



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Michigan Indian Legal Services, Inc.
Compliance Review
May 21-23, 2013

Recipient No. 723146

I. EXECUTIVE SUMMARY

Finding 1: MILS' automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded; however, two (2) data entry errors were identified during case review that appeared to be the result of human error.

Finding 2: MILS' intake procedures and case management system overall support the program's compliance related requirements; however, the need for one (1) documentation method change and one (1) screening method change were evidenced. Further, while the MILS' financial eligibility policy overall is consistent with the requirements of 45 CFR Part 1611 (Financial eligibility), one (1) policy error needing correction was identified.

Finding 3: Sampled cases evidenced compliance with the income eligibility documentation required by 45 CFR § 1611.4 (Financial eligibility for legal assistance), CSR Handbook (2008 Ed., as amended 2011), § 5.3 (Income documentation requirements), and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines ("FPG").

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

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

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

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

Finding 8: Review of the recipient's policies and procedures, sampled cases, and related documents evidenced compliance with the requirements of 45 CFR § 1620.3(a) (Establishing priorities) and § 1620.6 (Signed written agreement).

Finding 9: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Legal assistance documentation requirements).

Finding 10: Sampled cases evidenced that the program's application of the CSR case closure categories was generally consistent with Chapters VIII (Case definitions and closure categories) and IX (Legal problem categories and codes) of the CSR Handbook (2008 Ed., as amended 2011); however, one (1) pattern of error was identified.

Finding 11: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timely closing of cases).

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

Finding 13: Review of the recipient's policies and interviews with management and staff evidenced compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Review of the recipient's policies, sampled cases, and fiscal and other records, as well as interviews with management and staff, evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Finding 16: Review of the recipient's accounting and financial records and interviews with management evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). Review of the recipient's notification letters and interviews with management and staff also evidenced compliance with the requirements of 45 CFR § 1610.5(a) (Notification).

Finding 17: Review of the recipient's policies and fiscal records, as well as interviews with fiscal staff, evidenced compliance with the requirements of 45 CFR § 1627.4(a) (Membership fees or dues).

Finding 18: Review of the recipient's timekeeping and other fiscal records evidenced compliance with the requirements of 45 CFR Part 1635 (Timekeeping requirement).

Finding 19: Review of sampled cases and fiscal and other records, as well as interviews with management and staff, evidenced compliance with the requirements of former 45 CFR Part 1642 (Attorneys' fees).

Finding 20: Review of the recipient's policies and procedures, sampled cases, and fiscal and other records, as well as interviews with management and staff, evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 21: Review of the recipient's sampled cases and interviews with management evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).

Finding 22: Review of the recipient's policies and procedures and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 23: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 24: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

Finding 26: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 27: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 28: Review of the recipient's sampled cases and interviews with management evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 29: Review of fidelity bonding on MILS employees evidenced compliance with the requirements of 45 CFR Part 1629 (Bonding of recipients).

Finding 30: Review of accounting records evidenced compliance with the requirements of 45 CFR Part 1630 (Cost standards and procedures).

Finding 31: Review of the recipient's internal control policies and procedures evidenced weaknesses that are inconsistent with the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.); however, the small size of the recipient's staff may preclude it from achieving the most stringent internal controls.

II. BACKGROUND OF REVIEW

On May 21 through 23, 2013, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Compliance Review at Michigan Indian Legal Services, Inc. ("MILS"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Ed.), and the Property Acquisition and Management Manual. The visit was conducted by a team of one (1) program counsel and two (2) fiscal compliance specialists. All team members were OCE staff.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that MILS has correctly implemented the 2008 CSR Handbook, as amended 2011. Specifically, the review team assessed MILS for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.3(a) and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); former 45 CFR Part 1642 (Attorneys' fees)¹; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion). The designated period of review was January 1, 2011 through March 30, 2013.

MILS is exclusively a Native American program serving the Native American population in the state of Michigan. Michigan encompasses 12 federally recognized Native American tribes, as well as additional tribes seeking federal recognition. MILS' has a total staff of seven (7), including its Executive Director ("ED"), Deputy Director ("DD"), a Bookkeeper who also serves as the Receptionist and Administrative Assistant, one (1) clerical worker, two (2) attorney fellows, and one (1) attorney funded by Little Traverse Bay Bands Office of Citizens Legal Assistance ("LTBB-OCLA") to provide legal assistance to members of that tribe.

MILS does not have a PAI program, as it does not receive an LSC Basic Field Grant and, therefore, the 45 CFR Part 1614 requirement does not apply. *See* 45 CFR § 1614.1(a). MILS indicated that it did not close any cases as PAI during the review period.

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

The MILS Native American Grant for 2011 was \$182,088, for 2012 it was \$155,042, and MILS anticipates receiving \$152,034 in 2013. MILS has no subgrants approved by LSC within the review period. In its 2011 CSR submission to LSC MILS reported 188 closed cases and in 2012 it reported 330 closed cases. MILS also reported for 2011 and 2012 that 26.1% and 25.8%, respectively, of its cases closed were family law cases. For both years, the largest percentage of cases closed was indicated as “miscellaneous” (over 40%). Additionally, MILS reported that for 2011 and 2012, 86.7% and 87.6%, respectively, of its closed cases were Limited Service cases. MILS’ 2011 self-inspection certification revealed a 4% error rate in CSR reporting and its 2012 self-inspection certification revealed a 5.3% error rate. MILS’ 2011 self-inspection indicated one (1) error in each of the following categories: telephone client file lacking evidence of citizenship or alien eligibility screening, in-person client file lacking citizenship or alien eligibility documentation, and file lacking evidence of legal assistance. MILS’ 2012 self-inspection indicated one (1) error in each of the following categories: over income without a noted authorized exception, in-person client file lacking citizenship or alien eligibility documentation, untimely closed or dormant file, and file lacking evidence of legal assistance.

By letter dated March 11, 2013, OCE requested that MILS provide a list of all cases reported to LSC in its 2011 CSR data submission (closed 2011 cases), a list of all cases reported in its 2012 CSR data submission (closed 2012 cases), a list of all cases closed between January 1, 2013 and March 30, 2013 (closed 2013 cases), and a list of all cases which remained open as of March 30, 2013 (open cases). MILS 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). During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and MILS agreement of May 6, 2013, MILS 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.² MILS’ management and staff cooperated fully in the course of the review process.

The OCE team interviewed members of MILS’ upper and middle management, staff attorneys, and support staff. MILS’ case intake, case acceptance, case management, and case closure practices and policies in the Traverse City office were assessed. In addition to interviews, sample case files were reviewed. The sample closed case review period was from January 1, 2011 through March 30, 2013. A total of 75 case files were reviewed. The sample was developed proportionately among 2011, 2012, and 2013 closed and open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with certain CSR instructions, for example: timely closing, proper application of the CSR case closure categories, and duplicate reporting, etc.

² In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

As discussed in greater detail below, MILS was made aware of identified compliance issues during the on-site visit. This was accomplished by informing intermediaries, as well as the Executive Director, of compliance issues uncovered during case review. OCE conducted an exit conference on May 23, 2013, during which MILS was provided with OCE's preliminary findings and was made aware of compliance issues found. MILS was advised that it would receive a Draft Report which would include all of OCE's findings and that the program would have 30 days to submit comments.

By letter dated July 31, 2013, OCE issued the Draft Report detailing its findings, recommendations, and Required Corrective Actions regarding the May 21 through 23, 2013, Compliance Review. MILS was asked to review the Draft Report and provide written comments within 30 days. MILS did not provide written comments to the Draft Report within the time frame requested. By email dated September 9, 2013, OCE communicated to MILS that its comments were overdue and inquired about the status of the comments. OCE sent MILS a follow-up email on September 11, 2013.

By email dated September 13, 2013, MILS responded to OCE's emails by indicating that MILS did not intend to comment on OCE's Draft Report, but that its Board of Directors were scheduled to meet on September 19, 2013, and would change MILS' eligibility policy as necessary to comply with "the required corrective action that requires Board action" and that the Executive Director would put into place written policies to "inform and educate" staff regarding the balance of the Required Corrective Actions. By email dated September 16, 2013, OCE responded to MILS' September 13, 2013, email informing the recipient that, without further detailed action, all Required Corrective Actions would remain open. Additionally, OCE detailed for MILS various ways in which it could satisfy its outstanding Required Corrective Actions.

By email dated September 20, 2013, MILS responded to OCE's September 16, 2013, email and provided comments and supporting documentation concerning the Required Corrective Actions issued by OCE in the Draft Report. MILS provided emails sent to staff confirming that the requirements raised by Required Corrective Actions 1, 3, 4, and 5 had been communicated to necessary staff. Additionally, MILS submitted a copy of its edited group application form, in response to Required Corrective Action 3, and indicated that certain non-compliant language was deleted from its financial eligibility policy by MILS' Board of Trustees on September 19, 2013, in response to Required Corrective Action 2.

Based on the actions taken and documents provided by MILS in response to the Draft Report, OCE finds that all Required Corrective Actions have been implemented and that no further action is needed. MILS' comments are reflected in this Final Report and have been attached as an appendix hereto.

III. FINDINGS

Finding 1: MILS' automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded; however, two (2) data entry errors were identified during case review that appeared to be the result of human error.

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

MILS uses PIKA Case Management System as its ACMS. Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, MILS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded; however, two (2) data entry errors were identified during case review that appeared to be the result of human error and not evidence of a pattern of error.

The first ACMS data entry error that was identified pertains to Closed 2013 Case No. 02-1001080. The case was opened in 2002 and the file contained evidence of continuous case work throughout the pendency of the case. The file also contained evidence of a proper income eligibility screening at the onset of the case (reporting no income in 2002), as well as evidence that the client was rescreened several times by MILS (the most recent FPG calculation being 120.1%). The most current income screening documented in the file indicated an annual income of \$22,000 for a household of three (3), bringing the client slightly over MILS' income ceiling of 125% of the FPG. The data entry error identified during case review became evident because MILS' ACMS continued to indicate that the client's income was at 120.1% of the FPG. The fact that the ACMS continued to display the FPG calculation of previously entered income information signified that, at the time of the most recent re-screening, MILS' staff likely failed to click on the "calculate" button in the ACMS after entering the new income data. The intermediary indicated that when new income figures are entered into an individual's ACMS file, the screener must click on the "calculate" button on the screen in order for the ACMS to update the displayed FPG percentage. As there were no other instances of this error identified during case review, there was no pattern of error. In the Draft Report, OCE recommended that MILS remind staff of this necessary step when entering updated income data in the ACMS in order to prevent the error from occurring in the future.

The second ACMS data entry error identified pertains to Closed 2013 Case No. 12-00550. The case was opened on 12/19/12, but no legal assistance was provided and the applicant was referred to another legal service provider. The ACMS file was closed on 1/2/13. MILS' staff intended to deselect the case, but did so improperly by utilizing case closure category "K" (Other) to close the case. In order to properly deselect the case, pursuant to MILS' procedure, MILS' staff should have designated "deselected" in the ACMS drop-down categories titled "case status" and "LSC closing code," as well as by designating "non-critical legal need" in the ACMS drop-down category titled "reason rejected." Case closure category "K," as well as all other LSC

case closure categories, may only be used for cases that meet all of the requirements of a CSR reportable case. *See* CSR Handbook (2008 Ed., as amended 2011), Chapters II and V. Accordingly, the use of case closure category “K” to denote a deselected case – or any other case in which legal assistance was not rendered to an eligible client – is non-compliant. As there were no other instances of this error identified during case review, there was no pattern of error. In the Draft Report, OCE recommended that MILS remind necessary staff of the proper procedure to be used when deselected a case for CSR reporting in order to prevent this error from occurring in the future.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 2: MILS’ intake procedures and case management system overall support the program’s compliance related requirements; however, the need for one (1) documentation method change and one (1) screening method change were evidenced. Further, while the MILS’ financial eligibility policy overall is consistent with the requirements of 45 CFR Part 1611 (Financial eligibility), one (1) policy error needing correction was identified.

The intake and case management, as well as oversight procedures, were assessed by interviewing the Receptionist (who also works as the office’s part-time Bookkeeper and Administrative Assistance), an Attorney Fellow, the Deputy Director, and the Executive Director, and by reviewing the ACMS and paper forms and letters utilized during the intake process. Further, the results of the intake system were tested during the sample case review.

MILS Intake, Case Management, and Oversight

MILS maintains a centralized intake system in its Traverse City office where applicants call a toll-free telephone number. Considering that its client population encompasses the entire state of Michigan, intake interviews are typically conducted by the office’s Receptionist followed by the assigned staff attorney over the telephone. In-person intake interviews are also conducted for applicants who appear in person at the Traverse City office. Additionally, intake interviews may be conducted in the field via remote access to MILS’ ACMS by staff attorneys during clinics conducted at Tribal and Indian centers throughout Michigan. When conducting intake in the field, MILS’ staff attorneys carry with them a laptop, portable printer, scanner, and a mobile internet device in order to access the ACMS and conduct eligibility screening.

The Receptionist simply conducts data entry during intake interviews and is not authorized to make any eligibility determinations based on the information gathered. The Receptionist asks appropriate eligibility questions and simultaneously enters the information obtained into the ACMS. If the intake interview is conducted in person, a written citizenship attestation is obtained at that time. The Receptionist asks for the applicant’s full name and the name of the opposing party in order to conduct a conflict and duplicate case check in the ACMS. If the information entered highlights a potential conflict, an alert appears in red at the top of the intake screen which is later reviewed by the staff attorney assigned the application to determine whether a conflict exists. ACMS drop-down menus are used as a guide during the screening of income and assets.

Case Acceptance, Closure, and Review

Once all required data is recorded, the applicant is transferred to an assigned staff attorney for review and verification of the information gathered and for an eligibility determination to be made. If an applicant is found ineligible, the staff attorney will immediately inform the applicant of the determination and follow-up with a letter detailing the basis of the rejection. For eligible persons, whenever possible, a staff attorney will provide limited services at the time of the initial intake. If limited services are provided, the staff attorney will subsequently summarize the services provided in a letter sent to the client. If more extensive services are required, the case is discussed at a weekly staff meeting to determine whether it will be accepted for extended services.

If a case is accepted for extended services, the staff attorney who handled the case at intake will send the client an opening letter with an enclosed Representation Agreement and an Income and Citizenship verification form, which is a one-page ACMS summary of the eligibility information collected with two (2) signature lines. If, after limited services are provided, a decision is made to not provide extended services, the assigned staff attorney will also send a letter detailing the basis of the rejection.

MILS is working towards becoming a “paperless” organization and has taken many steps to achieve this goal. MILS employs a part-time clerical worker whose duties entail scanning old paper files into the ACMS. Limited service client files remain 100% paperless whenever possible (e.g., when no in-person contact is made). A paper file may be developed for in-person and extended service cases in order to enclose eligibility and case related documents. However, MILS scans and uploads all documents to its ACMS and uses the “copy” and “paste” function of its word processing software to enter the text of all letters drafted, as well as the text of any legal research conducted, into the “notes” section of clients’ ACMS files. This process facilitates MILS’ “paperless” goals and supports its case management, as management and staff can easily view all correspondence and legal documentation pertaining to a case by accessing the ACMS.

Staff attorneys are responsible for maintaining their files by ensuring that all necessary eligibility information and paperwork is obtained. Staff attorneys are also responsible for drafting all correspondence for their assigned cases. At the conclusion of a case, staff attorneys send a closing letter summarizing the legal services provided to the client before assigning a case closure category to the case and closing the ACMS file.

New and selected ongoing cases are reviewed at weekly staff meetings, as are cases being evaluated for extended representation. The Executive Director runs an open case report on the ACMS and reviews all open cases with staff on a quarterly basis in order to assess what has been done and to discuss the best strategies moving forward. Additionally, due to the small size of the office, the Executive Director has the ability to be continuously apprised of the status of open cases.

Clinics

MILS conducts clinics within the tribal community at various venues such as urban Indian centers and tribal offices. Clinics are managed by staff attorneys and intake is conducted on-site via remote access to the ACMS. While most intake done at clinics is through mobile internet device connecting to the MILS' ACMS, in rare circumstances, a paper application form is utilized if MILS' ACMS is not accessible due to a lack of internet connectivity. In such a scenario, conflict checks, if necessary, are checked via telephone by staff at the Traverse City office.

Intake-Related Compliance Issues

Cars Used for Transportation

Observations of the intake practices of the Receptionist and a staff attorney evidenced that, when inquiring into assets, applicants are questioned regarding the number of vehicles maintained by them or members of their household, including whether the car(s) are paid for and what their approximate value is. MILS' staff, however, was not observed inquiring whether the vehicles were used for transportation. LSC Regulations, at 45 CFR § 1611.3(d)(1), allow recipients to exclude the value of household vehicles, but the vehicles must be "used for transportation." Consistent with 45 CFR § 1611.3(d)(1), MILS' financial eligibility policy indicates that applicant's and household members' vehicles used for transportation are excluded from consideration as assets. Subsequent interviews with the Receptionist and staff attorney, however, indicated that the staff members are excluding the value of these vehicles without confirming that they are used for transportation. In the Draft Report, LSC advised that MILS must take corrective action to ensure that staff conducting intake verify that a vehicle is used for transportation before considering it an excludable asset, as is required by 45 CFR § 1611.3(d)(1) and MILS' financial eligibility policy.

Food Stamps Included as Income

Intake observations evidenced that the ACMS drop-down menu for income sources includes the value of food stamps. Additionally, the paper intake forms available for field use also request that applicants document the amount of food stamps received under a section requesting income sources. LSC regulations, at 45 CFR § 1611.2(i), indicate that the value of food stamps is not an income source. Laws pertaining to the Food Stamp Program, at 7 USC § 2017(b), explicitly state that that value of these benefits:

...[S]hall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of benefits under this chapter.

Interviews evidenced that staff is aware of the restriction and that MILS does not use the recorded value of food stamps when determining an applicant's financial eligibility. Also,

MILS' financial eligibility policy correctly indicates that total cash receipts should not include the value of food or food stamps. MILS staff members noted that it is necessary for MILS' staff to document the value of the food stamps a client receives, as Michigan's court fee waiver form requires the information to be included in a fee waiver request. In support of this, the Executive Director issued a directive stating that, as of 2013, staff conducting intake should highlight an applicant's receipt of food stamps by selecting it in the ACMS drop-down menu, but enter \$0 in the required ACMS location in order to keep the amount received from appearing in an applicant's total income and, to then enter the amount received in the separate "notes" section. It appears, however, that staff conducting intake have not yet accustomed themselves to this practice as case review revealed several cases opened in 2013 that included the value of food stamps in the ACMS income section. *See* Closed 2013 Case Nos. 13-00188, 13-00035, and 13-00068.

OCE believes that the most prudent course of action would be for MILS to instruct staff conducting intake to record the value of food stamps received in another ACMS location altogether and to remove "food stamps" as an option in the ACMS income drop-down menu. This would prevent the inadvertent inclusion of the value of food stamps in an applicant's total income and simplify the process for staff conducting intake and staff attorneys making eligibility determinations. This concern was communicated to MILS staff and management at the exit conference and management indicated that it would contact its ACMS vendor to inquire into making this change.

Group Application Procedures

Intake interviews indicated that the occurrence of a group application is extremely rare; however, case review and discussions with MILS' management revealed a "Group Application for Assistance" form ("group application form") that would be used if a group applied for legal representation. The group application form utilized by MILS allows a member of the applicant group to attest that the group is primarily composed of persons eligible for legal services and that the group is financially unable to retain private counsel. While this language is generally compliant with the requirements of 45 CFR §§ 1611.6(a) and 1611.6(a)(1), the program, not a member of an applicant group, must make this determination and collect information demonstrating these requirements. *See* 45 CFR §§ 1611.6(b)(1) and 1611.6(b)(2). Notably, MILS' financial eligibility policy describes the documentation requirement correctly and two (2) group cases reviewed contained appropriate eligibility documentation. *See* Open Case No. 94M0060 (this case was opened in 1994 and, due to its age, the file contained the old, non-compliant group application form; however, the file contained the group's articles of incorporation and its budget and tax filings allowing for an independent financial eligibility determination to be made) and Closed 2012 Case No. 10-00346 (this case was opened in 2010 and did not contain the old, non-compliant group application form. The file did contain the group's articles of incorporation and its budget and tax filings supporting the financial eligibility of the group). MILS was advised in the Draft Report that if MILS intends to use the non-compliant group application form in the future, MILS must amend form so as to provide proper guidance to staff regarding group eligibility screening.

MILS Financial Eligibility Policy Review

MILS' financial eligibility policy overall is consistent with the requirements of 45 CFR Part 1611; however, one (1) policy error needing correction and one (1) recommendation were identified.

Government Benefit Exemption

A review of MILS' financial eligibility policy revealed an error when detailing its 45 CFR § 1611.4(c) government benefit exemption. As written, the exemption appears to apply to applicants whose sole income is derived from *any* governmental program for the poor. MILS was informed that 45 CFR § 1611.4(c) states that this exception can be applied "...provided that *the recipient's governing body* has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test (emphasis added)." MILS' Board of Directors is required to "take some identifiable action to recognize the asset test of the governmental benefit program being relied upon." *See* 70 Fed. Reg. 45545, 45553 (Aug. 8, 2005). The preamble to 45 CFR Part 1611 explains that "[t]his ensures that the eligibility standards of the governmental program have been carefully considered and are incorporated into the overall financial eligibility policies adopted and regularly reviewed by the recipient's governing body." *See id.* MILS management indicated that, although a complete financial eligibility screening is conducted of each applicant, the error would be corrected and it would have its Board of Directors approve the intended specific governmental programs allowable under MILS' exemption. MILS must ensure that its Board of Directors considers and approves the governmental programs intended to fall under the government benefit exemption detailed in its financial eligibility policy pursuant to 45 CFR § 1611.4(c). With its comments to the Draft Report, MILS was asked to inform LSC of the actions it has taken to correct this issue.

Liquid v. Non-Liquid Assets

In the Draft Report, it was recommended that MILS eliminate the distinction between liquid and non-liquid assets in its financial eligibility policy, as LSC revised this former practice in 2005 in favor of language that focused more on the availability of assets. *See* 70 Fed. Reg. 45545, 45547 (August 8, 2005). MILS' definition of assets is identical to the definition provided in 45 CFR § 1611.2(d), specifically indicating that an asset must be "...readily convertible to cash," and, thus, the inclusion of non-liquid assets as a consideration in its policy is unnecessary and could potentially be confusing to staff. MILS' responded favorably to the idea of simplifying its policy.

In response to the Draft Report and this finding, MILS indicated that it had discussed the requirements of 45 CFR § 1611.3(d)(1) with staff after OCE's Draft Report was issued and included a copy of the email it sent to staff on September 20, 2013, reiterating the requirements under the regulation. Additionally, MILS indicated that on September 19, 2013, its Board of Trustees deleted all language concerning 45 CFR § 1611.4(c) (government benefit exemption) from its financial eligibility policy and that, moving forward, MILS would screen all applicants' income and asset, regardless of the source. Finally, MILS provided OCE with an amended group

application form, demonstrating compliance with 45 CFR § 1611.6, and included a copy of the email in which it distributed the form to staff with an instruction to discontinue the use of all previous versions of the form.

Based on the comments provided by MILS, including the copies of emails sent to staff and supporting documentation, OCE finds that the actions taken sufficiently satisfy this finding and Required Corrective Actions 1, 2, and 3 and that no further action is needed.

Finding 3: Sampled cases evidenced compliance with the income eligibility documentation required by 45 CFR § 1611.4 (Financial eligibility for legal assistance), CSR Handbook (2008 Ed., as amended 2011), § 5.3 (Income documentation requirements), and applicable LSC instructions for clients whose income exceeds 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.³ *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) and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

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

Review of the recipient’s sampled cases evidenced compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the FPG, with one (1) exception. A single *non-LSC* funded case over 125% was accepted on the basis of an exception that is not allowed by MILS. *See* Closed 2013 Case No. 13-00071. The file indicated

³ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

“credit card debt” as its 45 CFR § 1611.5(a)(4)(iii) (Fixed debts and obligations) authorized exception, which is explicitly prohibited by MILS’ financial eligibility policy. The intermediary indicated that the case, which was opened and closed in 2013, would be corrected, if possible, or deselected from CSR reporting. As there were no other instances of this error identified during case review, there was no error pattern. In the Draft Report, OCE recommended that MILS remind staff conducting intake that it prohibits the use of applicants’ credit card debt as a 45 CFR § 1611.5(a)(4)(iii) authorized exception. It would be prudent for MILS to review its cases designated as CSR reportable, which remain open or have been recently closed and not yet reported in a CSR, to ensure that only authorized exceptions consistent with MILS’ financial eligibility policy and 45 CFR § 1611.5(a)(4)(iii) are utilized when determining applicant eligibility.

In response to the Draft Report and this finding, MILS offered no individualized comments.

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

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.⁴ *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.

Review of sampled cases evidenced the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

In response to the Draft Report and this finding, MILS offered no individualized comments.

⁴ 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.

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

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

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse’s or parent’s family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁵ 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.

MILS has adopted a written policy and procedure to guide its staff in complying with 45 CFR Part 1626 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS add an effective date to its policy to avoid confusion should a new or updated policy be adopted by MILS in the future.

Sampled cases evidenced compliance with the requirements of 45 CFR Part 1626.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 6: Review of the recipient’s policies, sampled cases, and related documents evidenced compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

⁵ *See* Kennedy Amendment at 45 CFR § 1626.4.

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.⁶ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

MILS financial eligibility policy contains a subsection regarding retainer agreements that is consistent with 45 CFR § 1611.9. A review of the standardized retainer utilized by MILS also found it to be consistent with the requirements of 45 CFR § 1611.9. Sampled cases evidenced only one (1) exception with 45 CFR § 1611.9. *See* Closed 2011 Case No. 11-00221 (the file pertaining to this extended service case lacked a required retainer).

Based on the materials reviewed and case sampling, MILS is in compliance with 45 CFR § 1611.9.

In response to the Draft Report and this finding, MILS offered no individualized comments.

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

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

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

MILS has adopted a written policy and procedure to guide its staff in complying with 45 CFR Part 1636 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS add an effective date to its policy to avoid confusion should a new or updated policy be adopted by MILS in the future.

⁶ 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.

Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 8: Review of the recipient's policies and procedures, sampled cases, and related documents evidenced substantial compliance with the requirements of 45 CFR § 1620.3(a) (Establishing priorities) and § 1620.6 (Signed written agreement).

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

MILS has adopted a written policy and procedure to guide its staff in complying with 45 CFR Part 1620 that is consistent with the Regulation. The review evidenced that a Staff Attorney Agreement Regarding Priorities ("priorities agreement") is signed during new staff orientation, and that MILS complies with 45 CFR § 1620.6. Further, interviews with the Executive Director and staff evidenced appropriate knowledge regarding the requirements of 45 CFR § 1620.3(a) and § 1620.6. Finally, all sampled cases were within program priorities.

Based on the materials reviewed and interviews with management and staff, MILS is in compliance with 45 CFR § 1620.3(a) and § 1620.6.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 9: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Legal assistance documentation requirements).

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

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

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such

information shall, at a minimum, describe, *inter alia*, the level of service provided. See CSR Handbook (2008 Ed., as amended 2011), § 5.6.

Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 10: Sampled cases evidenced that the recipient’s application of the CSR case closure categories was generally consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011); however, one (1) pattern of error was identified.

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the case closure categories 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.

Sampled cases evidenced that MILS’ application of the CSR case closure categories was generally consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). Case review evidenced six (6) cases that were closed with incorrect case closure categories, with five (5) of these cases revealing an error pattern. The error pattern involves an underreporting of MILS’ level of service in certain cases that were incorrectly closed as “L” (Extensive Service). Five (5) files closed with case closure category “L” were found to contain evidence of court action supporting case closure categories “G” (Negotiated Settlement with Litigation), “I(a)” (Uncontested Court Decision), or “I(b)” (Contested Court Decision). See Closed 2013 Case No. 12-00463 (“G” would have better reflected the legal work done, as MILS negotiated a plea on behalf of the client in a misdemeanor tribal court criminal case); Closed 2013 Case Nos. 13-00163 and 13-00109 (“I(b)” would have better reflected the legal work done, as MILS represented both clients in contested probation violation hearings in misdemeanor tribal court criminal cases); Closed 2012 Case No. 11-00158 (“I(a)” would have better reflected the legal work done, as MILS represented the client in an uncontested tribal housing eviction case); and Closed 2011 Case No. 10-00307 (“G” would have better reflected the legal work done, as MILS negotiated a plea on behalf of the client in a misdemeanor tribal court criminal case).⁷ See also CSR Frequently Asked Questions (July 2011), Chapter VIII-Case Definitions and Closure Categories, Question 4.

In addition to the above, there was a sixth case not part of an error pattern closed with case closure category “F” (Negotiated Settlement Without Litigation), but should have been closed with case closure category “A” (Counsel and Advice). In this case, although MILS drafted a motion on behalf of the client, the client never received the benefit of that legal work and the

⁷ LSC Regulations, at 45 CFR § 1613.2, state that “[a] misdemeanor or lesser offense tried in an Indian tribal court is not a ‘criminal proceeding,’” and, thus, this type of representation is not prohibited by Part 1613. Additionally, LSC Program Letter 12-3 (November 8, 2012), on Criminal Proceedings in Tribal Courts, informed LSC recipients that “Congress has amended section 1007(b)(2) of the LSC Act to permit LSC recipients to use LSC funds to represent persons in all criminal proceedings in tribal courts” and that LSC recipients may report such cases in their CSRs. See 42 USC § 2996f(b)(2).

only assistance given to the client was the legal advice provided at the inception of the case. *See* Closed 2013 Case No. 12-0093.

As such, the Draft Report required that MILS take corrective action to ensure that cases are closed utilizing the CSR case closure category that best reflects the highest level of service provided to the client. As part of this, LSC also advised that attention should be given to cases closed as “L” to ensure the proper use of that case closing category. With its comments to the Draft Report, MILS was asked to inform LSC of the actions it has taken to ensure that staff closing cases are properly applying CSR case closure categories.

In response to the Draft Report and this finding, MILS indicated that it had discussed the requirements of the CSR Handbook (2008 Ed., as amended 2011), Chapter VIII, with staff after OCE’s Draft Report was issued and included a copy of the email it sent to staff on September 20, 2013, reiterating the errors identified in the Draft Report and detailing why “L” was not the appropriate Case Closure Category in those circumstances. Additionally, staff was asked to review the CSR Handbook which was included as an attachment to the email.

Based on the comments provided by MILS, including the copy of the email sent to staff, OCE finds that the actions taken sufficiently satisfy Required Corrective Action 4 and that no further action is needed.

Finding 11: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timely closing of cases).

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a).⁸ 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).

⁸ The time limitation of the 2001 Handbook that a brief service case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed., as amended 2011), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3.

In response to the Draft Report and this finding, MILS offered no individualized comments.

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

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

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 13: Review of the recipient's policies and interviews with management and staff evidenced 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.

MILS has a written policy to guide its staff in complying with 45 CFR Part 1604 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS review 45 CFR Part 1604 and its own corresponding policy to evaluate whether changes should be made to incorporate additional permissible exceptions and/or to detail procedures to be used by staff when participating in approved activities pursuant to this Part. The MILS Executive Director indicated that staff members had not participated in outside practice activities. Interviews of other MILS' staff identified no outside practice of law activities.

Based on the materials reviewed and interviews with management and staff, MILS evidenced compliance with 45 CFR Part 1604.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 14: Review of the recipient's policies, sampled cases, and fiscal and other records, as well as interviews with management and staff, evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

The Executive Director stated that no prohibited political activities had been conducted by MILS or any of its staff. This was supported by a limited review of accounting records reflected in MILS' Chart of Accounts and interviews with the Bookkeeper which indicated that no grant funds, personnel, or equipment were used for activities prohibited by 45 CFR § 1608.3(b). A review of payee cash receipts and disbursements, as well as other fiscal documentation, for the period of review found no indications of financial relationships with other organizations or expenditures of a political nature. Additionally, a review of hard-copy informational materials and publications which MILS makes available to applicants and clients that are published by MILS and other federal, state, and private organizations, as well as a review of MILS' website, evidenced no content prohibited by 45 CFR §§ 1608.4, 1608.5, and 1608.6.

Based on the materials reviewed and interviews with management and staff, MILS evidenced compliance with 45 CFR Part 1608.

In response to the Draft Report and this finding, MILS offered no individualized comments.

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

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two (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. Attorneys' fees received by a recipient for representation supported in whole or in part with LSC funds shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the LSC funds expended bears to the total amount expended to support the representation. Further, attorneys' fees received shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other applicable law at the time the money is received. *See* 45 CFR § 1609.4.

MILS has a written policy and procedure to guide its staff in complying with 45 CFR Part 1609 that it is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS add an effective date to its policy to avoid confusion should a new or updated policy be adopted by MILS in the future. A limited review of accounting records and interviews with the Executive Director and Bookkeeper disclosed no fee-generating cases during the period of review. Further, no sampled files involved legal assistance with respect to a fee-generating case.

Based on the materials reviewed and interviews with management and staff, MILS evidenced compliance with 45 CFR Part 1609.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 16: Review of the recipient's accounting and financial records and interviews with management evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). Review of the recipient's notification letters and interviews with management and staff also evidenced compliance with the requirements of 45 CFR § 1610.5(a) (Notification).

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

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

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

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

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

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

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

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

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

Restricted Activities

A limited review of MILS' accounting and other financial records found no evidence of MILS' participation in the statutory restrictions defined by 45 CFR § 1610.2. MILS does not have contracts with other organizations to provide personnel, accounting, information technology, or other support services that would require compliance with 45 CFR Part 1610. An analysis of MILS' expenditure of LSC funds during the period of review indicated that no LSC funds were transferred to other organizations. A review of payees for cash disbursement during the period of review found no indications of financial relationships with other organizations or expenditures of a political nature. Limited on-line search found no news articles or other indications that MILS is involved in restricted activities. Additionally, according to interviews with the Executive Director the program is not involved in any restricted activities.

Donor Notification

LSC regulations, at 45 CFR § 1610.5, prohibit recipients from accepting funds in the amount of \$250 or more "from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds." Further clarification of this requirement is provided in the Final Rule pertaining to 45 CFR Part 1610 (Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity) published at 27696 Fed. Reg., Vol. 62, No. 98, Wednesday, May 21, 1997, which states:

Generally, notification should be provided before the recipient accepts the funds. Thus, notice should be given during the course of soliciting funds or applying for a grant or contract. However, for unsolicited donations where advance notice is not feasible, notice should be given in the recipient's letter acknowledging the contribution. For contracts and grants awarded prior to the enactment of the restriction, notice should be given prior to acceptance by the recipient of any additional payments. The notice requirement applies to funds received by recipients as grants, contracts or charitable donations from funders other than the Corporation, which are intended to fund the nonprofit work of the recipient. It does not include funds received from sources such as court payment to attorneys for their work under court appointments; nor does it include payments to the recipient for rent, bank interest, or sale of goods, such as manuals.

MILS receives funding from various federal, state, county, municipal, and tribal grants and contracts. Fund applications appropriately indicate that MILS is a recipient of LSC funding which restricts its activities. MILS also receives public contributions, both through fundraising activities and unsolicited action. A review of MILS' donor notification letters evidenced that all contributions, regardless of amount, are responded to in writing and that the written communications include the following statement, which is consistent with the requirements of 45 CFR § 1610.5(a):

[B]ecause MILS receives funding through the Legal Services Corporation, we are required to notify all funders, including private donors, that we will not engage in advocacy or activities prohibited by the LSC Act or LSC Appropriation riders. If you have any questions about the prohibitions, please feel free to contact me.

Interviews with the Executive Director and Bookkeeper further confirmed that MILS' activities are in contemplation of 45 CFR § 1610.5(a) and are consistent with the Regulation.

Based on the materials reviewed and interviews with management and staff, MILS evidenced compliance with 45 CFR Part 1610.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 17: Review of the recipient's policies and fiscal records, and interviews with fiscal staff, evidenced compliance with the requirements of 45 CFR § 1627.4(a) (Membership fees or dues).

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.⁹ 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 Fed. Reg. 28485 (June 2, 1983) and 48 Fed. Reg. 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.

⁹ 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.

- 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.

MILS has a written policy to guide its staff in complying with 45 CFR § 1627.4(a) that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS review 45 CFR Part 1627 in its entirety to evaluate whether changes should be made to its own corresponding policy in order to incorporate additional language that details the policies and procedures to be followed should MILS, in the future, elect to engage in a subgrant agreement by transferring LSC funds to a third party. The Draft Report further advised that MILS should also remove the word “interim” from the policy’s title, if it is intended to be in effect as written, and add an effective date to its policy to avoid confusion should a new or updated policy be adopted by MILS in the future.

A limited review of MILS’ accounting records, detailed general ledger records, its cash disbursement journal, and interviews with its Bookkeeper evidenced that MILS is in compliance with 45 CFR § 1627.4(a) as the recipient pays for non-mandatory membership fees and dues with non-LSC funds. Additionally, the limited review of MILS’ fiscal records and interviews with the Bookkeeper confirmed that the program had no LSC funded subgrants in effect during the review period.

Based on the materials reviewed and interviews with fiscal staff, MILS evidenced compliance with 45 CFR § 1627.4(a).

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 18: Review of the recipient’s timekeeping and other fiscal records evidenced compliance with the requirements of 45 CFR Part 1635 (Timekeeping requirement).

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

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts

of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

MILS' advocates utilize the PIKA ACMS timekeeping system to enter time worked, while administrative personnel utilize a standardized spreadsheet application. A review of three (3) advocates' timekeeping records for the two (2) pay periods ending in March 2013 evidenced that the time records were electronically kept and that the time spent on each case, matter, or supporting activity was regularly recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

Based on the materials reviewed, MILS evidenced compliance with 45 CFR Part 1635.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 19: Review of sampled cases and fiscal and other records, as well as interviews with management and staff, evidenced compliance with the requirements of former 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* former 45 CFR § 1642.3.¹⁰ 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).

¹⁰ 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* former 45 CFR § 1642.2(a).

A limited review of MILS' fiscal records, including its audited financial statements and cash receipts, as reflected in MILS' general ledger, for the period of review, and interviews with the Executive Director evidenced that there were no attorneys' fees awarded, collected, or retained for cases serviced directly by MILS during the period of review that would violate former 45 CFR Part 1642. Further, no sampled cases involved any issues relating to former 45 CFR Part 1642. In the Draft Report, OCE recommended, however, that MILS review its current policy addressing the requirements of former 45 CFR Part 1642 and consider whether retracting or amending its policy would be beneficial.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with former 45 CFR Part 1642.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 20: Review of the recipient's policies and procedures, sampled cases, and fiscal and other records, as well as interviews with management and staff, evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

MILS has a written policy and procedure to guide its staff in complying with 45 CFR Part 1612 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS review 45 CFR Part 1612 and its own corresponding policy to evaluate whether changes should be made to incorporate language which details additional procedures to be followed should a staff member engage in permissible activity under this Part. Incorporating language into MILS policy that details the process by which a staff member should seek and obtain approval for Part 1612 activity, as well as how to track, report, and record costs related to the activity, could further assist MILS' staff in complying with this Part. OCE further recommended that MILS add an effective date to its policy to avoid confusion should a new or updated policy be adopted by MILS in the future.

The Executive Director also stated that MILS is not involved in any prohibited public rulemaking or lobbying activities. This was supported by a limited review of MILS' fiscal records, including the Chart of Accounts and sampled cash disbursements, provided no indication of lobbying or other restricted activities during the review period. Additionally, as discussed *supra* in Finding 14 with regard to Part 1608, a review of hard-copy informational materials and publications that MILS makes available to applicants and clients, which are

published by MILS and other federal, state, and private organizations, as well as a review of MILS' website, did not evidence any content prohibited by 45 CFR §§ 1612.4, 1612.8, and 1612.9. Furthermore, sampled cases did not raise any issues regarding the requirements of 45 CFR Part 1612.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with 45 CFR Part 1612.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 21: Review of the recipients sampled cases and interviews with management evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).

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

No sampled cases involved legal assistance with respect to a criminal proceeding or a collateral attack in a criminal conviction, as prohibited by 45 CFR Part 1615. Furthermore, the Executive Director stated that MILS has not been, and is not involved in this prohibited activity.¹¹

Based on the materials reviewed and interviews with management, MILS evidenced compliance with 45 CFR Parts 1613 and 1615.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 22: Review of the recipient's policies and procedures and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define "initiating or participating in any class action" as any involvement, including acting as co-

¹¹ LSC Regulations, at 45 CFR § 1613.2, state that "[a] misdemeanor or lesser offense tried in an Indian tribal court is not a 'criminal proceeding,'" and, thus, this type of representation is not prohibited by Part 1613. Additionally, LSC Program Letter 12-3 (November 8, 2012), on Criminal Proceedings in Tribal Courts, informed LSC recipients that "Congress has amended section 1007(b)(2) of the LSC Act to permit LSC recipients to use LSC funds to represent persons in all criminal proceedings in tribal courts" and that LSC recipients may report such cases in their CSRs. *See* 42 USC § 2996f(b)(2).

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).¹²

MILS has a written policy and procedure to guide its staff in complying with 45 CFR Part 1617 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS: remove the word “interim” from the policy’s title, if it is intended to be in effect as written; add an effective date to avoid confusion should a new or updated policy be adopted by MILS in the future; and either complete or delete the space reserved for the inclusion of a relevant state statute.

No sampled cases involved the initiation or participation in a class action. Furthermore, the Executive Director stated that MILS has not been, and is not, involved in any class actions.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with 45 CFR Part 1617.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 23: Review of the recipient’s policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 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.

MILS has a written policy to guide its staff in complying with 45 CFR Part 1632 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS remove the word “interim” from the policy’s title, if it is intended to be in effect as written, and add an effective date to avoid confusion should a new or updated policy be adopted by MILS in the future.

No sampled cases revealed participation in litigation related to redistricting. Furthermore, the Executive Director stated that MILS has not been, and is not involved in redistricting activity.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with 45 CFR Part 1632.

In response to the Draft Report and this finding, MILS offered no individualized comments.

¹² It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

Finding 24: Review of the recipient’s policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

MILS has a written policy to guide its staff in complying with 45 CFR Part 1633 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS: edit its policy to include an essential prohibition in the body of the document, as opposed to in a “note” appearing at the bottom of the page, and remove the outdated language the “note” is intended to supersede; remove “interim” from the policy’s title, if it is intended to be in effect as written; and add an effective date to avoid confusion should a new or updated policy be adopted by MILS in the future.

No sampled cases involved the defense of eviction proceedings prohibited by 45 CFR Part 1633. Furthermore, the Executive Director stated that MILS has not been, and is not involved in restricted eviction proceedings.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with 45 CFR Part 1633.

In response to the Draft Report and this finding, MILS offered no individualized comments.

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

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

MILS has a written policy and procedure to guide its staff in complying with 45 CFR Part 1637 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS: edit its policy to incorporate an approval procedure currently included as an “optional provision”; remove “interim” from the policy’s title, if it is intended to be in effect as written; and add an effective date to avoid confusion should a new or updated policy be adopted by MILS in the future.

No sampled cases involved participation in civil litigation, or administrative proceedings challenging the conditions of incarceration, on behalf of an incarcerated person as is prohibited by 45 CFR Part 1637. Furthermore, the Executive Director stated that MILS has not been, and is not involved in the representation of prisoners.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with 45 CFR Part 1637.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 26: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 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.¹³ 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."

MILS has a written policy to guide its staff in complying with 45 CFR Part 1638 that is consistent with the Regulation. In the Draft Report, OCE recommended, however, that MILS add an effective date to its policy to avoid confusion should a new or updated policy be adopted by MILS in the future.

No sampled cases, or documentation such as community education materials and program literature, indicated program involvement in activity prohibited by 45 CFR Part 1638. Furthermore, the Executive Director stated that MILS has not been, and is not involved in solicitation activity.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with 45 CFR Part 1638.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 27: Review of the recipient's policies and sampled cases, as well as interviews with management, evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

¹³ See Section 504(a)(18).

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. Nor may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

MILS has a written policy to guide its staff in complying with 45 CFR Part 1643 that is consistent with the Regulation. No sampled cases indicated involvement in activity prohibited by 45 CFR Part 1643. Furthermore, the Executive Director stated that MILS has not been, and is not involved in any activity prohibited by Part 1643.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with 45 CFR Part 1643.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 28: Review of the recipient's sampled cases and interviews with management evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

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

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

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

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Furthermore, the Executive Director stated that MILS was not engaged in any

litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

Based on the materials reviewed and interviews with management, MILS evidenced compliance with the above LSC statutory prohibitions.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 29: Review of the recipient's fidelity bonding on MILS employees evidenced compliance with the requirements of 45 CFR Part 1629 (Bonding of recipients).

LSC regulations, at 45 CFR Part 1629, require that recipients carry fidelity bonds or insurance at a minimum level of 10% of their annualized LSC funding level for the previous fiscal year and that the bond or insurance not be less than \$50,000. MILS maintains a Commercial Crime Bond in the amount of \$50,000 and that policy has a three (3) year term, running from September 20, 2011 thru September 20, 2014.

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

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 30: Review of the recipient's accounting records evidenced compliance with the requirements of 45 CFR Part 1630 (Cost standards and procedures).

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

A limited review of the recipient's accounting records evidenced that MILS properly attributed interest income as derivative to LSC in both its general ledger and as part of its independent audits, as required by 45 CFR § 1630.12. Additionally, MILS' travel expenses were reviewed for compliance with 45 CFR § 1630.3 and were found to have been reasonable and necessary, as well as adequately and contemporaneously documented. The Travel Expense form utilized by MILS' staff contains sections for recording the business purpose, time frame, and cost breakdowns of expenses (e.g., transportation, lodging, meals and incidental expenses, supplies, etc.). A sampling of paid travel expense vouchers reflected adequate expense documentation, timely submission, and appropriate approval. Expenses incurred by the Executive Director were approved by the Board President. Interviews with the Bookkeeper further indicated compliance with Part 1630.

Based on the materials reviewed and staff interviews, MILS evidenced compliance with 45 CFR Part 1630.

In response to the Draft Report and this finding, MILS offered no individualized comments.

Finding 31: Review of the recipient's internal control policies and procedures evidenced weaknesses that are inconsistent with the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.); however, the small size of the recipient's staff may preclude it from achieving the most stringent internal controls.

In accepting LSC funds, recipients agree to administer the funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended, 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, the 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 put in place, managed and maintained by the recipient's board of directors and management which is designed to provide reasonable assurance of achieving the following objectives: (1) safeguarding of assets against unauthorized use or disposition; (2) reliability of financial information and reporting; and (3) compliance with regulations and laws that have a direct and material effect on the program. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed.).

The Accounting Guide for LSC Recipient 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.

Fiscal Structure and Operating Systems

At the time of the instant review, MILS had a staff of seven (7): five (5) legal and two (2) administrative. Several of MILS' staff members are transitive positions funded by tribal grants or contracts, which in effect results in only three (3) staff members being available to share in the fiscal duties (i.e., the Executive Director, Deputy Director, and Bookkeeper).

For the purpose of implementing proper internal controls, the small size of MILS' staff creates practical problems and, as such, proper internal controls, such as a strong segregation of duties,

have been difficult to achieve. Thus, the segregation of duties that has been implemented is not always effective and weaknesses were identified.

Cash Receipts Controls

A limited review of MILS' cash receipts policies and procedures contained in its Accounting Manual indicated that there are adequate controls considering the small staff of three (3) sharing the financial duties. Cash receipts are originated by the Bookkeeper and approved by the Executive Director. Cash receipts journals for the duration of the review period were examined and samples of three (3) transactions were selected to perform a comparison to the segregation of financial duties worksheet. The comparison revealed no internal control deficiencies within the cash receipts domain. MILS does not maintain petty cash or client trust funds.

Bank Account Reconciliation Controls

MILS' bank account reconciliations are conducted utilizing the reconciliation feature in the Peachtree (now Sage 50) accounting software which requires the user to have computer access to limited general ledger functions. MILS' Accounting Manual assigns the responsibility of reconciling monthly bank statements to the general ledger to the Executive Director or a cross trained designee (in this case being the Deputy Director). For control purposes, all MILS' checks require two (2) signatures. Most checks are signed by MILS' Executive Director and Deputy Director; however, checks with the Executive Director as payee are signed by the Deputy Director and the Board President. No members of MILS' Board reside locally, meaning that all prepared checks and related documents are sent to and from the Board President via U.S. Mail.

A random sample of 20 bank statement reconciliations from the period of review evidenced that in all cases the reconciliations were performed in a timely manner; however, 16 of the reconciliations were not signed by the preparer and none documented a subsequent review in contradiction with the guidelines set forth in the Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.2(d). MILS must take corrective action to ensure that bank statement reconciliations are "appropriately documented by signature and date" and to ensure that the reconciliation is "reviewed and approved by a responsible individual." See the Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.2(d). With its comments to the Draft Report, MILS was asked to inform LSC of the steps it has taken to ensure that its bank reconciliations are properly documented and reviewed.

Payroll Controls

MILS' Personnel Policies and Procedures Manual indicate that starting salaries are set by the Board of Trustees upon a recommendation by the Executive Director and shall be set in compliance with LSC policies regarding salary comparability. Annually, the Executive Director prepares a budget salary worksheet, which is an analysis of staff salaries including the Executive Director's salary change recommendations and multiple scenarios reflecting their impact on MILS' annual budget. MILS' Board Personnel Committee reviews the supplied data and makes a recommendation to the full Board in a closed session, which is followed by a motion for Board approval proposed in an open session. The MILS budget salary worksheets for the years of 2011

and 2012 were reviewed by fiscal staff, as were the Board minutes corresponding to the meetings at which the worksheets were presented (June 3-4, 2011, and June 2, 2012). The most recent salary increase approvals occurred in June 2012. The MILS Accounting Manual defines the process of entering Board approved salary changes into the payroll accounting system.

Payroll processing is conducted in-house utilizing a payroll module for the Sage 50 accounting software. MILS personnel files containing identifying data (e.g., social security numbers) are maintained in locked files controlled by the Executive Director. Access to computerized payroll and personnel files are limited by password control. Payroll timekeeping reports for legal staff are generated from the PIKA ACMS, while administrative personnel utilize a standardized spreadsheet application. The Bookkeeper enters payroll data into the accounting system, generates payroll advice forms and direct deposit reports, and also initiates appropriate fund transfers to the payroll imprest account. The payroll direct deposit is conducted through Sage Payroll Solutions, which is authorized by the Executive Director through a password sync of MILS' accounting software and the Sage Payroll system. MILS does not allow payroll advances.

The limited review of the policies and procedures employed by MILS with regard to salary and wage rates evidenced consistency with the guidelines contained in the Accounting Guide for LSC Recipients (2010 Ed.), §§ 3-5.5(a) and (b).

In the Draft Report, OCE recommended that MILS consider having all staff (including non-legal) utilize the PIKA ACMS to enter work and leave time thereby utilizing a single system to generate required payroll time reports.

Accounting Manual

MILS' has an Accounting Manual that is supplemented by policy statements available to staff in the MILS Personnel Policies and Procedures Manual. Board minutes from a September 20, 2012, meeting evidenced that the MILS' Board of Directors approved the current Accounting Manual. The MILS Accounting Manual adequately defines accounting and control policies, as required by the Accounting Guide for LSC Recipients (2010 Ed.); however, the Board-approved Manual also contained sections which appeared to still be a work in progress. It is recommended that MILS complete the portions of its Accounting Manual that remain under revision and have its Board of Directors review and approve the fully executed version. LSC is available to review a draft version of MILS Accounting Manual to ensure its completeness, and to provide any further comments, prior to the Manual's presentation to its Board.

In the Draft Report, OCE recommended that MILS add to its Accounting Manual procedural language pertaining to its policy regarding out of area business travel, in order to include board approved travel reimbursement rates, the timeliness required for submission of travel expense reimbursement requests, and to define what documentation is necessary, supporting the requirements of 45 CFR § 1630.3. MILS' Personnel Policy and Procedures Manual currently details the travel reimbursement rates; however, the listed rates have been superseded and, therefore, should either be updated to include current mileage and per diem rates or to simply reference the website where current General Service Administration ("GSA") travel rates are

published (www.GSA.gov/perdiem). Maximum per diem and expense rates are defined by federal regulation at 41 CFR 301-11.6. *See also* 5 U.S.C. 5707.

Board of Directors Fiscal Oversight

The President and Secretary/Treasurer of the MILS Board were interviewed by telephone. The interview evidenced an engaged Board carrying out several essential fiscal functions while, at the same time, lacking an understanding of internal controls as they relate to MILS' fiscal integrity. A critical weakness identified during the interview was that neither Board member had seen or read the Accounting Guide for LSC Recipients (2010 Ed.). The interview indicated that the Board holds quarterly meetings. MILS' Board has several committees, including a Personnel/Grievance Committee, an Audit Committee, and a Priorities and Fundraising Committee. At its quarterly meetings, the Board reviews reports presented by MILS' Executive Director, including MILS' annual audit. The Board further approves travel expenses submitted by the Executive Director and is charged with approving salary increases and pension fund contributions. Additionally, select Board members have signature authority on MILS' bank accounts.

Interview of the Board President and Secretary/Treasurer indicated that Board practices are generally consistent with the guidance provided in the Accounting Guide for LSC Recipients (2010 Ed.), Chapter 1-7; however, the fact that neither Board member had seen or read the Accounting Guide for LSC Recipients (2010 Ed.) is a critical weakness that should be remedied. In the Draft Report, OCE recommended that MILS' entire Board, particularly those members tasked with carrying out fiscal duties, familiarize itself with the guidance provided in the Accounting Guide for LSC Recipients (2010 Ed.) so as to have a more thorough understanding of LSC's requirements, and potentially provide additional support to MILS' small staff carrying out necessary fiscal duties.

Property, Plant, and Equipment

No review of MILS' property, plant, and equipment ("PP&E") was conducted as MILS does not own any property.

In response to the Draft Report and this finding, MILS included a copy of the email it sent to its Deputy Director and Administrative Assistant (who also serves as MILS' part-time Bookkeeper) on September 20, 2013, to "reinforce and clarify" the requirements of MILS' policy, in accordance with the Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.2(d), which indicates that bank account reconciliations must be signed and dated by the reconciler and that the subsequent review of the reconciliation must also be signed and dated by the reviewer. The email further instructed MILS' Administrative Assistant to ensure that both signatures are present prior to filing the completed reconciliation forms.

Based on the comments provided by MILS, including the copy of the email sent to applicable staff, OCE finds that the actions taken sufficiently satisfy Required Corrective Action 5 and that no further action is needed.

IV. RECOMMENDATIONS¹⁴

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

1. Remind staff that when new income figures are entered into an applicant or client's ACMS file, staff must click on the "calculate" button on the ACMS screen in order for it to update the displayed FPG percentage;

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

2. Remind staff that the use of case closure category "K" to denote a deselected case – or any other case in which legal assistance was not rendered to an eligible client – is non-compliant. *See* CSR Handbook (2008 Ed., as amended 2011), Chapter VIII (Case Definitions and Closure Categories);

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

3. Avoid future confusion and potential errors in applicant income eligibility calculations by removing "food stamps" as a selection on its ACMS "income" drop-down menu and from its paper intake forms. *See* 45 CFR § 1611.2(i) and 7 USC § 2017(b);

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

4. Eliminate the distinction between liquid and non-liquid assets in its financial eligibility policy, as LSC revised this former practice in 2005 in favor of language that focused more on the availability of assets. *See* 70 Fed. Reg. 45545, 45547 (August 8, 2005);

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

5. Remind staff conducting intake that it prohibits the use of applicants' credit card debt as a 45 CFR § 1611.5(a)(4)(iii) authorized exception and that only authorized exceptions consistent with MILS' financial eligibility policy and 45 CFR § 1611.5(a)(4) should be utilized when determining applicant eligibility;

¹⁴ 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.

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

6. Have all staff (including non-legal) utilize the PIKA ACMS to enter work and leave time thereby utilizing a single system to generate required payroll time reports;

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

7. Have its Board of Directors familiarize itself with the guidance provided in the Accounting Guide for LSC Recipients (2010 Ed.) so that it has a more thorough understanding of LSC's requirements and so that it can potentially provide additional support to MILS' small staff carrying out necessary fiscal duties;

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

8. Make the noted additions and/or considerations regarding the following MILS LSC required policies:
 - a. 45 CFR Part 1604 (Outside practice of law): Review the Regulation and its own corresponding policy to evaluate whether changes should be made to incorporate additional permissible exceptions and/or to detail procedures to be used by staff when participating in approved activities pursuant to this Part;
 - b. 45 CFR Part 1609 (Fee-generating cases): Add an effective date to its policy;
 - c. 45 CFR Part 1612 (Restrictions on lobbying and certain other activities): Review the Regulation and its own corresponding policy to evaluate whether changes should be made to incorporate language which details additional procedures to be followed should a staff member engage in permissible activity under this Part and add an effective date to its policy;
 - d. 45 CFR Part 1617 (Class actions): Remove the word "interim" from the policy's title, add an effective date, and either complete or delete the space reserved for the inclusion of a relevant state statute;
 - e. 45 CFR Part 1626 (Restrictions on legal assistance to aliens): Add an effective date to its policy;
 - f. 45 CFR Part 1627 (Subgrants and membership fees or dues): Review the Regulation in its entirety to evaluate whether changes should be made to its own corresponding policy in order to incorporate additional language that details the policies and procedures to be followed should MILS, in the future, elect to engage in a subgrant agreement, remove the word "interim" from the policy's title, and add an effective date;
 - g. 45 CFR Part 1632 (Redistricting): Remove the word "interim" from the policy's title and add an effective date;
 - h. 45 CFR Part 1633 (Restrictions on representation in certain eviction proceedings): Edit its policy to include an essential prohibition in the body of the document, as opposed to in a "note" appearing at the bottom of the page,

and remove the outdated language the “note” is intended to supersede, remove the word “interim” from the policy’s title, and add an effective date;

- i. 45 CFR Part 1636 (Client identity and statement of facts): Add an effective date to its policy;
- j. 45 CFR Part 1637 (Representation of prisoners): Edit its policy to incorporate an approval procedure currently included as an “optional provision,” remove the word “interim” from the policy’s title, and add an effective date; and
- k. 45 CFR Part 1638 (Restriction on solicitation): Add an effective date to its policy.

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

9. Complete the portions of its Accounting Manual that remain under revision and have its Board of Directors review and approve the fully executed version;

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

10. Add language to its Accounting Manual pertaining to its policy regarding out of area business travel, in order to include board approved travel reimbursement rates, the timeliness required for submission of travel expense reimbursement requests, and to define what documentation is necessary, supporting the requirements of 45 CFR § 1630.3 (Standards governing allowability of costs under Corporation grants or contracts); and

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

11. Update its Personnel Policy and Procedures Manual to include current mileage and per diem rates or to reference the website where current General Service Administration (“GSA”) travel rates are published (www.GSA.gov/perdiem). *See* 41 CFR 301-11.6 and 5 U.S.C. 5707.

In response to the Draft Report and this Recommendation, MILS offered no individualized comments.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that staff conducting intake verify that a vehicle is used for transportation before considering it an excludable asset, as is required by 45 CFR § 1611.3(d)(1) and MILS' financial eligibility policy. With its comments to the Draft Report, MILS was asked to inform LSC of the actions it has taken to ensure that staff is applying this requirement correctly;

In response to the Draft Report and this Required Corrective Action, MILS indicated that it had discussed the requirements of 45 CFR § 1611.3(d)(1) with staff after OCE's Draft Report was issued and included a copy of the email it sent to staff on September 20, 2013, reiterating the requirements under the regulation.

Based on the comments provided by MILS, including the copy of the email sent to staff, OCE finds that the actions taken sufficiently satisfy Required Corrective Action 1 and that no further action is needed.

2. Ensure that its Board of Directors considers and approves the specific governmental programs intended to fall under the government benefit exemption detailed in its financial eligibility policy pursuant to 45 CFR § 1611.4(c), as recorded in formal board minutes. With its comments to the Draft Report, MILS was asked to inform LSC of the actions it has taken to correct this oversight;

In response to the Draft Report and this Required Corrective Action, MILS indicated that on September 19, 2013, its Board of Trustees deleted all language concerning 45 CFR § 1611.4(c) (government benefit exemption) from its financial eligibility policy and that, moving forward, MILS would screen all applicants' income and asset, regardless of the source.

Based on the comments provided by MILS, OCE finds that the actions taken sufficiently satisfy Required Corrective Action 2 and that no further action is needed.

3. Ensure that its non-compliant group application form is revised to provide proper guidance to staff regarding group eligibility screening, if MILS intends to use this form in the future. *See* 45 CFR § 1611.6;

In response to the Draft Report and this Required Corrective Action, MILS provided OCE with its amended group application form, demonstrating compliance with 45 CFR § 1611.6, and, additionally, included a copy of the email in which it distributed the form to staff with an instruction to discontinue the use of all previous versions of the form.

Based on the comments provided by MILS, including the copies of the amended form and the email sent to staff, OCE finds that the actions taken sufficiently satisfy Required Corrective Action 3 and that no further action is needed.

4. Ensure that cases are closed with the CSR case closure category that best reflects the highest level of service provided to a client. *See* CSR Handbook (2008 Ed., as amended 2011), Chapter VIII (Case Definitions and Closure Categories). With its comments to the Draft Report, MILS was asked to inform LSC of the actions it has taken to ensure proper case closing category usage, especially as regards case closing category “L”; and

In response to the Draft Report and this Required Corrective Action, MILS indicated that it had discussed the requirements of the CSR Handbook (2008 Ed., as amended 2011), Chapter VIII, with staff after OCE’s Draft Report was issued and included a copy of the email it sent to staff on September 20, 2013, reiterating the errors identified in the Draft Report and detailing why “L” was not the appropriate Case Closure Category in those circumstances. Additionally, staff was asked to review the CSR Handbook which was included as an attachment to the email.

Based on the comments provided by MILS, including the copy of the email sent to staff, OCE finds that the actions taken sufficiently satisfy Required Corrective Action 4 and that no further action is needed.

5. Ensure that bank statement reconciliations are “appropriately documented by signature and date” and that the reconciliations are “reviewed and approved by a responsible individual.” *See* the Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.2(d). With its comments to the Draft Report, MILS was asked to inform LSC of the steps it has taken to ensure that its bank reconciliations are properly documented and reviewed.

In response to the Draft Report and this Required Corrective Action, MILS included a copy of the email it sent to its Deputy Director and Administrative Assistant (who also serves as MILS’ part-time Bookkeeper) on September 20, 2013, to “reinforce and clarify” the requirements of MILS’ policy, in accordance with the Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.2(d), which indicates that bank account reconciliations must be signed and dated by the reconciler and that the subsequent review of the reconciliation must also be signed and dated by the reviewer. The email further instructed MILS’ Administrative Assistant to ensure that both signatures are present prior to filing the completed reconciliation forms.

Based on the comments provided by MILS, including the copy of the email sent to applicable staff, OCE finds that the actions taken sufficiently satisfy Required Corrective Action 5 and that no further action is needed.

Julia Kramer

From: James Keedy <jkeedy@mils3.org>
Sent: Friday, September 20, 2013 12:30 PM
To: Julia Kramer
Subject: Re: OCE Draft Report Comments
Attachments: Email_action_1.pdf; Email_action_3.pdf; Email_action_4.pdf; Email_action_5.pdf; Group_Application_Verification_Form.pdf

Julia,

Attached to this email are PDF copies of emails I sent to staff (Corrective actions 1,3 and 4) or to Cameron Fraser and Tammy Turner (Corrective Action 5). The email group address staff@mils3.org is sent to every person employed by MILS. I verified the group address was correct in the past week. MILS did not change any staff members since I verified the group address in the past week.

Also attached is the revised group application form.

Finally at its board meeting on September 19, 2013 the MILS Board of Trustees deleted the following language from the MILS Eligibility policy.

Applicants Whose Income is Solely Derived from Governmental Programs fro Low-Income Individuals & Families: If an applicant's household income is derived solely from a governmental program for low-income individuals or families [e.g., FIP, General Assistance, SSI etc.] that has an assets test and has income standards that are at or below 125% of the Federal Poverty Guidelines, the applicant is eligible for LSC-funded legal assistance without an independent determination of the applicant's income and assets.

With this deletion all applicants will receive an independent determination of the applicant's income and assets.

If you have any questions please call. Thank you.



James Keedy <jkeedy@mils3.org>

45 CFR 1611.3(d)(1)

James Keedy <jkeedy@mils.org>
To: "staff@mils3.org" <staff@mils3.org>

Fri, Sep 20, 2013 at 10:29 AM

As your recall from our discussion after the LSC OCE draft report arrived LSC requires that when a potential client discloses a vehicle is an asset of the household we must inquire if the vehicle is used for transportation. If the vehicle is used for transportation it shall be excluded from consideration as an asset. If the vehicle is not used for transportation it shall not be excluded from consideration as an asset.

If you have any questions about implementation of this policy please put them on the agenda for the next staff meeting,

—
James A. Keedy
Michigan Indian Legal Services
814 S. Garfield Ave., Suite A
Traverse City, Michigan 49686
231-947-0122
231-947-3956 fax
jkeedy@mils.org

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James Keedy <jkeedy@mils3.org>

Revised MILS group eligibility application

James Keedy <jkeedy@mils.org>
To: "staff@mils3.org" <staff@mils3.org>

Fri, Sep 20, 2013 at 12:00 PM

Attached is the new group application with a revised date of 9/20/13. Please discard and discontinue use of any other version of this form. Thank you,.

—
James A. Keedy
Michigan Indian Legal Services
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231-947-3956 fax
jkeedy@mils.org

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 **Group_Application_Verification_Form.pdf**
46K

MICHIGAN INDIAN LEGAL SERVICES

814 S. Garfield Avenue, Suite A Traverse City, Michigan 49686-2401
Telephone (231) 947-0122 Facsimile (231) 947-3956
Toll free (800) 968-6877

VERIFICATION INFORMATION GROUP APPLICATION FOR LEGAL ASSISTANCE Revised September 20, 2013

IF ASSISTANCE IS REQUESTED FOR A GROUP, CORPORATION OR ASSOCIATION:

Name of applicant group _____

MILS staff must collect and review the following information to determine group eligibility using alternative 1 or 2 below.

1. For groups composed of individuals who would be financially eligible for LSC funded legal assistance;

List below and attach supporting documents of the financial or socioeconomic characteristics of the persons comprising the applicant group (or operating body of a non-membership group) are consistent with those persons who are financially eligible for LSC funded legal assistance.

Is the applicant group primarily composed of individuals who would be financially eligible for LSC funded legal assistance? Yes No

Does the group lack, and has no practical means of obtaining, funds to retain private counsel? Yes No

Dated: _____

MILS Staff

2. For an applicant group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC funded legal assistance.

State below and attach documentation supporting the determination that the financial or other socioeconomic characteristics of the persons served by the group are consistent with those persons who are financially eligible for LSC funded legal assistance and the assistance sought relates to such activity of the group.

Does the applicant have as its principal activity the delivery of services to those persons in the community who would be financially eligible for LSC funded legal assistance? Yes No

Does the group lack, and has no practical means of obtaining, funds to retain private counsel? Yes No

Dated: _____
MILS Staff

APPLICANT ASSURANCES

I understand that MILS provides free legal assistance based upon lack of our ability to afford legal counsel and the determination made in 1 or 2 above. I hereby certify that the information and documentation supplied to support the application is true to the best of my knowledge and belief.

MILS assures that the information supplied in the application is confidential and will not be disclosed to others, without the express written consent of you, the client. However, the Legal Services Corporation may require the disclosure of your financial information if a specific complaint is made to the Corporation and an investigation instituted by the Legal Services Corporation that you, the client, are not financially eligible to receive legal services. In no case will MILS reveal any information that is protected by the attorney-client privilege.

I also understand that the application for services does not assure that MILS will take our case. MILS will consider whether we are eligible for free legal assistance based upon the Legal Services Corporation Act and Regulations and the MILS Eligibility Guidelines and program priorities. MILS will inform me whether our case is accepted.

Until a Retainer Agreement has been signed by myself and MILS, MILS has no obligation to provide legal assistance on my behalf.

Date: _____ Signature: _____



James Keedy <jkeedy@mils3.org>

LSC CSR Handbook, Case Closure Categories

James Keedy <jkeedy@mils.org>
To: "staff@mils3.org" <staff@mils3.org>

Fri, Sep 20, 2013 at 10:54 AM

As you recall from our discussions after reviewing the LSC OCE draft report LSC found that 5 of MILS's closed cases from 2011, 2012 and 2013 were closed with a code that did not utilize "the CSR case closure category that best reflects the highest level of services provided to the client." Specifically the Code L was used instead of G, I(a), or I(b) in the five cases cited.

Please review Chapter VIII of the CSR Handbook (2008 edition) attached. Note that the heading for Category L "CSR Closure Category L – Extensive Service (not resulting in Settlement or Court or Administrative Action)" specifically excludes cases closed by Settlement or Court or Administrative Action from the L category.

Please use your best efforts to use the correct closing category as defined in the CSR Handbook.

--
James A. Keedy
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231-947-0122
231-947-3956 fax
jkeedy@mils.org

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CSR_Handbook.pdf
1586K



James Keedy <jkeedy@mils3.org>

Bank reconciliations

James Keedy <jkeedy@mils.org>

Fri, Sep 20, 2013 at 12:07 PM

To: Cameron Fraser <cfraser@mils3.org>, "Tammy L. Turner" <tturner@mils3.org>

In accordance with the LSC Accounting Guide for Recipients (2010) Section 3-5.2(d) I am writing to reinforce and clarify that MILS policy requires that the signature of the person reconciling the bank account and the date of the reconciliation. The policy also requires the signature and date of the person conducting the review of the reconciliation. Before filing completed reconciliation forms the Administrative Assistant will verify that both sets of signature are present on the form.

—

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