staff attorney responsible for closing cases with documents and other management staff.

Volunteer Lawyers Project

The Maine VLP is a statewide joint project of PTLA and the Maine Bar Foundation (“Foundation”). It is operated pursuant to a contract between PTLA and the Foundation. VLP is not a legal entity and staff is employed by PTLA. Staff is primarily located in Portland, and includes a full-time Project Director (who is an attorney), a part-time (40%) attorney, a full-time Volunteer Coordinator (who is a paralegal), and 2.6 full-time equivalent (“FTE”) paralegals. A full-time attorney staffs the VLP office in Bangor. As a result, the VLP currently has a total of seven (7) full and part-time employees. VLP intake is conducted via its toll-free Statewide Hotline and at two (2) courthouse projects.¹⁹

1. Statewide hotline

The majority of VLP intake is conducted on the Hotline. VLP generally does not conduct in-person intake.²⁰ Applicants seeking to apply in person are greeted and asked to complete a form with their name, contact information, and legal problem. The form states that they will receive a call-back within seven to ten days. Every volunteer shift has a designated volunteer to make call-backs from persons completing the form or referrals from PTLA.

The hotline is open for family law intake from 9:00 am-12:00 pm Monday, Wednesday and Friday. Other areas of law are screened on Tuesday and Thursday from 1:00 pm-4:00 pm. The hotline's menu directs applicants with unemployment compensation cases to a voice mailbox for applicants to leave their name and number. Messages from the unemployment compensation line are returned on Tuesdays and Thursday by an intern or a paralegal. These cases are also screened using HotDocs and they must meet LSC financial eligibility guidelines. One (1) of the paralegals is responsible for reviewing these cases. Some cases may be referred to PTLA's Employment Law Project based in Bangor. Others are discussed with the Project Director. Given the time issues involved in unemployment cases, this discussion usually cannot wait until weekly meetings. The Project Director approves referrals of cases to a law firm that has agreed to accept cases in Kennebec and Androscoggin Counties or individual attorneys on an unemployment panel if the case is in other counties.²¹ These cases are handled according to procedures described above for other pro bono referrals.

Except for unemployment compensation cases, community volunteers who are not paralegals or attorneys conduct the eligibility screening using HotDocs document generation software.²² Each screen of the software has specific interview questions with corresponding answer fields. At the end of the interview, a VLP Intake Form is generated from the gathered information. Volunteers then place the caller on hold and take the intake form to the supervising paralegal

¹⁹ The only intake conducted by Bangor VLP is at a limited assistance clinic. All other intake is conducted via the statewide hotline, as discussed below.

²⁰ Exceptions are if the applicant is deaf, needs an interpreter, or does not have a telephone.

²¹ By way of clarification, VLP uses a direct referral system for unemployment compensation appeals to a specific law firm and group of private attorneys. There is no geographic limitation on this referral system.

²² The Volunteer Coordinator is responsible for training and scheduling the volunteers. Three (3) volunteers are scheduled for each shift. One (1) of the two (2) VLP paralegals is assigned to supervise each shift.

who does a conflict check and who makes a determination of eligibility following the LSC guidelines.

For all but unemployment compensation cases, the paralegal responsible for supervising the volunteer shift matches the questionnaire to the intake information and decides upon one (1) of four (4) courses of action:

i. Referral to an Outside Source

The case may be referred to an outside source for services. Referral information is provided by the paralegal and communicated to the caller. The paralegal closes the Legal Files record. Referrals are assigned a Maine Civil Legal Services Fund or IOLTA funding source and not reported to LSC as CSRs.

ii. Legal Information

The paralegal may specify legal information that is relayed to the caller by the volunteer.²³ Often the verbal information is followed-up with written materials. These Legal Files records are closed by the paralegal with the LSC closing code Counsel and Advice; however, they are assigned a Maine Civil Legal Services Fund or IOLTA funding source. While legal advice as defined by LSC is not provided, non-LSC funded cases are not reported to LSC, as described above. If PTLA starts to report non-LSC funded cases as part of its annual Grant Activity Report, it must continue to ensure that these incidents of legal information are not reported as “cases.”

In response to the DR, PTLA explained that VLP staff worked with PTLA’s information technology staff to create additional specific “matters” in VLS’s case management system to fully track time spent on private attorney activities, as distinguished from other VLP initiatives. *See* Item 2 on page 2 of the PTLA Response.

iii. Helpline

Third, the paralegal may refer the case to the VLP statewide family law Helpline. The paralegal prepares a one (1) page summary and attaches a question page with space for answers and legal advice provided. A volunteer sets a telephone appointment for the Helpline which is operated Wednesdays 6:00 pm-8:00 pm and Fridays 1:00 pm-4:00 pm. At the time of the review, appointments for a call-back from an attorney or law student were being set two (2) weeks out. On Wednesdays, the Helpline is staffed by three (3) private attorneys and one (1) or two (2) law students. Law students review the write ups of the case with the attorneys prior to making the call-back to the client. Attorneys are available while the law students are on the call and they review the advice afterwards. On Fridays, a prominent Portland law firm provides one (1) to two

²³ At the time of the 2004 OCE review, PTLA reported these interactions as cases. LSC instructed PTLA to cease this practice as private attorneys are not involved and the assistance does not rise to the level of legal advice. *See* 2004 Report on page 26f. PTLA has taken corrective action and no longer reports these as cases.

(2) attorneys. Conflict information is provided in advance to the attorneys so they can determine if there is anyone they cannot assist.

iv. Pro Bono

Last, the paralegal may refer the case to a private attorney on the pro bono panel. The paralegal has the authority to make the pro bono referral decision if the case meets certain routine criteria. Primarily, these are family, bankruptcy, disability appeals, and tax cases. Otherwise, the case is discussed at a weekly case meeting and the decision to refer is made by the Project Director. Once the referral decision is made, the paralegal prepares a one (1) page summary with conflict information. The applicant is sent a letter with a form confirming eligibility and a Client Referral Agreement which must be completed and returned to the office prior to placement. Two (2) different versions of the eligibility form were provided by VLP, one (1) with a citizenship statement that does not comply with LSC requirements and one (1) with no citizenship statement. *See* discussion below.

Once paperwork is returned, cases are organized by case type and placed with pro bono attorneys by volunteers who serve as “Lawyers of the Day.”²⁴ There are two (2) “Lawyer of the Day” programs, one operating out of Portland which places cases with the Southern Tier offices; the other operating in the Bangor Office which place cases in the Northern Tier offices.²⁵ In Portland, the referral and oversight of these cases is assigned to the third paralegal.²⁶ Each “Lawyer of the Day” has access to a roster of panel attorneys organized by county, area of law, and the number of VLP open cases.²⁷ The “Lawyer of the Day” contacts the panel attorneys regarding available cases and, if someone is interested, emails the case summary previously prepared by the supervising paralegal as well as conflict information. Private attorneys who do not respond are contacted by the next day's “Lawyer of the Day.” Once a private attorney agrees to accept a case, the “Lawyer of the Day” completes a form which internally docket the information; they do not record this information directly into Legal Files. The applicant is sent a letter advising them of the placement and to call the pro bono attorney within 10 days. At the same time, the pro bono attorney receives an acceptance packet which includes general information about VLP referrals and a closing form.

A paralegal enters the referral information from the aforementioned internal docketing form into Legal Files. The pro bono attorneys are asked to advise VLP once they have met with the applicant and agreed to provide assistance. Cases are tickled for 30 days. If the attorney has not responded within 60 days, the paralegal contacts the attorney. Once accepted, the case is tickled quarterly though interviews reveal that follow-up is not necessarily conducted at that time. When the case is complete, volunteer attorneys are expected to submit the closing form indicating the level of service provided and date closed. At least once a year, the paralegal does a mass mailing of letters to attorneys with open cases requesting an update. HotDocs is used to

²⁴ Attorneys volunteer for three (3) hour morning or afternoon shifts.

²⁵ For these cases, documents are scanned into the Legal Files record.

²⁶ Two (2) paralegals are responsible for supervising hotline shifts and the third is responsible for the unemployment compensation line and supervising pro bono referrals and follow-up.

²⁷ This roster is generated by a Crystal Report application which was designed by the PTLA Systems Analyst and is updated by a VLP Paralegal.

generate the mailing. At the time of the review, the paralegal responsible for oversight stated that 342 cases have been open since at least 2010 and that VLP recently sent a letter to the attorneys assigned to those cases requesting an update. The paralegal closes cases on Legal Files with the closing code identified by the attorney in the closing form. An interview disclosed that cases in which the client does not make contact with the attorney may be closed with limited assistance codes when assistance was provided by the “Lawyer of the Day.” This was confirmed by case review as well.

2. Courthouse Projects

VLP also conducts intake at four (4) courthouse projects.

i. Courthouse Assistance Projects

The family law Courthouse Assistance Projects (“CHAPs”) are held at the Augusta, Biddeford, Lewiston, and Portland District Courts once per week during the afternoon. Students from local colleges conduct intake which includes a written intake form that mirrors the print-out from HotDocs, a Limited Representation Agreement, and a compliant citizenship attestation. They also obtain written citizenship attestations or review eligible alien documentation and complete the form used by PTLA. Pro bono attorneys provide limited assistance to LSC-eligible persons with family law issues representing themselves pro se. Such assistance may consist of form completion or providing substantive or strategic advice and is documented in the file.

ii. Domestic Violence Lawyer of the Day

The second courthouse project is a Domestic Violence Lawyer of the Day. Once a year private attorneys are trained on domestic crisis issues. During the year, these attorneys staff sessions each Friday at Lewiston and Portland District Courts. Intake is conducted by students, as described above using the same forms, and the attorneys provide full or limited assistance to persons seeking a two-year Protection From Abuse order. An Entry of Limited Appearance is entered if the attorney appears before the court.

For both projects, the case information is entered into Legal Files within days.²⁸ The VLP Project Director reviews the eligibility and legal assistance, and approves closure. If she determines additional assistance is required, the case is referred to either PTLA or a VLP pro bono panel attorney.

c. Southern tier offices: Lewiston and Augusta

*Intake in the Lewiston office – telephone and walk-in:*²⁹

²⁸ The VLP Director stated that in Maine volunteer attorneys are not subject to conflict rules when providing assistance in a courthouse project setting.

²⁹ Non-LSC funded cases in the Lewiston office: As is the case in Portland, Lewiston receives HPRP funding to staff the local eviction docket. The same process is followed as described for Portland. These cases are coded to the MSHA funding code.

The Lewiston office conducts walk-in and telephone intake screening every Monday, Thursday, and Friday from 9:00 am-4:00 pm, Tuesday from 9:00 am-12:00 pm and Wednesday from 1:00 pm-4:00 pm. The office is closed daily for lunch from 12:00 pm-1:00 pm. Intake is conducted by a single paralegal with five (5) years of experience. Due to staffing shortages, there is no back-up unless the office has an intern. If the paralegal is unavailable, intake screening is not conducted except that emergencies will be accommodated by one (1) of the office's two (2) attorneys.

The intake process is uniform throughout PTLA; accordingly, it is the same as described in the Northern tier offices. This office has a high volume of calls. If the paralegal is conducting an intake when a new call comes through, the new caller leaves a voice message and the paralegal returns the call within a few days.

Cases are closed in a similar manner as described in the Portland office discussion, above. The paralegal codes a case to be closed. Cases with documents are reviewed and closed by an attorney. Cases without documents are electronically reviewed and closed by the Regional Directing Attorney.

*Intake in the Augusta office – telephone and walk-in:*³⁰

The Augusta office conducts walk-in and telephone intake Monday, Thursday, and Friday from 9:00 am-4:00 pm and Tuesday from 9:00 am-12:00 pm. The office is closed from 12:00 pm-1:00 pm for lunch. Intake is conducted by a single paralegal with 14 years of experience. Due to staffing shortages, there is no back-up unless the office has an intern. If the paralegal is out, intake is closed except that emergencies will be accommodated by an attorney.

The intake process proceeds as described above. This office has a high volume of calls. If the paralegal is conducting an intake when a new call comes through, the new callers leaves a voice message and the paralegal returns the call within a few days.

Cases are closed in a similar manner as Portland, above. The paralegal codes a case to be closed. Cases with documents are reviewed and closed by an attorney. Cases without documents are electronically reviewed and closed by the Regional Directing Attorney.

Financial Eligibility Screening

Income Screening: Government Benefits Exemption: PTLA's Financial Eligibility Policy contains a provision qualifying individuals whose income is solely derived from government

³⁰ *Augusta Non-LSC Funded:* As is the case in Portland and Lewiston, Augusta receives HPRP funding to staff the local eviction docket. These cases are coded to the MSHA funding code. A paralegal in the Augusta office conducts intake for foreclosure and predatory lending cases funded by the Maine Attorney General's Office and a contract from the Bureau of Consumer Credit Protection. There are no financial eligibility guidelines for these cases. Applicants are referred to the paralegal from various agencies. The paralegal conducts a conflict/duplicate check and calls the applicant for a full eligibility screening guided by Legal Files. While nearly all intake screening is by telephone, attestations are obtained during the first in-person meeting.

programs for low-income individuals and families. The policy identifies these programs as Temporary Assistance for Needy Families (“TANF”), Supplemental Security Income (“SSI”), and General Assistance.

Reasonable Inquiry Regarding Income Prospects: Pursuant to the requirements of 45 CFR § 1611.7(a), staff make reasonable inquiry into each applicant's income prospects. The question is asked by paralegals during the eligibility screening process. The answer is recorded in the Financial Eligibility Demographics screen of Legal Files. VLP volunteers conducting intake record the answer in HotDocs which has a specific question; however, the question is not included on the printed version of the intake.³¹ Five (5) written intake forms were identified and reviewed. Only one (1) form is used for LSC reported cases and it is used by VLP at the Courthouse projects. This form is based on the printed HotDocs form, which, as discussed above, does not include income prospects information. This form must be revised to include the question. Forms used for non-LSC funded cases were also reviewed. Most, but not all, include this question.³²

Asset Screening: All interviewees were aware of PTLA's asset ceiling of \$2,000 for a family of one (1) and \$3,000 for a household of more than one (1). However, PTLA's current practices do not ensure sufficient inquiry, assessment, and recordation of an applicant's assets. The “pick” list on the ACMS for asset eligibility contain few asset categories: Cash - Bank Account Checking/Savings, Cash - Certificates of Deposit, Cash - Other, Pension/Retire Acct/Other Restricted Funds, Real Property/Other than Primary Residence, and Zero Assets. Interviews disclosed that screeners only ask about these categories. Most screeners do not inquire about vehicles, which is not listed in the “pick” list. Further, there are other assets of value which may not be captured in cash, such as retirement accounts or property in addition to the primary residence. Lastly, there is no mechanism to record additional assets if they were identified during screening. It is recommended that senior management review the asset policy against the pick list and conduct staff training. Given that several paralegals conduct screening of LSC Basic funding cases, it was recommended in the DR that the program develop a script of several asset questions so that all paralegals screen in a consistent manner. In addition, it was recommended that PTLA add additional asset categories to the pick list.³³

Finally, the DR noted the program's financial eligibility policy excludes from consideration, amongst other items, assets which are exempt from attachment under State or Federal law. In response to the concerns and explanation set forth in the DR, the PTLA Board of Directors substantially revised the PTLA income and asset policies and set forth an expanded list of assets

³¹ A test of HotDocs was conducted with the Volunteer Coordinator. It was confirmed that the income questions inquire as to whether the applicant expects income to change. The user clicks on “yes” or “no,” depending upon the answer, though this does not appear on the printed intake.

³² At the current time these cases are not reported to LSC. While LSC is requiring PTLA to report cases fully screened and determined to be LSC-eligible, PTLA should not report non-LSC funded cases that do not evidence an inquiry into an applicant's income prospects.

³³ In response to Required Corrective Action Item 1, the PTLA Board met on February 7, 2013 and revised the Financial Eligibility Policy including an updated asset policy and added to the “pick list.” See pages 3-4 of the Response and the policy to which it refers. This has been reviewed and is found to address the concerns raised in the DR.

to review. See page 4 of the Response to the DR, responding to the second corrective action item.

Group Eligibility Screening: No group cases were identified. Further, none of the interviewees could recall screening a group case. Nevertheless, the PTLA policy for groups was reviewed and found to be in compliance with the regulations. Of particular note is that it requires the approval of the Executive Director and also directs that non-LSC funds should be used to the extent possible; neither is a requirement of 45 CFR § 1611.6, but both are permitted to be added.

Authorized Exceptions to the Income and Asset Ceilings: In accordance with 45 CFR § 1611.4(c)(2), PTLA has adopted authorized exceptions to its annual income ceilings, consistent with 45 CFR § 1611.5. For cases evidencing gross annual income of 125-200% of the FPG, screeners must deduct expenses in an effort to bring income to or below 125%. Both the original and adjusted income is preserved in the ACMS. No concerns were noted.

Citizenship and Eligible Alien Status Screening: All interviewees demonstrated familiarity with the citizenship and alien eligibility and documentation requirements of 45 CFR Part 1626. Moreover, staff reported they receive few alien applicants. Citizenship status is reviewed during the initial eligibility screening. If the initial screening is conducted by telephone, staff enters the initial information directly into the ACMS selecting from Alien LSC Eligible, Alien LSC Non Eligible, and U.S. Citizen options. If applying in-person, the applicant signs a citizenship attestation. For non-citizen applicants, the staff reviews the applicant's eligibility documentation using the program's standardized Citizen/Eligible Alien Determination and, after making a notation of the presented documentation, the staff signs the form.

Seven (7) different citizenship attestation forms were identified. With two (2) exceptions, the above-mentioned documentation complies with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5. Homelessness Prevention and Rapid Re-Housing Program ("HPRP") cases use paperwork required by the funder, which includes a statement of citizenship or eligible alien status in a check-list format.³⁴ Although these cases are not funded by LSC or reported, PTLA must meet LSC requirements. Two (2) different versions of the eligibility form were provided by VLP, one with a citizenship statement (dated 7/20/12) that does not comply with LSC requirements and one with no citizenship statement (dated 3/26/12). It appears as if one (1) of the paralegals uses one (1) version and the other paralegal uses another version, as indicated by the different supervisor initials in the top right hand corner. It is possible, therefore, that some cases referred to pro bono attorneys have no citizenship statement. However, the statement on the other form does not have a signature line tied to the citizenship attestation. Further, the statement has an asterisk asking the applicant to immediately call VLP if not a United States citizen. This practice may not be effective to ensure that non-citizen documentation is reviewed, in accordance with 45 CFR § 1626.7. As such, in the DR, PTLA was directed to take corrective action to ensure that all cases, regardless of funding, contain citizenship attestations in accordance with 45 CFR Part 1626 and CSR Handbook (2008 Ed., as

³⁴ It is noted that most of these cases are obtained through courthouse pick-ups on days the local courts hear eviction cases and this form is used. However, some applicants seek assistance through normal office intake and in such instances a compliant attestation is executed in addition to the HPRP forms. Accordingly, some of these cases are compliant.

amended 2011), § 5.5. The specific actions PTLA has taken in response to this Required Corrective Action are discussed under Finding 5 and at the end of this Report. *See infra*, at 27.

Compliance Related Forms: Except for the Citizen/Eligible Alien Determination, PTLA does not use forms standardized throughout the program. As described above, seven (7) citizenship attestation forms were identified, two of which are non-compliant. Five (5) written intake forms were identified, though only one is used for LSC cases and that form does not include an inquiry into the applicant's income prospects. Seven (7) retainer agreements and limited assistance forms were identified. No compliance concerns were noted.

Case Oversight: Limited assistance cases closed by the paralegals in all offices are reviewed and closed by an attorney who assesses the legal assistance provided to the client and compliance related elements. The Director of Training and Litigation reviews cases electronically and, at least once per year conducts a case review of all open cases and a sample of closed cases for each advocate. As described above, the Systems Analyst generates a variety of error reports and senior management generates reports open cases with no recorded time, and no recorded time within a 30, 60, and 90 day period.

Conflict and Duplicate Checks: Program-wide conflict checks are conducted. Prior to conducting intake, paralegals conduct a conflict check to determine if the applicant has been an adverse party to a PTLA case or if the applicant is a former client. Interviews reveal that staff has been well trained on spotting potential duplicates and how to reopen a case, if appropriate.

Outreach Intake: Through the Homelessness Prevention and Rapid Re-Housing Program ("HPRP") an attorney is on-site at local courthouses during the eviction docket. The judge announces the attorney's presence and indicates that legal assistance should be obtained prior to their case being called. PTLA staff obtains the docket list the day before and check conflicts so that they know in advance if they cannot assist someone. HPRP requires specific paperwork which is completed with the assistance of a PTLA paralegal who usually accompanies the attorney. It is noted that this paperwork contains an attestation that does not comply with LSC requirements. Cases are entered into Legal Files when the paralegal returns to the office. These cases are coded to the Maine State Housing Authority ("MSHA") funding code. These cases are funded by MSHA/HPRP and are not reported to LSC. The citizenship attestation used for these cases do not comply with LSC requirements.

As such, OCE recommended, in the DR, that PTLA conduct additional training to ensure that staff is applying the Financial Eligibility Policy in a consistent manner. It was further recommended that senior management review the asset policy against the pick list and conduct staff training. In addition, it was recommended that PTLA add additional asset categories to the pick list.

Moreover, given that several paralegals conduct screening of LSC Basic funding cases, it was recommended that the program develop a script of several asset questions so that all paralegal screen in a consistent manner. In response to the DR, as discussed above, the PTLA Board modified the asset policy on February 7, 2013. To implement these changes, PTLA had discussions with staff seeking feedback on modifications and then proposed a revised policy.

Following the adoption, on February 11, 2013, all staff were provided instructions about implementing changes in the policy. While the response doesn't address the recommendation of developing scripts, this was just a suggestion, not a recommended requirement. The changes which PTLA has put into place, including modifications to the drop down menu on Pika, should alleviate the concerns. *See* the PTLA response at 3 and 4.

Finding 3: Sampled cases evidenced substantial compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines (“FPG”).

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.³⁵ *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.2.

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

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

In advance of the review, PTLA provided the “Revised Financial Eligibility Policy,” dated December 7, 2005, that was revised in accordance with the 2005 changes to 45 CFR Part 1611. The policy adopts two (2) levels of financial eligibility related to LSC-funded services. Chart A reflects household income for 125% of the FPG and Chart B 200% of the FPG.

All sampled case files 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

³⁵ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

whose income do not exceed 125% of the FPG. Moreover, for those files reviewed in which the clients income was in excess of the 125% FPG threshold, PTLA properly documented its review of the factors and, in accordance with its policy, used the factors to “spend down” the applicant’s income below the 125% threshold.

There were nine (9) files reviewed in which the client was over the income threshold and there was no evidence of either an appropriate spend-down or that the case was funded with non-LSC funding.³⁶ A review of these files did not indicate a specific or distinct pattern to these errors.

There were no cases of group clients reviewed.

In the DR, OCE recommended that PTLA consider the adoption of an opening and/or closing checklist, which would include a review of the applicant’s/client’s income and the use of the income factors before proceeding to provide assistance or to close the case.³⁷

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

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant’s eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.³⁸ *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

³⁶ *See* Case Nos. 11-P049-08350 (This is a Presque Isle staff case where the client’s annual income was \$24,480 for a household of two (2) which is over 125% but below 200% of the FPG, however, there were no exceptions documented in the case file); 09-11760 (applicant was initially over the 200% threshold and the use of the program factors brought the income below 200%, but not below 125%. It appears that this should not have been an accepted case.); 12-PO49-13827 (The client is over the eligibility guidelines and no factors are recorded in the file; however, the case, which is funded by LSC, is open. The funding code could be changed before the case is closed and reported.);

See also, Case Nos. 08-06634, 12-P049-14318, 10-P049-01803, 10-P049-06178, 10-P049-06180, and 10-P049-02794. Each of these files involved applicants whose household income exceeded PTLA’s annual income ceiling, but lacked documentation of PTLA’s consideration of any of the authorized factors adopted by PTLA as a part of its financial eligibility policy.

In addition, eight (8) non-LSC funded files were reviewed during the visit that lacked the income eligibility documentation required by LSC regulations and the CSR Handbook (2008 Ed., as amended 2011). *See* File Nos. 08-05757, 12-P049-16718, 12-P049-14354, 04-11389, 12-P049-15624, 11-P049-16332, 12-P049-13596, and 12-P049-16753.

³⁷ In the Response to the DR, PTLA noted that a case closing checklist exists as an annotation in Legal Files for all cases. *See* pages 3 and 4 of the Response and the February 5, 2013 email to all staff attached as an exhibit. PTLA reported that it has advised staff to use this checklist consistently. In addition, the Litigation Director and other supervising attorneys will periodically review a random sample of closed files to ensure that PTLA compliance policies and all closing practices are being followed in a consistent manner. *Id.*

³⁸ 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.

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.

With two (2) exceptions, case files sampled evidenced asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.³⁹ As such, sampled cases evidenced substantial compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

There are no recommendations or corrective actions specific to the case review which are required; nevertheless, note the previously discussed screening issues in Finding 1 of this report.

No response were made to this Finding.

Finding 5: Sampled cases evidenced non-compliance with the documentation requirements set forth in 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 and 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.

³⁹ *See* Case Nos. 12-P052-09813 (This was an open VLP case in which the client had \$25,000 in a pension account – the client was under the 59½ threshold and there was no evidence of a waiver. The intermediary indicated that since it was a recently opened case file, a waiver would be obtained) and 12-P049-14318.

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.⁴⁰ 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.

Sampled cases evidenced non-compliance with the documentation requirements of 45 CFR Part 1626. Twenty (20) cases lacked executed citizenship attestations.⁴¹ In addition, 12 attestations were not dated and therefore it could not be determined whether they were executed prior to the commencement of representation.⁴² One (1) attestation was not executed prior to the commencement of representation.⁴³ One (1) file for an eligible non-citizen did not have the required recordation of the evidence of screening of documentation, although the file notes indicated the client was eligible for legal assistance.⁴⁴ Based on our review of both the files and the operational procedures, the deficiency appears to be in screening, not in the systems. Nevertheless, it was recommended that a possible additional systemic step be added to ensure that these attestations are obtained prior to assistance being provided.⁴⁵ In response to this

⁴⁰ See Kennedy Amendment at 45 CFR § 1626.4.

⁴¹ See Case Nos. 11-P052-07738 (This file, opened on 9/9/2011 and still open, had no attestation because the program never saw the applicant. In addition, the applicant never provided income information, so this case will be deselected); 12-P052-09211 (This file, opened on 2/3/2012 and still open, had no attestation, although the file notes indicate the client is a U.S. Citizen); Case No. 12-P049-15026 (Case opened by telephone 4/3/12 and the attorney immediately filed an answer in a collection case due to a deadline, though the case is still open, the attorney has not seen the client in-person, the retainer and attestation were mailed but not returned.); 12-P052-09813 (This file, opened on 3/29/2012, does not have an attestation, neither has the applicant sent in the remaining paperwork. This file will probably be deselected and closed.); 06-00529 (This file, opened on 1/12/2006 and still open has not been located, therefore, PTLA is unable to determine whether there is an attestation. Moreover, as discussed below, there is no evidence of continuing oversight.); 11-P052-05440 (This file, opened on 3/29/2011 and still open, was initially a Helpline case and was reported closed. It was subsequently reopened and referred to a pro bono attorney. The citizenship attestation form was sent, but not returned); 10-P052-03827 (This file, opened on 10/27/2010 and still open was also missing the hard file. It was last tickled on May 2, 2011, and the file notes indicate the attestation form was sent on 9-28-10, but has not been returned). See also, Case Nos. 10-P049-03112, 11-P049-11762, 12-P049-15964, 12-P049-15171, 10-P049-03585, 11-P049-08447, 12-P049-13596, 10-P049-02794, 07-06215, 07-14807, 09-01981, 12-PO49-15723, and 12-PO49-15265.

⁴² See Case Nos. 08-07983, 12-9049-13702, 11-P049-09447, 11-P049-08625, 07-08910, 12-PO49-16768, 12-PO49-15719, 11-PO49-08600, 10-PO49-06591, 09-16215, 11-PO49-07843, and 12-PO4915469.

⁴³ One (1) case file contained a signed and dated attestation; however, the attestation was dated after the work on the case was completed. See Case No. 10-PO49-03917.

⁴⁴ See Case No. 09-11760 (This file, opened on 8/4/2009, was closed on 6/3/11, as a B-Limited Action file. The client never followed up with program and the file was kept open too long. While the client is recorded as being a screened non-citizen, the alien eligibility information was not in the file).

⁴⁵ While PTLA has the option of deciding of how to effect the change, a simple checklist should solve the problem. See Gawande "The Checklist" *The New Yorker*, December 10, 2007 at

(This footnote is continued on the next page.)

concern, PTLA noted it was using a closing checklist and concurs with the DR's acknowledgement of its efficacy.

Finally, as discussed in Finding 2, above, most housing cases funded by HPRP (Homelessness Prevention and Rapid Re-Housing Program) do not contain citizenship attestations that comply with the format required by the CSR Handbook (2008 Ed., as amended 2011), § 5.5. While these cases are not reported to LSC, they nevertheless must comply with the requirements of 45 CFR Part 1626 and the CSR Handbook (2008 Ed., as amended 2011) as they relate to citizenship attestations. In the DR, OCE required PTLA take corrective action to ensure that cases include citizenship attestations as required by 45 CFR § 1626.6(a). Further, PTLA was also citizenship attestation forms must comply with the format required by the CSR Handbook (2008 Ed., as amended 2011), § 5.5. In addition, due to the number of files reviewed with attestation deficiencies, the DR directed PTLA to develop a plan for corrective action to resolve this.

In response to the findings set forth in this section, PTLA has taken the following actions: First, in September 2012, immediately following the review, all PTLA case handler staff were required to review their files to ensure consistent usage of the standardized citizenship attestation form. *See* Response at 2, Item 3. Second, staff were directed by PTLA management to use the standard attestation form even if certain funders also require PTLA to obtain signatures on a second citizenship form. As noted previously, PTLA currently utilizes at least seven (7) citizen attestation forms; however PTLA management has made it clear that all files must contain the standard form. The PTLA response contained the standard attestation form that the program requires in all instances, which may be seen attached to this report. *See* Response at 2, Item 3, as well as the attached exhibits.

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.⁴⁶ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

(This footnote is continued from the prior page.)

http://www.newyorker.com/reporting/2007/12/10/071210fa_fact_gawande?currentPage=all (last checked on December 4, 2012).

⁴⁶ 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.

PTLA is in substantial compliance with the retainer agreement requirements of 45 CFR § 1611.9, though some exceptions were identified. Eleven (11) sampled files lacked executed retainer agreements as required.⁴⁷ One (1) hard file was not located therefore the retainer was missing.⁴⁸ Two (2) open files had notes indicating that a retainer agreement had been mailed out but was not returned.⁴⁹ Two (2) executed retainer agreements were signed by the program and the client, though missing the scope and subject matter of the agreement.⁵⁰ Seven (7) retainer agreements were not dated.⁵¹ Lastly, four (4) retainer agreements were executed for investigation only though court representation was evidenced in the file.⁵²

The practice of executing retainer agreements is considered by LSC to be professionally desirable and in accordance with its mandate under Section 1007(a)(1) of the LSC Act to assure the maintenance of the highest quality of service and professional standards. The retainer agreement assures there is a mutual understanding as to the services to be provided to a client and this understanding is to be developed at the commencement of representation or as soon thereafter as possible. Though only three (3) retainers were missing, resulting in a finding of substantial compliance, the totality retainers of missing dates, lacking a description of assistance to be provided, and/or containing descriptions which are exceeded as the case progresses, do not ensure a timely, mutual understanding of services to be provided and rise to a level of concern. Accordingly, in the DR, PTLA was directed to ensure that it executes timely retainer agreements with complete and accurate descriptions of the extended legal assistance to be provided to the client. While this was not included in the DR's list of recommendations or required corrective actions, it was included in the text of the report. LSC notes that in the PTLA response, the

⁴⁷ See Case Nos. 12-P049-13614, 12-P049-15531, 11-P049-09677, 10-P049-00914, 12-PO49-15265, and 11-P049-11318 (The program mailed an attestation and retainer agreement to the client seeking assistance in an eviction case, the client returned the signed citizenship attestation stapled to the retainer, though the retainer agreement was not signed. The program represented and closed the case as Negotiated Settlement with Litigation).

See also, File Nos. 11-P049-12594, 12-P049-15171, 11-P049-09965, 12-P049-13512, and 11-P049-13103.

⁴⁸ See Case No. 06-00529 (This file, opened on 1/12/2006 and still open was not located, therefore, PTLA was unable to determine whether there is a retainer). It should be noted in some instances, PTLA scans a copy of the retainer into an electronic file, and therefore, in some instances where the hard file was not immediately located, the retainer was accessed electronically.

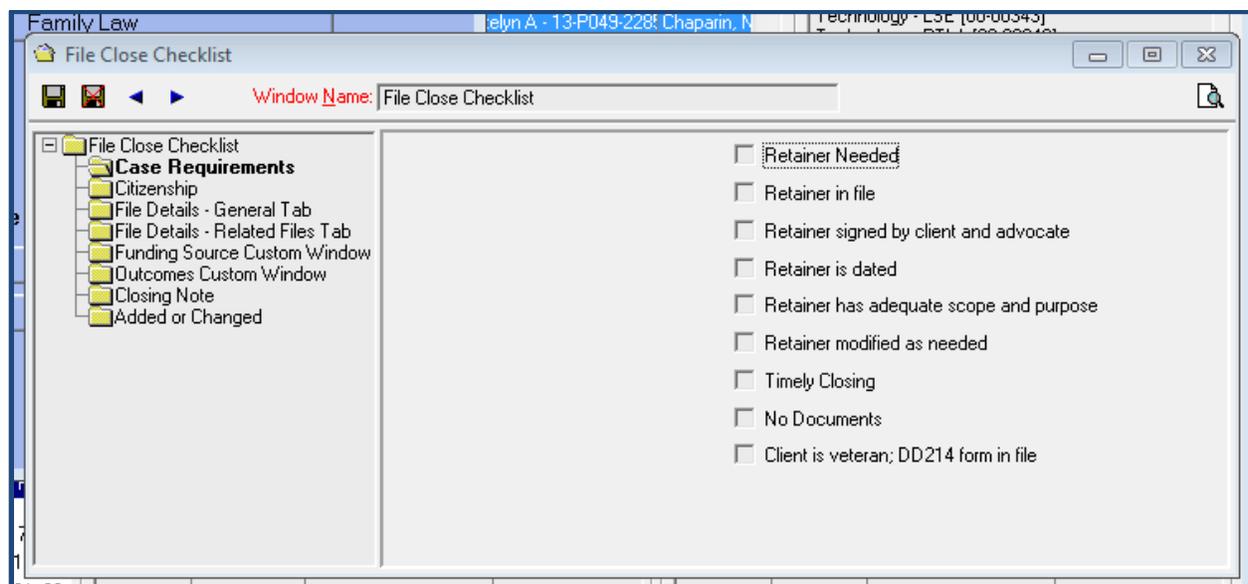
⁴⁹ See Case Nos. 11-P052-05440 (This file, opened on 3/29/2011 and still open at the time of the on-site review, was initially a Helpline case and was reported closed. It was subsequently reopened and referred to a pro bono attorney. The Basic Agreement between Parties (retainer equivalent), was sent out but not returned) and 12-P049-15026 (the attorney immediately filed an answer in a collection case due to a deadline, though the case is still open, the attorney has not seen the client in-person, the retainer and attestation were mailed but not returned (LSC Basic Field funding case)).

⁵⁰ See Case Nos. 02-12760 and 11-P049-09929.

⁵¹ See Case Nos. 08-07983 (The attorney dated the retainer but the client did not); 11-P049-11245 (Neither the attorney nor the client dated the retainer, though it was stapled to the citizenship attestation signed on 8/26/11 it is likely but not conclusive that the retainer was signed on the same date); 11-P049-09754 (lacked the date of the program signature); and 11-P049-08625 (neither the attorney nor the client dated the retainer). See also Case Nos. 07-08910; 10-PO49-06591; and 09-16215.

⁵² See Case Nos. 08-07983 (The retainer agreement was executed to investigate a foreclosure matter though the case was subsequently opened for four years and the program represented the client in a mediation conference), 12-P049-16964 (The retainer was executed to investigate a housing case though the program represented the client in court), 11-P049-09447 (The retainer was executed to investigate the circumstances of an eviction though the program represented the client in court), and 11-P049-09754 (The retainer was executed to investigate an eviction though the program negotiated a security deposit return).

program provided information showing that the report was provided to staff and management met to address the concerns raised by the DR. In addition, LSC subsequently acknowledged its error in an email to PTLA in not including this item as a corrective action item. In response to that email, PTLA demonstrated that it has taken action to ensure retainer agreements are (1) signed by the applicant/client; (2) countersigned by a PTLA representative; (3) dated; (4) provide adequate scope and purpose; and (5) are modified if the representation goes beyond what was specified in the original retainer agreement. As noted in the prior section on attestations, PTLA is using a closing checklist as can be seen in the screen shot below:



Accordingly, the concerns of the DR, although not included in the list of required corrective actions, have been fully addressed.

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

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

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

Case files reviewed indicated that PTLA is in substantial compliance with the requirements of 45 CFR Part 1636; only two (2) files reviewed during the visit were missing the required Part 1636 statement of facts.⁵³

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1 (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 § 1620.1 and 45 CFR § 1620.4.

Prior to the visit, PTLA provided LSC priorities statements approved by the board of directors on April 5, 2006 and June 2012. The 2012 priorities are identified as: Preservation of housing and related needs; Promoting the safety, stability and well-being of low-income Mainers; Enforce workplace opportunities, legal protections and income for low-wage workers; Maintaining, enhancing and protecting income and economic security for low-income Mainers; Improving outcomes for Maine children; Meeting the legal needs of populations with special vulnerabilities; and Improving the delivery of legal services and access to justice for low-income Mainers statewide.

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

There are no recommendations or corrective actions required.

No comments were made to this Finding.

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

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

⁵³ *See* Case Nos. 09-16215 (Client filed a habitability suit against her landlord after numerous attempts to secure repairs to property – negotiated a settlement and repairs were made) and 11-P049-12594.

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.

While most case files were well documented, there were exceptions noted in the open and recently closed basic field cases⁵⁴ and the VLP cases.⁵⁵ It should be noted and emphasized that since these were all recently closed case none were reported in prior years – it is fair to conclude that PTLA has an effective screening mechanism for ensuring that deficient cases are not reported to LSC.

As such, sampled staff cases evidenced substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6. No corrective action is required for staff cases, however, because of the number of open files in the VLP unit which had deficiencies, corrective action will be required for PAI cases. This will be discussed below in the section related to PAI activities.

No comments were made to this Finding.

Finding 10: Sampled cases evidenced that PTLA's application of the CSR case closure categories is consistent with Chapters VIII and IX, 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.

⁵⁴ The exceptions were Case Nos. 10-P049-03561, 09-16224, 12-P049-15714, 10-P049-04336, 10-P049-05567, 12-P049-14318, 12-P049-14761, 12-P049-16408, 12-P049-16404, and 12-P049-13479. However, each of these 10 files had been de-selected prior to the visit. In addition to these 10, three (3) of the case files reviewed failed to document the appropriate legal assistance provided. *See* Case Nos. 12-PO49-14245, 12-PO49-13997, and 12-PO49-14749. All were closed in 2012 with closing code "A," however they all will be deselected and not reported. These were identified during the LSC review and PTLA determined that deselection was the appropriate course of action.

⁵⁵ In the VLP unit, there were six (6) open files and three (3) recently closed files which lacked the description of the legal assistance provided. The three (3) recently closed cases had already been deselected and the six (6) open cases will most likely be closed as deselected cases because they have been open for an extended period of time with no advice noted.

Most of the case files reviewed were closed with correct closing codes; those with closing code errors had no distinct pattern noted.⁵⁶ As such, cases evidenced substantial consistency with the requirements of Chapters VIII and IV of the CSR Handbook (2008 Ed., as amended 2011).

Other than correcting the closing codes on the current year closed cases (which PTLA was already in the process of doing), there are no recommendations or corrective actions required.⁵⁷

As noted in the Response to the DR, PTLA has taken a number of steps to address these concerns. PTLA has made changes in the closing code summary on its internal SharePoint site to clarify the relevant factors; it has worked on training within individual units and offices; and it has advised staff by email of the concerns set forth in the DR (including issues not necessarily specific to this Finding). *See* the Response at 3 and supporting documentation. Based on OCE's review of PTLA's actions, no further response regarding this finding is needed at this time.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (timely case closing), however, there were deficiencies noted in the open cases of the VLP.

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

⁵⁶ *See* Case Nos. 11-P049-10584 [This Presque Isle staff case was closed with the closing category "H" (Administrative Decision), however, "G" (Negotiated Settlement with Litigation) is the applicable closing code. The PTLA attorney negotiated a settlement with the administrative agency which resulted in the client's original administrative case being overturned]; 09-07129 [This Bangor staff case was closed with the Closing Category "L" (Extensive Service), however the applicable closing code in this case is "B" (Limited Action). PTLA provided advice to the client and subsequently referred the client's case to a private attorney. The client spoke Spanish but the private attorney did not. The PTLA attorney acted as the interpreter for the client and private attorney. Although the PTLA attorney provided significant interpretation services throughout the case, this type of assistance is not considered legal assistance under the requirements of CSR Handbook (2008 Ed., as amended in 2011), therefore cannot be closed utilizing the closing code "L"); 09-08799 [This case was closed with a "B" though the file documentation supports an "L" Extensive Services, code. The program attempted, over two years to obtain the client's security deposit, including efforts to serve the landlord and the landlord's attorney with a suit, and efforts to negotiate with the landlord]; 11-P049-07378 [This case was closed with a "G" Negotiated Settlement With Litigation, though a "B" Limited Action, code is appropriate as the client dismissed a Protection From Harassment temporary order pro se]. *See also* Case Nos. 09-01981 (closing code "B" should be "L"); 12-PO49-16696 (closing code "G" should be "I-B"); 12-PO49-16150 (closing code "L" should be "B"); 12-PO49-15868 (closing code "L" should be "B"); 12-PO49-14245 (closing code "A" should be "X"); 12-PO49-13997 (closing code "A" should be "X"); 12-PO49-14749 (closing code "A" should be "X"); (11-PO49-13220 (closing code "B" should be "A"); 11-P049-13166 (the file was closed as "limited action", but the level of assistance indicated in the file was more consistent with "extensive service"); 09-13119 (open for two years, yet closed as a "B" the "L" closure code would have been better); 04-09866 (this case, opened since 2004 was closed in 2011 with a closing code of "A," based on the advice which was provided in 2004).

⁵⁷ While the number of files noted would seem to indicate corrective action might be required, the fact that there was no discernible pattern mitigates against this. LSC does set forth these cases in this report in the hopes that attention will be paid to the closing codes and PTLA will ensure that future errors do not occur.

amended 2011), § 3.3(a).⁵⁸ 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).

PTLA is in substantial compliance (with the exception of the VLP, as discussed below) regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3(a), as a number of untimely closed files were found.⁵⁹ It is possible that the high number untimely staff as a number of untimely closed files were found. It is possible that the high number of untimely staff cases closed was a function of the targeting of cases, because the open case files reviewed were not found to be dormant.⁶⁰

In addition to the untimely closed staff cases, there were a large number of dormant files found in the VLP unit. In the VLP, the review of open case files disclosed 10 of the 34 open files selected for review (including nine (9) specifically targeted for age) had gotten out of the tickler loop.⁶¹ As will be discussed below, the PTLA Response indicated it has addressed the concerns regarding dormancy.

⁵⁸ 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 in 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).

⁵⁹*See* Case Nos. 08-17345 (This closed Bangor staff case was opened on December 10, 2008 and closed on September 23, 2011. There is no evidence that legal advice was ever provided to the client or why the case remained open for approximately three (3) years); needed. The case was reviewed and closed in August 2012. Since only advice was provided, and no work was completed since September 2011, the case is untimely and accurately deselected with an “X” closing code.); 10-P049-01866 (the client wanted additional advice; file documents continued telephone calls, however there was no activity from June 2010 until February 2011, when it was closed); and Case No. 09-16052 (This case was opened in October 2009 and the last legal work documented in the file was June 2010, with no notations in the file of any further legal assistance needed or provided since that date. The file was closed 12/29/11 with a “B” code and is accordingly untimely).

⁶⁰ In the non-compliant untimely closed cases discussed in the prior footnote, 18 were specifically targeted, four (4) were randomly selected from the open case list (and are therefore actually considered “dormant” as distinguished from “untimely closed,” which means that when they are finally closed, they will be considered “untimely closed”), and five (5) were randomly selected on the closed 2012 case list. This 2:1 ratio (18:9, targeted to random) varies significantly from the roughly 1:2 targeted to random selection for the case list as a whole. Based on OCE’s sampling, it appears that the VLP case files exhibited such a significant variance so as to be classified as “non-compliant,” whereas the deficiencies found in the staff cases demonstrate some compliance concerns so as to require improvements, yet due to the sample size, the findings related to staff cases are not as significant a variance so as to warrant a program-wide finding of “non-compliance.”

⁶¹ *See* Case Nos. 11-P052-07738 (This file will be deselected); 10-P052-03727 (This 2010 case was last updated in 2011 indicating that this would be closed in 2011. However, there is no evidence of a subsequent tickle); 10-P052-
(This footnote is continued on the next page.)

As noted in the CSR Handbook 3.3 at (a)(ii), "if there is any entry in the file or in the case management system stating a reason why the case should be held open into the following year, the case shall be closed in the grant year in which assistance on behalf of the client was completed."

Because of the number of open files in the VLP unit which had deficiencies, corrective action will be required. This will be discussed below in the section related to PAI activities.

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

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

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

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

(This footnote is continued from the prior page.)

02151 (Client was given advice at intake, but decided not to proceed after being approved for referral; accordingly, the case should have been closed in 2010); 06-00529 (This file, opened on 1/12/2006 and still open has not been located, therefore, PTLA is unable to determine whether there is evidence of continuing oversight; nothing in ACMS); 11-P052-05956 (file indicates private attorney accepted case on 7/8/11, however there are no other file notes after that); 06-00293 (this case, opened in 2006 and still open, does not have any updates after 2010); 05-16973 (this case, opened in 2005 and still open, was tickled and responded to regularly, but the last tickle was 2-12-2008); 07-03931 (this case, opened in 2007 and still open, is inactive and should be closed and not reported); 07-04483 (this case, opened in 2007 and still open, is inactive and should be closed and not reported); 10-P052-03827 (This file, opened on 10/27/2010 and still open was also missing the hard file. It was last tickled on May 2, 2011). In addition, there were two (2) files closed in 2011 which should have been closed in prior years and should not have been reported with the 2011 closed cases. These are case nos. 02-08212 (This file, opened in 2002, had been a delinquent file on the open list; it was discovered in 2010 and the PAI attorney was contacted and sent information - PTLA then closed out the case. Hard file is missing); 04- 09866 (this case, opened in 2004 was closed in 2011 with a closing code of A, based on the advice which was provided in 2004; this should have been closed in 2004 and not remained open until 2011).

None of the sampled case files reviewed were duplicates.⁶² As such, sampled files evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 13: Review of the recipient’s policies and interviews with staff attorneys reveal that PTLA is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

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

Based on the review of the recipient’s policies, it appears that PTLA is in compliance with the requirements of 45 CFR Part 1604.

PTLA has developed a written policy governing the outside practice of law. The policy requires prior approval by the Executive Director of PTLA. It is not limited to full-time attorneys, but applies to full-time and part-time employees. The policy finds that such activity is inconsistent with full-time employment as an attorney with PTLA and permits part-time employees to engage in such activity when it does not interfere with the employee’s work with PTLA, or the employee’s clients at PTLA. Otherwise, the policy is consistent with 45 CFR §§ 1604.4(c)(1) – (3) and 1604.7(a)(1) – (3).

Prior to the visit, PTLA advised OCE that one (1) of the Managing Attorneys and one (1) of the staff attorneys in the Portland office, two (2) of the Managing Attorneys and three (3) of the staff attorneys in the Bangor office, one (1) of the staff attorneys in the Augusta Office, the Supervising Attorney in the Presque Isle office, and one (1) staff attorney in the Machias office engaged in the uncompensated outside practice of law during the period 2010 through 2011. PTLA reported no instances of compensated outside practice of law. Interviews with all these attorneys, except for one (1) Managing Attorney in the Portland Office – who was out of the office on vacation – confirmed the details of their outside practice. Each of them confirmed that they are full-time attorneys employed by PTLA.⁶³ As well, each confirmed that they had

⁶² As noted previously, several files were targeted and tested for possible duplicates – in each case, the files were found to not be duplicates – either there were different issues or different opposing parties or both. *See*, for example, Case No. 11-P049-08781 – Closed Portland 2011, which also included a brief review of four (4) other files for the same client which were determined to not be duplicates. Two (2) of the files were separate and distinct General Assistance problems, one (1) was Veterans Benefits, one (1) was SSI, and one (1) was a housing case.

⁶³ Although one (1) attorney was not funded with LSC funding and therefore would not fall within the definitional requirements of the regulation, his activities were fully disclosed and approved consistent with PTLA policies.

engaged in the uncompensated outside practice of law during the period 2010 through 2011. All of them indicated that their outside practice had been approved by PTLA’s Executive Director. All those interviewed indicated that they did not identify PTLA with the outside practice, nor did they use any PTLA resources for the outside practice.⁶⁴

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Sampled files reviewed, and interviews with staff indicate, that PTLA is not involved in such activity.

Based on the review of the recipient’s policies, it appears that PTLA is in compliance with the requirements of 45 CFR Part 1608.⁶⁵ In addition, it should be noted that PTLA has posted the November 2, 2011 memorandum from LSC to “Executive Directors of All LSC Grant Recipients” on its SharePoint website (see screenshot below).



⁶⁴ While the revised LSC regulations permit a minimal use of resources in certain circumstances, the PTLA policy sets a flat bar on the use of program resources for one’s outside practice of law.

⁶⁵ PTLA has adopted a policy titled “Political and Restricted Activities Policy,” which jointly covers the restrictions and prohibitions set forth in Parts 1608 and 1612.

In accordance with the OCE workplan, a comprehensive review of PTLA's pamphlets, brochures, flyers, bulletin boards, and other public space was conducted in offices including the waiting area for the VLP, which is separate from the Portland waiting area. The assessment revealed that all information was free of any prohibited political message, expression, symbol, image, or allusion, and in compliance with 45 CFR Part 1608.

The Program has an established written policy entitled Political and Restricted Activities Policy which was last revised June 22, 2011. This policy is available on-line to all PTLA employees to ensure they are aware of and comply with LSC requirements regarding political activities as set forth in 45 CFR Part 1608 and imposes similar restrictions on the program's employees.

A limited review of fiscal records reflected in PTLA's Chart of Accounts and its cash disbursements provided no indication that the program was involved in any prohibited political activity during the review period. In discussions with the Fiscal Manager she also confirmed that PTLA and its staff were not involved in restricted political activities.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

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

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

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

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

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

All of the sampled case files reviewed evidenced compliance with the requirements of 45 CFR Part 1609 in each of its iterations.

None of the sampled files reviewed involved legal assistance with respect to a fee-generating case. Discussions with the staff also confirmed that PTLA is not involved in any fee-generating case.

PTLA received, from July 23, 2010 through June 30, 2012, a total of \$70,980.14 in attorneys' fees. A limited review of sampled receipts evidenced compliance with the requirements of 45 CFR Part 1609. Furthermore, the review of six (6) cases where attorneys' fees were obtained revealed that the derivative income was correctly allocated into the appropriate funding sources where time was spent on these cases.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 16: A limited review of PTLA's accounting and financial records to determine compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) was conducted by the fiscal reviewers.

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

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

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

such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

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

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

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

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

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

The thank you letters sent to donors that were reviewed fully comply with the requirement that recipients provide to the source of the funds written notification of the prohibitions and conditions which apply to the funds. PTLA reported that it notifies funding sources of the LSC restrictions. *See* 45 CFR § 1610.5 (Notification).

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 17: PTLA is in substantial compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. However, PTLA's compliance with 45 CFR § 1614.3 (d)(3) which requires oversight and follow up of the Private Attorney Involvement ("PAI") cases was found to need improvements to ensure compliance with the regulatory requirements.

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

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

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

According to PTLA's 2011 PAI Plan, PTLA provides legal assistance to low-income residents of Maine through VLP, a statewide joint project with the Maine Bar Foundation. The plan states that VLP, created in 1983, is under the same organizational umbrella as PTLA. It is operated pursuant to a contract between PTLA and the Foundation. VLP is not a legally separate entity from PTLA and staff is employed by PTLA.

As described previously, VLP conducts its own intake and provides direct legal assistance to low-income persons through several components, a family law Helpline staffed by law students and attorneys, Courthouse Assistance Projects at which attorneys provide limited assistance in family law issues, a Domestic Violence Courthouse Project at which attorneys provided limited

or full assistance at Protection from Abuse hearings, and referrals to members of its pro bono panel.

Helpline and the two (2) courthouse projects cases are reviewed by the VLP Project Director and closed immediately with limited assistance. Assistance provided by law students is discussed in advance with a volunteer attorney, and the attorney is available for additional questions during Helpline calls. No oversight concerns were identified.

With respect to pro bono referrals, attorneys are asked to advise VLP once they have met with the client and agreed to provide assistance. Cases are tickled for 30 days. If the attorney has not responded within 60 days, the paralegal contacts the attorney. Once accepted, the case is tickled quarterly though interviews reveal that follow-up is not necessary conducted at that time. When the case is complete, volunteer attorneys are expected to submit the closing form indicating the level of service provided and date closed. At least once a year, the paralegal does a mass mailing of letters to attorneys with open cases requesting an update. HotDocs is used to generate the mailing. At the time of the review, the paralegal responsible for oversight stated that 342 cases have been open since at least 2010 and that VLP recently sent a letter to those attorneys requesting an update. The interviews and written procedures indicate that PTLA is substantially compliant with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of PAI cases; however, the sampled case review results disclosed a weakness in the system.

As noted above, there were a large number of files in the open VLP list which had gotten outside of the tickler process and were not being reviewed. *See* the discussion on dormant open files above, for specific details. In order to ensure compliance with the LSC regulations, the VLP staff will need to review all open VLP files and ensure that each file is active and present in the tickler system. Furthermore, it is recommended that PTLA establish a procedure to periodically compare the open VLP case list with the current tickler case list to ensure all cases are accounted for.

In response to this finding, DR PTLA reported that, “VLP staff implemented a more rigorous review process to address ‘dormant’ cases open to private attorneys... [a]s a result of this effort, staff identified 160 cases dating back to 2008 that could be closed in the VLP database.” Moreover, PTLA’s Response explained that the VLP staff will conduct this rigorous review on an annual basis to ensure this concern is addressed. *See* the Response at 2, Item 5. OCE is confident that this review, if conducted as described, will address the concerns set forth above.

In addition to VLP, interviews reveal that a volunteer attorney assists in the Lewiston Office's HPRP funded court-house eviction work. No such cases were identified and it appears these cases are not reported to LSC as PAI as they are coded with a non-LSC funding code. If the attorney is providing direct legal assistance, such cases could be reported to LSC in its PAI CSRs.

The Audited Financial Statement (“AFS”) for Fiscal Year Ending December 31, 2011 reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). The total reported PAI expenditures in the AFS was \$661,901 which is 50.7% of PTLA’s total basic field grant of \$1,304,157, complying with the 12.5% requirement in 45 CFR § 1614.2 (b)(1). The

review of the PAI cost allocation, PAI detail cost of all funders, the 2011 Audit report, and the allocation of PAI staff salary for the calendar year ending December 31, 2011 disclosed that PTLA correctly allocates the salaries of attorneys and paralegals on total workable hours. However, a review of the VLP staff (“attorneys and paralegals”) records revealed that it allocates time based on estimates which do not comply with the requirements of 45 CFR § 1614.3(e)(1)(i), which states that “any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities.” In the DR, OCE informed PTLA that it must base VLP attorneys and paralegals salaries on the actual, not estimated, PAI time hours recorded in the timekeeping records, to comply with 45 CFR § 1614.3(e)(1)(i). Interviews during the review with the VLP Project Director disclosed that the staff would correct the VLP PAI time reported in 2012.

Non-personnel costs are being allocated on the basis of reasonable operating data in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i).

Several direct costs allocated to PAI were reviewed and were found to be related to PAI activities, and were fully documented and approved.

In the PTLA Response to the DR, PTLA included the following explanation of actions it has taken, which are quoted verbatim:

Seven full and part-time staff work in the Volunteer Lawyers Project. In 2012, the annual budget for the VLP is ... \$650,000, of which roughly 21% is derived from LSC funding. Staff had been reporting their time to several general categories that did not consistently distinguish between activities exclusively limited to private attorney involvement and those which addressed other important VLP objectives.

During the LSC visit in September, this issue was flagged for action. In response, VLP and Pine Tree staff worked to create general "clients" in Legal Files that are completely reliant on PAI activities to which staff time could be billed on an ongoing basis. The additional client names were added to Legal Files in September 2012. Examples of PAI clients being used by VLP include the following:

- "CHAP" which refers to Courthouse Assistance Projects in several locations that use staff time to support limited representation service by private attorneys;
- "Pro Bono DV Panel" which references staff time used to support "lawyer of the day" representation in protection from abuse proceedings by private attorneys in several court locations;
- "Lawyer of the day" which refers to staff time used to recruit, train and support private attorneys in making referral of full representation VLP cases to other private attorneys, typically working from VLP offices in Portland and Bangor;
- "LSC- PAI" to encompass other VLP activities that involve private attorney involvement.

The expanded client list ensures that all VLP staff time spent on PAI activities is properly recorded as such.

OCE has reviewed PTLA's submission and agrees with the assessment. Therefore, no further action is required by PTLA at this time.

Finding 18: PTLA is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization and 45 CFR § 1627.2(b)(1) which requires LSC approval of payments made to attorneys in excess of \$25,000.00.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.⁶⁶ Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

Additionally, 45 CFR § 1627.4(a) states that:

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

A limited review of PTLA's accounting records and interview with its Fiscal Manager determined that PTLA is in compliance with 45 CFR § 1627.4(a) as the program pays for membership fees and dues, including any dues to National Legal Aid and Defender Association ("NLADA"), with non-LSC funds.

There are no recommendations or corrective actions required.

⁶⁶ 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.

No comments were made to this Finding.

Finding 19: PTLA is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

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

PTLA utilizes the Legal Files timekeeping/case management system. The program maintains a Time and Attendance Records policy which includes detailed procedures outlining employees' responsibilities with respect to timekeeping. This policy requires, in part, that all PTLA employees keep contemporaneous time using the computerized timekeeping program in Legal Files. Each employee submits a timesheet (Legal Files payroll report) on a bi-weekly schedule, showing actual work hours on a daily basis as well as any leave time taken.

A review was conducted of selected PTLA's advocates timekeeping records for the randomly selected pay periods ending November 17, 2011 and March 22, 2012. The review disclosed that time records are electronically and contemporaneously kept and the time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR § 1635.3(b). Additionally, the review disclosed that each of the full-time advocates selected for review had worked a minimum of 37.5 hours during the week in compliance with the program's stated work week requirement. In summary, the timekeeping review revealed no exceptions.

No comments were made to this Finding.

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.⁶⁷ 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).

None of the sampled file reviewed indicated non-compliance with this Part. As noted in Finding 15, PTLA received a total of \$70,980.14 in attorneys' fees during the period from July 23, 2010 through June 30, 2012.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 21: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1612.

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

⁶⁷ 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).

governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

PTLA has an established written policy on Part 1612 - Legislative and Administrative Activities as well as a Part 1612 - Request for Approval of Legislative and Administrative Advocacy Form which were last modified June 22, 2011. These are available on-line to all PTLA employees to ensure they are aware of and comply with LSC requirements regarding legislative and administrative activities, including restrictions and prohibitions, as set forth in 45 CFR Part 1612.

A limited review of PTLA's fiscal records provided no indication that the program was involved in restricted activities during the review period. The Executive Director also confirmed that PTLA and its staff were not involved in any restricted public rulemaking or lobbying activities.

Pursuant to 45 CFR § 1612.10(c), PTLA notifies LSC through its Semi-Annual Legislative and Administrative Activity Report of legislative and rulemaking activities conducted by the program and its staff. A sample of two (2) legislative and rulemaking activities conducted by PTLA staff during the review period disclosed no exceptions. The activity had been pre-approved by the Executive Director using PTLA's Section 1612 - Request for Approval of Legislative and Administrative Advocacy Form. The form states that if the request is approved, the time will be charged to the State of Maine. Interviews with the Executive Director and the Fiscal Manager confirmed that these activities were charged to the program's State of Maine funding. This was also verified through a review of PTLA's fiscal documentation which showed this time was charged to the State and not to LSC.

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

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

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).⁶⁸

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

There are no recommendations or corrective actions required.

No comments were made to this Finding.

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

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

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

There are no recommendations or corrective actions required.

No comments were made to this Finding.

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

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens

⁶⁸ 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).

the health or safety or 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.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

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

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

There are no recommendations or corrective actions required.

No comments were made to this Finding.

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.⁶⁹ 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: "This part is designed to ensure that recipients and their employees do not solicit clients."

The key provision in the prohibition is in the definition of "unsolicited advice" 45 CFR §1638.2(b) which states:

(b) Unsolicited advice means advice to obtain counsel or take legal action given by a recipient or its employee to an individual who did not seek the

⁶⁹ *See* Section 504(a)(18).

advice and with whom the recipient does not have an attorney-client relationship.

As further noted in the regulation, at 45 CFR § 1638.4(a),

(a) This part does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures through community legal education activities such as outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request them.

As stated in Finding 2 above, the Bangor office has a Farmworker Outreach Unit which provides assistance to migrant workers in the area. The attorney and a temporary outreach paralegal travel to labor camps in PTLA's service area providing assistance and information to workers. They go to the camps in the early evenings when the workers are usually home. Interviews revealed that the outreach paralegal and attorney will go door to door of worker's homes providing information packets, which is essentially a calendar with information on the different types of legal issues facing migrant farmworkers. If the worker is not home they will leave the packet at the door. Additionally, according to the paralegal, in some instances they will provide legal assistance to worker at that point if assistance is requested. Furthermore, according to interviews, sometimes the outreach workers go door to door informing the farmworkers that they will be conducting a presentation later that same evening at the center of camp describing the types of assistance PTLA provides and will assist individuals following the presentation if requested.

Although the action of going to a labor camp can be considered permissible community legal education activities under 45 CFR § 1638.4, the action of going to a prospective client's home, knocking on their door and advising them of their availability to provide services, followed by the representation of that individual, is impermissible under the general solicitation ban. *See* External Opinion # EX-2003-1011 (July 9, 2003).⁷⁰ Accordingly, PTLA must ensure it refrains from engaging in solicitation activities at the migrant farmworker's labor camps, and may not, consistent with Part 1638, undertake such activities in the future. However, the acts, of informing individuals of an informational meeting at the center of camp or leaving information packets at the door of migrant workers is permissible under 45 CFR § 1638.4.

None of the sampled files reviewed indicated program involvement in such activity.

⁷⁰ This may be found on the internet at:

<http://www.lsc.gov/sites/default/files/LSC/laws/pdfs/olaco/EX-2003-1011.pdf>. We note that the Opinion states, in relevant part, "...the targeted distribution of information at the courthouse to identified persons just prior to their court appearances would amount to in person unsolicited advice in contravention of the regulations." If PTLA believes its situation is distinguishable from that described in the Opinion, we would recommend that PTLA contact the Office of Legal Affairs ("OLA") directly to seek additional guidance.

Accordingly, the DR recommended that PTLA takes the steps necessary to ensure that it does not violate Part 1638.

No comments were made to this Finding.

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

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

None of the sampled files reviewed involved such activity.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

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

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

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

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

he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

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

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 30: PTLA is in compliance with the requirements of 45 CFR § 1620.6 (Signed written agreements).

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

- a) Has read and is familiar with the priorities of the recipient;
- b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

During the compliance visit, the review team requested to see copies of signed written agreements wherein staff acknowledged, among other things, that they have read and are familiar with PTLA's priorities and emergency case acceptance procedures. Pursuant to the request, the Executive Director provided copies of the statements signed by PTLA staff, which were consistent with the requirements of 45 CFR § 1620.6. Additionally, interviews with the Executive Director evidenced that PTLA is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

There are no recommendations or corrective actions required.

No comments were made to this Finding.

Finding 31: Policies reviewed evidenced compliance with the requirements of their respective regulations with the exception of 45 CFR Part 1619 (Disclosure of information).

In accordance with 45 CFR Part 1605, (Appeals on behalf of clients), LSC Recipients are required to adopt policies governing appeals on behalf of clients. A review of the PTLA policy

and its “Appeals Request Form” was done on-site and found to be in compliance with the LSC regulations. In accordance with 45 CFR Part 1621 (Client grievance procedure), LSC Recipients are required to have a grievance policy for clients. *See* 45 CFR § 1621.4. A review of the PTLA client grievance procedure – both in English and Spanish – was conducted and found to be in compliance. This regulation, at 45 CFR §1621.3 also requires the adoption of a policy for applicants who have been denied assistance, PTLA uses the same procedure – the client grievance procedure – for addressing applicant concerns.

As noted above, PTLA’s policies relating to 45 CFR Parts 1609 (Fee-generating cases), 1612 (Restrictions on lobbying and certain other activities), 1617 (Class Actions), 1620 (Priorities in use of resources), 1626 (Restrictions on legal assistance to aliens), 1627 (Subgrants and membership fees or dues), 1632 (Redistricting), 1633 (Restriction on representation in certain eviction proceedings), 1636 (Client identity and statement of facts), 1637 (Representation of Prisoners), 1638 (Restriction on solicitation), 1639 (Welfare Reform), 1643 (Restrictions on Assisted Suicide, Euthanasia, and Mercy Killing), and 1644 (Disclosure of case information) were all reviewed and found to be in compliance with the regulations.

In accordance with 45 CFR Part 1619, recipients are directed to disclose certain information that is a valid subject of public interest in the recipient’s activities. 45 CFR § 1619.2 requires recipients to adopt a procedure to afford the public appropriate access to the following:

- a. the LSC Act, Corporation rules, regulations, and guidelines;
- b. the recipient’s written policies, procedures, and guidelines;
- c. the names and addresses of the members of the recipient’s governing body; and
- d. other material that the recipient determines should be disclosed.

PTLA did not have a formal policy designed to implement 45 CFR Part 1619. The reviewers did note that PTLA has published a great deal of information on the internet including its IRS Form 990’s. Accordingly, the failure to adopt a policy should be seen as a simple oversight – when PTLA management was questioned about this omission, they indicated that they would ensure a formal policy would be adopted.

As noted in the DR, when PTLA management was advised that it did not have a written 1619 policy, they said they would adopt one. During the interim between the on-site review and the submission of the response, PTLA consulted with LSC staff and drafted and adopted a new policy. OCE has reviewed this policy and finds that it fully complies with the requirements of 45 CFR Part 1619.

Finding 32: A limited review of PTLA’s internal control policies and procedures demonstrated that the program’s policies and procedures compare favorably to Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC’s Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to, LSC Audit Guide for Recipients and Auditors, Accounting Guide For LSC Recipients (2010 Ed.), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity’s governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed.).

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

Fundamental Criteria and Internal Controls

As discussed in the 2010 Edition of the Accounting Guide for LSC Recipients (“AGLR”), Section 3-5 – Fundamental Criteria, an LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. The LSC Fundamental Criteria is a listing of the elements of an adequate accounting and financial reporting system. Compliance with the Fundamental Criteria can assist recipient boards with their fiduciary and stewardship obligations and may reduce the possibility of serious ethical, financial and compliance breaches. Good internal controls can improve the effectiveness of the recipient’s operations, the reliability of grantee financial information, compliance with laws and regulations and the safeguarding of assets.

The 2010 Edition of the AGLR sets forth financial accounting and reporting standards for recipients of LSC funds, and describes the accounting policies, records, and internal control procedures to be maintained by recipients to ensure the integrity of accounting, reporting and financial systems. The AGLR provides guidance on all aspects of fiscal operations and the 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that

provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur. The AGLR provides that in establishing an adequate internal control structure, the following items must be considered: Competent Personnel; Definition of Duties and Responsibilities; Segregation of Duties; Establishment of Independent Checks and Proofs; Establishment of an Accounting Manual; and Committee of Sponsoring Organizations (“COSO”) Considerations such as Risk Assessment. See AGLR (2010 Edition), Appendix VII – Accounting Procedures and Internal Control Checklist and LSC Program Letter 10-2, Appendix A - Embezzlement, Fraud, and the Critical Importance of Effective Internal Control.

PTLA has developed a comprehensive Fiscal Manual which is program-wide and incorporates the fiscal duties and responsibilities of its staff. The Fiscal Manual is broken down into ten (10) sections including 1) Overview of Fiscal Responsibilities, 2) Time and Attendance Records, 3) Payroll Procedures, 4) Bank Accounts, 5) Accounting System, 6) Purchases, 7) Property Control, 8) Hiring and Termination Procedures, 9) Monthly, Quarterly and Year-end Reports, and 10) Workplace Safety. PTLA’s Fiscal Manual was most recently updated in 2010, subsequent to the issuance of the 2010 Edition of the Accounting Guide for LSC Recipients. In addition, PTLA also maintains its Policies & Procedures which incorporates the program’s policies for implementation of regulations issued by the LSC as well as internal controls and procedures including Administrative, Anti-Fraud, Selected LSC Regulations With Associated PTLA Policies, Terms and Conditions of Employment, and Document Destruction Policy. The Fiscal Manual and PTLA’s Policies & Procedures are contained in its document library which can be accessed on-line through SharePoint.

As previously stated, PTLA’s Fiscal Manual provides an overview of fiscal responsibilities amongst its staff. PTLA’s bookkeeper retains most of the day-to-day responsibility for maintaining all fiscal systems including timely payment of bills, preparation of payroll, and support to local offices. The Development Associate opens the mail for the Administrative Office and records cash or check contributions to the program on a daily basis. The Fiscal Manager supervises the bookkeeper and is responsible for preparation of fiscal grant documents, budget projections, and annual audit preparation. The program’s Executive Director is responsible for the overall administration of the program and for prudent allocation of scarce program resources and overseeing the work of the Fiscal Manager in this regard. Additionally, she has the ultimate authority on payment of expenses and with check signing privileges. The program utilizes Sage MIP accounting software, Legal Files for its case and time management software, and ADP for payroll.

Board Oversight

In the 2010 Edition of the AGLR, Part 1-7 - Responsibilities of the Financial Oversight Committee or Committees defines a recipient's governing body’s fiduciary responsibility to the program including the establishment of a Finance Committees which should, at a minimum (subject to any requirements of state law): Review and Revise budgets and makes recommendations to the full board of directors; Review monthly financial management reports with the chief financial officer, controller, and/or independent public accountants (“IPA”);

Review accounting and control policies; Review the audited financial statements, management letter, and senior staff's response with staff and auditor; Regularly review and make recommendations about investment policies; Coordinate board training on financial matters; and Act as liaison between the full board and staff on fiscal matters.

The AGLR also recommends that a program have an Audit Committee whose role, (subject to any requirements of state law): includes: Hiring the auditor; Setting the compensation of the auditor; Overseeing the auditor's activities; Setting rules and processes for complaints concerning accounting practices and internal control practices; Reviewing the annual IRS Form 990 for completeness, accuracy, and on-time filing and providing assurances of compliance to the full board; and Ensuring 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 the recipient's resources and risks, and accountability of persons within the organization.

While it is recognized that some boards due to their small size and other considerations will decide not to have a separate audit committee, nevertheless it generally is considered a best practice for governing bodies to have both a finance committee and a separate audit committee. The critical point is that all of the finance and audit committee duties listed immediately above must be performed by a financial oversight committee(s). It is also critical, and considered a best practice, that the financial oversight committee(s) have at least one member who is a financial expert or for the board to have access to a financial expert. A financial expert has (1) an understanding of Generally Accepted Accounting Principles ("GAAP") and financial statements, (2) the capacity to apply GAAP in connection with preparing and auditing financial statements, (3) familiarity with developing and implementing internal financial controls and procedures, and (4) the capacity to understand the implications of different interpretations of accounting rules.

PTLA maintains a Finance Committee but not a separate Audit Committee. Based on a limited review of PTLA's policies and through on-site interview with its Fiscal Manager it was determined that the Finance Committee performs the responsibilities of a financial oversight committee, as described in the AGLR. The Fiscal Manager advised that an auditor, who is also a Certified Public Accountant, serves on the Finance Committee and possesses financial expertise. The Finance Committee meets before each Board meeting and the Fiscal Manager is responsible for distribution of financial reports to the committee members. In discussions with the Fiscal Manager it was revealed that the financial information provided to Finance Committee members includes data related to its revenues and expenses, an updated budget (planned versus actual) and variances. Also, there is a Director Report which includes a Funding Update, which details the program's grant requests for the current year along with the funding status for each of the grants. However, the Fiscal Manager advised that the information provided to the Finance Committee and the Board does not include a statement of cash on hand as recommended in the AGLR. As such, OCE recommended that a cash flow statement or a statement of cash on hand be submitted monthly to the FC and quarterly to all Board members. *See t* AGLR, Appendix VII, Section A-18 (General). The Fiscal Manager advised during the on-site review that she would begin providing this information. On September 27, 2012, the Pine Tree Legal Assistance Board of Directors approved a revised policy provides that the Board Treasurer reviews the Journal entries

on a monthly basis, including a statement of cash on hand. In addition, this information will be communicated to the full Board.

Segregation of Duties

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

An analysis of the responses provided by PTLA during the on-site visit to the ICW, interviews with the program's Fiscal Manager, and a limited review of the program's policies and procedures indicate generally sufficient staffing assignments and management oversight to provide adequate segregation of fiscal duties and responsibilities; however, there were also two (2) internal controls deficiencies identified.

An internal controls weakness was detected based on the program's responses to ICW, Sections A-14 through A-16 which indicates that the Fiscal Manager prepares the monthly bank statement reconciliations and reconciles bank statement balances to the General Ledger ("GL"); however, at the time of the on-site review there was not a secondary review of the bank statement reconciliations. Bank statement reconciliations to the GL should be conducted on a monthly basis and should be reviewed and approved by a responsible individual. The review must be appropriately documented and signed and dated. *See AGLR § 3-5.2(d), Reconciliations and LSC Program Letter 12-2, Compliance Guidance, Fiscal Management Issues.* In response to the findings of the on-site review, the PTLA Board of Directors, on September 27, 2012, adopted a revised policy, which, if followed, will address this concern.

Another internal controls weakness was detected based on the program's responses to ICW Sections H-1 and H-2 which disclosed that the Fiscal Manager makes entries to the General Journal but there is no subsequent review and approval of the General Journal. Journal entries should be approved by the ED or other authorized individual. *See AGLR § 3-5 and LSC Program Letter 12-2, Compliance Guidance, Fiscal Management Issues.*

In the DR, OCE informed PTLA that it should incorporate a secondary review of bank statement reconciliations and the review and approval of entries into the General Journal into its internal controls procedures. In its response to the DR, PTLA advised: "An updated policy on bank account reconciliations was approved by the Board of Directors on September 27, 2012. It was further updated at the Board meeting on February 7, 2013 to include the Board Treasurer in the process of secondary review of bank statement reconciliations." *See Response at 4.* OCE believes these actions will resolve the concerns raised in the DR.

Records Retention

PTLA has a written Document Destruction Policy for Administrative and Accounting Records which was approved by its Board on June 3, 2008, with no subsequent revisions noted.

Following the on-site review, but prior to the issuance of the DR, the PTLA Board of Directors, on September 27, 2012, revised this policy.⁷¹ Based on a subsequent review of the newly adopted 2012 policy, OCE found this policy to be in compliance with the LSC standards.

Bank Account Reconciliations

As previously stated, bank statement reconciliations to the general ledger should be conducted on a monthly basis and should be reviewed and approved by a responsible individual. The review must be appropriately documented and signed and dated. *See* AGLR § 3-5.

PTLA currently maintains numerous bank accounts which are used for various purposes including its main operating (sweep) account, payroll account, three (3) certificates of deposits, a money market account, and a separate trust account and revolving (litigation) account for each of its offices.⁷² The bank statement reconciliation process is performed monthly by the Fiscal Manager. Interview with the Fiscal Manager and review of the ICW revealed that the Development Associate gets the unopened bank statements in the mail and which are forwarded for a preliminary review by three (3) other staff members. Then, the Fiscal Manager performs the bank statement reconciliations.

A limited review of PTLA's bank statement reconciliations from December 2011 and April 2012 revealed that the bank statements are reconciled; however, there is no subsequent review or approval of the bank reconciliation, as previously described in the Segregation of Duties analysis. Also, outstanding checks should be investigated and resolved in accordance with the procedures detailed in the AGLR, Appendix VII, Section I-7, Bank Reconciliation Procedures which states, in part, that checks which have been outstanding for more than six (6) months should be investigated and resolved. Through interview with PTLA's Fiscal Manager it was determined that the program does not have a written policy regarding stale items; however, the Fiscal Manager advised that per state law, each November the program must remit items which have been outstanding for over one (1) year to the State of Maine. A limited review of PTLA's bank statement reconciliations from December 2011 and April 2012 revealed numerous items outstanding over six (6) months. The April 2012 sweep account reconciliation contained 25 items approximating \$14,725 which were outstanding over six (6) months. Review of the

⁷¹ A comparison was conducted of PTLA's 2008 record retention requirements to the LSC guidelines contained in AGLR (2010 Edition), Appendix II, Description of Accounting Records – Retention Times for Nonprofit Records. Based on this review, it was determined that the 2008 policy did not conform to the LSC guidelines for four (4) categories of accounting records. Specifically, LSC recommends that 1) Billings for services, 2) Employee travel and expense reports, 3) Expense bills (source documents), and 4) Petty cash records be retained for seven (7) years while PTLA's policy states that these records be retained for four (4) years. Also the AGLR recommends that records related to timecards and daily reports (after termination) be retained for four (4) years, union agreements be retained for four (4) years, employment applications be retained for two (2) years, and legal correspondence be retained permanently. However, PTLA's Document Destruction Policy does not include these types of documents. As noted above, prior to the issuance of the draft report, PTLA revised its Files and Records Management policy to ensure that the specified retention requirements met LSC's current minimum guidelines as contained in the AGLR (2010 Edition), Appendix II, Description of Accounting Records – Retention Times for Nonprofit Records.

⁷² For more information on sweep accounts, *see* Anderson and Rasche, "Retail Sweep Programs and Bank Reserves, 1994-1999," Federal Reserve Bank of St. Louis Review, January/February 2001. This is available on-line at <http://research.stlouisfed.org/wp/2000/2000-023.pdf>.

revolving (litigation) account for the Portland Office determined there were 46 items totaling \$882 outstanding from between 2008 – 2011.

In the DR, PTLA was informed that it should revise its bank statement reconciliation procedures to require a secondary review of bank statement reconciliations and that stale dated checks over six months old from each of its bank accounts be researched and resolved to the extent possible. In addition to the adoption of the new Document Destruction Policy, the PTLA Board of Directors also adopted a new policy for stale dated checks and for a secondary review of bank reconciliations. OCE believes that by carrying out this policy, PTLA will address the concerns raised in the report. *See* Page 4 of the PTLA Response and attached exhibit.

Cash Receipts from Clients

PTLA will sometimes accept cash from a client to cover anticipated fees in connection with their legal representation (Client Trust Accounts). The program has a written policy on this area entitled Client Trust Account Procedures which is maintained in its Fiscal Manual.

The policy states, in part, that each PTLA field office has a client escrow account and must follow the policy and procedures to ensure segregation of each client's funds. Each office shall have a Custodian, a person designated by the Directing Attorney, who is responsible for reconciling the account and ensuring that the total of cash in the account equals the total of each individual's account. The accounts will be reconciled once a month and the Custodian may never have check signing authority and any attorney with check signing authority may not have access to the checkbook. When a client submits funds for deposit the staff receiving the funds must complete the Receipt of Funds Form and provide a copy to the client.

To strengthen a program's internal control with the goal of reducing opportunities for fraudulent activities to occur, LSC recommends that clients should be provided a notice about the program's cash receipts policy which states that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor. *See* AGLR (2010 Edition), Appendix VII, Section H-15, Accounting Procedures and Internal Control Checklist - Controls over Cash Receipts. Through review of the lobby area at the Portland office and also through interview with PTLA's Fiscal Manager it was determined that there is currently no such written notification provided to clients to inform them of the program's policy for cash receipts.

As such, OCE recommended that the PTLA place a sign in each of its office lobbies that contains a notice to its clients of PTLA's cash receipts policy.⁷³ The program was encouraged to implement this recommendation as it provides a control to better inform its clients, which also serves as deterrence to possible fraudulent activities. The Fiscal Manager advised that the program will implement this recommendation.

⁷³ PTLA advised at the exit conference this would be done. In its Response to the DR, PTLA provided a copy of the sign which is now posted.

Electronic Data Processing (“EDP”) Controls

LSC’s Accounting Guide for LSC Recipients requires under Section 3-5.14 EDP Controls (Security) that “controls must provide assurances that computers and the data they contain are properly protected against theft, loss, unauthorized access, and natural disaster.

Interviews with the IT Director and physical observations of PTLA’s EDP facilities evidenced that the facilities are adequate and secure to maintain all EDP related equipment, including its server, in line with PTLA’s policy that adequately addresses in general LSC’s requirements related to EDP controls. However, the DR recommended that PTLA lock the door to the server room at the close of business each day. At the exit conference, and again in subsequent discussions with the OCE review team, PTLA indicated it would follow this recommendation.

Finding 33: PTLA is in compliance with the Accounting Guide for LSC Recipients (2010 Ed.) (“AGLR”) as it maintains adequate supporting documentation of payments and corresponding reviews and approvals, for travel related expenses and credit card payments.

The LSC Regulations, at 45 CFR Part 1630, are intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely and flexible process for the resolution of questionable costs, under Corporation grants and contracts.

A limited review of invoices related to credit cards for years 2011 and 2012 where payments were charged to LSC and non-LSC funds evidenced no exceptions and demonstrated payments were adequately documented with their corresponding review and approval, in compliance with the requirements of the AGLR and PTLA’s own Travel Policies. All credit card payments reviewed evidenced that they were timely made and in compliance with PTLA’s policy.

No comments were made to this Finding.

Finding 34: A limited review of PTLA’s accounting records determined that the program is in compliance with the requirements of 45 CFR Part 1630 (Cost standards and procedures) in that its bank fees are allocated amongst its various funding sources.

PTLA maintains its Sweep Account and Payroll Account with TD Bank. Through review of PTLA’s bank statements it was determined that there is a monthly service charge assessed by TD Bank for the Payroll Account. For November 2011, the bank fee totaled \$288. The interview with the Fiscal Manager and review of PTLA’s fiscal documentation disclosed the program is in general compliance with the requirements of 45 CFR Part 1630 in that bank fees associated with PTLA’s Payroll account are allocated amongst its various funding sources, including LSC, based on the program’s allocation formula.

No comments were made to this Finding.

IV. RECOMMENDATIONS⁷⁴

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

1. Conduct additional training to ensure that staff is applying the Financial Eligibility Policy, specifically regarding number of people in the household, in a consistent manner;

In the Response to the DR, PTLA advised that it has conducted additional training and oversight and made modifications to Legal Files.

2. Review the asset policy against the pick list and conduct staff training. Given that several paralegals conduct screening of LSC Basic cases, it is recommended that the program develop a script of several asset questions so that all paralegal screen in a consistent manner. In addition, it is recommended that PTLA add additional asset categories to the pick list.

In response to the DR, the PTLA reported that its Board modified the asset policy on February 7, 2013. To implement these changes, PTLA staff discussed and proposed a revised policy. Following the adoption, on February 11, 2013, all staff were provided instructions about implementing changes in the policy. While the response doesn't address the recommendation of developing scripts, this was just a suggestion, not a requirement. The changes which PTLA has put into place, including modifications to the drop down menu on Pika, should alleviate the concerns. *See* the PTLA response at 3 and 4.

3. Develop and utilize a closing checklist in each office (and unit);

By way of clarification, noted here explicitly, PTLA noted in its response that it has had a closing checklist. In response to recommendations contained in the DR, PTLA noted that it has instructed staff to use this checklist on a consistent basis; moreover, PTLA indicated that it will work on improving this form for better use. *See* the PTLA Response at 3.

4. Establish a system to be utilized by each office and unit where closing codes are reviewed to ensure accuracy;

⁷⁴ 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.

As noted in the Response to the DR, PTLA has taken a number of steps to address these concerns. PTLA has made changes in the closing code summary on its internal SharePoint site to clarify the relevant factors; it has worked on training within individual units and offices; and it has advised staff by email of the concerns set forth in the DR (including issues not necessarily specific to this Finding). *See* the Response at 3 and supporting documentation.

5. Train staff on case closing codes and the timely closing of cases;

PTLA has trained staff on both case closing and timely closure. *See* the Response at 3 and the supporting documentation.

6. Implement a management review of case files at closing;

PTLA has both notified staff of and has taken action to have management review of case files at closing. *See* the Response at 2-3.

7. Submit monthly a cash flow statement or a statement of cash on hand to the Finance Committee and quarterly to all Board members;

As noted in the body of this report and in the discussion of the PTLA actions in response to the Required Corrective Action items, PTLA has revised several of its policies, including this one.

8. Place a sign in each of its lobbies that contains a notice to its clients of PTLA's cash receipts policy including a statement that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor;

In the Response to the DR, PTLA indicated this has been done and provided a copy of the signage. *See* the Response at page 2, Item 1 and the accompanying signage.

9. Lock the door to the server at the close of business each day.

At the exit conference, and again in subsequent discussions with the OCE review team, PTLA indicated it would follow this recommendation.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that all cases reported to LSC are in compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.3⁷⁵;

In its Response to the DR, PTLA reported:

“On February 7, 2013, the Pine Tree Board of Directors approved an updated Financial Eligibility Policy that specifically addresses the issue of household member income and the circumstances in which household size might be adjusted. The new policy also includes an updated “asset policy” with two additional asset categories added to the “pick list” to ensure uniform handling throughout the program. All staff were advised in writing of the new policy and implications for intake, and local office managers have followed up with their staff to ensure understanding and compliance.”

Having reviewed the provided documentation and the relevant response, OCE agrees that this should be sufficient.

2. Ensure compliance with 45 CFR § 1626.6 regarding the inclusion (when required) of a signed citizenship attestation in all cases files; Additionally, a citizenship attestation may be contained on a document provided there is a separate signature line tied only to the citizenship attestation;

In its Response to the DR, PTLA advised:

“All staff were reminded of the proper form and use of the citizenship attestation form in a written update from the Executive Director on September 14, 2012. This message was reinforced in local office meetings with program supervisors in the fall of 2012. It was also reiterated by email to staff dated February 5 and February 11, 2013.

The “case closing checklist” that is an annotation in all Legal File matters also includes a reminder about the need for citizenship attestations.”

OCE finds PTLA’s action to be sufficient to resolve the concerns raised in this Report.

3. Revise its bank statement reconciliation procedures to require that stale dated checks (over six months old) from each of its bank accounts be researched and resolved to the extent possible;

In its Response to the DR, PTLA advised:

⁷⁵ Compare to Corrective Action Item 9 in the 2004 Final Report.

“On February 7, 2013, the Pine Tree Board of Directors approved updated procedures in the Fiscal Manual regarding review of stale checks. The new procedure requires that all stale dated checks be researched and resolved by the Pine Tree Fiscal Manager.”

OCE has determined that PTLA’s actions are sufficient to address the concerns raised.

4. Perform a secondary review of bank statement reconciliations;

In its Response to the DR, PTLA advised:

“An updated policy on bank account reconciliations was approved by the Board of Directors on September 27, 2012. It was further updated at the Board meeting on February 7, 2013 to include the Board Treasurer in the process of secondary review of bank statement reconciliations.”

OCE believes these actions will resolve the concerns raised in the DR.

5. Institute the review and approval of entries into the General Journal;

In its Response to the DR, PTLA advised:

“The updated policy on bank account reconciliations, referenced in Number 4 above, also addresses the review and approval of entries in the General Journal/Ledger by the Board Treasurer.”

As with our review of PTLA’s actions taken in response to Required Corrective Action Item 4, OCE finds that PTLA’s actions will address the concerns raised in the Draft Report.

6. Base VLP attorneys and paralegals salaries on the actual, not estimated, PAI time hours recorded in the timekeeping records, to comply with 45 CFR § 1614.3(e)(1)(i).

In its Response to the DR, PTLA advised that the VLP and PTLA staff worked to create general “clients” in Legal Files which are fully reliant on PAI activities to which staff time could be billed on an ongoing bases. PTLA’s actions are discussed more fully above. OCE believes the actions described should address these concerns outlined in this Report.

By way of summary, OCE notes that all Required Corrective Actions have been addressed by PTLA. Other than continuing to carry these actions out, no further action is necessary; all Required Corrective Actions have been resolved.

PINE TREE LEGAL ASSISTANCE, INC.

P.O. Box 547
Portland, ME 04112-0547
(207) 774-4753 V/TTY: 711 FAX (207) 828-2300

February 15, 2013

Nan Heald
Executive Director

Augusta Office
39 Green Street
P.O. Box 2429
Augusta, ME 04338-2429
(207) 622-4731

Bangor Office
115 Main Street, 2nd Floor
Bangor, ME 04401
(207) 942-8241

Lewiston Office
37 Park Street, Suite 401
P.O. Box 398
Lewiston, ME 04243-0398
(207) 784-1558

Machias Office
13 Cooper Street
P.O. Box 278
Machias, ME 04654
(207) 255-8656

Portland Office
88 Federal Street
P. O. Box 547
Portland, ME 04112-0547
(207) 774-8211

Presque Isle Office
373 Main Street
Presque Isle, ME 04769
(207) 764-4349

**Farmworker and
Native American Units**
115 Main Street, 2nd Floor
Bangor, ME 04401-6374
(207) 942-0673

**Volunteer Lawyers
Project**
88 Federal Street
P.O. Box 547
Portland, ME 04112-0547
(207) 774-4348

KIDS LEGAL
88 Federal Street
P.O. Box 547
Portland, ME 04112-0547
(207) 774-8246

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

Dear Ms. Rath:

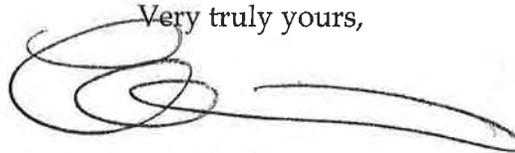
Please find enclosed our comments to the Legal Services Corporation Draft Report for the on-site Case Service Report/Case Management System review that took place during the week of September 10 - 14, 2012.

We appreciate having the opportunity to respond to the report.

We also appreciated the professionalism of the team leader William Sulik and other members of the OCE team. In addition to the recommendations contained in this report, their insights and technical support during the visit to our six office locations were very helpful.

If you have any questions about our response, please don't hesitate to contact me.

Very truly yours,



Nan Heald
Executive Director

Pine Tree Legal Assistance has reviewed the Legal Services Corporation Office of Compliance and Enforcement Draft Report for the on-site Case Service Report/Case Management Systems Review dated December 19, 2012, and which followed its September 10 – 14, 2012 visit to the program. OCE subsequently extended the period of comment on the Draft Report to February 20, 2013.

This program response is intended to provide additional clarification on Pine Tree activities, to update LSC on our efforts to address recommendations in the report, and to provide specific details on the way in which Pine Tree has implemented all of the required corrective actions.

Corrections to the Report

There were minor factual errors in the Draft Report, as noted below:

- Page 7: Pine Tree utilizes Legal Files as its case management system. However, the version used at Pine Tree is not web-based.
- Page 14: VLP staff in Portland include a full-time Project Director (who is an attorney), a part-time (40%) attorney, a full-time Volunteer Coordinator (who is a paralegal), and 2.6 FTE paralegals. A full-time attorney staffs the VLP office in Bangor. As a result, the VLP currently has a total of seven full and part-time employees.
- Page 15: VLP uses a direct referral system for unemployment compensation appeals to a specific law firm and group of private attorneys. There is no geographic limitation on this referral system.
- Page 17: VLP conducts intake at four (4) courthouse projects.
- Page 56: Legal Files already provides a dashboard index that supports immediate retrieval of paperless files from the system.

Actions Take to Improve Compliance Overall

Pine Tree Legal Assistance appreciated the willingness of the OCE team to share their initial observations and to provide technical support to staff during their visit to Maine in September. Executive Director Nan Heald reported the preliminary findings and recommendations from the OCE report to all staff in the afternoon of September 14, 2012. The program moved quickly to address the preliminary recommendations, and to follow up more precisely when the draft report became available in December.

The following actions have been taken to address OCE recommendations:

1. In September, signage was posted in all client waiting rooms informing clients of their right to receive a written receipt for any cash or funds provided to the program in connection with litigation. (The notice is attached)
2. In September, staff of the Volunteer Lawyers Project [VLP] worked with Pine Tree's information technology staff to create additional specific "matters" in the program's case management system (Legal Files) to fully track time spent on private attorney involvement activities, as distinguished from other VLP initiatives;
3. In September, Pine Tree staff reviewed their files in order to consistently use the same standardized "citizenship attestation" form. Staff were also advised to use this form even if certain funders (e.g., HUD HPRP) also require Pine Tree to obtain signatures on a second citizenship form. (The LSC form is attached)
4. On September 27, 2012, the Pine Tree Legal Assistance Board of Directors approved an updated Document Destruction Policy and an Account Reconciliation Policy to conform to the requirements of the LSC Accounting Guide. (The Document Destruction Policy is attached.)
5. In the fall, VLP staff implemented a more rigorous review process to address "dormant" cases open to private attorneys in which the attorneys had not reported recent action to the VLP. As a result of this effort, staff identified 160 cases dating back to 2008 that could be closed in the VLP database. VLP staff will now conduct a rigorous "dormant" check every year, including a more intensive review and discussion related to the oldest cases in the database.
6. A copy of the draft OCE Report dated December 19 2012 was distributed to all Pine Tree Legal Assistance staff and to all members of the Pine Tree Legal Assistance Board of Directors as a training tool.
7. In January 2013, Legal Files support staff created a way to generate an automatic list of new LSC-funded cases reporting household income of more than 125% percent of the federal poverty guidelines in order to allow field office staff to review the files and make necessary corrections on a regular basis.

8. In January, Pine Tree managers met to review the needed corrective actions and to identify specific ways to address those issues within each office and unit, both on a local basis through staff discussion/training and through program wide communication from the Director.
9. In February, staff updated the CSR closing code summary on the Pine Tree SharePoint site to clarify the relevant factors involved in each closing code. Pine Tree has augmented this list to indicate cases in which the Pine Tree client prevails with a "1" and cases where the Pine Tree client does not prevail with a "2." (Listing attached.)

Legal Files support staff also created an automated report to identify cases closed with "limited service" but reporting more than 5 hours of legal work, in order to prompt staff review to determine if the case should more appropriately be closed as "extensive service."

10. On February 5 and again on February 11, all staffed were emailed a reminder of actions needed to address concerns in the OCE draft report.(email attached.) Those actions include:
 - a. making time each month to review and close cases;
 - b. reviewing the LSC requirements regarding calculation of household size and income;
 - c. obtaining citizenship attestations;
 - d. confirming asset levels;
 - e. consistent use of case closing checklists (which exist as an annotation in Legal Files for all files);
 - f. use of the right case closing codes and closing cases in a timely manner.
 - g. Periodic review of a random sample of cases by the Litigation Director and other supervising attorneys to confirm consistent practice.

As noted above, local office and unit managers will follow up with specific training for staff on these issues , as needed.

11. On February 7, 2013, the Pine Tree Board of Directors approved a new 45 CFR §1619 policy regarding disclosure of information (attached.)

Required Corrective Actions

1. Ensure that all cases reported to LSC are in compliance with CSR Handbook (2008 Ed. as amended 2011) §5.3

On February 7, 2013, the Pine Tree Board of Directors approved an updated Financial Eligibility Policy that specifically addresses the issue of household member income and the circumstances in which household size might be adjusted. The new policy also includes an updated "asset policy" with two additional asset categories added to the "pick list" to ensure uniform handling throughout the program. All staff were advised in writing of the new policy and implications for intake, and local office managers have followed up with their staff to ensure understanding and compliance. (A copy of the revised policy is attached.)

2. Ensure compliance with 45 CFR § 1626.6 regarding the inclusion, when required, of a signed citizenship attestation in all case files. Additionally, a citizenship attestation may be contained on a document provided there is a separate signature line tied only to the citizenship attestation.

All staff were reminded of the proper form and use of the citizenship attestation form in a written update from the Executive Director on September 14, 2012. This message was reinforced in local office meetings with program supervisors in the fall of 2012. It was also reiterated by email to staff dated February 5 and February 11, 2013.

The "case closing checklist" that is an annotation in all Legal File matters also includes a reminder about the need for citizenship attestations.

3. Revise its bank statement reconciliation procedures to require that stale dated checks (over 6 months old) from each of its bank accounts be researched and resolved to the extent possible.

On February 7, 2013, the Pine Tree Board of Directors approved updated procedures in the Fiscal Manual regarding review of stale checks. The new procedure requires that all stale dated checks be researched and resolved by the Pine Tree Fiscal Manager. (The new procedure is attached.)

4. Perform a secondary review of bank statement reconciliations.

An updated policy on bank account reconciliations was approved by the Board of Directors on September 27, 2012. It was further updated at the Board meeting on February 7, 2013 to include the Board Treasurer in the process of secondary review of bank statement reconciliations. (The final policy is attached.)

5. Institute the review and approval of entries into the General Journal; and

The updated policy on bank account reconciliations, referenced in #4 above, also addresses the review and approval of entries in the General Journal/Ledger by the Board Treasurer.

6. Base VLP attorney and paralegal salaries on the actual, not estimated, PAI time hours recorded in the timekeeping records, to comply with 45 CFR §1614.3(e)(1)(i).

Seven full and part-time staff work in the Volunteer Lawyers Project. In 2012, the annual budget for the VLP is c. \$650,000, of which roughly 21% is derived from LSC funding. Staff had been reporting their time to several general categories that did not consistently distinguish between activities exclusively limited to private attorney involvement and those which addressed other important VLP objectives.

During the LSC visit in September, this issue was flagged for action. In response, VLP and Pine Tree staff worked to create general "clients" in Legal Files that are completely reliant on PAI activities to which staff time could be billed on an ongoing basis. The additional client names were added to Legal Files in September 2012. Examples of PAI clients being used by VLP include the following:

- "CHAP" which refers to Courthouse Assistance Projects in several locations that use staff time to support limited representation service by private attorneys;
- "Pro Bono DV Panel" which references staff time used to support "lawyer of the day" representation in protection from abuse proceedings by private attorneys in several court locations;
- "Lawyer of the day" which refers to staff time used to recruit, train and support private attorneys in making referral of full representation VLP cases to other private attorneys, typically working from VLP offices in Portland and Bangor;
- "LSC- PAI" to encompass other VLP activities that involve private attorney involvement.

The expanded client list ensures that all VLP staff time spent on PAI activities is properly recorded as such.

For our clients:

Ask for a signed and dated receipt if you give us cash or a check in connection with a case.

That's your right!

PINE TREE LEGAL ASSISTANCE, INC.

**Citizenship Attestation/Declaración de Ciudadanía/
Déclaration de la Citoyenneté**

I am a citizen of the United States.

Soy ciudadano de los Estados Unidos.

Je suis un citoyen des États-Unis.

Printed Name of Applicant/Nombre impreso del Solicitante/
Nom du Postulant en Caractères d'Imprimerie

Signature of Applicant/Firma del Solicitante/
Signature du Candidat

Date/Fecha

**Pine Tree Legal Assistance
Document Destruction Policy for
Administrative and Accounting Records**

Policy

It is the policy of Pine Tree Legal Assistance to comply with federal and state laws with respect to document destruction while providing for an orderly method for disposing of files and records that are no longer relevant or required. This policy does not apply to client files, which are covered separately in the program's longstanding File Maintenance Protocol.

Procedures

1. If an official investigation is underway or even suspected, any document purging must stop.
2. Voice mail messages routinely are deleted after the recipient responds to them.
3. Routine e-mail may be deleted after the recipient responds, except e-mail regarding a client's case, which must be retained for as long as the case file is retained.

For all other documents, whether paper or electronic, the following Retention Time chart applies:

RETENTION TIMES

Accounting Records

General journal - permanent

General ledger - permanent

Cash receipts book - 10 years

Cash disbursements book - 7 years

Bank statements and canceled checks - 7 years

Billings for services - ~~4 years~~ 7 years

Employee travel and expense reports - 7 years

Expense bills (source documents) - ~~4 years~~ 7 years

Petty case records - ~~4 years~~ 7 years

Financial statements – annual - permanent

Financial statements - monthly or quarterly - 7 years

Fixed Assets

Land and buildings - permanent

Equipment in use - keep on file

Equipment traded in on similar asset - keep on file

Equipment disposed of (no trade-in) 7 years

Contracts

Leases (after termination) - 7 years
Grant agreements - 10 years
Restricted funds documentation (after use of funds) - 10 years
Tax Returns Federal Form 990 and working papers - permanent
State information returns and working papers - permanent
Payroll tax returns - 5 years
Withholding tax statements (W-2) - 7 years

Corporate Organization Records

Corporate charter and certificate of incorporation - permanent
Minutes of Board of Directors meetings - permanent
Annual reports - permanent

Personnel Records

Individual employee records - permanent
Payroll book permanent
Employee pension and insurance records - permanent
General Correspondence – 2 years

Legal Correspondence - permanent.

LSC Closing Codes

- A Counsel and Advice**
A case closed in which the program provided legal advice to an eligible client should be closed as Counsel and Advice (e.g., the advocate ascertained and reviewed relevant facts, exercised judgment in interpreting the particular facts presented by the client and in applying the relevant law to the facts presented, and counseled the client concerning his or her legal problem).
- B Limited Action**
A case closed in which the program took limited action(s) on behalf of an eligible client that addressed the client's legal problem that is not so complex or extended as to meet the requirements for CSR Category L should be closed as Limited Action. Examples include, communications by letter, telephone or other means to a third party; preparation of a simple legal document such as a routine will or power of attorney; or legal assistance to a pro se client that involves assistance with preparation of court or other legal documents.
- F1 F2 Negotiated Settlement Without Litigation**
A case closed in which the program negotiated and reached an actual settlement on behalf of a client without any court or administrative actions pending should be closed as Negotiated Settlement Without Litigation. This category should be reserved for cases in which the program conferred with another party so as to reach a resolution of the client's legal problem. This category includes settlements negotiated with an administrative agency prior to the filing of a formal administrative proceeding.
- G1 G2 Negotiated Settlement with Litigation**
A case closed in which the program negotiated and reached an actual settlement on behalf of a client while a court or formal administrative action was pending should be closed as Negotiated Settlement With Litigation. This category should be reserved for cases in which the program conferred with another party so as to reach a resolution of the client's legal problem. Settlements of pending court or administrative actions should be closed in this category even if the court or administrative agency issues an order memorializing the settlement.
- This category includes only: (1) cases in which an appearance has been entered before a court or administrative agency as counsel of record; or (2) cases in which the settlement was reached prior to the program's entry as counsel of record, provided that the program was actually representing the client in the negotiations (not assisting a pro se client) and provided that there is documentation of the settlement in the case file -- preferably a copy of the actual settlement agreement, written confirmation of the settlement with the opposing party, or, if neither of these are available, a copy of a communication to the client outlining the terms of the settlement.
- H1 H2 Administrative Agency Decision**
A case closed in which the program represented a client in an administrative agency action that resulted in a case-dispositive decision by the administrative agency or body, after a hearing or other formal administrative process (e.g., a decision by the hearings office of a welfare department), should be closed as an Administrative Agency Decision. This category does not include settlements made during the course of litigation that are then approved by the administrative agency, voluntary dismissals or the grant of a motion to withdraw as counsel [see categories G & L for guidance in closing such cases]. If the case is resolved informally through contacts with an administrative agency, but without any formal administrative agency action, the case should be closed as CSR Closure Categories B - Limited Action or F - Negotiated Settlement Without Litigation, depending on the level of service.
- I Court Decision**
A case closed in which the program represented a client in a court proceeding that resulted in a case-dispositive decision made by the court should be closed as a Court Decision [Only cases in which the program attorney or advocate or PAI attorney is entered as counsel of record may be

LSC Closing Codes

closed as category H or I. Assistance to pro se litigants cannot be closed as categories H or I]. [This does not include settlements made during the course of litigation approved by the administrative agency or court, voluntary dismissals or the grant of a motion to withdraw as counsel. However, although it may not be technically case dispositive, a case closed after a TRO or similar interim order made on the merits has been entered, may be closed in this category when the litigation is not pursued further].

This category is divided into the following three subcategories:

I(a1) I(a2) Uncontested Court Decisions - either there is no adverse party or the adverse party does not contest the case;

I(b1) I(b2) Contested Court Decisions - there is an adverse party and that party contests the case;

I(c1) I(c2) Appeals to an appellate court taken from a decision of any court or tribunal (See 45 CFR §§ 1605.2 and 1605.3). This category does not include appeals or writs taken from administrative agency decisions or lower trial court decisions to a higher level trial court acting as an appellate court, whether they are on the record or de novo proceedings [Such cases should be closed only once as category I(b)].

K Other – *May only be used with Nan's approval*

A closed case that does not fit any of the other CSR case closure categories should be closed as Other. Cases which fit two or more CSR categories may not be closed in this category, but should be closed in the category which best reflects the level of service provided.

L1 L2 Extensive Service (not resulting in Settlement or Court or Administrative Action)

A case closed in which the program undertook extensive research, preparation of complex legal documents, extensive interaction with third parties on behalf of an eligible client, or extensive on-going assistance to clients who are proceeding pro se should be closed as Extensive Service. Some examples of extensive service include the preparation of complex advance directives, wills, contracts, real estate documents or other legal documents, or the provision of extensive transactional work. This category also includes cases closed after extensive interaction or negotiations with another party which do not result in a negotiated settlement. In addition, cases closed after litigation is initiated in which the program appears as counsel of record that do not result in a negotiated settlement, administrative agency or court decision, or in which an order of withdrawal or voluntary dismissal is entered should be closed in this category.

This closure category should be reserved for cases in which the assistance the program provides clearly exceeds the amount of work that would be performed for categories A - Counsel and Advice or B - Limited Action and no other closing code is appropriate (e.g., F, G, H, or I). Factors that favor selection of category L include but are not limited to: (1) a high level of factual complexity; (2) a highly sophisticated legal analysis; (3) drafting of non-routine original pleadings or legal documents; and (4) significant legal research. Although not controlling, programs may also consider whether a substantial amount of time was charged to the case as evidence of extensive services.

Heald, Nan

From: Heald, Nan
Sent: Monday, February 11, 2013 4:19 PM
To: PTLA & VLP STAFF
Subject: Increased Asset Eligibility Guidelines --effective immediately
Attachments: Citizenship Attestation (Spanish and English).doc; Sec. 1626 - Citizen and Eligible Alien Determination Form.doc; Closing Codes.pdf

Folks:

On February 7th, the Board approved an increase in the client asset level from \$1,000 to \$3,000 for individuals, and from \$3,000 to \$5,000 for households.

I will update the policy on the Sharepoint website ASAP but Laura has already updated the fields in Legal Files and you can go ahead and start using the higher guidelines. And please remember that even if a client has additional assets, you can always seek a waiver from me!

From: Heald, Nan
Sent: Tuesday, February 05, 2013 2:37 PM
To: PTLA & VLP STAFF
Subject: LSC compliance report and MANDATORY needed changes -- please print and retain

Folks:

Last year's LSC report on compliance issues was generally positive about staff and volunteer efforts, but it did find some areas where we need to improve. Effective immediately, your support is required for all of the following. Please print this off and keep it handy.

- (1) **Making time each month to review and close cases.** Waiting until January of each year to review and close case files is not working. Effective immediately, I authorize all staff – and especially all attorneys – to use work time during the first 10 days of each month to review their own case list and close – or prepare to be closed – ALL appropriate matters. Please consult with your supervisor about how to best ensure that you have the time to do this on a regular, monthly basis. **Please signal that you have taken this time via email notice to your supervisor each month.** If it becomes evident that staff are NOT making the time for this, I will follow up in each office/project to make sure this can happen program wide. If this means that we must reduce the number of cases being handled program wide, that is a necessary consequence of improving our practices in this area.

As required by the LSC report, Tom and other supervisors will also be reviewing a random sample of closed cases on a regular basis to make sure we are following consistent practice in handling these cases.

- (2) **Household size/income.** There appears to be confusion around how we handle situations where several adults are living in a household but only one is seeking our legal assistance. LSC requires us to count all the members of the household and all of their income except when the applicant for legal services is not financially supported by those other household members. (see §5.3 of the CSR handbook at http://grants.lsc.gov/sites/default/files/Grants/RIN/Grantee_Guidance/CSR/CSR%20Handbook%202008%20as%20amended%202011.pdf and the board-approved Pine Tree client eligibility policy on our Sharepoint site, which states in part:

Household: Eligibility determinations should be based on the actual income of all persons who are resident members of the household AND who regularly contribute to the support of a family member for whom legal services have been requested. **When individuals who have no legal obligation to support one**

another share a residence, the determination of who should be included in the household for financial eligibility purposes may depend upon the type of legal assistance requested or the identity of the client for whom legal assistance is sought. For example, the household income of all residents would be considered if the family sought help with an eviction. However, if a mother seeks legal assistance for her child, a resident boyfriend's income should not be imputed to the child unless the boyfriend is providing support for that child.

If you are unsure what this means in a specific situation, ask your supervisor or me!

- (3) **Citizenship attestations.** These are required in ALL cases, regardless of funding code, where (1) program staff have in-person contact with the client or (2) the program provides continuous representation beyond Counsel and Advice or Limited Action (Closing codes A or B). If the person is a US citizen, they need to sign the attached form. If they are not a citizen, you need to document the way in which they are eligible for services using the eligible alien determination form. Please note that we also need to have these forms in place whenever staff serve as a GAL, signed by one of the parents for the child in question.
- (4) **Asset levels.** We have added two new categories of assets to the "pick list" for asset eligibility. Regardless of funding code, everyone should inquire about these and report actual cash values (not counting liens/loans) if they exist in the client's household. Our asset guidelines for LSC remain low (\$2,000 for an individual/\$3,000 for a household) but I am willing to waive these limits where appropriate and authorize use of other funding – the important thing is to be consistent in documenting these assets.
- **Recreational vehicles** (snowmobiles, boats, ATVs, etc.) and **"additional vehicles"** (those cars/trucks that are not the primary transportation vehicle for household members.) Thus, if it's a household of two adults and they have three cars, you would report the cash value of the third car here.
 - **Collectibles** (jewelry or collectibles that have an actual \$\$ value)

And please remember that we are NOT reporting on the equity value of a homeowner's primary residence unless it is important to the case. If so, this value should be reported in the NOTES section of the matter and not on the "asset" eligibility section of LF.

- (5) **Be consistent in using a case closing checklist in each office/unit.** Legal Files includes a detailed checklist in the annotations section of each matter, which covers ALL of the required components of a case. All of you should be familiar with that list and using it on a regular basis. However, I will be working with your colleagues to create a shorter "cheat sheet" to make this even easier for you.
- (6) **Use the right case closing codes and close cases in a timely way.** Laura has updated the Sharepoint site to provide a shorter version of the LSC closing codes. It is attached. The biggest confusion appears to fall between "B" (limited representation) and "L" (extensive service.) In general, if total staff time on the case is more than 3 hours, it should be closed as L.

With respect to LSC rules on "timely closing", "A" and "B" level cases should be closed in the year in which they were opened unless the case itself opened after September 30 or there is an entry in the file or time slip that indicates why the case is being kept open into the following year. Extended representation cases (F – L) should be closed either in the year in which work was completed OR the following year. LSC will look at time slips and other evidence of the status of the case to determine if it is still active or has become dormant. Cases that do not meet these requirements may need to be switched to a different funding code -- consult with Laura and me before doing so.

I appreciate your willingness to pay attention to these important administrative requirements that support our continued work around the program.

Approved on February 7, 2013

Pine Tree Legal Assistance
Policies And Procedures For Disclosure Of Information
Reference: 45 C.F.R. Part 1619

Pine Tree Legal Assistance adopts the following policy and procedures for affording the public appropriate access to information regarding the Legal Services Corporation and Pine Tree Legal Assistance pursuant to 45 C.F.R. Section 1619.

The following information shall be available for public inspection on the Pine Tree Legal Assistance website (<http://www.ptla.org>):

- a link to the Legal Services Corporation (LSC) Act, and the rules, regulations and guidelines of LSC;
- Pine Tree eligibility guidelines, the Board-approved Statement of Priorities, information on how to request program services, and information on how to file a complaint with the program;
- the names of current members of the Pine Tree Board of Directors, with town of residence/work listed;

Other materials which may appropriately be made available to the public should be requested in writing from Executive Director Nan Heald, Pine Tree Legal Assistance, PO Box 547, Portland ME 04112; or via email to nheald@ptla.org.

Nothing contained in this policy statement shall require PTLA to disclose:

- any information furnished to PTLA by a client;
- work product of any attorney, paralegal, law student, or legal assistant;
- any material used by PTLA in providing representation to clients;
- any material that is related solely to PTLAs internal personnel rules and practices;
or
- any personnel, medical, or similar files.

If a person requests information, not required to be disclosed by 45 C.F.R. Section 1619, that the Legal Services Corporation may be required to disclose pursuant to 45 C.F.R. Section 1602, and if the information is not available on the PTLA web site pursuant to this policy, the Executive Director shall inform the person how to request it from the Corporation.

Pine Tree Legal Assistance Revised Financial Eligibility Policy

Background

Pine Tree receives funding support to provide civil legal services to low-income individuals from many different sources. In recording an intake in Legal Files, the specific funding source supporting that service MUST be noted. Financial information should be recorded for ALL clients, regardless of the funding source used to support the case.

The original and primary source of support for this advocacy comes from an annualized grant from the Legal Services Corporation, which requires that clients meet financial eligibility criteria (45 CFR 1611) that are established by the Board of Directors of Pine Tree Legal Assistance.

For cases supported with LSC funding, LSC requires a maximum income ceiling of 125% of the federal poverty guidelines, after deductions. Staff may serve individuals with household incomes up to 200% of the federal poverty guidelines where documented eligibility factors (explained below) reduce income to 125%.)

Other funding and grants have different eligibility criteria; these include but are not limited to the following current sources of funding:

- United Way of Greater Portland (no income criteria)
- Department of Justice Civil Legal Assistance to Victims of Domestic Violence (no income criteria)
- STOP (no income criteria)
- LITC (household incomes up to 250% of federal poverty guidelines; some exceptions possible)
- IOLTA (200% of poverty; may be higher with prior approval of the Director or designee)
- MCLSF (200% of poverty; may be higher with prior approval of the Director or designee)

Staff are expected to document income and asset information in all cases, regardless of the funding source for the work.

Eligibility Determination

All eligibility determinations shall be conducted in a professional manner so as to promote the development of a trusting attorney-client relationship between staff and the potential client. Initial eligibility determinations may be conducted in person or by telephone. This determination should always be made consistent with the specific requirements of the funding source that will be used to support the services provided.

Groups: Pine Tree Legal Assistance may provide legal assistance to a group, corporation, or association if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel for the matter for which it seeks legal help and either (1) the group itself or the organizing/operating body of the group is primarily composed of individuals who would be financially eligible for LSC-funded services, or (2) the group has as a principal activity the delivery of services to individuals who would be financially-eligible for LSC-funded services. Pine Tree staff should utilize non-LSC funding in providing this service and only after approval of the Executive Director or her designee.

Household: Eligibility determinations should be based on the actual income of all persons who are resident members of the household AND who regularly contribute to the support of a family member for whom legal services have been requested. When individuals who have no legal obligation to support one another share a residence, the determination of who should be included in the household for financial eligibility purposes may depend upon the type of legal assistance requested or the identity of the client for whom legal assistance is sought. For example, the household income of all residents would be considered if the family sought help with an eviction. However, if a mother seeks legal assistance for her child, a resident boyfriend's income should not be imputed to the child unless the boyfriend is providing support for that child.

Change in circumstances: After accepting a client for representation, if PTLA staff become aware that a client has become financially ineligible through a change in circumstances, PTLA shall discontinue representation if the change in circumstances is sufficient and is likely to continue, and discontinuation is not inconsistent with the rules of professional responsibility, in order to allow the client to secure private representation. If, after making a determination of financial eligibility and accepting a client for LSC-funded services, PTLA later determines that the client is financially ineligible for LSC-funded services on the basis of later discovered or disclosed information, PTLA shall discontinue LSC-supported representation if discontinuation is not inconsistent with the rules of professional responsibility.

Income Eligibility

“Income” means total cash receipts of the potential client’s household before taxes. Types of income to be listed in the appropriate place on the Legal Files intake screen include, but are not limited to, the following:

- Wages or salaries before deductions;
- Income from self-employment after deductions for business or farm expenses;
- Rents or royalties;
- regular payments from governmental programs for low-income persons or persons with disabilities;
- child support or alimony payments actually received;
- Social Security benefits if received on a regular basis;
- SSI benefits if received on a regular basis;

- TANF benefits if received on a regular basis;
- VA benefits if received on a regular basis;
- general assistance cash benefits if received on a regular basis;
- unemployment benefits if received on a regular basis;
- workers compensation benefits if received on a regular basis
- weekly or monthly insurance or pension benefits;
- strike benefits from union funds;
- training stipends;
- income from dividends, interest or from estates and trusts;
- military family allotments or other regular support from absent family member or someone not living in the household;
- any other regular or recurring sources of income that are currently and actually available to the potential client:

Income does NOT include the following:

- the value of food or rent received by the potential client in lieu of wages;
- money withdrawn from a bank;
- tax refunds;
- value of food stamps;
- non-cash benefits;
- money received from sale or real or personal property or from tax refunds;
- gifts;
- one-time insurance payments or compensation for injury;
- the first \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statutes pursuant to PL 94-115 Section 5 (25 USC 459(e)), or to PL 96-420, The Maine Indian Claims Settlement Act of 1980 (25 USC 1728(c)(2));

Income eligibility factors for clients served with LSC funding

Pine Tree has adopted two levels of financial eligibility related to eligibility for services with LSC funding. These levels reflect consideration of the cost of living in the State of Maine, the number of clients who can be served by the resources of Pine Tree Legal Assistance, the population that would be eligible at and below alternative income and asset ceilings, and the availability and cost of legal services provided by the private bar and other free or low cost legal service providers in Maine. Only individuals determined to be financially eligible under these eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

Chart A reflects household incomes at 125% of the federal poverty guidelines. A potential client whose household income is at or below 125% of the federal poverty guidelines will be financially eligible for assistance, assuming other LSC eligibility criteria have been met.

Chart B reflects household incomes at 200% of the federal poverty guidelines. As described below, a potential client whose household income is at or below 200% of the federal poverty guidelines may be eligible for assistance, assuming other LSC eligibility criteria have been met.

Those guidelines are annually revised by LSC and published to the Pine Tree staff, typically in the spring of each year. They will also be ratified by the Board every three years.

A potential client whose household income is between 125% and 200% of the federal poverty guidelines (between Chart A and Chart B) and who is otherwise eligible under the asset policy may be accepted for legal services under one or more of the following circumstances, which must be documented in the client file:

- The potential client seeks to maintain benefits provided by a governmental program for low-income individuals or families; or
- The Pine Tree Legal Assistance Director or local Directing Attorneys have reviewed documentation that indicates that the potential client's income is primarily committed to medical or nursing home expenses which, if excluded, would bring the potential client's household income within Chart A; or
- Documentation of one or more of the following "spend down" criteria in the income eligibility screens for Legal Files that will bring the potential client's household income within Chart A:
 - Unreimbursed medical expenses or medical insurance premiums;
 - Rent and other **fixed** debts and obligations (not including living costs that fluctuate from month to month such as utility payments)
 - Expenses for child care, transportation, necessary work clothing or equipment, job training or educational activity to prepare for employment;
 - Non-medical expenses associated with age or disability;
 - Current income taxes; or
 - The potential client's current income prospects are limited and reflect seasonal variations;
- Other significant factors have been determined by the Executive Director or a Directing Attorney to affect the potential client's ability to afford legal assistance and are documented in the file;

In assessing the income or assets of a potential client who is a victim of domestic violence, Pine Tree staff shall consider only the assets and income of the potential client and members of the client's household other than those of the alleged perpetrator of the domestic violence. Further, Pine Tree staff shall not include any assets held exclusively or jointly by the alleged perpetrator, regardless of whether the potential client is also a joint owner of those assets.

Presumption of eligibility for certain public benefit recipients: A potential client's whose income is derived solely from TANF, SSI or General Assistance is financially eligible for legal services from Pine Tree Legal Assistance without further review of income or assets because those governmental programs have income standards that are at or below 125% of the federal poverty guidelines and their eligibility standards include an assets test.

In addition to these income criteria, Pine Tree has established an asset ceiling relative to a potential client's eligibility for program services that is defined below. Unless otherwise noted or waived, potential client assets must not exceed the asset ceiling if a client is to be found financially eligible for services from Pine Tree Legal Assistance with LSC funding.

ASSET ELIGIBILITY

The intake process must include reasonable inquiry regarding potential client assets to insure eligibility consistent with the requirements of LSC or other funders. For purposes of this policy, "assets" means cash or other resources of the potential client or members of the potential client's household that are readily convertible to cash, and which are currently and actually available to the potential client.

Household assets with a value of more than \$2,000 for a household of one or \$3,000 for a household of more than one shall disqualify a client from representation with LSC funding, without prior approval of the Director or the Directing Attorney. It is reasonable to inquire about the following types of assets in determining eligibility under this policy:

- Actual cash, money in bank accounts (checking or savings) or certificates of deposit;
- The existence of pensions, retirement accounts or other restricted funds from which current funds could be withdrawn;
- Real property (other than residence);
- Recreational vehicles and (snowmobiles, boats, ATVs, etc.) and "additional vehicles" (those cars/trucks that are not the primary transportation vehicle for household members.)
- Collectibles (jewelry or collectibles that have an actual cash value)

Unless required by a special funding source or otherwise relevant to the nature of legal service being provided (e.g., *pro bono* representation through the Maine Volunteer Lawyers Project), staff do not need to document information about the client's primary residence, vehicles used for transportation, assets used in producing income and other assets excluded from attachment under State or federal law.

Waiver: In unusual or meritorious cases, the Director or Directing Attorney may waive the above asset ceiling(s) in order to provide services to an individual. The waiver and reasons for granting it should be documented in the client file.

Monthly

At the end of each month, the Fiscal Manager prepares the journal entries. Entries made on a monthly basis are the payroll/tax/insurance summary, bank statement adjusting, and any posting errors that may be found. Monthly reports from MIP are run, trial balance, program and over all variance reports. The Treasurer reviews the monthly journal entries.

The Fiscal Manager balances the checkbook on a monthly basis, reviews outstanding items and follows up on stale items over six months old. Authorized check signers review and approve reconciled statements. Current check signers: Nan Heald, Thomas Kelley and Charles Henegar.

A program variance report is prepared each month. This Report is reviewed by the Board Treasurer. A variance report is prepared for each Board meeting and is reviewed by the Treasurer along with the Finance Committee, before it is presented to the full Board.

The bookkeeper prepares schedules for voluntary deduction that need to be paid. These include Union dues, reimbursement accounts, health insurance contributions, voluntary life insurance, and other deductions that might be taken.

Quarterly

The Fiscal Manager prepares the State Labor report and fiscal reports that are required by funders.

The Bookkeeper prepares the "Out of State" travel report for the State.

Year End

The bookkeeper must record as 'accounts payable' all bills owing as of December 31st that were not received before the year-end. In the context of year-end activities, a number of memos are sent to offices and staff. These include the December pay schedule, a reminder to get all reimbursement requests in, and reminders of Pine Tree reimbursement policies.

The beginning of March (after YE payables have been entered) the accounts payable and income are reviewed by the fiscal manager to make sure the expenses and income are as expected. Cash accounts are balanced. YE journal entries are prepared and posted as needed. Schedules are prepared as backup for trial balance, listed below are the YE schedules that are prepared:

- Account Receivable
- Accounts payable
- Prepaid Expense Report
- Deferred Income

Revised Policy on Account Reconciliations and General Ledger Review

(Approved on February 7, 2013)

It is the policy of Pine Tree Legal Assistance that its bank statements shall be reconciled monthly to the general ledger by a person who is not an approved check signer and whose daily work responsibilities do not include:

- access to cash;
- cash bookkeeping duties

At the present time, account reconciliation and general ledger review shall be performed by the Pine Tree Legal Assistance Fiscal Manager.

All required adjustments to the general ledger cash account identified through the reconciliation procedures should be recorded in the general journal and promptly posted to the general ledger.

The reconciliation shall be reviewed and approved by a responsible individual on a monthly basis. Such review shall be appropriately documented by signature and date. At the present time, that review will rotate on a regular basis among the program's three approved check-signers: the Executive Director, the Litigation Director and the Information Technology Coordinator **or by handled by the Board Treasurer.**