



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Services New York City
February 1-11, 2010 and June 7-11, 2010
Case Service Report/Case Management System Review

Recipient No. 233100

I. EXECUTIVE SUMMARY

Finding 1: LS-NYC's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were a few instances of inconsistent information in the ACMS and the case files.

Finding 2: LS-NYC's intake procedures and case management system support the program's compliance related requirements.

Finding 3: LS-NYC maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines ("FPG") in substantial compliance. However, 21 case files reviewed were in excess of 125% of the applicable FPG.

Finding 4: LS-NYC maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: LS-NYC is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens), however there were numerous files not in compliance with 45 CFR § 1626.6(a).

Finding 6: LS-NYC is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

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

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

Finding 9: LS-NYC is not in compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided), and there were 33 staff case files reviewed which contained no description of the legal assistance provided. Numerous cases cited in the DR had been de-selected by LS-NYC.

Finding 10: LS-NYC's application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), particularly closing code "K."

Finding 11: LS-NYC is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3, however there were 10 staff case files reviewed that were not closed in a timely manner and five (5) dormant cases.

Finding 12: Sample cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 15: A review of LS-NYC's accounting and financial records indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). In addition, LS-NYC accounting records appear to be in full compliance with 45 CFR 1610.5 (notifying contributors in writing of the prohibitions and conditions governing donor funds). LS-NYC needs to ensure compliance with 45 CFR Part 1610.4 (b).

Finding 16: LS-NYC is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, LS-NYC is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. However, LS-NYC is not in compliance with 45 CFR § 1614.4(b) which requires consultation with significant segments of the client community, private attorneys, and bar associations, including minority and woman's bar associations, in LS-NYC's service area in the development of its annual PAI plan.

Finding 17: LS-NYC is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

Finding 18: LS-NYC is in compliance with 45 CFR Part 1635 (by keeping time records both electronically and contemporaneously). However, LS-NYC is not in compliance with 45 CFR § 1635.3(d) by not having some of the part-time case handlers' quarterly certifications on file for 2008 and 2009.

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 20: LS-NYC is not in compliance with 45 CFR § 1630.2(g)(3) and 45 CFR § 1630.3(b)1 by allowing excessive bank charges to be paid with LSC funds.

Finding 21: Through a review of LS-NYC's internal control worksheet, interviews with management and accountants and a review of disbursements, it was disclosed that LS-NYC has good internal controls with proper segregation of duties within its operations and financial systems.

Finding 22: LS-NYC bank reconciliations for 18 bank accounts were reviewed from October-December 2009. The review disclosed that several were not performed timely however, they were accurate and certified by the proper parties. Several accounts had outstanding checks over the normal 180 day period. Two (2) of the Client Trust Fund accounts maintained third party money orders in a vault with no physical inventory conducted for two years.

Finding 23: LS-NYC's comprehensive Accounting Manual dates back to 1997 and needs to be updated to incorporate all changes and modifications that have occurred over the years.

Finding 24: LS-NYC needs to ensure that a portion of Volunteer Legal Services ("VOLS") payments is allocated to LSC as derivative income.

Finding 25: Two (2) of the constituent corporations were operating with a negative LSC fund balance in 2008. A contributing issue is that LS-NYC is not allocating common costs on actual time, rather on estimates.

Finding 26: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 30: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 31: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 32: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 33: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 34: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007

(a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 35: LS-NYC had several case files that could not be located for review.

II. BACKGROUND OF REVIEW

On February 1 through 11, 2010, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Legal Services New York City ("LS-NYC"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of seven (7) attorneys, and three (3) fiscal analysts. Six (6) of the attorneys were OCE staff members; the remaining attorney was a consultant. On June 7 through 11, 2010, OCE conducted an additional case review at LS-NYC, with a team of four (4) attorneys.

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 LS-NYC has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LS-NYC for compliance with regulatory requirements of: 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees²); 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 OCE team interviewed members of LS-NYC's upper and middle management, staff attorneys and support staff. LS-NYC's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2007 through November 30, 2009. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the

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

² Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.

course of the on-site review, February 1 through 11, 2010, the OCE team reviewed approximately 600 case files which included 90 targeted files. In the course of the on-site review, June 7 through 11, 2010, the OCE team reviewed 601 case files, which included 10 targeted files for a total of 1,201 case files, which included 314 open cases and 887 closed cases.

LS-NYC is an LSC recipient that operates offices in all five (5) boroughs of the city. The main office is located on 350 Broadway, 6th Floor, New York, NY and will be identified in this Draft Report (“DR”) as (“Main”). The remaining offices will be identified in this DR as follows: Bedford-Stuyvesant Community Legal Services (“BSCLS”); LSNY Brooklyn Branch (“LSNYBB”); Brooklyn Branch Brighton Office (“BBO”); Williamsburg Office; Williamsburg Outreach Office; LSNY-Bronx (“LSNYB”); Courtland Office (“CO”); Courthouse Office Bronx (“COB”); Queens Legal Services Corporation (“QLSC”); South Brooklyn Legal Services (“SBLs”); Upper Manhattan Legal Services (“UMLS”); LSNY Staten Island (“LSNYSI”); Brooklyn Legal Services Corporation “A” (“BLSCA”); Brooklyn Legal Services Bushwick (“BLSB”); Brooklyn Legal Services East Brooklyn (“BLSEB”); The Brooklyn Family Defense Project (“BFDP”); Queens Legal Services Long Island (“QLSLI”); and Lower Manhattan Legal Services (“LMLS”).

LS-NYC received a grant award from LSC in the amount of 14,000,000.00 for 2007, 14,000,000.00 for 2008, and 16,000,000.00 for 2009.

For 2007, LS-NYC reported 15,480 closed cases in its CSR data. LS-NYC’s 2007 self-inspection report indicated a 2.8% error rate with exceptions noted in 28 files out of 975 reviewed. The problem areas identified were: income eligibility was not documented, assets eligibility was not documented, citizenship/alien eligibility was not documented, evidence of actual legal assistance rendered to the client was not in the file and case closure was not timely.

For 2008, LS-NYC reported 12,430 closed cases in its CSR data. LS-NYC’s 2008 self-inspection report indicated a 2.0% error rate with exceptions noted in 18 files out of 900 reviewed. The problem areas identified were: income eligibility was not documented, assets eligibility was not documented, citizenship/alien eligibility was not documented, evidence of actual legal assistance rendered to the client was not in the file and case closure was not timely.

By letter dated November 30, 2009, OCE requested that LS-NYC provide a list of all cases reported to LSC in its 2007 CSR data submission (“closed 2007 cases”), a list of all cases reported in its 2008 CSR data submission (“closed 2008 cases”), a list of all cases reported in its 2009 CSR data submission (“closed 2009 cases”) a list of all cases closed between January 1, 2009 and November 30, 2009 (“closed 2009 cases”), and a list of all cases which remained open as of November 30, 2009 (“open cases”). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LS-NYC staff and the other for cases handled through LS-NYC’s PAI component. LS-NYC 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* (January 5, 2004) protocol. LS-NYC was requested to promptly notify OCE, in writing, if it

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

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2007, 2008, 2009 closed cases and open cases, as well as a proportionate distribution of cases from all of LS-NYC's offices. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc. Additional cases were pulled on-site.

During both visits, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LS-NYC agreement of January 28, 2010, LS-NYC 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.³ LS-NYC's management and staff cooperated fully in the course of the review process. As discussed more fully below, LS-NYC was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as Managing Attorneys in the branch offices and the Executive Director in the main office.

The visit ended on February 11, 2010 and OCE conducted a partial exit conference by telephone during which LS-NYC was made aware of the areas in which a pattern of non-compliance was found. No distinctions between 2007, 2008 and 2009 cases were found. OCE cited instances of non-compliance in the areas of closing codes, PAI cost allocation, timely closed cases and allocation of PAI time and PAI oversight (some referrals made to Legal Aid and Society and Center for Disability Advocacy Rights, Inc. cases, only). LS-NYC was advised that they would be re-visited by OCE to review additional cases in June 2010.

At the conclusion of the visit on June 11, 2010, OCE conducted an exit conference during which LS-NYC was made aware of the areas in which a pattern of non-compliance was found. OCE cited instances of non-compliance in the areas of cases lacking documented descriptions of legal assistance provided, untimely closed and dormant cases, and cases lacking executed citizenship/alien eligibility documentation. LS-NYC was informed that they would receive a Draft Report ("DR") that would include all of OCE's findings and they would have 30 days to submit comments.

LS-NYC was provided a DR and given an opportunity to comment. After an extension of time was granted for LS-NYC to comment, to and including October 20, 2010, LS-NYC's comments and exhibits were received on October 20, 2010. The comments and exhibits have been incorporated into this Final Report, where appropriate, and are affixed as an appendix.

³ 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.

LS-NYC forwarded LSC a list of cited file numbers which LS-NYC could not locate because the file numbers were incorrectly recorded in the DR. Some files have been located and the file numbers corrected. Where such files could not be located they were removed from this Final Report. In addition, numerous files that were cited for non-compliance were de-selected, according to the comments from LS-NYC. Accordingly, those files that were de-selected by LS-NYC were removed from this Final Report, where appropriate.

III. FINDINGS

Finding 1: LS-NYC’s automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were a few instances of inconsistent information in the ACMS and the case files.

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 (2001 Ed.), ¶ 3.1 and CSR Handbook (2008 Ed.), § 3.1.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LS-NYC’s ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, in the LSNYBB office, the Closed 2008 PAI case list contained closing dates in 2012. *See* Closed 2008 Case Nos. B08E-4020240, B06E-1000025, B08E-4020185, B05E-1000088, and B08E-1000245 (LSNYBB). Neither the open, nor the closed date, in any of these files was consistent with the dates stated in the case list. LSNYBB explained that in all likelihood these were the “destroy” dates based on LS-NYC’s records retention policy. *See also*, Closed 2008 File No. X08E-1001369 (funding source) (LSNYBB), Closed 2008 Case No. L08E-20016598 (BSCLS) (closed with a closing code of “counsel and advice” in the file and the ACMS indicated a closing code of “other”), and Closed 2010 Case No. X03E-2003230 (LSNYB) (closed with a closing code of “counsel and advice” in the file on 12-31-04 but the ACMS indicates the case remains open).

Contrary to the CSR Handbook (2008 Ed.), § 10.1 (b)(i), several cases that were listed PAI involved only legal assistance provided by staff. Those cases that cannot be referred to a PAI attorney and the staff have provided legal assistance should be closed as staff cases. *See* Closed 2008 Case Nos. U06E-121005679, U07E-121006548, U06E-121005551, and U07E-1210005863 (Main).

Comments to the DR stated that LS-NYC currently uses Kempis for its ACMS and Kempis has proven to have the capacity to adequately capture and store necessary information for clients and case files. Additional comments to the DR stated that in an effort to continuously improve, LS-NYC is in the process of sourcing, developing, and implementing a new ACMS that will further enhance LS-NYC’s capacity and ability to serve their clients, with a current outlook for roll-out of 2012. Regarding staff, LS-NYC has recently instituted a more structured system-wide evaluation process to better monitor and improve the performance of all staff and management. This began in 2010, according to comments to the DR. Via this process, LS-NYC will be in a better position to determine that all staff and management are performing their respective functions as needed. Further comments to the DR stated that LS-NYC’s Central Office is in the process of preparing appropriate communications to remind all Project Directors, and their respective programs, that information recorded on all clients must be accurate.

Between Kemps, staff evaluations, staff communications, and the future ACMS, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

Finding 2: LS-NYC’s intake procedures and case management system support the program’s compliance related requirements.

The review demonstrated that there is no uniform intake access method employed by LS-NYC. The SBLIS and LSNYBB offices predominately conduct intake by telephone. The LSNYBB, Williamsburg Outreach and COB offices each conduct in-person intake (at an outreach location and local courthouse, respectively); and BLSCA, conducts both telephone and in-person intake. The LSNYSI office conducts intake by telephone, in-person, by referral and by its outreach partner, pre-screening eligibility and citizenship for its outreach applicants.

As part of the intake process, LS-NYC gathers essential eligibility and other compliance-related information using manual intake forms, investigative retainers, citizenship attestations, releases and over-income and asset ceiling approvals and waivers. While many of these forms are consistent, there is no program-wide standardization among some of the forms used by the offices. The LSNYBB staff report that this lack of standardization in Brooklyn is supported by LS-NYC’s unique organizational structure in which each constituent corporation retains a degree of autonomy. The Brooklyn Planning Statement describes Brooklyn’s corporate structure as follows: “LS-NYC operates five separate units in Brooklyn – 2 branch offices and 3 constituent corporations. The Brooklyn branch offices are LSNYBB and the BFDP. The Brooklyn constituent corporations are BSCLS, BLSCA and SBLIS. The constituent corporations are the nonprofit equivalent of subsidiary corporations with the LS-NYC corporate entity the equivalent of a parent corporation with LS-NYC being the sole member of each constituent corporation.” Moreover, the LS-NYC website notes that BLSCA and SBLIS each have its own Board of Directors while LSNYBB has its Board of Legal Assistance for the Jewish Poor.

In one instance, a form used by one office is inconsistent with the 2009 Legal Service LS-NYC Financial Eligibility Policy for LSC Funded Legal Assistance pursuant to 45 CFR § 1611.3. The form used by LSNYB and known as “Exception to Maximum Income Level or Asset Ceiling,” provides that “if a person’s gross income is primarily committed to medical or nursing home expenses, a person may be served even if that person’s gross income exceeds 150% of the national eligibility level,” (which is 187.5% of Federal Poverty Guidelines) (“FPG”). Whereas LS-NYC Authorized Exceptions to the Annual Income Ceilings policy, provides that the applicant may be served if his income exceeds 125% of the FPG. Moreover, the LSNYB office considers “[f]ixed debts and obligation, [sic] including unpaid federal, state and local taxes from *prior* years” whereas LS-NYC Authorized Exceptions to the Annual Income Ceilings considers “*current* fixed debts, obligations and taxes.” LS-NYC should update this inconsistent form to reflect LS-NYC’s current Financial Policies.

Additionally, the intake process includes screening for citizenship and alien/eligibility. During this process, applicants are required to verify their citizenship or alien eligibility by telephone, during telephone intake by inquiries being made by the LS-NYC, and in writing for all in-person

contacts. If a person is an eligible alien, staff obtains a copy of the required eligible alien documentation that indicates the applicant's status and then dates and signs it. A review of the alien eligibility-screening sheet for one office reveals that tourist and student visas are included within the categories screened to determine alien eligibility status, which are not categories included within 45 CFR Part 1626. LS-NYC should remove these visa categories from its screening sheets. In another instance, a citizenship eligibility form did not contain a separate signature line tied only to the citizenship attestation. This citizenship form should be revised so that it is consistent with the provisions of CSR Handbook (2008 Ed.), § 5.5.

LS-NYC is consistent in its use of the Kemps Prime Case Management System ("ACMS") to conduct income and asset eligibility screenings, collect demographic information, perform conflicts checks⁴ and case history searches (duplicate checks), verify citizenship, and store electronic reporting data. There was no indication in the ACMS that staff inquired about an applicant's income prospects, however, staff reports that they do screen for prospective income.⁵ There were no defaults in essential categories identified. LS-NYC has intake procedures in place that provide for emergency access. Thus, while certain intake features vary by office, LS-NYC generally has standardized practices and procedures.

Although few staff could recollect having attended CSR training, interviews revealed that eligibility-screening practices are uniform and, with a few exceptions noted below, staff is knowledgeable concerning LSC regulations and the requirements of the CSR Handbook (2008 Ed.).

Non-Cash Benefits: During interviews and on-site demonstrations of ACMS, it was observed that the amount of an applicant's Food Stamp benefit was recorded as part of an applicant's gross income for financial eligibility purposes. The program is reminded that 45 CFR § 1611.2 (i) provides that total cash receipts do not include non-cash benefits. As the receipt of food stamps is a non-cash benefit, LS-NYC should cease the practice of including the cash value of Food Stamp benefits as income when determining LSC eligibility for services.

Government Benefits Exemption: Although the LS-NYC Board of Directors adopted a policy for applicants whose income is derived solely from a Governmental Program for Low-Income Individuals ("Government Benefits Exemption"), staff report that they do not follow this policy but instead conduct a full income and asset eligibility determination for these individuals. The LS-NYC policy provides that "if an applicant's income is derived solely from a governmental program for two-income individuals or families that has an assets test and has income standards that are at or below 125% of the FPG—meaning SSI, TANF, New York State and City cash welfare programs, Food Stamps, and Medicaid-- that applicant is eligible for LSC-funded legal assistance without an independent determination of the applicant's income and assets."

⁴ Staff report that given the outreach location of the Williamsburg office, it is not always possible to conduct conflicts checks until after legal services are rendered and that the LS-NYC does not conduct program wide conflicts checks. Staff reports that these conflict check practices are permissible pursuant to New York State ethics rules. See also, DR 2-110(B)(2), Canon 4, DR 4-101, EC 4-5, DR 5-101, DR 5-105, DR 5-108, EC 5-1, Canon 6, Canon 7, DR 7-101, EC 7-1. THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK COMMITTEE ON PROFESSIONAL AND JUDICIAL ETHICS.

⁵ LS-NYC can easily use its ACMS to document screening of income prospects by adding a field to the ACMS or indicating such in the Notes screen.

Domestic Violence Victim Alien Eligibility: During intake interviews, a few staff did not demonstrate an understanding of the applicability of 45 CFR § 1626.4 and LSC Program Letter 06-02, Violence Against Women Act 2006 Amendments.

Income Exceptions and Asset Ceiling Waivers: During interviews, non-attorney staff did not demonstrate knowledge of 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR § 1611.3(2) (waivers of annual asset ceiling), however it was discovered that Project Directors or other supervisors are responsible for completing the Income and Asset Waiver form that identifies the over-income factor or whether unusual or extremely meritorious situations are present to justify an asset waiver. Interviews with management staff revealed that LS-NYC managing staff are knowledgeable concerning 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR § 1611.3(2) (waivers of annual asset ceiling).

The implementation of LSC regulations should be consistent throughout the program. As such, it is strongly recommended that LS-NYC provide staff training on the program's policies regarding non-cash benefits, the Government Benefits Exemption, 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments, and 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR § 1611.3(2) (waivers of annual asset ceiling).

LSNYBB Office

LSNYBB office revealed that while there is some measure of telephone intake, most requests for legal assistance are in-person. In each office, the applicant is requested to complete a screening sheet. The screening sheet is designed to capture information relative to the applicant's citizenship/alien eligibility, household size, household income, and household assets.⁶ Once the applicant has completed the form, it is reviewed by the intake screener. If the applicant's income exceeds LS-NYC's annual income ceiling, the intake screener considers the appropriate authorized exceptions pursuant to 45 CFR § 1611.5. LSNYBB stated that it does not inquire into income prospects. All of the information is then entered into the ACMS and a six-way conflicts check is performed. The conflicts check is limited to LSNYBB and its other offices.

Thereafter, the information is forwarded to one of the attorneys or paralegals, depending upon who is available and the nature of the legal issue. Most applicants receive some level of legal assistance on the day that they apply for assistance. Otherwise, applicants are advised to contact the office in three (3) days if they not heard from LSNYBB. New intakes are reviewed weekly at the case review meeting.

LSNYBB offices are trying to develop a plan for a more integrated approach to services in Brooklyn. Standardizing intake forms, practices, and procedures and conducting program wide conflicts checks may assist in the development of a service delivery structure that supports LS-NYC's plan for integrated services. Brooklyn's Planning Commission notes that it "will deliver recommendations for a service delivery structure to the LS-NYC Board for approval that will make changes to the long-standing organizational structures and relationships." LS-NYC's

⁶ The screening sheet does not capture information about an applicant's principal residence. LSNYBB explained that such omission reflects the realities of life in Brooklyn, where very few people own their own homes.

expressed goals is to arrive at a “Brooklyn configuration that will preserve the best of what the five entities in Brooklyn currently do to serve clients and their communities, while addressing structural impediments that hinder our ability to provide excellent, high impact and efficient client services.” LS-NYC offices have case acceptance, case review, and case closing procedures.

Upper Manhattan Office

LS-NYC utilizes the Kemps case management system in the UMLS office. The Kemps system was tested for eligibility defaults and none were found. The UMLS office accepts applicants that are victims of domestic violence, and accepts eligible applicants who have family, consumer, public benefit, housing, and HIV-related issues. There are two (2) assistants that conduct walk-in intakes and telephone intakes. Walk-in intakes and telephone intakes are conducted Monday – Friday. However, not all substantive units receive intake requests five (5) days a week. Both intake assistants utilize an intake form to document intake information before they enter the applicant’s information into Kemps.

Walk-ins and telephone applicants are first screened for residency, priorities, and conflicts. A six way conflicts check is conducted. The conflicts checks are office specific and not program-wide. Next, the applicant is asked questions regarding their assets, income and citizenship status. Prospective income is asked and if the applicant is over-income, factors are considered and given to the supervisor for review.

BLSCA Office

BLSCA office revealed that there is somewhat of a balance between telephone and in-person intakes. Whether by telephone or in-person, the process begins by ensuring that the applicant lives within BLSCA’s service area. This is accomplished by determining the applicant’s zip code. Once it is determined that the applicant resides in BLSCA’s service area, the applicant is questioned relative to their citizenship/alien eligibility, their household size, household income, source of income, and household assets. In the case of applicants whose income exceeds 125% of LS-NYC’s annual income ceiling, authorized exceptions are considered pursuant to 45 CFR § 1611.5. The intake screeners at BLSCA also disclosed that they do not necessarily ask about changes in income or income prospects. The information is then entered into the ACMS. At that time, a conflicts check is performed, although the conflicts check is limited to BLSCA and its offices. Once the intake sheet is printed, the applicant is requested to attest to his/her citizenship. Eligible aliens are required to submit proof of eligibility, which is photocopied and attached to the intake application.

The Project Director stated that because of the difficulties in determining group eligibility, most of BLSCA’s group representation cases are non-LSC funded. BLSCA was advised that the LSC group eligibility process had been simplified and the documentation requirements of 45 CFR § 1611.6, the different types of groups that may be assisted, and a recipient’s ability to rely on various socioeconomic characteristics in making a group eligibility determination was explained for the in-person intake.

QLSLI Office

At the QLSLI office, there are two (2) intake screeners. The intake process begins by determining whether the applicant resides within their service area. If so, the applicant is provided an intake sheet that is designed to capture citizenship/alien eligibility information, household size, household income, and household assets. The information is then entered into the ACMS and a conflicts check is performed. The conflicts checks are limited to the QLSLI office.

The intake personnel at the QLSLI office stated that while some applicants will volunteer information about likely changes in their income, they do not routinely ask applicants about the likelihood of a significant change in their household income. QLSLI is the project which provides assistance to all who live in the Borough of Queens.

All applications are reviewed at a weekly case acceptance meeting and no case is opened until the application has been reviewed by an advocate and approved by a supervisor.

Intake was uniform among intake staff interviewed in the BBO, COB, and LMLS offices.

In the offices mentioned above, all offices intake screeners begin by conducting a conflicts check and determining whether the applicant's legal issue is within LS-NYC's priorities. Subsequently, the interviewers either follow the intake/eligibility screens of the ACMS, entering the applicant's information directly into the system or use an intake form and then enter the information into the ACMS. An assessment of eligibility is usually made by the screener unless further assessment is required by the managing attorney. If an applicant's income is between 125% and 187.5% of the FPG and if applicable, the intake staff is required to have an Exception to Maximum Income Level or Asset Ceiling form completed and signed by the managing attorney. The BBO and Courthouse office staff was not familiar with LS-NYC's over-income policy, however, if an applicant is over-income, intake staff is required to obtain assistance from a managing attorney. According to LS-NYC, they are in the process of creating a drop down menu in the ACMS with the exceptions to maximum income level listed. Once this drop down menu is implemented, LS-NYC should ensure staff is trained on LS-NYC's over-income/asset policy and the related exceptions.

BBO Office

The BBO intake staff utilizes a screening sheet for intake. Section IV of the screening sheet is labeled Immigration Status. The intake staff can check one of the following: Citizen, permanent resident, refugee, tourist visa, or student visa. There appears to be no basis for the inclusion of tourist visa and student visa on the screening sheet and intake staff is aware that if an applicant possesses one of these visas they are not eligible for legal services. LS-NYC should remove these options from the screening sheet to eliminate any confusion by intake staff.

Once an applicant is determined eligible, the cases are either reviewed during case acceptance meetings or an appointment is scheduled with an attorney to determine whether a case will be accepted. If the case is an emergency, a determination whether or not to accept the case is made

immediately by the managing attorney. The cases are closed and assigned a closing code by each individual case handler and in most instances closed by intake staff in the ACMS.

BSCLS Office

The BSCLS provides legal assistance to a portion of the borough of New York City known as Brooklyn. It provides legal assistance to persons living within a set zip code area. The BSCLS office has an intake officer, who serves as the receptionist and conducts the initial intake.

The BSCLS office has certain limited times at which it provides intake assistance. Basically, it provides “General Intake” (which consists of Social Security, SSI/Disability, Unemployment Insurance Benefits, Consumer Credit, Foreclosure Prevention, and ACS/Parental Rights Termination) on Mondays, from 2:00 p.m. – 6:00 p.m. and Fridays from 3:00 p.m. - 5:45 p.m.; “Landlord-Tenant Matters” on Wednesdays and Thursdays from 10:30 a.m. – 12:30 p.m.; IRS Taxpayer Assistance from 10 a.m. - 4:00 p.m. and has just started Foreclosure Prevention Intake on Mondays, from 3:00 p.m. - 6:00 p.m.

In the intake process, the applicant completes the BSCLS Intake Case Form Questionnaire and turns it into the intake officer who records the data into the Kemps case management database. At that point, the applicant meets with an attorney or paralegal who reviews the intake and case information. It is up to the advocate to determine whether to accept or reject the case. There are variations in the process depending on the intake type. For example, the Landlord-Tenant intake on Wednesdays and Thursdays is by telephone only and is conducted directly by the advocate. In this instance, the advocate does the interview and inputs the information directly into Kemps Prime.

With respect to conflicts checking, it should be noted that BSCLS is a separate law firm from any other office or project within LS-NYC. Accordingly, it needs to only screen against its prior clientele. In doing this, BSCLS asks two questions: (1) Are you presently being represented by counsel; and (2) Have you ever been here before. These questions screen out the possibility of duplicates and conflicts.

This practice of screening for conflicts only at the local project level is a sensible one since BSCLS is indeed a separate law firm within the LS-NYC corporate entity. It preserves the subsidiarity principle and keeps fewer people from being conflicted out. In addition, in a follow up interview with the Project Director, he indicated that very few of the program’s cases are conflicts situations - most are housing cases and BSCLS does not represent landlords or consumer law cases nor do they represent businesses.

A preliminary concern with respect to BSCLS project was how it handled over-income applicants. The intake officer inputs the income as provided by the applicants directly into Kemps prime. She does not inform applicants if they are over-income. It is up to the advocate to review the case and determine whether applicants are eligible for assistance. The advocate will discuss the case with the applicant to determine whether it is a meritorious case; if it appears to be so and the applicant is over-income, then the advocate records the appropriate factors and brings the whole case to the supervisor or Project Director for approval.

The only remaining concern of substance was an issue which appeared to occur program-wide, which was including food stamps as income. By statute, food stamps are not to be included in with cash in determining income. It appears that LS-NYC records the cash value of food stamps in the Kemps ACMS and this figure is included in the total income calculation.⁷ If LS-NYC wishes to continue to record whether the applicant receives food stamps this must not be included in the total income figure.⁸

QLSC Office

QLSC is the project which provides assistance to all who live in the Borough of Queens. During the review, staff at the QLSC office was interviewed with respect to intake.

The intake officer for the QLSC office is currently staffed by a temporary employee. Because of her temporary status, she was interviewed in conjunction with the Project Director.⁹ The QLSC office has a wide variety of services it provides and a varied schedule for intake dates and times.

As with the BSCLS project, the QLSC office has the intake officer conduct the initial qualifying process. In brief, the applicant completes the intake questionnaire and returns it to the intake officer who reviews and sets up the appropriate intake appointment based on the schedule above. The interview times depend on the type of case and the attorney involved, but most are seen within a week. In addition, the QLSC project operates several off-site clinics, however, at each of these the applicant is screened for income eligibility prior to acceptance – while QLSC may accept the case of an financially ineligible client (for LSC purposes), that client will be represented with non-LSC funds.¹⁰

⁷ It should be noted, that in the interviews all persons indicated that the cash value of food stamps is included in the total income.

⁸ Having this information can be useful in determining whether the applicant/client is obtaining full benefits as entitled by law.

⁹ It should be noted, since both employees were new to QLSC, that both had been issued the appropriate CSR Handbooks and had access to the CSR FAQs, LSC Act, regulations, and Program letters.

¹⁰ Prior to the on-site review, the (then) interim QLSC Project Director provided LSC with the following explanation in the form of a memorandum, dated December 14, 2009:

Here are the QLS Clinics:

1. Foreclosure Prevention Unit court-based clinic seeing foreclosure defendants.
2. Family Law Unit DV clinic at the Queens Family Justice Center.
3. Housing Unit clinic at MinKwon Center.
4. Citizenship/Immigration citizenship clinic at MinKwon Center.
5. Family Law Unit DV clinic at SAKHI.

In each of the clinics, cases may be taken that will be reported in the CSRs data. But this depends on whether the client in each case was LSC eligible. The percentages of cases that will be reported will vary by clinic. Few or none of the cases seen in the foreclosure court-based clinic are reported, while most of those in the Family Justice Center will be.

Again, as with BSCLS, the case handler conducts a more substantive case interview and will further evaluate the applicant's income – including obtaining additional information for those who might be over the 125% threshold. Both interviewees indicated that the advocate asks and records information on the applicant's prospective income and asset changes.

Following the meeting with the advocate, the different units meet to determine which of the new cases to accept for extended services. These meetings are held on a weekly basis with the time varying by the different unit. Again, if the applicant has an income over 125%, the advocate would bring the relevant information to the unit supervisor to consider the authorized exceptions pursuant to 45 CFR § 1611.5.

Similarly, case oversight is also handled by the units and their supervisors. The advocates are responsible for self inspection and bring problems and concerns to the unit meetings and/or supervisors. The unit supervisors conduct periodic case review with each advocate and review an open list of cases on a monthly basis. Any grievances or complaints go to the Project Director. The decision to close a case is up to the advocate in consultation with the client; together they determine if the objectives of the retainer agreement were met and then the case is closed. The advocate decides on the closing code, but the Project Director, unit supervisor and other staff are available to discuss if there are any questions.

LMLS Office

The LMLS office accepts applicants that are victims of domestic violence, and accepts eligible applicants who have family, consumer, public benefit, housing, and HIV- related issues. There are two (2) assistants that conduct walk-in and telephone intake. Walk-in and telephone intake are conducted Monday – Friday. However, not all substantive units receive intake requests five (5) days a week. Both intake assistants utilize an intake form to document intake information before they enter the applicant's information into Kemps.

LS-NYC utilizes the Kemps case management system in the LMLS office. The Kemps system was tested for eligibility defaults and none were found

Walk-ins and telephone applicants are first screened for residency, priorities and conflicts. A six way conflicts check is conducted. The conflicts check is office specific not program wide. Next, the applicant is asked questions regarding their assets, income and citizenship/alien eligibility status. A prospective income question is asked and if the applicant is over-income, authorized exceptions are considered and forwarded to the supervisor for review. LS-NYC has a Government Benefit Exemption but the intake staff does not utilize it. It is recommended that LMLS intake staff be reminded of the government benefit exemption.

After screening, if the applicant has an issue that requires immediate attention, the client information is forwarded to an attorney for review and assistance is provided to the client immediately. Non-emergency calls are given an appointment. However, if the applicant has a non-emergency public benefit or housing issue, the applicant is referred to the respective

hotlines.¹¹ The hotline intake process is similar to the walk-in and phone intake procedures. The applicant information is documented manually and the placed in Kemps. Once accepted for services, the applicant is transferred to an attorney and provided advice, brief service or given an appointment if extended service is required.

The LMLS office has several outreach programs. The staff conducts outreach at community centers throughout the Lower Manhattan area. The staff conducts intake on-site using the in-office intake forms. One of the intake specialists assists the LMLS staff attorney however, only the attorney provides legal assistance. A citizenship attestation is included on the form and applicants are required to sign. The completed intakes are entered into Kemps when the assistant returns to the office. These files are reported to LSC. Both intake staff members indicated that they had received training on the CSR Handbook (2008 Ed.).

A review of the LMLS office intake forms revealed that although it is not counted as income, food stamps is listed in the income section of the questionnaire. Also, the general and housing intake forms which are used during intake do not capture the applicant's assets. Both forms must be revised to include assets.

LS-NYC's intake procedures and case management system supports the program's compliance related requirements.

Comments to the DR stated that the DR was not clear on which offices have screening sheets for Student and Tourist visas, citing page 9 of the DR. The offices which conduct screening for Student and Tourist visas are contained in Finding No. 2 at pages 10-18 which delineates the intake process of all of LS-NYC's offices.

Further comments to the DR stated that LS-NYC recognizes that these may be broader issues seen at multiple offices, and will prepare appropriate communications to all Project Directors to ensure that: (1) Student and Tourist visas are removed from all screening documents; and (2) there is a separate signature line that is tied only to citizenship attestation.

Finding 3: LS-NYC maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines ("FPG") in substantial compliance. However, 21 case files reviewed were in excess of 125% of the applicable 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

¹¹ The Public Assistant Hotline is offered twice a week. An assistant in the LMLS office assist with the hotline on Wednesday. Not all housing issues are referred to the Hotline some are referred directly to the attorney.

to determine an applicant's eligibility to receive legal assistance.¹² See 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 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 (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable FPG and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. See 45 CFR § 1611.5(b), CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 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 (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

LS-NYC's eligibility policy includes authorized exceptions to the annual income ceiling. The annual income ceiling for individuals and household served by LS-NYC using LSC funds is 125% of the Federal Poverty Guidelines ("FPG") as published annually in the Federal Register by LSC in Appendix A to 45 CFR Part 1611. LS-NYC's policy requires that if an applicant's income is above 125% of the FPG, but does not exceed 200% of the FPG, LS-NYC must record the basis of its decision to provide assistance and shall record the specific 45 CFR Part 1611 exceptions or factors relied on to make the determination. On the back of the case form, staff is required to document the exception(s) considered to accept the over-income applicant and the facts justifying the exception.

All sampled cases reviewed evidenced that the applicants were screened for income eligibility. Many of the sampled case files reviewed for applicants whose income exceeded 125% of the FPG evidenced that the applicant had authorized exceptions. However, numerous case files were over-income and accepted without exceptions being noted in the files.

See Open Case Nos. X09E-14000682 (LSNYB), M08E-1001019 (UMLS), V09E24060659 (Main Off.), and V08E-24019862 (Main).

See also, Closed 2007 Case Nos. Q07E-1000502 (QLSC), and Q07E-1002152 (QLSC), Closed 2008 Case Nos. B08E-1000373 (LSNYBB), M08E-1000352 (UMLS), M08E-62020037, M08E-1000818 (UMLS), Closed 2009 Case Nos. 108E-1000549 (BSCLS), X08E-

¹² A numerical amount must be recorded, even if it is zero. See CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

1001621(Courthouse), L09E-20000134 (LSNYBB), L09E-20000750 (LSNYBB), Q09E-66000243 (QLSC), Q09E-66002648 (QLSC), and Q08E-1000614 (QLSC).

The above mentioned files should not be reported or should not have been reported to LSC. LS-NYC must ensure that all over-income client case files include the 45 CFR § 1611.5 exception(s) considered in accepting the client. In addition, intake workers must make an inquiry of the applicant's income prospects and assets. *See* 45 CFR § 1611.7 (a) (1). Food stamps should not be considered as income.

Comments to the DR stated that LS-NYC is preparing appropriate communications to remind all Project Directors, and their respective programs, that waiver forms are required for LSC-funded cases in which the client's income is greater than 125% of FPG and that food stamps are not to be included as income when performing eligibility screening. In addition, LS-NYC's technology department has added a pop-up in Kemps to remind advocates to obtain proper authorization when a client's income is over 125% of FPG. Further comments to the DR stated that the standardized case closing checklist will further address oversight of this issue. Between staff communications, the pop-up reminder in Kemps, and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

LS-NYC must ensure that all over-income client case files include the 45 CFR § 1611.5 exception(s) considered in accepting the client as opposed to providing waiver forms.

Finding 4: LS-NYC maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.¹³ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 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

¹³ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

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.

The policy approved by the LS-NYC Board of Directors on January 30, 2009 establishes the asset ceiling at \$13,000. Exempt from consideration is the applicant's home; all automobiles owned by the family unit; assets used in producing income; and any other assets that are exempt from attachment under New York State or Federal law.

Sampled case files reviewed revealed that LS-NYC maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by the revised 45 CFR §§ 1611.3(c) and (d)¹⁴ CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. However, *See* Closed 2008 Case No. Q08E-1000358 (QLSC) where recorded assets of the client were over LS-NYC's asset ceiling, but the case file did not contain the necessary asset waiver.

LS-NYC provided no comments to this Finding.

Finding 5: LS-NYC is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens), however there were numerous files not in compliance with 45 CFR § 1626.6(a).

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 (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 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 (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 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.¹⁵ 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

¹⁴ The revised 45 CFR § 1611.2 defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms "liquid" and "non-liquid" have been eliminated.

¹⁵ *See* Kennedy Amendment at 45 CFR § 1626.4.

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.

LS-NYC is not in compliance with 45 CFR § 1626.6(a), as there were numerous cases that lacked the required verification of citizenship. *See* Closed 2008 Case No. L05E-1002410 (BSLS), this case was missing an executed attestation and the case notes indicate the applicant initially indicated s/he was a U.S. Citizen during telephone screening and there was an executed retainer in the case; Closed 2009 Case No. X08E-1001486 (SBSL), this file was kept open because it was missing an attestation and eventually closed when LS-NYC was unable to locate the client; Closed 2009 Case No. A09E-1000480 (BLSEB), lacking an executed attestation; Open Case No. B09E-4000287 (Williamsburg Outreach), lacking executed citizenship attestation; Closed 2008 Case Nos. B08E-1000058 and B07E-1000692 (Williamsburg Outreach), files containing only telephone verifications of citizenship despite documented in-person contacts with the clients. (These cases were reported in error. Program staff acknowledges there was a performance issue with an employee that has been resolved); Open Case No. B09E-4000287 (Williamsburg Outreach), lacking an executed citizenship attestation; Closed 2009 Case No. M08E-63018620 (UMLS), the client was disabled and did not come to the office, instead his mother signed the attestation document on his behalf. Client was not a minor and mother was not appointed his guardian; Closed 2007 Case No. Q07E-1000508 (QLSC), Closed 2008 Case Nos. L08E-1000108 (LMLS), and Closed 2009 Case No. Q09E-66002776 (QLSC), lacking executed citizenship attestations; Closed 2009 Case No. L09E-20000750 (BSCLS) involved a non citizen and lacked any supporting documentation; Closed 2007 Case No. X07E-1001553 (LSNYB), lacking an executed citizenship attestation; Closed 2008 Case No. X058-30003716 (LSNYB), client claimed to be a resident alien but never produced appropriate documentation for review; Closed 2007 Case No. M07E-1002535 (LSNYB), the client signed the intake form stating she was a legal resident, however the file did not contain evidence of a review of the residency documentation. (According to the intermediary, this was a client known to the program who had been previously served in 1995, 1998, and 1999); and Closed 2008 Case No. Q07E-100280508 (QLSC), the client signed a written attestation stating she was a resident alien, but the file did not contain evidence of review of required documentation.

LS-NYC is reminded that an alien can not verify their alien eligibility by attesting in writing. An alien seeking representation shall submit appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone which does not include continuous representation of the client. *See* 45 CFR § 1626.7. LS-NYC is further reminded to date the citizenship attestations.

The above identified case files, and those similar to them, are not CSR reportable. LS-NYC must take corrective action to ensure that citizenship attestations are obtained when required. Further, LS-NYC must take action to de-select those cases identified lacking citizenship attestations or evidence of alien eligibility from current and future CSR submissions.

Comments to the DR stated that LS-NYC is preparing appropriate communications to educate all Project Directors, and their respective programs, that citizenship attestations must be obtained pursuant to the regulations. LS-NYC will employ the “whites-of-their-eyes-rule” to obtain the attestation for any citizen they advise/represent in person, according to comments to the DR. Further comments to the DR stated that to further enforce this regulation, LS-NYC may decide in conjunction with the PDs / DAs that some type of training is needed at either the central office or local level and LS-NYC will incorporate such into their standard training materials.

LS-NYC will also ensure that the files highlighted in the DR as lacking required attestations will be deselected from CSR submissions, according to comments to the DR.

Finding 6: LS-NYC is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

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.¹⁶ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LS-NYC is in substantial compliance with the requirements of 45 CFR § 1611.9. However, open Case No. B08E-1000297 (LSNYBB) lacked a retainer altogether. The case was closed in December 2009 as “negotiated settlement with litigation.” LSNYBB stated that the case had been identified for exclusion from LS-NYC’s CSR data submission because it was their understanding that such cases could not be reported. It was explained that compliance with 45 CFR § 1611.9, albeit a regulatory requirement, was not a reporting requirement and that cases lacking a retainer should, nonetheless, be reported to LSC. The retainer in Closed 2009 Case No. X06E-2001261 (LSNYB) failed to identify the nature of the services to be provided. *See also*, Closed 2008 Case No. B08E-1000373 (LSNYBB) with a closed code of “extended service”, but lacking an executed retainer agreement; Closed 2009 Case No. L08E-20019780 (BSCLS) with a closed code of “administrative agency decision” but lacking an executed retainer; Open Case No. X04E-2002743 (LSNYB); case on appeal lacking executed retainer; Closed 2007 Case No. M03-1000659 (UMLS), retainer obtained after representation had ceased; and Open Case No. X03E-1001172 (LSNYB), lacking an executed retainer.

¹⁶ 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.

LS-NYC is reminded that the lack of a retainer does not preclude CSR reporting eligibility. Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Comments to the DR stated that LS-NYC has discussed this issue with their Project Directors, and is in the process of preparing appropriate communication to remind them, and their respective programs, that execution of retainers must be performed timely prior to client representation. LS-NYC will additionally notify staff that the lack of a retainer does not preclude CSR reporting eligibility, according to comments to the DR. Further comments to the DR stated that LS-NYC has implemented a standardized case closing checklist that will directly address this issue. Between staff communications and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

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

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

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

Case files reviewed indicated that LS-NYC is in compliance with the requirements of 45 CFR Part 1636.

LS-NYC provided no comments to this Finding.

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

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

Prior to the visit, LS-NYC provided LSC with a list of its priorities. The priorities are stated as “supporting families, preserving the home, promoting economic stability, achieving safety, stability and health and serving populations with special vulnerabilities.”

LS-NYC is in compliance with 45 CFR Part 1620. None of the sampled files reviewed revealed cases that were outside of LS-NYC’s priorities.

LS-NYC provided no comments to this Finding.

Finding 9: LS-NYC is not in compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided), and there were 33 staff case files reviewed which contained no description of the legal assistance provided. Numerous cases cited in the DR had been de-selected by LS-NYC.

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 (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 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 (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

LS-NYC is not in compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6, and there were 57 staff case files reviewed which contained no description of the legal assistance provided.

See Closed 2007 Case Nos. M07E-1001230 (LMLS), L06E-1001655 (BSCLS), M07E-1002329 (LMLS), L07E-1000616 (BSCLS), X05E-1001597 (LSNYB), and Q07E-1002126 (LSNYB).

See also, Closed 2008 Case Nos. A08E-1019005 (BLSCA), A08E-131006688 (BLSCA), A08E-1017845 (BLSCA), A08E-131000639 (BLSCA), M08E-1000141 (UMLS), Q07E-2002613 (BFDP), L08E-1000108 (BSCLS), L08E-1000611 (BSCLS), L08E-20020079 (BSCLS), M08E-62018566 (LMLS), M08E-1000889 (LMLS), M08E-62016680 (LMLS), M08E-1001312 (LMLS), M08E-1000958 (LMLS), M08E-1001437(LMLS), and M08E-1001145 (LMLS).

See Closed 2009 Case Nos. A09E-2001077 (BLSEB), X09E-14002184 (LSNYB), X09E-14002960 (LSNYB), A09E-1000537 (Williamsburg), A09E-1000786 (Williamsburg), A09E-1000738, (Williamsburg), A09E-1000785 (Williamsburg), A09E-1001797 (Williamsburg), A09E-1000090 (Williamsburg), Q08E-66019454(QLSC), Q09E-66001978 (QLSC), and M09E-63001233) (UMLS).

These files, and others like them, are not CSR reportable.

Comments to the DR stated that LS-NYC is preparing appropriate communications to educate all Project Directors, and their respective programs, that a description of the legal assistance provided must be included in all case files. Additionally, LS-NYC has implemented a standardized case closing checklist that will directly address this issue, as no case should be closed without first verifying that a description of legal assistance is present, according to comments to the DR. Further comments to the DR stated that LS-NYC will ensure that the case files identified during the OCE review will be de-selected from future CSR submissions. Between staff communications, tracking the identified cases in the DR, and the closing checklist, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

Finding 10: LS-NYC’s application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), particularly closing code “K.”

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1.

The files reviewed demonstrated that LS-NYC’s application of the CSR case closing categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were numerous instances of case closing code errors.

See Closed 2007 Case Nos. X07E-30003273 (LSNYB), closed with a closing code of “administrative agency decision” when the more appropriate closing code would have been “brief service”; L07E-1000146 (BSCLS), closed with a closing code of “brief service” when the more appropriate closing code would have been “counsel and advice”; and L06E-1001640 (BSCLS), closed with a closing code of “brief service” when the more appropriate closing code would have been “counsel and advice.”

See also, Closed 2008 Case Nos. L08E-10000016 (BSCLS) and X09E-14002184 (LSNYB) closed with a closing code of “other”, but LS-NYC had de-selected these cases; 507E-1005442 (SBLS) closed with a closing code of “other” when the more appropriate closing code would have been “counsel and advice”; B08E-1000214 (BBO) closed with a closing code of “administrative agency decision” when the more appropriate closing code was “brief

service”; M08E-62018520 (LMLS) closed with a closing code of “brief service” when the more appropriate closing code would have been “counsel and advice”; and X08E-1001369 (LSNYB) closed with a closing code of “limited action” when the more appropriate closing code would have been “counsel and advice”.

See Closed 2009 Case Nos. M08E-62016800, M09E-63001495, and M09E-63000337 (Main) closed with a closing code of “other” but the program had de-selected these cases; 509E-68000640 (SBLs) closed with closing code of “other” when the more appropriate closing code would have been “counsel and advice”; B09E-4000296 (LSNYBB) closed with a closing code of “other” when the more appropriate closing code would have been “counsel and advice”; Q09E-66001351 (QLSC) closed with a closing code of “negotiated settlement” when the more appropriate closing code would have been “administrative agency decision”; B08E-4014621 (LSNY-BB) closed with a closing code of “other” but the more appropriate closing code would have been “extensive service”; Q09E-67000681 (QLSC) closed with a closing code of “counsel and advice” when the more appropriate closing code would have been “limited action” B08E-4020218 (Williamsburg) closed with a closing code of “other” when the more appropriate closing code would have been “counsel and advice”; M09E-63000786 (Main) closed with a closing code of “other” when the more appropriate closing code would have been “counsel and advice”; L09E-20000752 (BSCLS) closed with a closing code of “brief service” when the more appropriate closing code would have been “counsel and advice”; L09E-2000394 (BSCLS) closed with a closing code of “other” when the more appropriate closing code would have been “counsel and advice”; and X09E-16002551 (LSNYB) closed with a closing code of “administrative agency decision” when the more appropriate closing code would have been “brief service”.

LS-NYC is reminded that they must establish a method in their case management system that will de-select case files for CSR reporting that were opened as LSC-eligible but are not reportable to LSC as cases. Example of such cases can be found in the CSR Handbook (2008 Ed.), § 3.5.

While LSC does not mandate the use of a specific method to identify and de-select non-CSR cases, the method adopted must have the ability to be easily used by the case handlers and other program staff to close case files that should not be reported to LSC with some type of “exit” code or field that enables staff to de-select that case from inclusion in a CSR report. Any system that accomplishes the goal of easily de-selecting any files opened as LSC reportable that are not eligible to be closed CSR “cases” from CSR reports is sufficient. For example, one method is to close such case files with a closing code such as X (or any other letter near the end of the alphabet) that would be used to designate the case file as a non-CSR case. *See* CSR Handbook (2008 Ed.), § 3.5.

Comments to the DR stated that LS-NYC recognizes that improved understanding of closing codes is needed across all programs and they are preparing appropriate communications to educate all Project Directors, and their respective programs, that the proper closing codes and categories must be adhered to for each closed case. This is also an issue that will likely get addressed via direct training to staff at both the central and local levels, according to comments to the DR. Further comments to the DR stated that LS-NYC has implemented a standardized

case closing checklist that will directly address this issue by ensuring that staff will properly review/verify the closing code for each case. Between staff communications, staff training, and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

Further comments to the DR stated that LS-NYC will take the advice offered in the DR and create a closing code “X”, which will be used to designate problem cases that should not be reported to any funder. Along with this, LS-NYC will prepare appropriate communications that notify all staff of this issue and when to appropriately use the new “X” closing code, according to comments to the DR. Further comments to the DR stated that LS-NYC will likely add this point into any training they decide to hold to address corrective action #18, such that staff understands all closing codes and how to correctly apply.

LS-NYC has implemented a standardized case closing checklist that will directly address this issue by ensuring that staff will properly review/verify the closing code for each case, according to comments to the DR. Additional comments to the DR stated that between staff communications, potential staff training, and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward.

Further comments to the DR stated that numerous cases cited above were de-selected. LS-NYC is reminded that an error in a closing code does not preclude a case from being CSR reportable.

Finding 11: LS-NYC is in substantial compliance regarding the requirements of **CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3, however there were 10 staff case files reviewed that were not closed in a timely manner and five (5) dormant cases.**

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).¹⁷ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible

¹⁷ 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.), § 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).

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).

LS-NYC is in substantial compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a), however there were 10 staff case files that were not closed in a timely manner and five (5) dormant cases in various offices.

Those cases closed in 2010 or remaining open with no recent activity should be closed administratively. The following case files, and those similar to them, should not have been reported to LSC in LS-NYC's CSR data submission and should be closed administratively. Examples include: Case Nos. B08E-1000217 (LSNYBB) (which was opened on April 14, 2008 and closed December 29, 2009). The case notes indicate that all activity ceased in the year 2008 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; X05E-2001106 (LSNYB) (which was opened on February 28, 2005, and closed on December 31, 2009). All activity ceased in this case file in the year 2008 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; X04E-2000381 (LSNYB) (which was opened on February 10, 2004 and remains open). All activity ceased in this case file in the year 2006 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; X05E-2003243 (LSNYB) (which was opened on August 23, 2005 and closed January 27, 2010). All activity ceased in this case file in the year 2005 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; X03E-2003230 (LSNYB) (which was opened October 21, 2003 and remained open at the time of the review). All activity ceased in this case file in the year 2004 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; X07E-3000992 (LSNYB) (which was opened on March 14, 2007 and remained open at the time of the review). All activity ceased in this case file in the year 2007 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; X05E-3003175 (LSNYB) (which was opened on August 16, 2005 and remained open at the time of the review). Case notes indicate file should be closed; X06E-2001185 (LSNYB) (which was opened on April 7, 2006 and closed on September 28, 2009). All activity ceased in this case file in the year 2008 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; X06E-2002372 (LSNYB) (which was opened on July 12, 2006 and closed on June 2, 2009). All activity ceased in this case file in the year 2008 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; X06E-2000862 (LSNYB) (which was opened on March 15, 2006 and closed on June 5, 2009). All activity ceased in this case file in the year 2007 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; B08E-1000152 (BBO) (which opened on March 10, 2008 and closed on December 30, 2009). All activity ceased in this case file in the year 2008 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; M08E-1001280 (UMLS) (which was opened June 12, 2008 and closed on closed on January 2, 2009). All activity ceased in this case file on June 12, 2008 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; M08E-1000647 (UMLS) (which was opened on March 27, 2008 and closed on January 2, 2009). All activity ceased in this case file on March 27, 2008 with no recent legal activity and no

documented activity in the file regarding future legal assistance pending or needed; X03E-1003525 (LSNYB) (which was opened on November 7, 2003 and closed on February 1, 2010). All activity ceased in this case file in the year 2003 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; Q08E-66014332 (QLSC) (which was opened on August 1, 2008 and closed on February 18, 2010). All activity ceased in this case file in the year 2008 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed; and X03E-1001172 (LSNYB) (which was opened on April 29, 2003 and remained open at the time of the review). All activity ceased in this case file in the year 2008 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed.

LS-NYC should take corrective action and review all open cases to identify those that cannot be timely closed. Those cases identified as dormant should be closed in such a manner that they are not reported to LSC in a current or future CSR submission.

Comments to the DR stated that LS-NYC is preparing appropriate communication to remind all Project Directors, and their respective programs, that: (1) cases must be closed in a timely manner; and (2) open cases are not dormant by providing appropriate follow-up and oversight by advocates. The latter may be addressed by the tickler system as mentioned in OCE's recommendation #2, according to comments to the DR. Further comments to the DR stated that LS-NYC has implemented a standardized case closing checklist that will directly address this issue from a reporting standpoint and LS-NYC will ensure that the case files identified during the OCE audit will be de-selected from future CSR submissions. Between staff communications, tracking the identified cases in the draft report, and the closing checklist, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to the comments to the DR.

LS-NYC has indicated that some of the above mentioned cases were de-selected, however in the case files reviewed by the OCE reviewers there was no evidence of de-selection.

Finding 12: Sample cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

When a recipient provides more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.2 and CSR Handbook (2008 Ed.), § 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 (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 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 (2001 Ed.), ¶ 6.4. and CSR Handbook (2008 Ed.), § 6.4.

LS-NYC is in substantial compliance with the requirements of the CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases, however, one set of duplicate cases was noted. *See* Closed 2009 Case Nos. Q09E-66000846 and Q09E-66001276 (both QLSC). Only one of these cases should have been reported to LSC in the CSRs.

LS-NYC provided no comments to this Finding.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Sampled files reviewed, and interviews with staff indicate, that LS-NYC is not involved in such activity. Discussions with the Executive Director also indicated that LS-NYC is not involved in these prohibited activities.

A review of accounting records and documents and interviews with staff for the period of 2007 through December 31, 2009 disclosed that LS-NYC has not expended any grant funds, or used personnel or equipment on any prohibited activities in violation of 45 CFR § 1608.3(b).

LS-NYC provided no comments to this Finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking,

Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

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

None of the sampled files reviewed involved legal assistance with respect to a fee-generating case. Discussions with the Executive Director also indicated that LS-NYC is not involved in any fee-generating case.

LS-NYC provided no comments to this Finding.

Finding 15: A review of LS-NYC's accounting and financial records indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). In addition, LS-NYC accounting records appear to be in full compliance with 45 CFR 1610.5 (notifying contributors in writing of the prohibitions and conditions governing donor funds). LS-NYC needs to ensure compliance with 45 CFR Part 1610.4 (b).

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).

From a limited review of the chart of accounts and detailed general ledger (“G/L”) for specific G/L accounts for 2007 through 2009, observations of the physical locations of all offices, and interviews with staff and management, LS-NYC does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

A review of the “donor notification” letters for 2008 and 2009 conforms to the requirements of 45 CFR § 1610.5(a) that donors should be notified of the prohibitions and conditions which apply to the funds.

45 CFR Part 1610.4(b) states that a recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by the LSC Act or inconsistent with Section 504, PL. 104-134, 110 Stat. 1321 (1996).

In 2008 LS-NYC allocated costs in the amount of \$39,896 and \$7,735 respectively to Private Attorney Involvement from the grants they have with Legal Aid Society and Center for

Disability Advocacy Rights, Inc. Upon interview, it was revealed that some of the case files that were referred lacked citizenship/alien eligibility screening. Although the costs associated with these grants are from public (non-LSC) funds, because the cases did not conform to the requirements of 45 CFR Part 1626, the amounts allocated to these PAI cases are unallowable. *See* 45 CFR § 1610.2 (b)(7).

LS-NYC was asked to provide a memo supporting their position on the PAI allocation for 2009. However, after the exit teleconference LS-NYC is re-thinking their earlier position and will be excluding the costs associated with these grants from the PAI allocation and will make sure all cases are screened for citizenship/alien eligibility and appropriate follow-up and oversight is provided.

Comments to the DR stated that LS-NYC is somewhat unsure of how this became a corrective action, as there was no mention in the Draft Report in either Finding 5 (verification of citizenship/alien eligibility) or Finding 16 (PAI activities) that LS-NYC had failing PAI cases due to poor citizenship/alien eligibility screening. Of the 19 failing cases mentioned in Finding 5, all of those are staff cases, not PAI and in Finding 16 on page 33 of the Draft Report, it was stated that “LS-NYC is in compliance with 45 CFR 1614.3(d)(3) which requires oversight of the PAI case files,” according to comments to the DR.

Additional comments to the DR stated that LS-NYC would like further insight into what exactly OCE found during the audit in this regard. Pending that information, LS-NYC will continue to provide proper eligibility screening and effective oversight and follow-up to ensure compliance on all PAI cases, according to comments to the DR.

As noted in the above finding, in 2008 LS-NYC allocated costs in the amount of \$39,896 and \$7,735 respectively to Private Attorney Involvement from the grants they have with Legal Aid Society and Center for Disability Advocacy Rights, Inc. Upon interview, it was revealed that some of the case files that were referred lacked citizenship/alien eligibility screening. Although the costs associated with these grants are from public (non-LSC) funds, because the cases did not conform to the requirements of 45 CFR Part 1626, the amounts allocated to these PAI cases are unallowable. *See* 45 CFR § 1610.2 (b)(7).

LS-NYC was asked to provide a memo supporting their position on the PAI allocation for 2009. However, after the exit teleconference LS-NYC is re-thinking their earlier position and will be excluding the costs associated with these grants from the PAI allocation and will make sure all cases are screened for citizenship/alien eligibility and appropriate follow-up and oversight is provided.

Accordingly, LS-NYC has indicated that corrective action will be taken on this matter.

Finding 16: LS-NYC is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, LS-NYC is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. However, LS-NYC is not in compliance with 45 CFR § 1614.4(b) which requires consultation with significant segments of the client

community, private attorneys, and bar associations, including minority and woman's bar associations, in LS-NYC's service area in the development of its annual PAI plan.

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

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

The Audited Financial Statement ("AFS") for calendar year ending December 31, 2008 reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). PAI expenditures of \$2,719,376 or 18% of LS-NYC's total basic field grant of \$14,741,967, complying with the 12.5% requirement. The review of the spreadsheet allocating PAI staff salary for the calendar year ending December 31, 2008 disclosed that LS-NYC incorrectly allocates the salaries of attorneys and paralegals, based on estimates and not on actual time as required by 45 CFR § 1614.3(a)(i)(i). LS-NYC reformulated their PAI methodology in 2009, however, it had not been implemented at the time of the February 2010 review. LS-NYC should implement the PAI allocation methodology based on actual cost in 2010 and in the future.

A review of LS-NYC's PAI component reveals that LS-NYC engages in a variety of traditional and non-traditional pro bono models, not all of which are direct delivery activities. LS-NYC refers cases directly to pro bono attorneys, co-counsels cases with private attorneys, solicits law firms to participate in Associate Service Programs (in which associates work full-time for 4-6 months in a legal services office), and has privately funded staff attorney positions at local offices.¹⁸ Additionally, LS-NYC partners with local Bar Associations for case referral.

The oversight and follow-up of pro bono cases varies by office, advocacy group within an office, and according to the model under which services are provided. Interviews confirmed that attorneys participating in the Associate Service, Fellowship, Externship and Deferred Associate Programs, as well as, those privately funded attorneys working at LS-NYC, "fall within the regular supervision systems of the office in which they work. These attorneys' cases receive the same degree and level of scrutiny as any other case being handled by the regular staff attorneys

¹⁸ The Pro Bono Coordinator reports that these cases are not PAI cases; they are closed as staff cases.

in the office.” In co-counseling arrangements with private firms and attorneys, the local LS-NYC attorney staff participates as partners in these matters.¹⁹ Staff report that these arrangements provide adequate oversight and follow-up. As noted above, it appears the private attorneys are subject to the program’s uniform internal case management procedures and are provided with the same supervision and oversight as any staff attorney employed by LS-NYC.

Under the leadership of the Director of Communications and in conjunction with the Pro Bono *Coordinator*, LS-NYC operates an “Available pro bono Cases” email system to connect private attorneys to pro bono opportunities within LS-NYC. The process is as follows: LS-NYC staff screens the PAI applicant for financial and citizenship/alien eligibility in a manner consistent with staff cases. All of the necessary compliance documents are obtained. Staff then identifies cases appropriate for PAI referral which are consistent with their established priorities. They prepare a fact summary describing the PAI matter, which is then emailed to the pro bono Coordinator. The Pro Bono Coordinator places the referral on the “Available Pro Bono Cases” email system or the matter is referred to private attorneys and law firms. LS-NYC has ongoing relationships with private attorneys and law firms through which direct referrals are made. The private attorneys then contact LS-NYC staff to accept the case. LS-NYC staff performs oversight, supervision, and may provide ongoing consultation and assistance. Staff reports various levels of contact with the private attorneys ranging from monthly to quarterly to bi-annual oversight. If a private attorney cannot be located for the PAI applicant, the Pro Bono Coordinator notifies the referring staff member. Upon completion of the case, the private attorney provides the office with a summary of the case and copies of the final orders or other documents. In accordance with LS-NYC case closing procedures, LS-NYC reviews and closes the file. An office may maintain the file as a staff case to perform its oversight functions. The staff member records the oversight activities in the case file. The SBLs Benefits and Employment Project reports closes their cases as a staff cases with a notation that it is PAI--time is entered as PAI.

Additionally, some offices relate that they have PAI relationships with their local bar associations. They refer cases to these bar associations. The LSNYSI office refers cases to the Richmond County Bar. The Brooklyn offices previously referred non-domestic violence divorce cases to the Brooklyn Bar Association (“BBA”); however, it ceased this practice due to a lack of oversight and supervision. SBLs presently refers bankruptcy cases to the BBA. The BBA and SBLs Foreclosure and Prevention Project (“SBLs-FPP”) participate in a shared grant to represent clients in foreclosure proceedings. LS-NYC screens housing applicants and refers them to the BBA. SBLs-FPP does not perform oversight or follow-up of these cases. The BBA provides the oversight and supervision of the Kemps attorneys. The staff member interviewed believes SBLs-FPP closes these cases as referrals but was not certain. There are between 50-100 cases of this type every year. If these cases are not referrals, there does not appear to be sufficient oversight and follow-up for these cases to meet 45 CFR § 1614.3(d)(3). Staff report that if no legal advice is provided, the case is closed as “other” and later deselected from the CSR submission.

¹⁹ Such activities are permissible pursuant to 45 CFR Part 1614.

Although, the interviews revealed that staff might harbor some degree of uncertainty as to what constitutes a PAI case and what are the proper closure codes for some activities, LS-NYC is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight of the PAI case files.

The BSCLS office does not have any PAI program as there are not many private attorneys working in the BSCLS service area. The PAI efforts in QLSLI have become dormant over a number of years, but with the hiring of a new Project Director looks to be invigorated for the coming year.²⁰

There are quite a number of PAI initiatives being operated by the LSNYB project. All efforts involve volunteer activities – there are no compensated private attorneys involved in the following activities by LSNYB or LS-NYC. The following are the different efforts operating at LSNYB:

- Assistance with Wills and Estate Planning. Once a month, attorneys from the firm of Carter Ledyard & Milburn, LLP work with clients on preparing wills and testamentary instruments and consult and advise LSNYB staff on case work.
- Tax Project – a cooperative effort between Milbank, Tweed, Hadley & McCloy, LLP and Columbia Law School. LSNYB refers tax related issues to this project.
- Family Law Project – LSNYB, in collaboration with the Bronx Bar Association works with inMotion²¹ to provide assistance on a broad spectrum of family law case work including matrimonial domestic violence, orders for protection, child support, and, VAWA to women in need of help. In Motion is a non-profit corporation funded by a number of law firms and corporations throughout New York City and it also receives a grant from the state IOLA fund. While it has a staff of over twenty persons, it mainly coordinates volunteer attorneys to provide legal assistance in domestic relations law. The LSNYB staff works as pro bono trainers to provide training to the private bar. In return, members of the bar earn Continuing Legal Education credit and agree to take on two pro bono referrals. The LSNYB staff and inMotion attorneys work to mentor the private attorneys in the handling of these cases.
- The law firm of Simpson, Thacher & Bartlett, LLP provides ongoing assistance in housing cases (and some tax and estate matters as mentioned above).
- In addition to these efforts, there is coordination with the PAI efforts with the Main office in Manhattan (specifically the person responsible for PAI) and the law firm of DLA Piper LLP. Also, there is coordination with the Main office on referrals to the New York City Bankruptcy Assistance Project.

In addition to these efforts, the program has also worked with several fellows under the Skadden (Skadden, Arps, Slate, Meagher & Flom, LLP) fellowship program and the Kirkland & Ellis New York City Public Service Fellowship program. Finally, in the last year, LSNYB had 10

²⁰ The Queens Project has a new project director, who started just weeks before the February 2010 on-site review and has a background in working with private attorney involvement.

²¹ InMotion is a non-profit corporation funded by a number of law firms and corporations throughout New York City. It also receives a grant from the state IOLA fund. While it has a staff of over 20 people, it mainly coordinates volunteer attorneys to provide legal assistance in domestic relations law.

volunteer attorneys who devoted between 1½ to 3 days a week working out of the LSNYB offices.²²

Intake and oversight for each of the above efforts vary with respect to the particular program. First, it should be noted that it is the LSNYB Director of Litigation who has been given the final responsibility of oversight for these efforts, although the primary oversight is conducted by a number of different staff, as explained below. With the Wills and Estates Planning program, LSNYB has a paralegal that sets up each applicant with an available space in the clinic. Appointments are scheduled in half-hour increments on the last Thursday of every month between the hours of 9:30 a.m. and 11:00 a.m. For this clinic, the event takes place over two appointments: the first is the day of screening – income eligibility and the collection of information and substantive interviews; the second is execution day, wherein the clients execute the wills, powers of attorney or other testamentary documents requested. Oversight is exercised primarily by the structure of this process – if the client does not return for the second portion, LSNYB follows up to determine if the client wants to proceed and if LSNYB cannot contact the client, or the client decides not to proceed, the file is closed either as a “reject” or as “counsel and advice” (depending on which is appropriate). Since the program maintains control of the files, it is responsible for oversight (wills, power of attorneys and other testamentary documents) and the paralegal that does intake ensures all case work is handled in a timely manner.

For the Low Income Taxpayers Clinic, the applicant goes through the regular intake process and, upon review of the case, it is determined whether referral to the Clinic is most appropriate. Specifically, this routing can be done in one of several ways. At the time of the initial call by the applicant, the caller goes through a telephone tree in which one of the options is “tax.” If the applicant selects the “tax” option, the call is routed to the paralegal on staff with the tax unit. If the issue appears to be within the unit’s priorities, the paralegal creates a Kemps record and records some brief notes regarding the tax issue. After this, the applicant is advised that the clinic attorney will call back for a more detailed interview/consultation on a specific date. As with the testamentary case files, most of these are not protracted cases, therefore the files are only open for a brief time. Unlike the will cases, LSNYB does not maintain control of the files, however they are apprised of the status and follow up if anything appears to be taking too long.

For the Family Law Project, there is both telephone intake which goes directly to inMotion and there are referrals from the LSNYB intake process. LSNYB screens the applicant through the regular intake process and then makes scanned copies of the documents, including the intake documents (such as the attestation) and sends them via email attachment to inMotion. As far as oversight and case management, inMotion uses the Kemps case management system and LSNYB gets reports from inMotion twice a year on case status.²³ LSNYB reviews the case lists for inconsistencies, dormancy, and untimely closings.

²² In these instances, LSNYB covers the overhead of the attorneys while at the program and the compensation is provided by the law firm or the attorneys themselves.

²³ In materials provided in advance of the on-site review, LSNYB advised LSC of the following procedures: For cases referred PAI to inMotion, twice a year, we prepare a Kemps query for PAI cases that were referred to them. We submit to inMotion a report to for them to respond to the status of cases. Once report has been received, we review and note status in Kemps if case is still active. If case is dormant or ready for closing, we prepare file for closing by checking and recording time records, notes, and forms. Then we close file with appropriate level of service, as indicated by inMotion and proceed to close in Kemps.

As far as the other PAI efforts, LSNYB coordinates with the private law firms handling the cases to get a status report prior to the end of the year. At that point, the decision is made to either close the case or to push for continued work on behalf of the client. With respect to the cases handled by volunteer attorneys or Fellows working in-house, LSNYB maintains its normal case oversight procedures.

The Bankruptcy Assistance project has a hotline that takes calls every day from 9:30 a.m. to 5:30 p.m. There are also workshops held every month. Intake workers screen for residency, household income, including income prospects, assets and citizenship/alien eligibility. A conflicts check is performed before scheduling an appointment. If an applicant is over-income, those cases are referred to a supervisor. Case acceptance meetings are conducted every other week. Once intake is completed, the case is referred to a pro bono attorney who handles bankruptcy cases. Oversight is conducted by the managing attorney once a year and all cases are reviewed once a year. Some applicants are scheduled for the bankruptcy clinic. The Bankruptcy PAI has an intake script for telephone screening which mirrors the intake information provided by the intake worker.

Most bankruptcy PAI cases reviewed were in compliance with 45 CFR Part 1614 and there was adequate oversight and follow-up provided. However, there was one PAI case file reviewed which contained no description of the legal assistance provided. *See* Closed 2010 Case No. 9E2000942 (Main).

The PAI Coordinator, also Litigation Director, in the UMLS office was interviewed regarding the office oversight procedures and the office only handles pro bono cases. The pro bono clients are screened by the UMLS' intake staff and the cases are then reviewed at the weekly case acceptance meeting to determine if the case should be referred to a PAI attorney. There are two retired volunteer attorneys that handle housing cases for the office. LS-NYC also has relationships with private law firms that allow LS-NYC to refer housing cases to the firms, employ summer associates to work on housing and disability cases, or co-counsel on cases.²⁴ PAI cases that are co-counseled are primarily handled by the private law firm and a co-counsel agreement is executed between the two firms. In addition, the client is sent a letter from the law firm explaining the relationship between LS-NYC and the PAI firm representing her/him pro bono.

The PAI Coordinator indicated that, in the past, some of the PAI cases were not coded correctly. However, now all co-counsel cases are coded as PAI and the PAI files reviewed indicated that they were in compliance with the proper coding. Most of the PAI files are closed within the same reporting year and copies of pleadings and final orders were located in the case files reviewed. According to the PAI Coordinator, the Director or a managing attorney is responsible for the oversight of individual files depending on the type of case. Co-counsel cases are oversighted by the staff attorney who is co-counsel with the PAI attorney. It was recommended that the management draft oversight procedures since planning has begun to extend their PAI program.

²⁴ LS-NYC role as co-counsel is minimal because the firm is utilized for its resources and as such, the private attorney provides much of the representation.

The UMLS office also has a PAI clinic. The clinic is Consumer Debt Collection Clinic which is held every Thursday and staffed with students and volunteer lawyers. The UMLS staff serves as experts once a month. UMLS indicated that there is no eligibility screening conducted by the office, thus the cases are not counted and the cases are closed as matters. In its response to DR, LS-NYC must provide additional information regarding the level/type of assistance provided during this clinic. If legal advice is being provided, versus legal information only, the participants must be fully screened for eligibility prior to receiving such advice.

At the LSNYBB office, the specific activity chosen to afford private attorneys the opportunity to become involved in the delivery of legal assistance to eligible clients is through “externships”. The externships involve private attorneys employed by some of the larger firms in Brooklyn who are detailed to LSNYBB to provide legal assistance to eligible clients. Intake and case acceptance are consistent with LSNYBB’s established priorities; case assignments are made to the externs according to their interest and expertise; and the externs are supervised by the LSNYBB managing attorney in the same manner as LSNYBB staff attorneys.

LS-NYC is not in compliance with 45 CFR § 1614.4(b) procedures, which requires the recipient to consult with significant segments of the client community, private attorneys, and bar associations, including minority and woman’s bar associations, in the recipient’s service area in the development of its annual PAI plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual PAI plan has been presented to all local bar associations within the recipient’s service area and shall summarize their response.

Comments to the DR stated that LS-NYC’s offices are located in low-income communities throughout the city and their staff is deeply involved with community organizations and community leaders in the development of their priorities. The Board of LS-NYC, the Boards of their Constituent Corporations, and the Advisory Group for their Brooklyn Branch Office also provide formal opportunity for community input into program planning, including PAI initiatives and proposals, according to comments to the DR. LS-NYC develops approaches and programs that are responsive to those identified needs as resources allow and this is true for their staff model and for their PAI projects, according to comments to the DR. Further comments to the DR stated that, for example, as housing remains the highest priority in the city, LS-NYC has developed strong PAI projects that have added significant resources to their housing practice. Externships at South Brooklyn, Brooklyn Branch, and Manhattan focus on housing practice and other important PAI projects include the Bankruptcy Assistance Project, the HIV Wills Clinic, and the pro bono partnership project for DV work in the Bronx. Each of these projects was developed in consultation with community partners, according to comments to the DR. Additional comments to the DR stated that, in response to the corrective action required under this report, LS-NYC acknowledges that they have not sufficiently documented the consultative process; and will put in place a process that does so going forward. As part of this, LS-NYC is planning to, at least one month prior to the submission date, circulate its proposed PAI plan to: (1) all of the bar associations which appoint board members to the LS-NYC Board (which represent city, state and minority bar associations); (2) to the community groups which appoint members to the LS-NYC Board; and (3) to the community groups which are represented on the local boards of the LS-NYC constituent corporations, according to comments to the DR. Further

comments to the DR stated that LS-NYC will discuss with and incorporate feedback from these community representatives into the final PAI plan for submission.

The UMLS office also has a PAI clinic. The clinic is Consumer Debt Collection Clinic which is held every Thursday and staffed with students and volunteer lawyers. The UMLS staff serves as experts once a month. UMLS indicated that there is no eligibility screening conducted by the office, thus the cases are not counted and the cases are closed as matters. In its response to DR, LS-NYC must provide additional information regarding the level/type of assistance provided during this clinic. If legal advice is being provided, versus legal information only, the participants must be fully screened for eligibility prior to receiving such advice.

Comments to the DR stated that LS-NYC needs to clarify this assessment, as there are actually two different programs under operation – both of which meet LSC regulations. First, UMLS runs an in-house consumer clinic where they see clients who have come to UMLS for legal assistance in consumer matters and that clinic – which operates once a month – is staffed by staff attorneys and a fellow from a law firm, according to comments to the DR. Further comments to the DR stated that for that clinic, all clients are screened by UMLS prior to receiving legal advice or brief services by their staff. In addition, UMLS participates in the CLARO Project, in collaboration with the NY City Bar Association and Fordham Law School and that clinic meets weekly and is staffed by volunteer lawyers who provide legal advice and brief services to clients facing consumer debt collection matters, according to comments to the DR. Additional comments to the DR stated that UMLS’ role in that clinic is to provide training and expert advice to the volunteer lawyers staffing the clinic and UMLS does not provide individual advice or assistance to clients at that clinic. Further comments to the DR stated that UMLS also does not count any cases from that Project since the clients are not screened and LS-NYC counts the time as ‘matter time’ since they are providing training to private attorneys. If a client who comes to CLARO needs direct legal assistance from their UMLS offices, they are referred to UMLS and screened (as with all clients) before they are provided with individual advice or counsel, according to comments to the DR. Further comments to the DR stated that many of the clients who come to CLARO are eligible for legal services.

Finding 17: LS-NYC is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

LSC regulation 45 CFR § 1627.4(a) requires that:

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

The review of accounting records and detailed general ledger documents for 2007, 2008 and 2009 through December 31, disclosed that LS-NYC is in compliance with 45 CFR § 1627.4(a). All non-mandatory dues and fees are being paid with non-LSC funds.

LS-NYC provided no comments to this Finding.

Finding 18: LS-NYC is in compliance with 45 CFR Part 1635 (by keeping time records both electronically and contemporaneously). However, LS-NYC is not in compliance with 45 CFR § 1635.3(d) by not having some of the part-time case handlers' quarterly certifications on file for 2008 and 2009.

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.

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.

A review of two (2) to four (4) advocates' timekeeping records were selected from nine (9) of the LS-NYC offices for the following pay periods; November 24 through December 21, 2008, November 23 through December 29, 2009; and January 4 through January 17, 2010. This review

disclosed that all sampled records were electronically and contemporaneously kept. The time spent on each case, matter or supporting activity was recorded in compliance with 45 CFR §§ 1635.3(b) and (c). However, LS-NYC is not in compliance with 45 CFR § 1635.3(d) in that some of the part-time case handlers had not signed and submitted their quarterly certifications for 2008 and 2009 in a timely manner.

LS-NYC should take corrective action and adopt controls that ensure part-time case handlers sign and submit their quarterly certifications timely.

Comments to the DR stated that LS-NYC has established improved process and procedures for maintaining these certifications such that more diligent monitoring of part-time case handlers and associated documentation is present. The revised process gives more oversight to a specific staff manager such that accuracy is ensured, according to comments to the DR. Further comments to the DR stated that this revised process was discussed with OCE representatives during the February 2010 OCE visit and deemed sufficient and as such, LS-NYC believe that this corrective action has been properly addressed.

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.²⁵ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.²⁶

Except as provided by LSC regulations, recipients may not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

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

²⁶ 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 Letter10-1 (February 18, 2010).

None of the sampled files reviewed contained a prayer for attorney fees. Discussions with the Executive Director and fiscal review also indicated that LS-NYC is not involved in this prohibited activity.

A review of LS-NYC's fiscal records and the 2008 Audited Financial Statement as well as an interview with the CFO evidenced compliance with 45 CFR Part 1642.

LS-NYC provided no comments to this Finding.

Finding 20: LS-NYC is not in compliance with 45 CFR § 1630.2(g)(3) and 45 CFR § 1630.3(b)1 by allowing excessive bank charges to be paid with LSC funds.

The review of the expanded general ledger account "bank charges" for the full three (3) years of the review period (2007 through 2009) revealed that \$24,377.40 had been paid with LSC funds. In size, the charges ranged from as little as \$0.12 to as much as \$4,267.97, which was incurred when the minimum investable balance was only \$13,909,695 as opposed to the required \$17,762,417.

The above listed bank charges must be viewed in the contexts of 45 CFR § 1630.2 (g)(3) and 45 CFR § 1630.3(b)1. The first regulation states that "the cost incurred appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances," whereas the provisions outlined in 45 CFR § 1630.3(b)1 relate to costs not meeting the standards governing allowability of costs under Corporation grants or contracts and read in part: "...the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract."

LS-NYC should make sure bank charges are reasonable and necessary and that the cost is generally recognized as ordinary and necessary for the operation of LS-NYC or the performance of a grant or contact. LS-NYC needs to allocate its bank charges across all of its funding sources so that the allocation of bank charges is fair and equitable.

Comments to the DR stated that bank charges are reasonable and necessary and to ensure effective cash management throughout LS-NYC's offices, the organization utilizes several services as offered by their bank (JP Morgan Chase). To limit fees charged for these and other services, LS-NYC invests bank balances overnight to cover their fees and to get optimal rates, according to comments to the DR. Further comments to the DR stated that recently due to the decline in national interest rates, fees have not been entirely eliminated by the offsetting of earned income as in previous years; hence, LS-NYC incurs some fees.

Finding 21: Through a review of LS-NYC's internal control worksheet, interviews with management and accountants and a review of disbursements, it was disclosed that LS-NYC has good internal controls with proper segregation of duties within its operations and financial systems.

The review conducted of the internal control worksheet (a matrix of duties performed by management and accountants), completed by LS-NYC's accountants disclosed that LS-NYC maintains a proper segregation of duties throughout its operation and accounting systems. Interviews with management and accountants evidenced that internal controls are a primary objective of all of LS-NYC employees. A review of disbursements revealed that proper segregation of duties was achieved and internal controls were in place and adhered to in accordance with LSC's Accounting Guide for LSC Recipients.

LS-NYC provided no comments to this Finding.

Finding 22: LS-NYC bank reconciliations for 18 bank accounts were reviewed from October-December 2009. The review disclosed that several were not performed timely, however they were accurate and certified by the proper parties. Several accounts had outstanding checks over the normal 180 day period. Two of the Client Trust Fund accounts maintained third party money orders in a vault with no physical inventory conducted for two years.

The 18 bank reconciliations for the operating, client trust and investments accounts were reviewed. Several were not prepared on a timely basis. However, they are being reviewed and certified in their totality by the proper parties.

Also, several outstanding checks were found to be over the normal 180 day period making them stale-dated and non-negotiable. LS-NYC should review those checks and proceed according to the findings. LS-NYC should establish a policy that checks outstanding for over a period of six months should be investigated and either reissued or canceled.

The review of LS-NYC's client trust fund bank accounts disclosed that third party money orders are being maintained in a vault. Currently, LS-NYC conducts a physical inventory every two years to confirm the account balances. LS-NYC should establish a policy providing for a more frequent physical inventory, conducted at least once a year.

LS-NYC provided no comments to this Finding.

Finding 23: LS-NYC's comprehensive Accounting Manual dates back to 1997 and needs to be updated to incorporate all changes and modifications that have occurred over the years.

A cursory review of the Accounting Manual disclosed a strong similarity to the one received by LSC during a visit in the early 1990's. The Accounting Manual should be updated to incorporate all changes and/or modifications to the original manual showing the dates on which the documents were revised.

Comments to the DR stated that LS-NYC will complete revision of the accounting manual in 2011 and provide a copy to OCE. Going forward, LS-NYC will regularly review and further update the manual as needed, according to comments to the DR.

Finding 24: LS-NYC needs to ensure that a portion of Volunteer Legal Services (“VOLS”) payments is allocated to LSC as derivative income.

The mission of VOLS is to provide pro bono civil legal services to benefit poor people in New York City. VOLS identify areas of legal need, develop projects to meet these needs, and recruit volunteer lawyers and law firms to provide the needed legal services.

LS-NYC has been performing services for VOLS without an executed agreement. LS-NYC has been providing technical support to VOLS to deal with any technical questions and problems they may have with their software system. Several of LS-NYC Information Technology support staff assists VOLS by answering questions and resolving problems that are encountered by computer users of VOLS. LS-NYC bills VOLS every month for the technical support they are providing. The Information Technology Director is in the process of obtaining an executed agreement.

LS-NYC should make sure that a portion of VOLS payments is allocated to LSC as derivative income rather than miscellaneous income. Currently, it appears that the income is not being distributed back to the grant funding source for staff time/costs involved in providing the services.

Comments to the DR stated that LS-NYC’s accounting treatment for VOLS revenue has been revised – all related revenues are recorded as LSC along with related expenses ensuring resulting net gain (derivative income) or loss is properly recorded as LSC. Further comments to the DR stated that a contract was executed with VOLS on February 19, 2010.

Finding 25: Two (2) of the constituent corporations were operating with a negative LSC fund balance in 2008. A contributing issue is that LS-NYC is not allocating common costs on actual time, but rather on estimates.

The deficit balance of LSC funds in the amounts of \$2,595,991 and \$649,557 for two constituent corporations (Brooklyn A and South Brooklyn Legal Services) for FYE December 31, 2008 was a direct result of LS-NYC allocating common costs based on estimates and not actual time spent by their employees on specific functions, programs or activities. The un-audited Financial Statements for 2009 were not available for review to determine if there are deficit balances in 2009.

LS-NYC has not implemented its new methodology to allocate costs based on actual time spent. Such cost allocation methodology should be adequately documented and consistently applied. LS-NYC provided OCE with its new methodology on March 19, 2010 (PAI calculation and procedures). It is set to be implemented this year (in 2010).

Management should exercise more oversight in reviewing the actual results and make the necessary changes to the budget in a timely fashion to eliminate these insurmountable deficit balances.

Based on the 2008 AFS, LS-NYC has written off \$35,113 in bad debt expense. This amount was charged to non-LSC, unrestricted funds. In review of the 2009 documents, LS-NYC has written off a total of \$114,045.06. LS-NYC should reclassify at least \$56,319.28 from bad debt expense to allow for doubtful accounts instead of an immediate write off since management believes that these funds will be recovered.

Comments to the DR stated that prior to 2009, LS-NYC determined its PAI allocation based on estimates rather than actual attorney time. To remedy this approach, LS-NYC developed a revised methodology to calculate annual PAI allocation based on actual attorney time and associated costs (*see* Appendix 3 in LS-NYC's comments) and this was used to determine 2009 PAI allocation and was provided to OCE for review and comment in March, 2010, according to comments to the DR. Additional comments to the DR stated that going forward, LS-NYC will continue to utilize this approach.

Further comments to the DR stated that LS-NYC does not maintain an allowance account for bad debts but records debts as not deemed collectible as a direct expense when information becomes available. Based on information available at year-end the cited bad debt was deemed uncollectible, according to comments to the DR. Further comments to the DR stated that after conversations and negotiation with the funder, vouchers were revised and resubmitted, payment was received, and the accounting treatment was revised to reflect transactions as noted.

Finding 26: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also indicated that LS-NYC is not involved in this prohibited activity.

LS-NYC provided no comments to this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also indicated that LS-NYC is not involved in this prohibited activity.

LS-NYC provided no comments to this Finding.

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

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

None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director also indicated that LS-NYC is not involved in this prohibited activity.

LS-NYC provided no comments to this Finding.

Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632(Redistricting).

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

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

None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also indicated that LS-NYC is not involved in this prohibited activity.

LS-NYC provided no comments to this Finding.

Finding 30: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also indicated that LS-NYC is not involved in this prohibited activity.

LS-NYC provided no comments to this Finding.

Finding 31: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

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

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also indicated that LS-NYC is not involved in this prohibited activity.

LS-NYC provided no comments to this Finding.

Finding 32: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited

LSC recipients and their staff from engaging a client which it solicited.²⁸ This restriction has been contained in all subsequent appropriations acts.²⁹ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: “This part is designed to ensure that recipients and their employees do not solicit clients.”

None of the sampled files, including documentation such as community education materials and program literature, indicated program involvement in such activity. Discussions with the Executive Director also indicated that LS-NYC is not involved in this prohibited activity.

LS-NYC provided no comments to this Finding.

Finding 33: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

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

None of the sampled files reviewed involved such activity. Discussions with the Executive Director also indicated that LS-NYC is not involved in these prohibited activities.

LS-NYC provided no comments to this Finding.

Finding 34: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

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

²⁸ *See* Section 504(a)(18).

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

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. Interviews conducted further evidenced and confirmed that LS-NYC 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.

LS-NYC provided no comments to this Finding.

Finding 35: LS-NYC had several case files that could not be located for review.

Out of 1,201 cases reviewed, there were six (6) cases in the selected sample that could not be located for review.

The following six (6) cases were missing from the QLSC office: Closed 2007 Case Nos. Q07E-1002180, Q07E-1000232, Q07E-1001378, Q07E-1000405, and Q07E-1000751.

LS-NYC should assess the reasons for these lost case files and take corrective action required to ensure the safekeeping of LSC funded work. Further, in its comments to this DR, LS-NYC is requested to report on the results of the assessment including any planned corrective action.

Comments to the DR stated that LS-NYC has established policies and procedures for properly maintaining case files which are adhered to by all programs. To remind Project Directors, and their respective programs, LS-NYC will prepare appropriate communications reinforcing that case files must be properly maintained so as to not go missing or lost, according to comments to the DR. Further comments to the DR stated that going forward, LS-NYC will continue to emphasize that programs adhere to these procedures.

IV. RECOMMENDATIONS³⁰

Consistent with the findings of this report, it is recommended that LS-NYC:

1. Provide staff training on the program's policies regarding non-cash benefits, the Government Benefits Exemption, 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments, 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR § 1611.3(2) (waivers of annual asset ceiling);

Comments to the DR stated that LS-NYC will consult with Project Directors and other management to determine the best approach to train staff on the above issues. LS-NYC will likely include some or all of these points in the training that will address a number of the required corrective actions.

2. Create a tickler system to monitor cases so that cases are reviewed periodically and closed if no further legal work is required; and

Comments to the DR stated that LS-NYC recognizes that periodic review of cases is at times needed and they will give thought to how to best implement a tickler system for more structured review of open cases. One solution they can recommend is that managers receive reports from the Case Management System ("CMS") on a periodic basis and consistent with supervisory case meetings, that indicate the last date of activity noted in case files, according to comments to the DR. Further comments to the DR stated that his will help monitor open cases such they do not go dormant and get closed timely.

3. Run periodic case management reports in order to ensure the accuracy of the CSR reporting information prior to submission to LSC.

Comments to the DR stated that LS-NYC's offices currently run numerous case reports throughout a given year (to verify information for multiple funders), as well as perform a robust clean-up process to verify accuracy of reporting information towards the end of each calendar year. While this process largely works well to ensure accuracy, LS-NYC will consult with appropriate managers to determine options to further improve the process by running additional, and perhaps more regular, intermediate reports, according to comments to the DR.

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

By contrast, the items listed in "Required Corrective Actions" must be addressed by the program, and will be enforced by LSC.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that its PAI allocation methodology is implemented based on actual costs in 2009 and in the future;

Comments to the DR stated that prior to 2009, LS-NYC determined PAI allocation based on estimates rather than actual attorney time. To remedy this approach, LS-NYC developed a revised methodology to calculate annual PAI allocation based on actual attorney time and associated costs (*see* Appendix 3 of LS-NYC's comments) and this was used to determine 2009 PAI allocation and was provided to OCE for review and comment in March 2010, according to comments to the DR. Additional comments to the DR stated that going forward, LS-NYC will continue to utilize this approach.

2. Ensure consultation with significant segments of the client community, private attorneys and bar associations when developing its annual PAI plan;

Comments to the DR stated that LS-NYC's offices are located in low-income communities throughout the city and their staff is deeply involved with community organizations and community leaders in the development of their priorities. The Board of LS-NYC, the Boards of their Constituent Corporations and the Advisory Group for their Brooklyn Branch Office also provide formal opportunity for community input into program planning, including PAI initiatives and proposals, according to comments to the DR. LS-NYC develops approaches and programs that are responsive to those identified needs as resources allow and this is true for their staff model and for their PAI projects, according to comments to the DR. Further comments to the DR stated that, for example, as housing remains the highest priority in the city, LS-NYC has developed strong PAI projects that have added significant resources to their housing practice. Externships at South Brooklyn, Brooklyn Branch, and Manhattan focus on housing practice and other important PAI projects include the Bankruptcy Assistance Project, the HIV Wills Clinic, and the pro bono partnership project for DV work in the Bronx and each of these projects was developed in consultation with community partners, according to comments to the DR. Additional comments to the DR stated that in response to the corrective action required under this report, LS-NYC acknowledges that they have not sufficiently documented the consultative process; and will put in place a process that does so going forward. As part of this, LS-NYC is planning to, at least one month prior to the submission date, circulate its proposed PAI plan to: (1) all of the bar associations which appoint board members to the LS-NYC Board (which represent city, state and minority bar associations); (2) to the community groups which appoint members to the LS-NYC Board; and (3) to the community groups which are represented on the local boards of the LS-NYC constituent corporations, according to comments to the DR. Further comments to the DR stated that LS-NYC will discuss with and incorporate feedback from these community representatives into the final PAI plan for submission.

The UMLS office also has a PAI clinic. The clinic is Consumer Debt Collection Clinic which is held every Thursday and staffed with students and volunteer lawyers. The UMLS staff serves as experts once a month. UMLS indicated that there is no eligibility screening conducted by the office, thus the cases are not counted and the cases are closed as matters. In its response to DR, LS-NYC must provide additional information regarding the level/type of assistance provided during this clinic. If legal advice is being provided, versus legal information only, the participants must be fully screened for eligibility prior to receiving such advice.

Comments to the DR stated that LS-NYC needs to clarify this assessment, as there are actually two different programs under operation – both of which meet LSC regulations. First, UMLS runs an in-house consumer clinic where they see clients who have come to UMLS for legal assistance in consumer matters and that clinic – which operates once a month – is staffed by staff attorneys and a fellow from a law firm, according to comments to the DR. Further comments to the DR stated that for that clinic, all clients are screened by UMLS prior to receiving legal advice or brief services by their staff. In addition, UMLS participates in the CLARO Project, in collaboration with the NY City Bar Association and Fordham Law School and that clinic meets weekly and is staffed by volunteer lawyers who provide legal advice and brief services to clients facing consumer debt collection matters, according to comments to the DR. Additional comments to the DR stated that UMLS’ role in that clinic is to provide training and expert advice to the volunteer lawyers staffing the clinic and UMLS does not provide individual advice or assistance to clients at that clinic. Further comments to the DR stated that UMLS also does not count any cases from that Project since the clients are not screened and LS-NYC counts the time as ‘matter time’ since they are providing training to private attorneys. If a client who comes to CLARO needs direct legal assistance from their UMLS offices, they are referred to UMLS and screened (as with all of our clients) before they are provided with individual advice or counsel, according to comments to the DR. Further comments to the DR stated that many of the clients who come to CLARO are eligible for legal services.

3. Ensure updating of its Accounting Manual is completed. A copy of the updated Manual must be submitted to OCE;

Comments to the DR stated that LS-NYC will complete revision of the accounting manual in 2011 and provide a copy to OCE. Going forward, LS-NYC will regularly review and further update the manual as needed, according to comments to the DR.

4. Ensure that a valid contract is executed with the Volunteer Legal Services for services rendered;

Comments to the DR stated that a contract was executed with VOLS on February 19, 2010.

5. Ensure that a portion of VOLS payments are allocated to LSC as derivative income rather than miscellaneous income;

Comments to the DR stated that LS-NYC's accounting treatment for VOLS revenue has been revised – all related revenues are recorded as LSC along with related expenses ensuring resulting net gain (derivative income) or loss is properly recorded as LSC.

6. Ensure that bank charges are reasonable and necessary and that the cost is generally recognized as ordinary and necessary for the operation of LS-NYC or the performance of a grant or contract pursuant to 45 CFR § 1630.3(b)(1);

Comments to the DR stated that bank charges are reasonable and necessary and to ensure effective cash management throughout LS-NYC's offices, the organization utilizes several services as offered by their bank (JP Morgan Chase). To limit fees charged for these and other services, LS-NYC invests bank balances overnight to cover their fees and to get optimal rates, according to comments to the DR. Further comments to the DR stated that recently, due to the decline in national interest rates, fees have not been entirely eliminated by the offsetting of earned income as in previous years; hence, LS-NYC incurs some fees.

7. Ensure that staff attorneys execute retainers before commencement of legal services to comply with 45 CFR § 1611.9. LS-NYC is reminded that the lack of a retainer does not preclude CSR reporting eligibility. Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC;

Comments to the DR stated that LS-NYC has discussed this issue with their Project Directors, and is in the process of preparing appropriate communication to remind them and their respective programs that execution of retainers must be performed timely prior to client representation. LS-NYC will additionally notify staff that the lack of a retainer does not preclude CSR reporting eligibility, according to comments to the DR. Further comments to the DR stated that LS-NYC has implemented a standardized case closing checklist that will directly address this issue. Between staff communications and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

8. Ensure reclassification of at least \$56,319.28 from bad debt expense for allowance for doubtful accounts instead of an immediate write off since management believes that these funds will be recovered;

Comments to the DR stated that LS-NYC does not maintain an allowance account for bad debts but records debts as not deemed collectible as a direct expense when information becomes available. Based on information available at year-end the cited bad debt was deemed uncollectible, according to comments to the DR. Further comments to the DR stated that subsequently after conversations and negotiation with the funder, vouchers were revised and resubmitted and payment received and the accounting treatment was revised to reflect transactions as noted.

9. Ensure all cases that are referred to PAI Attorneys include citizenship/alien eligibility screening and effective oversight and follow-up in an effort to ensure compliance with the requirements.

Comments to the DR stated that LS-NYC is somewhat unsure of how this became a corrective action, as there was no mention in the Draft Report in either Finding 5 (verification of citizenship/alien eligibility) or Finding 16 (PAI activities) that LS-NYC had failing PAI cases due to poor citizenship/alien eligibility screening. Of the 19 failing cases mentioned in Finding 5, all of those are staff cases, not PAI and in Finding 16 on page 33 of the Draft Report, it is stated that “LS-NYC is in compliance with 45 CFR 1614.3(d)(3) which requires oversight of the PAI case files”, according to comments to the DR.

Additional comments to the DR stated that LS-NYC would like further insight into what exactly OCE found during the audit in this regard. Pending that information, LS-NYC will continue to provide proper eligibility screening and effective oversight and follow-up to ensure compliance on all PAI cases, according to comments to the DR.

In 2008, LS-NYC allocated costs in the amount of \$39,896 and \$7,735 respectively to Private Attorney Involvement from the grants they have with Legal Aid Society and Center for Disability Advocacy Rights, Inc. Upon interview, it was revealed that some of the case files that were referred lacked citizenship/alien eligibility screening. Although the costs associated with these grants are from public (non-LSC) funds, because the cases did not conform to the requirements of 45 CFR Part 1626, the amounts allocated to these PAI cases are unallowable. *See* 45 CFR § 1610.2 (b)(7).

LS-NYC was asked to provide a memo supporting their position on the PAI allocation for 2009. However, after the exit teleconference LS-NYC is re-thinking their earlier position and will be excluding the costs associated with these grants from the PAI allocation and will make sure all cases are screened for citizenship/alien eligibility and appropriate follow-up and oversight is provided.

Accordingly, LS-NYC has indicated that corrective action will be taken on this matter.

10. Ensure necessary changes are made to the budget in a timely manner to eliminate insurmountable deficit balances;

Comments to the DR stated that LSC net asset balances taken as a whole for the organization has consistently been positive and LSC deficit net asset balances relate entirely to two (2) LS-NYC offices, which incurred deficits in previous years. In the most current years, due to more aggressive budgeting, monitoring and reporting offices have continually been held in positive territory to ensure future deficits do not occur, according to comments to the DR.

11. Ensure that where the client’s income is over 125% of the FPG that authorized exceptions are noted, or that the case is not accepted with LSC funds;

Comments to the DR stated that LS-NYC is preparing appropriate communications to remind all Project Directors, and their respective programs, that waiver forms are required for LSC-funded cases in which the client’s income is greater than 125% of FPG and that food stamps are not to be included as income when performing eligibility screening. In addition, LS-NYC’s technology

department has added a pop-up in Kemps to remind advocates to obtain proper authorization when a client's income is over 125% of FPG, according to comments to the DR. Further comments to the DR stated that the standardized case closing checklist will further address oversight of this issue. Between staff communications, the pop-up reminder in Kemps, and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

LS-NYC must ensure that all over-income client case files include the 45 CFR § 1611.5 exception(s) considered in accepting the client as opposed to waiver forms.

12. Revise the "Exception to Maximum Income Level or Asset Ceiling" form utilized by LS-NYC-Bronx office so that it is consistent with LS-NYC policies and 45 CFR Part 1611;

Comments to the DR stated that LS-NYC has discussed this issue with their Bronx program and they are now utilizing the standardized waiver forms, which meet the CFR Regulations.

13. Revise the Screening Sheets and remove screening for Student and Tourist Visas and revise the April 3, 2007 "Request for Citizenship Form" so that the citizenship attestation form contains a separate signature line tied only to the citizenship attestation consistent with the provisions of CSR Handbook (2008 Ed.), § 5.5 (SBLs office);

Comments to the DR stated that the DR was not clear on which offices that have sheet screenings for Student and Tourist visas, citing page 9 of the DR. The offices which conduct screening for Student and Tourist visas are contained in the Finding No. 2 at pages 10-18 which delineates the intake process of all of LS-NYC's offices.

Further comments to the DR stated that LS-NYC recognizes that these may be broader issues seen at multiple offices, and will prepare appropriate communications to all Project Directors to ensure that: (1) Student and Tourist visas are removed from all screening documents; and (2) there is a separate signature line that is tied only to citizenship attestation.

14. Ensure that food stamps are not included as income;

Comments to the DR stated that LS-NYC is preparing appropriate communications to remind all Project Directors, and their respective programs, that waiver forms are required for LSC-funded cases in which the client's income is greater than 125% of FPG and that food stamps are not to be included as income when performing eligibility screening. In addition, LS-NYC's technology department has added a pop-up in Kemps to remind advocates to obtain proper authorization when a client's income is over 125% of FPG, according to comments to the DR. Further comments to the DR stated that the standardized case closing checklist will further address oversight of this issue. Between staff communications, the pop-up reminder in Kemps, and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

15. Ensure that all case files contain citizenship attestations pursuant to 45 CFR § 1626.6 (a) where appropriate. Further, ensure that all case files lacking the required citizenship attestations are de-selected from the CSR submission;

Comments to the DR stated that LS-NYC is preparing appropriate communications to educate all Project Directors, and their respective programs, that citizenship attestations must be obtained pursuant to the regulations. LS-NYC will employ the “whites-of-their-eyes-rule” to obtain the attestation for any citizen they advise/represent in person, according to comments to the DR. Further comments to the DR stated that to further enforce this regulation, LS-NYC may decide in conjunction with the PDs/DAs that some type of training is needed at either the central office or local level and LS-NYC will incorporate such into their standard training materials.

LS-NYC will also ensure that the files highlighted in the DR as lacking required attestations will be de-selected from CSR submissions, according to comments to the DR.

16. Ensure that cases are closed in a timely manner in compliance with CSR Handbook (2008 Ed.), § 5.6 and make sure open cases are not dormant by providing follow-up and oversight. Further, ensure that all case files identified in this DR that were not timely closed or dormant be de-selected from future CSR submission;

Comments to the DR stated that LS-NYC is preparing appropriate communication to remind all Project Directors, and their respective programs, that: (1) cases must be closed in a timely manner; and (2) open cases are not dormant by providing appropriate follow-up and oversight by advocates. The latter may be addressed by the tickler system as mentioned in OCE’s recommendation #2, according to comments to the DR. Further comments to the DR stated that LS-NYC has implemented a standardized case closing checklist that will directly address this issue from a reporting standpoint and LS-NYC will ensure that the case files identified during the OCE audit will be de-selected from future CSR submissions. Between staff communications, tracking the identified cases in the draft report, and the closing checklist, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to the comments to the DR.

17. Ensure that the legal assistance provided is documented in the case file and that those case files identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, a review of all files at the time of closing is necessary;

Comments to the DR stated that LS-NYC is preparing appropriate communications to educate all Project Directors, and their respective programs, that a description of the legal assistance provided must be included in all case files. Additionally, LS-NYC has implemented a standardized case closing checklist that will directly address this issue, as no case should be closed without first verifying that a description of legal assistance is present, according to

comments to the DR. Further comments to the DR stated that LS-NYC will ensure that the case files identified during the OCE audit will be de-selected from future CSR submissions. Between staff communications, tracking the identified cases in the DR, and the closing checklist, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

18. Ensure that staff is trained on the proper closing codes categories to comply with CSR Handbook (2008 Ed.), § 3.3;

Comments to the DR stated that LS-NYC recognizes that improved understanding of closing codes is needed across all programs and they are preparing appropriate communications to educate all Project Directors, and their respective programs, that the proper closing codes and categories must be adhered to on each closed case. This is also an issue that will likely get addressed via direct training to staff at both the central and local levels, according to comments to the DR. Further comments to the DR stated that LS-NYC has implemented a standardized case closing checklist that will directly address this issue by ensuring that staff will properly review/verify the closing code for each case. Between staff communications, staff training, and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

Further comments to the DR stated that LS-NYC will take the advice offered in the DR and create a closing code “X”, which will be used to designate problem cases that should not be reported to any funder. Along with this, LS-NYC will prepare appropriate communications that notify all staff of this issue and when to appropriately use the new “X” closing code, according to comments to the DR. Further comments to the DR stated that LS-NYC will likely add this point into any training they decide to hold to address corrective action #18, such that staff understands all closing codes and how to correctly apply.

LS-NYC has implemented a standardized case closing checklist that will directly address this issue by ensuring that staff will properly review/verify the closing code for each case, according to comments to the DR. Additional comments to the DR stated that between staff communications, potential staff training, and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward.

Further comments to the DR stated that numerous cases cited above were deselected. LS-NYC needs to be reminded that an error in a closing code does not preclude a case from being CSR reportable.

19. Ensure that all offices apply the over-income exception policy in a similar manner. As part of this, training should be provided to staff as to when and how to apply expenses and factors to applicants whose income falls between 125%-200% of the FPG;

Comments to the DR stated that LS-NYC is preparing appropriate communications to remind all Project Directors, and their respective programs, that waiver forms are required for LSC-funded cases in which the client’s income is greater than 125% of FPG and that food stamps are not to be included as income when performing eligibility screening.. In addition, LS-NYC’s

technology department has added a pop-up in Kemps to remind advocates to obtain proper authorization when a client's income is over 125% of FPG, according to comments to the DR. Further comments to the DR stated that the standardized case closing checklist will further address oversight of this issue. Between staff communications, the pop-up reminder in Kemps, and the closing form, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

LS-NYC must ensure that all over-income client case files include the 45 CFR § 1611.5 exception(s) considered in accepting the client as opposed to providing waiver forms.

20. Ensure that advocates consistently screen for income prospects and assets pursuant to 45 CFR § 1611.7(a)(1);

Comments to the DR stated that LS-NYC previously established a checkbox in Kemps for the intake officer to verify that prospective income was inquired. LS-NYC is preparing appropriate communications to remind all Project Directors, and their respective programs, that advocates must consistently screen for income prospects and assets, according to comments to the DR.

21. Ensure that rejected cases are not closed as "other" and create a separate reject closing code for those cases that are de-selected;

Comments to the DR stated that LS-NYC will take the advice offered in the DR and create a closing code "X", which will be used to designate problem cases that should not be reported to any funder. Along with this, LS-NYC will prepare appropriate communications that notify all staff of this issue and when to appropriately use the new "X" closing code, according to comments to the DR. Further comments to the DR stated that LS-NYC will likely add this point into any training they decide to hold to address corrective action #18, such that staff understands all closing codes and how to correctly apply.

22. Ensure that information is sufficiently retained in the case and track closed cases so that cases are not lost or missing. Further, ensure the cause is assessed for the identified missing case files;

Comments to the DR stated that LS-NYC has established policies and procedures for properly maintaining case files which are adhered to by all programs. To remind Project Directors and their respective programs, LS-NYC will prepare appropriate communications reinforcing that case files must be properly maintained so as to not go missing or lost, according to comments to the DR. Further comments to the DR stated that going forward, LS-NYC will continue to emphasize that programs adhere to these procedures.

23. Ensure that the ACMS has the capacity and LS-NYC has the staff to record accurate information regarding LS-NYC's cases; and

Comments to the DR stated that LS-NYC currently uses Kemps for its ACMS and Kemps has proven to have the capacity to adequately capture and store necessary information for clients and case files. Additional comments to the DR stated that in an effort to continuously improve, LS-NYC is in the process of sourcing, developing, and implementing a new ACMS that will further enhance LS-NYC's capacity and ability to serve their clients, with a current outlook for roll-out of 2012. Regarding staff, LS-NYC has recently instituted a more structured system-wide evaluation process to better monitor and improve the performance of all staff and management, which began in 2010, according to comments to the DR. Via this process, LS-NYC will be in a better position to determine that all staff and management are performing their respective functions as needed, according to comments to the DR. Further comments to the DR stated that LS-NYC Central Office is in the process of preparing appropriate communications to remind all Project Directors, and their respective programs, that information recorded on all clients must be accurate. Between Kemps, staff evaluations, staff communications, and the future ACMS, LS-NYC believes they have addressed this issue, and will monitor performance going forward, according to comments to the DR.

24. Ensure that controls are in place to make sure part-time case handlers sign and submit their quarterly certifications timely.

Comments to the DR stated that LS-NYC has established improved process and procedures for maintaining these certifications such that more diligent monitoring of part-time case handlers and associated documentation is present. The revised process gives more oversight to a specific staff manager such that accuracy is ensured, according to comments to the DR. Further comments to the DR stated that this revised process was discussed with OCE representatives during the February 2010 OCE visit and deemed sufficient and as such, LS-NYC believes that this corrective action has been properly addressed.



October 19, 2010

Danilo A. Cardona

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

Re: OCE Draft Report for CSR/CMS visit to LS-NYC (recipient no. 233100)

Dear Mr. Cardona,

Thank you for the OCE Draft Report that was sent to LS-NYC on August 20th. We very much appreciate the audits your team performed in February and June, as this only helps us improve our internal systems and in turn the external effectiveness of our services for the people in need here in New York City. We have closely reviewed the report, and found the results informative.

Enclosed is our response to the draft report. Generally, it highlights steps that are already in place, or will be implemented in order to meet the requirements the draft report laid out. In a couple of cases, we have noted a difference of opinion regarding an issue, and look forward to any additional discussion that may be needed.

Please review and let us know of any additional questions you and your audit team might have before issuing the final report.

Thank you for your attention and support.

Sincerely,

A handwritten signature in black ink that reads "Michael Young". The signature is written in a cursive, flowing style.

Michael D. Young, Interim Executive Director
Legal Services NYC

Enclosure

350 Broadway, 6th Floor
New York, NY 10013-9998

RESPONSE TO LSC OCE DRAFT REPORT

Legal Services NYC

Recipient No. 233100

Audit Dates: February 1-11, 2010 and June 7-11, 2010

OVERVIEW

LS-NYC’s response to the OCE Draft Report is written in three sections. The first section will detail LS-NYC’s response to the findings in the Draft Report. The second and third sections will detail LS-NYC’s response to, and the action plan for, OCE’s Recommendations and Required Corrective Actions, respectively.

LS-NYC’S RESPONSE TO FINDINGS

A. **Case #’s:** LS-NYC appreciates OCE naming each failing case in the Draft Report. However, there are a number of failing case numbers noted that LS-NYC does not see existing in our case management system (Kemps). Thus we cannot validate these cases on our side and take action on those specifically. Those cases are as follows:

07E-1005802	Q07E-100280508	A08E-131006688
07E-11006564	Q08E-100345909	X07E-30003273
07E-13000914	Q09E-6602698	

(note: on these next four cases, the ‘V’ should be ‘U’, but the rest of the # strings also do not exist in Kemps)

V06E-12100551	V07E-120005863
V06E-121006759	V09E-24060659

LS-NYC requests that OCE re-verify these case numbers (and offices) in the audit notes.

B. **Previously deselected cases:** During the audit, the Project Directors (PD’s) and Directors of Administration (DA’s) who met with the OCE audit teams noted to the teams that a significant amount of audited cases were in fact deselected from CSR reporting prior to the audit. On most, if not all occasions, the audit teams stated that those cases would not be counted as failures in the OCE report. However, there are still a significant number of these cases that were counted as failing (43, some across multiple findings), which were previously deselected. Those cases are as follows, by office and by finding #:

Queens Legal Services	
Case #	Finding
Q09E-66001232	3
Q09E-66001276	3, 12
Q09E-66002776	5, 9
Q06E-1014951	9
Q08E-1001182	9
Q08E-66017437	9
Q09E-66000078	9
Q09E-66001484	9
Q09E-66001854	9
Q09E-66001999	9
Q09E-66002028	9
Q09E-66002288	9
Q09E-66002527	9
Q09E-66002554	9
Q09E-66002793	9
Q09E-67000628	9

LSNYC Bronx	
Case #	Finding
X03E-2003230	1, 11
X08E-1001238	3
X08E-1001486	5
X03E-1003525	9, 11
X04E-1000942	9
X04E-1002221	9
X05E-2001106	9, 11
X06E-2001185	9, 11
X04E-2000381	11
X05E-2003243	11
X05E-3003175	11
X06E-2002372	11
X07E-3000992	11

South Brooklyn Legal Services	
Case #	Finding
S09E-68000640	10

Bed-Stuy Community Legal Services	
Case #	Finding
L09E-20000791	3
L07E-1000940	5
L06E-1001655	9
L08E-1000016	9, 10
L08E-1000522	9
L08E-1000597	9

Manhattan Legal Services	
Case #	Finding
M08E-62016800	10
M09E-63000337	10
M09E-63000786	10
M09E-63001495	10

LSNYC Brooklyn Branch	
Case #	Finding
B09E-4000287	5
B08E-1000152	11
B08E-1000217	11

LS-NYC requests that OCE remove these cases from the failure lists.

C. **“Missing” case # Q09E-66002793:** This case is also listed under Finding #9 (lacking description of legal assistance), so is not missing and should be removed from the list of missing cases in Finding #35.

D. Finding #16 (PAI activities)

The OCE Draft report states the following on page 36:

The UMLS office also has a PAI clinic. The clinic is Consumer Debt Collection Clinic which is held every Thursday and staffed with students and volunteer lawyers. The UMLS staff serves as experts once a month. UMLS indicated that there is no eligibility screening conducted by the office, thus the cases are not counted and the cases are closed as matters. In its response to the DR, LS-NYC must provide additional information regarding the level/type of assistance provided during the clinic. If legal advice is being provided, versus legal information only, the participants must be fully screened for eligibility prior to receiving such advice.

LS-NYC needs to clarify this assessment, as there are actually two different programs under operation – both of which meet LSC regulations.

First, UMLS runs an in-house consumer clinic where we see clients who have come to MLS for legal assistance in consumer matters. That clinic – which operates once a month – is staffed by staff attorneys and a fellow from a law firm. For that clinic, all clients are screened by MLS prior to receiving legal advice or brief services by our staff.

In addition, MLS participates in the CLARO Project, in collaboration with the NY City Bar Association and Fordham Law School. That clinic meets weekly and is staffed by volunteer lawyers who provide legal advice and brief services to clients facing consumer debt collection matters. MLS' role in that clinic is to provide training and expert advice to the volunteer lawyers staffing the clinic. MLS does not provide individual advice or assistance to clients at that clinic.

MLS also does not count any cases from that Project since the clients are not screened; we count the time as 'matter time' since we are providing training to private attorneys. If a client who comes to CLARO needs direct legal assistance from our MLS offices, they are referred to MLS and screened (as with all of our clients) before we provide them with individual advice or counsel. Many of the clients who come to CLARO are eligible for legal services.

LS-NYC'S RESPONSE TO RECOMMENDATIONS

1. Provide staff training on the program's policies regarding:

- non-cash benefits;
- the Government Benefits Exemption
- 45 CFR § 1626.4 and Program Letter 06-02;
- VAWA 2006 Amendments
- 45 CFR § 1611.5 (exceptions to annual income ceiling); and
- CFR § 1611.3(2) (waivers of annual asset ceiling):

LS-NYC will consult with Project Directors and other management to determine the best approach to train staff on the above issues. We will likely include some or all of these points in the training that will address a number of the required corrective actions.

2. Create a tickler system to monitor cases so that cases are reviewed periodically and closed if no further legal work is required

LS-NYC recognizes that periodic review of cases is at times needed. We will give thought to how to best implement a tickler system for more structured review of open cases. One solution we can recommend is that managers receive reports from the Case Management System (CMS) on a periodic basis and consistent with supervisory case meetings, that indicate the last date of activity noted in case files. This will help monitor open cases such they do not go dormant and get closed timely.

3. Run periodic case management reports in order to ensure the accuracy of the CSR reporting information prior to submission to LSC

LS-NYC's offices currently run numerous case reports throughout a given year (to verify information for multiple funders), as well as perform a robust clean-up process to verify accuracy of reporting information towards the end of each calendar year. While this process largely works well to ensure accuracy, we will consult with appropriate managers to determine options to further improve the process by running additional, and perhaps more regular, intermediate reports.

LS-NYC'S RESPONSE TO THE REQUIRED CORRECTIVE ACTIONS

Given OCE's feedback during the audits pertaining to the case files, LS-NYC began to address a number of issues that were called out as corrective actions in the Draft Report:

- **Immediate activities:** A number of our offices immediately implemented new procedures to intake and case management processes to fix some of the issues observed by the OCE case audit teams.
- **Standardized case closing checklist:** We developed and put into use a standardized case closing checklist (see Appendix 1 for details) that will greatly aid the Project Director (or DA, or other designee) when reviewing case files before closing. The checklist is a tool to be used to (1) verify that all necessary documentation (e.g. retainer, citizenship, waivers, etc.) is included within the case file and (2) verify that the case has been closed with all proper information (e.g. correct closing code, timely closing, source of funding, etc.). This new checklist was put into use in August 2010, and all offices have been advised to use immediately. We are optimistic the checklist will positively address the vast majority of programmatic case issues found.
- **Standardized waiver forms:** Along with the standardized case closing checklist, we have also developed standardized waivers for exceptions to asset and income levels (see Appendix 2 for details). These forms are also accessible in Kemps for easy use, and were put into use in August 2010 also. All offices have been advised to use immediately, and we are again optimistic that this will resolve some of the office specific issues found with these exceptions.
- **Reminders in CMS:** Within the case management system (Kemps), we have created additional pop-ups and reminders to aid the user in assuring that proper information is in the case file. In particular, there is now a pop-up to remind the case handler (or intake officer) that a proper waiver is needed if the client is above FPG % and/or asset level.
- **Educating staff:** We are in the process of working with our PD's and DA's to determine the best way to further educate our staff on some of the particulars of the regulations and proper case management that were highlighted in this audit. To address some of the issues, a straightforward memo or other appropriate communication to staff is the best option, and for other issues we will likely hold training sessions (either centrally or at the local level) to address specific staff members who need additional development. A version of training that often works well with our programs is a "train-the-trainer" method, in which we hold training in the central office for those people who will train others at the local program level. The local programs will then best determine when and whom will be trained by the newly trained trainers.
- **New CMS pending:** Lastly, LS-NYC is in the process of selecting, developing, and implementing a new case management system, which we hope to have in place for 2012. This major investment is intended to introduce a CMS that offers much improved logic checking, grants management, timekeeping, document filing/sharing, and other features that will aid in many of our service to clients and overall internal processes. Once this CMS is released, it will also address the vast majority of programmatic case issues found.

1. Ensure that PAI allocation methodology is implemented based on actual costs in 2009 and in the future.

Prior to 2009, LS-NYC determined PAI allocation based on estimates rather than actual attorney time. To remedy this approach, LS-NYC developed a revised methodology to calculate annual PAI allocation based on actual attorney time and associated costs (see Appendix 3). This was used to determine 2009 PAI allocation, and provided to OCE for review and comment in March 2010. Going forward, LS-NYC will continue to utilize this approach.

2. Ensure consultation with significant segments of the client community, private attorneys and bar associations when developing the annual PAI plan.

LS-NYC's offices are located in low-income communities throughout the city and our staff is deeply involved with community organizations and community leaders in the development of our priorities. The Board of LS-NYC, the Boards of our Constituent Corporations and the Advisory Group for our Brooklyn Branch Office also provide formal opportunity for community input into program planning, including PAI initiatives and proposals. We develop approaches and programs that are responsive to those identified needs as resources allow. This is true for our staff model and for our PAI projects. For example, as housing remains the highest priority in the city, we have developed strong PAI projects that have added significant resources to our housing practice. Externships at South Brooklyn, Brooklyn Branch and Manhattan focus on housing practice. Other important PAI projects include our Bankruptcy Assistance Project, our

HIV Wills Clinic and the pro bono partnership project for DV work in the Bronx. Each of these projects was developed in consultation with community partners.

In response to the corrective action required under this report, we acknowledge that we have not sufficiently documented the consultative process; we will put in place a process that does so going forward. As part of this, LS-NYC is planning to, at least one month prior to the submission date, circulate its proposed PAI plan to (1) all of the bar associations which appoint board members to the LS-NYC board (which represent city, state and minority bar associations), (2) to the community groups which appoint members to the LS-NYC board, and (3) to the community groups which are represented on the local boards of the LS-NYC constituent corporations. LS-NYC will discuss with and incorporate feedback from these community representatives into the final PAI plan for submission.

3. Ensure updating of Accounting Manual is completed. A copy of the updated manual must be submitted to OCE.

LS-NYC will complete revision of the accounting manual in 2011 and provide a copy to OCE. Going forward, we will regularly review and further update the manual as needed.

4. Ensure that a valid contract is executed with the VOLS for services rendered.

A contract was executed with VOLS on February 19, 2010.

5. Ensure that a portion of VOLS payments is allocated to LSC as derivative income rather than miscellaneous income.

LS-NYC's accounting treatment for VOLS revenue has been revised -- all related revenues are recorded as LSC along with related expenses ensuring resulting net gain (derivative income) or loss is properly recorded as LSC.

6. Ensure that bank charges are reasonable and necessary and that the cost is generally recognized as ordinary and necessary for the operation of LS-NYC or the performance of a grant or contract pursuant to 45 CFR § 1630.3(b)(1).

Bank charges are reasonable and necessary. To ensure effective cash management throughout LS-NYC's offices the organization utilizes several services as offered by our bank (JP Morgan Chase). To limit fees charged for these and other services LS-NYC invests bank balances overnight to cover our fees and to get optimal rates. Recently due to the decline in national interest rates, fees have not been entirely eliminated by the offsetting of earned income as in previous years; hence LS-NYC incurs some fees.

7. Ensure that staff attorneys execute retainers before commencement of legal services. LS-NYC is reminded that the lack of a retainer does not preclude CSR reporting eligibility. Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LS-NYC has discussed this issue with our Project Directors, and is in the process of preparing appropriate communication to remind them and their respective programs that execution of retainers must be performed timely prior to client representation. We will additionally notify staff that the lack of a retainer does not preclude CSR reporting eligibility.

Additionally, as mentioned before, LS-NYC has implemented a standardized case closing checklist that will directly address this issue.

Between staff communications and the closing form, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

- 8. Ensure reclassification of at least \$56,319 from bad debt expense for allowance for doubtful accounts instead of an immediate write-off since management believes that these funds will be recovered.**

LS-NYC does not maintain an allowance account for bad debts but records debts as not deemed collectible as a direct expense when information becomes available. Based on information available at year-end the cited bad debt was deemed uncollectible. Subsequently after conversations and negotiation with the funder, vouchers were revised and resubmitted and payment received. The accounting treatment was revised to reflect transactions as noted.

- 9. Ensure all cases that are referred to PAI Attorneys include citizenship/alien eligibility screening and effective oversight and follow-up in an effort to ensure compliance with the requirements.**

LS-NYC is somewhat unsure of how this became a corrective action, as there was no mention in the Draft Report in either Finding 5 (verification of citizenship / alien eligibility) or Finding 16 (PAI activities) that LS-NYC had failing PAI cases due to poor citizenship/alien eligibility screening. Of the 19 failing cases mentioned in Finding 5, all of those are staff cases, not PAI. Furthermore, in Finding 16 on page 33 of the Draft Report, it is stated that "LS-NYC is in compliance with 45 CFR 1614.3(d)(3) which requires oversight of the PAI case files."

As such, LS-NYC would like further insight into what exactly OCE found during the audit in this regard. Pending that information, LS-NYC will continue to provide proper eligibility screening and effective oversight and follow-up to ensure compliance on all PAI cases.

- 10. Ensure necessary changes are made to the budget in a timely manner to eliminate insurmountable deficit balances.**

LSC net asset balances taken as a whole for the organization has consistently been positive. LSC deficit net asset balances relate entirely to two LS-NYC offices, which incurred deficits in previous years. In the most current years, due to more aggressive budgeting, monitoring and reporting offices have continually been held in positive territory to ensure future deficits do not occur.

- 11. Ensure that where the client's income is over 125% of FPG that authorized exceptions are noted, or that the case is not accepted with LSC funds.**

LS-NYC is preparing appropriate communications to remind all Project Directors, and their respective programs, that waiver forms are required for LSC-funded cases in which the client's income is greater than 125% of FPG.

Additionally, as mentioned before, LS-NYC's technology department has added a pop-up in Kemps to remind advocates to obtain proper authorization when a client's income is over 125% of FPG. Also, the standardized case closing checklist will further address oversight of this issue.

Between staff communications, the pop-up reminder in Kemps, and the closing form, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

- 12. Revise the "Exception to Maximum Income Level or Asset Ceiling" form utilized by LS-NYC Bronx so that it is consistent with LS-NYC policies and CFR regulations.**

LS-NYC has discussed this issue with our Bronx program and they are now utilizing the standardized waiver forms (see Appendix 2) as mentioned at the start of this section, which meet the CFR Regulations.

- 13. Revise the Screening Sheets and remove screening for Student and Tourist Visas; and revise the April 3, 2007 "Request for Citizenship Form" so that the citizenship attestation form contains a separate signature line tied only to the citizenship attestation consistent with the provisions of CSR Handbook.**

The Draft Report was not clear on which offices this affects (see page 9 of DR), so would be helpful if OCE can provide such that we can target specifically.

However, LS-NYC recognizes that these may be broader issues seen at multiple offices, and will prepare appropriate communications to all Project Directors to ensure that (1) student and tourist visas are removed from all screening documents and (2) there is a separate signature line that is tied only to citizenship attestation on all requests for citizenships.

14. Ensure that food stamps are not included as income.

LS-NYC is preparing appropriate communications to educate all Project Directors, and their respective programs, that food stamps are not to be included as income when performing eligibility screens on prospective clients.

Additionally, "food stamps" is included as an option for income in our CMS. Our technology department is currently in the process of removing that option, such that food stamps are not included in the total income calculations.

Between staff communications and CMS update, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

15. Ensure that all case files contain citizenship attestations pursuant to 45 CFR § 1626.6(a) where appropriate. Further, ensure that all case files lacking the required citizenship attestations are de-selected from the CSR submission.

LS-NYC is preparing appropriate communications to educate all Project Directors, and their respective programs, that citizenship attestations must be obtained pursuant to the regulations. We will employ the "whites-of-their-eyes-rule" to obtain the attestation for any citizen whom we advise/represent in person.

To further enforce this regulation, LS-NYC may decide in conjunction with the PD's / DA's that some type of training is needed at either the central office or local level. We will incorporate into our standard training materials.

LS-NYC will also ensure that the files highlighted in the Draft Report as lacking required attestations will be de-selected from CSR submissions.

16. Ensure that cases are closed in a timely manner in compliance with CSR regulations and make sure open cases are not dormant by providing follow-up and oversight. Further, ensure that all cases identified in this draft report that were not timely closed or dormant be de-selected from future CSR submission.

LS-NYC is preparing appropriate communication to remind all Project Directors, and their respective programs, that (1) cases must be closed in a timely manner and (2) open cases are not dormant by providing appropriate follow-up and oversight by advocates. The latter may be addressed by the tickler system as mentioned in OCE's recommendation #2.

Additionally, as mentioned, LS-NYC has implemented a standardized case closing checklist that will directly address this issue from a reporting standpoint.

Furthermore, LS-NYC will ensure that the case files identified during the OCE audit will be de-selected from future CSR submissions.

Between staff communications, tracking the identified cases in the draft report, and the closing checklist, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

17. Ensure that the legal assistance provided is documented in the case file and that those case files identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, a review of all files at the time of closing is necessary.

LS-NYC is preparing appropriate communications to educate all Project Directors, and their respective programs, that a description of the legal assistance provided must be included in all case files.

Additionally, as mentioned before, LS-NYC has implemented a standardized case closing checklist that will directly address this issue, as no case should be closed without first verifying that a description of legal assistance is present.

Furthermore, LS-NYC will ensure that the case files identified during the OCE audit will be de-selected from future CSR submissions.

Between staff communications, tracking the identified cases in the draft report, and the closing checklist, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

18. Ensure that staff is trained on the proper closing codes and categories to comply with CSR Handbook.

LS-NYC recognizes that improved understanding of closing codes is needed across all programs. As such, we are preparing appropriate communications to educate all Project Directors, and their respective programs, that the proper closing codes and categories must be adhered to on each closed case. This is also an issue that will likely get addressed via direct training to staff at both the central and local levels.

As mentioned before, LS-NYC has implemented a standardized case closing checklist that will directly address this issue by ensuring that staff will properly review/verify the closing code for each case.

Between staff communications, staff training, and the closing form, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

19. Ensure that all offices apply the over-income exception policy in a similar manner. As part of this, training should be provided to staff as to when and how to apply expenses and factors to applicants whose income falls between 125 - 200% of FPG.

LS-NYC is preparing appropriate communications to educate all Project Directors, and their respective programs, that the over-income exception policy must be appropriately followed for LSC-funded cases. This is also an issue that will likely get addressed via direct training to staff at both the central and local levels.

As mentioned at the start of this section, a pop-up reminder has been established in Kemps to uniformly remind advocates and screening / intake officers when authorization (by PD or designee) is needed.

Between staff communications, staff training, and the closing form, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

20. Ensure that advocates consistently screen for income prospects and assets pursuant to 45 CFR § 1611.7(a)(1).

LS-NYC previously established a checkbox in Kemps for the intake officer to verify that prospective income was inquired. This, however, is being adhered to differently across offices as pointed out in the Draft Report. As a result, LS-NYC is preparing appropriate communications to remind all Project Directors, and their respective programs, that advocates must consistently screen for income prospects and assets.

21. Ensure that rejected cases are not closed as "other" and create a separate reject closing code for those cases that are de-selected.

LS-NYC will take the advice offered in the Draft Report and create a closing code "X", which will be used to designate problem cases that should not be reported to any funder. Along with this, LS-NYC will prepare appropriate communications that notify all staff of this issue and when to appropriately use the new "X" closing code.

Additionally, we will likely add this point into any training we decide to hold to address corrective action #18, such that staff understands all closing codes and how to correctly apply.

As mentioned before, LS-NYC has implemented a standardized case closing checklist that will directly address this issue by ensuring that staff will properly review/verify the closing code for each case.

Between staff communications, potential staff training, and the closing form, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

22. Ensure that information is sufficiently retained in the case and track closed cases so that cases are not lost or missing. Further, ensure the cause is assessed for the identified missing case files.

LS-NYC has established policies and procedures for properly maintaining case files, and is adhered to by all programs. To remind Project Directors and their respective programs, LS-NYC will prepare appropriate communications reinforcing that case files must be properly maintained so as to not go missing or lost. Going forward, LS-NYC will continue to emphasize that programs adhere to these procedures.

Specific to the six cases listed as missing in the Draft Report, the following must be stated:

- Case # Q09E-66002793 was also listed in Finding 9 (legal assistance not described). Therefore, this case could not have been missing, and should be removed from this corrective action.
- The other five missing cases were all from our Queens program, and importantly were from 2007, which was a time period in which our Queens program was unfortunately under subpar directorship. That PD left in 2008. To restore order, in 2009 one of our longstanding and strongest PD's took over as acting PD for that program, along with an equally strong deputy PD. Together, they overhauled the program and re-instilled a culture of excellence. Going forward we do not expect any cases to go missing, especially in our Queens offices.

23. Ensure that the ACMS has the capacity and LS-NYC has the staff to record accurate information regarding LS-NYC's cases.

LS-NYC currently uses Kemps for its ACMS. Kemps has proven to have the capacity to adequately capture and store necessary information for clients and case files. In an effort to continuously improve, LS-NYC is in the process of sourcing, developing, and implementing a new ACMS that will further enhance LS-NYC's capacity and ability to serve our clients. The current outlook for roll-out is 2012.

Regarding staff, LS-NYC has recently instituted a more structured system-wide evaluation process to better monitor and improve the performance of all staff and management. This new review process began in 2010. Via this process, LS-NYC will be in a better position to determine that all staff and management are performing their respective functions as needed.

Additionally, LS-NYC Central Office is in the process of preparing appropriate communications to remind all Project Directors, and their respective programs, that information recorded on all clients must be accurate.

Between Kemps, staff evaluations, staff communications, and the future ACMS, LS-NYC believes we have addressed this issue, and will monitor performance going forward.

24. Ensure that controls are in place to make sure part-time case handlers sign and submit their quarterly certifications timely

LS-NYC has established improved process and procedures for maintaining these certifications such that more diligent monitoring of part-time case handlers and associated documentation is present. The revised process gives more oversight to a specific staff manager such that accuracy is ensured.

This revised process was discussed with OCE representatives during the February 2010 OCE visit and deemed sufficient. As such, we believe that this corrective action has been properly addressed.

Appendix 1:
Case Closing Checklists
(for individual and group clients)

CASE CLOSING CHECKLIST

Legal Services NYC

CASE INFORMATION

CASE FILE #:	Testcase	OFFICE: Main	DATE OPENED:	3/30/2000
CLIENT NAME:	Test Client		DATE CLOSED:	7/20/2000
CASE HANDLER:	Test Advocate	INTAKE OFFICER: Test Intake		
CASE TYPE:		REASON REJECTED:		
PROBLEM CODE:	72	Social Security (Not SSDI)		
MAIN BENEFIT:	7002	Overcame denial of emergency assistance by DSS		
FUNDING CODE 1:	4000	LSC - Basic Grant		
FUNDING CODE 2:	0	Not filled in		
MONTHLY RECOVERY:	\$250.00	<u>Direct Dollar Benefits to Clients (if any):</u>		
MONTHLY RECOVERY:	\$250.00	Includes but is not limited to the following: EITC refunds, UIB, back wages, SSI/SSD, PA,		
TOTAL RECOVERY:	\$0.00	FS, child support, alimony, back rent and ongoing rent, affirmative employment, consumer,		
		and landlord-tenant judgments, etc.		
REASON CLOSED CODE:	A			

VERIFICATIONS (to be completed by Reviewer)

A. CITIZENSHIP / ALIEN STATUS

Status (from CMS): Eligible Alien-Documentation In File

- ① Phone rep only DV / Human trafficking victim (Kennedy Amendment)
 Signature and date (if U.S. citizen) Copy of documentation, & dated (if eligible alien)
- ② Signature / documentation dated prior to commencement of representation; OR
 Due to emergency situation, signature / documentation is dated subsequent to commencement of representation

B. INCOME LEVEL

Percent Of Poverty (from CMS, or calculated):

- Eligible under non-LSC funds (ensure appropriate funding code selected)
 If over 125% and LSC funded, approved waiver in file
 Specific amount(s) of income recorded in file?

C. ASSET LEVEL

Total Assets (from CMS):

- If over \$13,000 and LSC funded, approved waiver in file
 Specific amount(s) of assets recorded in file, OR recipient of government benefits that tests for assets

D. CASE DOCUMENTATION

- Retainer: Signed and dated (proximate to commencement of representation) (Full rep only)
 Retainer: Includes adequate scope and subject matter of legal representation (Full rep only)
 Evidence of legal advice/work in the case file (Advice cases must indicate specific advice provided to client)
 Resolution of case is adequately stated within case file (Full rep only)

E. TIMELY CLOSING

Has this case been timely?

- Yes
 No

Cases closed as A or B shall be closed in the year in which the case was opened, unless the case is opened after September 30, in which circumstance it may be closed in the next year. Cases closed as F through L shall be closed in the year in which work was completed. In the absence of an entry in the file stating a reason why the case should be held open into the following year, case MUST be closed by the end of the year following the last assistance on behalf of the client is noted in the file.

Full representation case (Closing code F, G, H, I, K, or L)

- If case has been dormant throughout any full calendar year, ensure case notes include reason(s) why case has been kept open

REPORTING

CSR (from CMS): No

Is recording in CMS correct? YES NO

Deselect (from CMS): _____

Is recording in CMS correct? YES NO

REVIEWER'S SIGNATURE: _____ DATE: _____

APPROVAL (if req'd by program): _____ DATE: _____

* Use other side of form for additional notes if needed

CASE CLOSING CHECKLIST – GROUP CASES

Legal Services NYC

CASE INFORMATION

CASE FILE #:	Testcase	OFFICE: Main	DATE OPENED: 3/30/2000
CLIENT NAME:	Test Client		DATE CLOSED: 7/20/2000
CASE HANDLER:	Test Advocate	INTAKE OFFICER: Test Intake	
CASE TYPE:		REASON REJECTED:	
PROBLEM CODE:	72	Social Security (Not SSDI)	
MAIN BENEFIT:	7002	Overcame denial of emergency assistance by DSS	
FUNDING CODE 1:	4000	LSC - Basic Grant	
FUNDING CODE 2:	0	Not filled In	
MONTHLY RECOVERY:	\$250.00	<u>Direct Dollar Benefits to Clients (if any):</u>	
MONTHLY RECOVERY:	\$250.00	Includes but is not limited to the following: EITC refunds, UIB, back wages, SSI/SSD, PA,	
TOTAL RECOVERY:	\$0.00	FS, child support, alimony, back rent and ongoing rent, affirmative employment, consumer,	
		and landlord-tenant judgments, etc.	
REASON CLOSED CODE:	A		

VERIFICATIONS (to be completed by Reviewer)

A. GROUP ELIGIBILITY

- ① Is there evidence within case file detailing eligibility of this group for legal representation?
- ② Group eligibility determined prior to commencement of representation; OR
- Due to emergency situation, group eligibility was determined subsequent to commencement of representation

C. CASE DOCUMENTATION

- Retainer: Signed and dated (proximate to commencement of representation) *(Full rep only)*
- Retainer: Includes adequate scope and subject matter of legal representation *(Full rep only)*
- Evidence of legal advice/work in the case file **(Advice cases must indicate specific advice provided to client)**
- Resolution of case is adequately stated within case file *(Full rep only)*

D. TIMELY CLOSING

Has this case been timely?

- Yes
- No

Cases closed as A or B shall be closed in the year in which the case was opened, unless the case is opened after September 30, in which circumstance it may be closed in the next year. Cases closed as F through L shall be closed in the year in which work was completed. In the absence of an entry in the file stating a reason why the case should be held open into the following year, case MUST be closed by the end of the year following the last assistance on behalf of the client is noted in the file.

Full representation case (Closing code F, G, H, I, K, or L)

- If case has been dormant throughout any full calendar year, ensure case notes include reason(s) why case has been kept open

REPORTING

CSR (from CMS): <u>No</u>	Deselect (from CMS): _____
Is recording in CMS correct? YES <input type="checkbox"/> NO <input type="checkbox"/>	Is recording in CMS correct? YES <input type="checkbox"/> NO <input type="checkbox"/>

ADDITIONAL NOTES

REVIEWER'S SIGNATURE: _____ DATE: _____

APPROVAL (if req'd by program): _____ DATE: _____

Appendix 2:
Standardized Income and Asset Waiver Forms

WAIVER OF ANNUAL INCOME CEILING

Legal Services NYC

CASE INFORMATION

CASE FILE #: Test case

CLIENT NAME: LSNYC Test Client

INCOME LEVEL WAIVER

The annual income ceiling for individuals and households served by LEGAL SERVICES NYC using LSC funds is 125% of the Federal Poverty Guidelines as published annually in the Federal Register by LSC in Appendix A to 45 C.F.R. 1611.

Authorized Exceptions to the Annual Income Ceiling:

If the applicant meets the appropriate asset ceiling for the household size (or the asset ceiling is waived) and the applicant's income is above 125% of the Federal Poverty Guidelines, the applicant is financially eligible for LSC-funded legal assistance if:

- _____ (1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or
- _____ (2) The Executive Director, Project Director or designee has determined that the income is primarily committed to medical or nursing home expenses and that, excluding such expenses, the applicant would be otherwise financially eligible for legal assistance.

If the applicant meets the appropriate asset ceiling for the household size (or the asset ceiling is waived) and the applicant's income is above 125% of the Federal Poverty Guidelines, but does not exceed 200% of the Federal Poverty Guidelines, the applicant is eligible for LSC-funded legal assistance if:

- _____ (1) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or
- _____ (2) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or
- _____ (3) The applicant should be considered financially eligible because of one or more of the following factors:
 - _____ a. The applicant's income prospects are limited or the applicant experiences seasonal variations in income; or
 - _____ b. The applicant has unreimbursed medical expenses, including medical insurance premiums; or
 - _____ c. The applicant has fixed debts or obligations; or
 - _____ d. The applicant has expenses such as for dependent care, transportation or equipment necessary for employment, job training, or educational activities in preparation for employment; or
 - _____ e. The applicant has non-medical expenses associated with age or disability; or
 - _____ f. The applicant is responsible for paying current taxes; or

Additional facts justifying waiver

ADVOCATE INITIALS: _____

PROJECT DIRECTOR'S (or Designee's) APPROVAL: _____

DATE: _____

WAIVER OF ASSET CEILING

Legal Services NYC

CASE INFORMATION

CASE FILE #: Test case

CLIENT NAME: Test Client

ASSET CEILING WAIVER

Definition of Assets:

Assets are cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash and currently and actually available to the applicant.

The following items are excluded from consideration as assets:

- (1) the applicant's or household's principal residence;
- (2) vehicles used by the applicant or household members for transportation;
- (3) assets used in producing income;
- (4) for DV applicants, assets of the perpetrator or jointly owned with the perpetrator
- (5) any other assets that are exempt from attachment under New York State or Federal law.

Asset Ceilings:

In order to be determined to be financially eligible for legal assistance supported in whole or in part by LSC funds, an applicant's assets must be at or below the Legal Services NYC asset ceilings, which are reviewed annually and adopted by the Legal Services NYC Board of Directors, or the asset ceiling must be waived.

Legal Services NYC Asset Ceiling: The asset ceiling is \$13,000.

Waiver of Asset Ceilings:

Legal Services NYC's Project Directors, or their designees, may waive the asset ceiling(s) for particular applicants under unusual circumstances.

Unusual circumstances justifying waiver

ADVOCATE INITIALS: _____

PROJECT DIRECTOR'S (or Designee's) APPROVAL: _____

DATE: _____

Appendix 3:
Revised PAI methodology (March 2010)

Note: the following was emailed to Alberto Lopez-Silvero (of the OCE fiscal audit team) on March 19, 2010.

Summary of LS-NYC 2009 PAI efforts

PAI HOURS	2009	calculation notes
Case (CA)	11,983.00	see worksheet: "2009 PAI hours & spend"
Matters (MA)	5,092.50	see worksheet: "2009 PAI hours & spend"
Supporting (SA)	1,645.50	see worksheet: "2009 PAI hours & spend"
TOTAL	18,721.00	see worksheet: "2009 PAI hours & spend"

PAI SPEND	2009	calculation notes
LSC funds to LS-NYC	\$ 16,281,450	
goal for PAI spend (12.5%)	\$ 2,035,181	
LS-NYC PAI spend	\$ 2,047,662	
\$ over / (under) amount	\$12,481	
% of LSC funds to PAI	12.6%	= (actual 2009 PAI spend) / (LSC funds to LS-NYC)
Fringe rate	40.0%	= (total fringe 2009) / (total personnel spend 2009)
Calculated PAI % (multiplier)	4.5%	= (total PAI personnel direct spend) / (total advocates personnel spend)
2009 PAI spend		
Direct spend		
PS - advocates	\$ 759,242	see worksheet: "2009 PAI hours & spend"
PS - other direct staff	\$ 138,851	see worksheet: "2009 PAI hours & spend"
PS - fringe	\$ 359,445	= (sum of direct spend on PAI personnel) * (fringe rate)
OTPS	\$ 13,351	see worksheet: "2009 YTD salary"
Total Direct	\$ 1,270,889	
Indirect spend		
PS - advocates	\$ -	all advocate time on PAI is considered direct
PS - non advocates	\$ 249,706	= (total spend on non-advocates) * (calculated PAI %)
PS - fringe	\$ 99,940	= (sum of indirect spend on PAI personnel) * (fringe rate)
OTPS	\$ 427,127	= (total spend on OTPS - direct OTPS) * (calculated PAI %)
Total Indirect	\$ 776,773	
Total PAI (2009)	\$ 2,047,662	

PRIVATE ATTORNEY INVOLVEMENT
(PAI / PBI)

CHAPTER VII (revised, from Accounting Manual)

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7.01 INTRODUCTION

Effective June 20, 1984, the Legal Service Corporation (LSC) requires all legal service programs to use 125% of the LSC Basic Field Grants to encourage the involvement of private attorneys in the delivery of legal services to the poor. This requirement is documented in the LSC's Private Attorney Involvement Regulation issued in May 1984 [Catalogue of Federal Register, Volume 45, Part 1614.]

Since the Legal Services NYC ("LS-NYC") receives an annual LSC Basic Field Grant, it is obligated to meet the requirements of the PAI Regulation. Consequently, LS-NYC has established a PAI Program designed to comply with this regulation. This program has the following three components:

1. Direct involvement of LS-NYC and the Operating Legal Services Corporations (OLSCs) attorneys and support staff in PAI activities.
2. Contract between LS-NYC and Volunteers of Legal Services, Inc. to promote and encourage the involvement of private attorneys in the LS-NYC's PAI Program.
3. Contract between LS-NYC and the Legal Aid Society to provide services to eligible low-income individuals through private attorney *pro bono* and direct representation.

Definition of Private Attorney

The term "private attorney" as used in Part 1614 means an attorney who is not a staff attorney as defined in Section 1600.1 of LSC Regulation. A "staff attorney" is defined as an attorney licensed in the jurisdiction, normally New York, who derives more than half of his/her annual professional income from the proceeds of a grant from the LSC or from a sub-recipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the LSC Act.

This chapter describes the general policies, the activities allowed and prohibited and the fiscal requirements of the PAI Regulation as well as how LS-NYC complies with them.

7.02 PAI REGULATION – GENERAL POLICIES

The PAI Regulation policy requirements, as they apply to LS-NYC, are summarized as follows: [45 CFR Part 1614.2(a)-(c)]

- 12.5% of LS-NYC annualized basic field award must be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and such funds be expended in an economical and efficient manner.
- LS-NYC must apply the percentage requirement to that portion of its program related to any direct advocacy activities on behalf of eligible clients.
- LS-NYC must make the PAI Program an integral part of a total local program undertaken within established priorities of that program in a manner that further the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients.
- LS-NYC Board of Directors is responsible for the implementation of the PAI Program as well as compliance with its requirements, subject to review and evaluation by the Legal Services Corporation.

7.03 PAI REGULATION – ACTIVITIES ALLOWED

The range of activities allowed by the PAI Regulation include, but are not limited to: [45 CFR 16143(a)]

- Direct delivery of legal assistance to eligible clients through organized *pro bono*, reduced fee plans, judicare panels, private attorney contracts, and those modified *pro bono* plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems.
- Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources.
- Support provided by the recipient to private attorneys including the provision of training, technical assistance, research, advice and counsel; or the use of recipient facilities, libraries, computer-assisted legal research systems or other resources.

7.04 PAI REGULATION – ACTIVITIES PROHIBITED

The PAI Regulation prohibits the following activities: [45 CFR 1614.5(a)-(b)]

- Revolving litigation fund systems that systematically encourage the acceptance of fee-generating cases by advancing funds to private attorneys for costs, expenses and/or attorney fees.
- The above prohibition does not prevent reimbursement or payment of costs and expenses incurred by private attorneys in normal situations in assignments through a judicare or *pro bono* panel.

Note: see exhibit 7-1 regarding additional LS-NYC guidelines for appropriate PAI activities and reporting to LSC.

7.05 PAI REGULATION – ACCOUNTING AND FINANCIAL REQUIREMENTS

The accounting and financial reporting systems used to account for costs allowable in meeting the 115% requirement must have the following characteristics: [45 CFR Part 1614.3(d)]

- The accounting and financial reporting systems must meet the requirements of the Legal Services Corporation's Audit and Accounting Guide for Recipients and Auditors (the "Audit Guide").
- The accounting system must identify and account for:
 - (i) The recipient's administrative, overhead, staff and support costs related to private attorney involvement activities;
 - (ii) Payments to private attorneys for support or direct client services rendered;
 - (iii) Contractual payments to individuals or organizations which will undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of the PAI Regulation; and
 - (iv) Other such actual costs as may be incurred by the recipient in this regard.
- The income and expenses relating to the PAI effort must be reported separately in the year-end audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule of income and expenses related to the PAI effort as part of the audit
- Internal records necessary to demonstrate that funds have been utilized for the PAI Program must be maintained. Internal records must include:
 - (i) Contracts on file that set forth payment systems, hourly rates, maximum allowable fees, etc;
 - (ii) Bills/invoices that are submitted and processed before payments are made;
 - (iii) Job descriptions, program directives or provisions included in collective bargaining agreements which set for specific program staff PAI requirements; and
 - (iv) Staff time records.
- Direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to private attorney involvement, such costs must be documented by detailed timesheets accounting for all those employees' time, not just the time spent on private attorney involvement activities. However, this time-keeping requirement does not apply to such employees as receptionists, secretaries, intake persons or bookkeepers.
- Direct payments to private attorneys must be supported by invoices and internal procedures performed by the program to ensure that the services billed have actually been delivered.
- Non-personnel costs must be allocated on the basis of reasonable operating data. All methods of allocating funds must be clearly documented.
- Contracts concerning transfer of LSC funds for PAI activities must indicate that such funds will be accounted for by the recipient in accordance with LSC guidelines. Organizations receiving funds are considered a sub-recipient or sub-grantee and are bound by all accounting and audit requirements, the Audit Guide and 45 CFR Part 167. These grants must be accounted for on a cost-reimbursable basis so that the primary recipient will be responsible for unspent funds.
- Encumbrances can not be included in the calculation of whether a program has met PAI requirements, nor could they be recorded as an expense for audit purposes. Only actual expenditures or those amounts shown as accounts payable or accrued liabilities according to generally accepted accounting principles at the end of the fiscal period may be utilized to determine whether or not the program has met the PAI requirements.

7.06 CALCULATING THE 12.5% REQUIREMENT

The PAI Regulation specifies that only the LSC annual basic field grant awarded to LS-NYC must be used to calculate the 12.5% required amount, and that only expenditures from the current year's annual grant will count toward meeting that year's PAI requirement. Therefore, funds carried over from prior years, one-time grants of any kind, funds from non-LSC sources and even interest and attorneys fees earned on LSC annual grants cannot be included in calculating the 12.5% required amount. Similarly, LS-NYC can only claim credit against the 12.5% required for PAI activities which are paid for out of the current annual grant funds.

7.07 SPENDING THE 12.5% REQUIRED AMOUNT

The PAI Regulation allows certain kinds of expenses to count towards meeting the 12.5% requirement [45 C.F.R., 1614.3(d)]. Some of those expenses include:

- Payments to private attorneys for direct services to clients;
- Salaries paid to staff for developing and implementing a PAI plan;
- Costs for office space where PAI work is done;
- Travel expenses to attend bar meetings or recruit private attorneys;
- Telephone charges for making referrals and doing follow-up on PAI cases;
- Training costs for staff to learn PAI rules and procedures;
- Production and printing costs for PAI practice manuals;
- The portion of the audit fee attributable to the PAI audit; and
- Litigation costs in PAI cases, etc.

Furthermore, under the PAI Regulation, personnel and non-personnel costs may be counted toward PAI, whether they are incurred solely for PAI purposes or are shared-purpose expenses. However, shared-purpose expense must be allocated among the several purposes.

7.08 ACCOUNTING FOR PAI EXPENDITURES

LS-NYC has developed and implemented a computerized formula (the "PAI Formula") to assist in the computation of expenditures incurred on behalf of the PAI activities.

The components of the PAI Formula follow:

- 1) Direct salaries of attorneys - are based on the employee hourly rate multiplied by the number of hours charged to PAI according to time as entered on timesheets and maintained in the organizations Case Management System (CMS).
- 2) Other Staff salaries - are based on the ratio of direct attorney staff salaries to total salaries in the current year.
- 3) Fringe benefits for attorneys and other staff – are calculated based on a percentage ratio of total salaries as applied against total fringe costs.
- 4) OTPS expenses not directly chargeable - are based on the current year's ratio of total PAI salaries to total salaries.
- 5) Specific OTPS expenses - are based on actual costs incurred.

LS-NYC has developed and implemented a computerized formula (the "PAI Formula") to assist in the computation of expenditures incurred on behalf of the PAI activities.

7.09 COMPUTATION OF PAI EXPENDITURES

Expenditures incurred on behalf of the PAI Program are comprised of:

DIRECT TIME

1. All attorneys and paralegals are required to enter time in the organizations Case Management System (CMS) and record all direct time related to PAI.
2. Non-attorney staff are not required to enter time into "CMS" but may perform activities that would be considered PAI activities, thus their time related to PAI would be considered as direct.

After a determination is made of what constitutes direct time a percentage ratio is calculated:

$$\text{Calculated PAI \%} = (\text{total PAI direct personnel cost}) / (\text{total advocates personnel cost})$$

NON – ATTORNEY TIME, FRINGE AND OTPS

3. All other costs are calculated using the calculated PAI percentage against all other costs not considered direct, except for fringe, which is calculated as a percentage of personnel using the organization's predetermined fringe percentage.

EXHIBIT 7-1

**Guidelines for Private Attorney Involvement (PAI / PBI):
Staff Timekeeping and LSC Reporting**

LS-NYC Staff must accurately document all Staff time spent on private attorney involvement. To ensure that all Staff are recording time consistently and accurately, use the following situations and/or cases as guidelines for PAI reporting.

Item #	Activity / Case	Staff	PAI Recording	Legal Files Data Entry
1	Case within our priorities is transferred to PAI Coordinator for a successful referral to Private Attorney	<ul style="list-style-type: none"> • PAI Coordinator • Support Staff • Any other Staff working the case 	<ul style="list-style-type: none"> • All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none"> • PAI file • “Referral Attorney” role in file related people • PAI program starting with “PAI” • Any activity code
2	Case within our priorities is transferred to PAI Coordinator for a referral to Private Attorney but referral efforts are unsuccessful and case is either rejected or closed with advice by Staff member	<ul style="list-style-type: none"> • PAI Coordinator • Support Staff • Any other Staff working the case 	<ul style="list-style-type: none"> • All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none"> • Not a PAI file in reports to LSC • All Staff time must be coded to “PAI” activity codes • If not rejected, enter “Staff (PAI referral unsuccessful)” in PAI program field
3	Case within our priorities is transferred to PAI Coordinator for a referral to private attorney. Private Attorney agrees to handle case but client fails to contact private attorney. Case is either rejected or closed with advice by Staff member	<ul style="list-style-type: none"> • PAI Coordinator • Support Staff • Any other Staff working the case 	<ul style="list-style-type: none"> • All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none"> • Not a PAI file in reports to LSC • PAI Attorney role may be either “Referral Attorney” or “Former Referral Attorney” • All Staff time must be coded to “PAI” activity codes • If not rejected, enter “Staff (transferred from PAI Attorney)” in PAI program field
4	Case is transferred to Staff Attorney after unsuccessful referral attempts to Private Attorney	<ul style="list-style-type: none"> • Staff attorney 	<ul style="list-style-type: none"> • Staff Attorney time is <u>NOT</u> PAI time 	<ul style="list-style-type: none"> • Not a PAI file in reports to LSC • PAI Attorney role may be either “Referral Attorney” or “Former Referral Attorney” • Staff Attorney should <u>not</u> use “PAI” activity codes • Enter “Staff (PAI referral unsuccessful)” in PAI program field

(Exhibit 1 continued)

Item #	Activity / Case	Staff	PAI Recording	Legal Files Data Entry
5	Case is initially referred to Private Attorney, then is transferred to Staff attorney when Private Attorney does not complete representation for any reason	<ul style="list-style-type: none"> Staff attorney 	<ul style="list-style-type: none"> Staff Attorney time is <u>NOT</u> PAI time 	<ul style="list-style-type: none"> Not a PAI file in reports to LSC PAI Attorney role may be either "Referral Attorney" or "Former Referral Attorney" Staff Attorney should <u>not</u> use "PAI" activity codes Enter "Staff (transferred from PAI Attorney)" in PAI program field
6	Private Attorney performs initial intake and provides closing advice or brief service	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none"> PAI file "Referral Attorney" role in file related people PAI program starting with "PAI" Any activity code
7	Private Attorney performs initial intake and then case is assigned to Staff Attorney	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> PAI Coordinator and support Staff time spent on recruiting, scheduling Private Attorney, reviewing case with supervisor and transferring case <u>is</u> PAI time Staff Attorney time is <u>not</u> PAI time 	<ul style="list-style-type: none"> Not a PAI file in reports to LSC PAI Attorney role is "PAI Attorney: Intake and other activities" PAI program is one of the "PAI ... Intake" options PAI Coordinator and support Staff time must use "PAI" activity codes Staff Attorney should <u>not</u> use "PAI" activity codes
8	Staff Attorney co-counsels with Private Attorney on case	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time (including travel time) <u>is</u> PAI time All associated expenses (meals, lodging, etc.) are PAI 	<ul style="list-style-type: none"> Not a PAI file in reports to LSC PAI Attorney role is "PAI Attorney: Intake and other activities" PAI program is one of the "Staff ... Co-Counseling" options All Staff <u>must</u> use "PAI" activity codes
9	Staff Attorney gives support (training, supervising, mentoring, case support, etc) to Private Attorney	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none">
10	Case outside priorities is referred or attempted to be referred to Private Attorney <i>Note: this is not a case for CSR purposes. Unless it is an emergency, it should be rejected. For discussion of "emergency", see 45 CFR 1620 and LANC policy on priorities</i>	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>spent on the referral attempts</u> <u>is</u> PAI time 	<ul style="list-style-type: none"> Not a PAI file in reports to LSC All Staff <u>must</u> use "PAI" activity codes

(Exhibit I continued)

Item #	Activity / Case	Staff	PAI Recording	Legal Files Data Entry
11	Case is referred to Private Attorney panel (e.g., social security, bankruptcy), but is then closed and is not tracked to its conclusion	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>spent on the referral</u> is PAI time 	<ul style="list-style-type: none"> Not a PAI file in reports to LSC All Staff <u>must</u> use "PAI" activity codes
12	Non-case referrals to private bar ("matters")	<ul style="list-style-type: none"> Receptionist 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none"> Task: "Worked" Activity: "W-PAI Support" Single entry per day
13	Discussions or activities related to <u>using</u> Private Attorneys	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time All associated expenses are PAI 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes
14	Discussions or activities related to <u>training</u> Private Attorneys	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time All associated expenses are PAI 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes
15	Discussions or activities related to <u>recruiting</u> Private Attorneys	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time All associated expenses are PAI 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes
16	Discussions or activities related to complying with LSC regulations related to 1614	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes
17	Planning and/or attending recognition events for private bar	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time All associated expenses are PAI 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes
18	Publicizing PAI efforts	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time All associated expenses are PAI 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes
19	Administering the PAI efforts	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time All associated expenses are PAI 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes
20	Meetings with other Staff regarding PAI, such as Task Force or case acceptance meetings	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes
21	Working on the Access to Justice Campaign (fundraising)	<ul style="list-style-type: none"> PAI Coordinator Support Staff Any other Staff working the case 	<ul style="list-style-type: none"> All Staff time <u>is</u> PAI time 	<ul style="list-style-type: none"> Reference time to PAI office file and/or use "PAI" activity codes