



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

**Legal Services of the Hudson Valley**  
May 3-7 and October 5-7, 2010  
Case Service Report/Case Management System Review

Recipient No. 233160

## **I. EXECUTIVE SUMMARY**

**Finding 1: LSHV is substantially compliant regarding its ability to ensure that CSR information is accurately reported and case file information is accurately and timely recorded. However, improvements should be made to ensure accurate CSR reporting.**

**Finding 2: LSHV is substantially compliant in ensuring that LSHV's intake staff applies LSC's and LSHV's compliance requirements correctly and consistently during intake.**

**Finding 3: LSHV's intake forms for acceptance of over-income clients needs to be revised and LSHV is not complaint regarding the intake screening of group eligibility as required by 45 CFR § 1611.6.**

**Finding 4: LSHV does maintain 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: LSHV is in non-compliance with the documentation requirements of 45 CFR § 1626.6 (Restrictions on legal assistance to aliens).**

**Finding 6: LSHV is in compliance with the retainer requirements of 45 CFR § 1611.9.**

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

**Finding 8: LSHV is compliant with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).**

**Finding 9: LSHV complies with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).**

**Finding 10: LSHV's application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).**

**Finding 11: LSHV is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 (Timely Closure).**

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

**Finding 13: LSHV is in compliance with 45 CFR Part 1608 (Prohibited political activities).**

**Finding 14: LSHV is in compliance with 45 CFR Part 1609 (Fee-generating cases).**

**Finding 15: LSHV is in compliance with the requirements of CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

**Finding 16: LSHV is in non-compliance with the requirements of 45 CFR Part 1614 regarding oversight of PAI files and allocation of PAI time and expenditures.**

**Finding 17: LSHV is compliance with the fiscal requirements of 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization cannot be given at this time.**

**Finding 18: LSHV is in substantial compliance with the requirements 45 CFR Part 1630. (Indirect cost allocations)**

**Finding 19: LSHV is in non-compliance with 45 CFR Part 1635 (Timekeeping requirements).**

**Finding 20: LSHV is in compliance regarding the requirements of 45 CFR Part 1642 (Attorneys' fees.**

**Finding 21: LSHV is in compliance with the LSC Accounting Guide (2010) which requires recipients to create an Accounting Manual.**

**Finding 22. LSHV is in substantial compliance with the LSC Accounting Guide (2010) which requires the timely reconciliation of bank ledgers.**

**Finding 23: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

**Finding 24: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).**

**Finding 25: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).**

**Finding 26: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

**Finding 27: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).**

**Finding 28: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

**Finding 29: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).**

**Finding 30: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

**Finding 31: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).**

## II. BACKGROUND OF REVIEW

On May 3-7, 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 of the Hudson Valley ("LSHV"). 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 two (2) LSC attorneys, two (2) attorney consultants, and two (2) LSC fiscal analysts.

The on-site visit 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 LSHV has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LSHV for compliance with regulatory requirements 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);<sup>1</sup> 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)<sup>2</sup>; 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 LSHV's upper and middle management, staff attorneys and support staff. LSHV'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 sample file review was conducted. The sample case review period was from January 1, 2009 through March 15, 2010.<sup>3</sup> Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site visit, the OCE team reviewed 435 case files which included 90 targeted files.

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

<sup>2</sup> On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. LSC review and enforcement of this regulation is therefore only for the period prior to December 16, 2010.

<sup>3</sup> Although 2008 CSR data was requested, the case sample did not include 2008 reported cases due to time constraints.

LSHV is a LSC recipient with six (6) offices. The offices are located in White Plains (main), Kingston, Mt. Vernon, Newburgh, Poughkeepsie, and Yonkers, New York. LSHV was created in 2004 when two (2) former LSC recipients' services areas merged, Westchester Putman and Rockland County. Westchester Putman was awarded both services areas and became LSHV. Rockland County's Board of Directors decided to become a non-LSC recipient aptly named Legal Aid Services of Rockland County ("LASRC"). LSC has not conducted an OCE visit to LSHV since its conception. OCE granted LSHV approval for a 2009 sub-grant agreement with LASRC.<sup>4</sup> However, LSHV did not submit a request for 2010. Currently, LSHV receives \$2,059,965 as LSC Basic Field funding, which is less than 30% of LSHV's total funding. LSHV does not receive Native American or Migrant funding. At the time of the visit, OCE did not have any open complaints against LSHV.

Since 2003, LSHV has reported on average of 4,894 cases in its CSR data. The highest being in 2009 with 5,399 reported cases and the lowest was reported in 2004 with 4,248 cases reported. For 2008 LSHV reported 5,184 closed cases in its CSR data. LSHV's 2008 self-inspection report indicated a 4.6% error rate with exceptions noted in 12 files out of the 172 cases reviewed. The problem areas identified were: one non-telephone case that lacked a citizenship attestation or documentation of alien eligibility (and client not eligible under VAWA 2006 or TVPA - *see* Program Letters 05-2 and 06-2); two (2) cases in which there is no written evidence of advice or representation; and nine counsel & advice or limited action cases opened prior to 10/1/07 and not falling under the exception 3.3(a)(ii) of the 2008 CSR Handbook. No corrective actions were taken in regards to the above issues cited.

For 2009 LSHV reported 5,399 closed cases in its CSR data. LSHV's 2009 self-inspection report indicated a 6.7% error rate with exceptions noted in 7 files out of the 158 cases reviewed. The problem areas identified were: six (6) cases in which there is no written evidence of advice or representation; and one extended service case in which assistance was completed and case closure occurred prior to 2009. No corrective actions were taken in regards to the above issues cited.

By letter dated March 1, 2010, OCE requested that LSHV provide a list of all cases reported to LSC 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, 2010 and March 15, 2010 ("closed 2010 cases"), and a list of all cases which remained open as of March 15, 2010 ("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 LSHV staff and the other for cases handled through LSHV's PAI component. LSHV 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. LSHV 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. LSHV notified OCE via phone call

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<sup>4</sup> During the current on-site visit, a case sample of LASRC staff and PAI cases were reviewed. In addition, LASRC intake procedures were reviewed.

that the State of New York protects the name of clients that are HIV and the victims of domestic violence and whose issue does not result in a public court filing. After having discussions with LSHV's management, OCE and LSHV executed an agreement dated April 26, 2010 which stated that the two parties agreed that OCE would have access only to the last names of all HIV clients and domestic violence clients in which a court pleading was not filed. Separate case lists were created for each category and only the last name was provided. During case review, in instances where a citizenship attestation or a retainer agreement was executed, only the last name of the signature was shown.

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 2009 and 2010 closed and 2010 open cases, as well as a proportionate distribution of cases from each of LSHV's branch 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.

During the current visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LSHV agreement signed April 26, 2010, LSHV 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.<sup>5</sup> LSHV's management and staff cooperated fully in the course of the review process. As discussed more fully below, LSHV 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 Supervising Attorneys in the branch offices and the Executive Director, Litigation Director and PAI Coordinator in the main office.

In addition, during the current visit OCE was advised that LSHV's fiscal staff had recently undergone several personnel changes, only one of three fiscal staff members had been with the program more than 6 months<sup>6</sup>. Six weeks prior to the OCE visit, a new Director of Finance was hired and, shortly thereafter, a book keeper was hired. Since the hiring of the new Director of Finance, LSHV has had six audits. During the OCE visit, LSHV's fiscal staff was slow to provide or did not provide requested documentation. After the second day of the OCE visit, it was determined that a comprehensive fiscal review could not be completed by the end of the scheduled visit. This was due to LSHV's fiscal team's limited staff resources and the limited time the current Director of Finance and Administration has had to become familiar with LSHV fiscal practices and procedures. As such, on the third day of the visit, the OCE Team Leader and the fiscal team consulted with the Director of OCE via conference call regarding the matter. It was agreed that the fiscal team would gather as much information as possible but a follow-up visit would have to be scheduled shortly after receipt of LSHV's audited financial statements

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<sup>5</sup> 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.

<sup>6</sup> The Senior Accountant was the only member of the LSHV's fiscal team who had been an employee more than 6 months.

which were due on June 30, 2010. LSHV was advised that, OCE had decided that due to the LSHV's recent personnel changes and its inability to ascertain or produce fiscal documents a follow-up fiscal review would be scheduled before the end of the year. At the conclusion of the visit, on May 7, 2010, OCE conducted an exit conference during which LSHV was made aware of the areas in which a preliminary finding of non-compliance were found. Overall, there were no distinctions found in the review of the 2009 and 2010 case files.

During the week of October 4, 2010, a follow-up fiscal review of LSHV was conducted by the Director of OCE and a fiscal consultant. After the completion of the follow-up fiscal review, LSHV was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments. During the OCE on-site visits, patterns of non-compliance were noted in the areas of intake, execution of citizenship attestations, legal advice documentation, timely closures, timekeeping, and PAI allocation, oversight and procedures. The cases cited as examples in this report are not conclusive but rather a sample of the non-compliance noted.

By letter dated December 9, 2010, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions. LSHV was asked to review the DR and provide written comments. On December 15, 2010, LSHV requested an extension of time, until February 1, 2011, to submit its comments. That request was granted. On February 2, 2011, OCE received LSHV's comments which were dated January 28, 2011. OCE has carefully considered LSHV's comments and has incorporated them into this Final Report as appropriate and are attached in their entirety.

### III. FINDINGS

**Finding 1: LSHV is substantially compliant regarding its ability to ensure that CSR information is accurately reported and case file information is accurately and timely recorded. However, improvements should be made to ensue accurate CSR reporting.**

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.

LSHV's ACMS was assessed to determine if it met the requirements of the CSR Handbook (2008 Ed.), § 3.1 and other applicable authority including Program Letter 02-06. LSHV utilizes the TIME case management system. The software has sufficient capabilities to generate a variety of reports to meet internal management needs and funding source reporting requirements. LSHV complies with Program Letter 02-06, which prohibits affirmative data defaults in critical compliance fields. However a few cases were noted because LSHV staff could not locate them. *See* case no. 09-WP-GB008104.

LSHV's Deputy Director generates LSHV's CSR data. The "LSC Eligible" and funding codes fields in the ACMS are used to select and deselect cases for the CSRs. However, it appears that staff are not coding cases correctly which in some instances is causing LSHV to under count staff and PAI CSR cases. *See* case nos. 09-WP-HS-00139, missing problem code; 09-WP-0082327 and 09-WP-DB000303, incorrectly coded as staff instead of PAI; and 09-WP-HS008094, case incorrectly coded as non-LSC but actually LSC reportable.

In its comments to the DR, LSHV noted that it receives funding from the New York State Office of Court Administration and further noted that, at the time of the OCE visit, the program was coding PAI cases under both an LSC PAI code and an Office of Court Administration code thus resulting in the cases of some LSC financially eligible clients not being included in CSR data. LSHV reported that it has changed the manner in which cases are coded so that all financially eligible clients with cases identified as PAI are not counted under the PAI code. The only cases now coded under the Office of Court Administration code are those in which the client has income over 200% of the federal poverty guideline. In this way, LSHV can exclude those cases from CSR data.

Also, prior to the current on-site visit, LSHV was required to recreate its 2008 and 2009 CSRs and forward such lists to OCE. A review of the cast list submitted prior to the visit and the CSRs reported to LSC revealed minor discrepancies. According to the reported 2008 CSRs, LSHV closed 5,184 LSC reportable cases. However, according to the case lists submitted, LSHV closed 4,821. For 2009, LSHV reported 5,399 cases. However, according to the case lists submitted, LSHV closed 5,032 cases.

At the time of the visit, LSHV was not sure what caused any of the above mentioned ACMS discrepancies. Based on a comparison of the information yielded by the ACMS to information contained in the case sample and case list, LSHV is in substantial compliance in ensuring that information necessary for the effective management of cases is accurately and timely recorded. LSHV must ensure that the proper information is entered into the ACMS, that cases appear on the appropriate case lists, and CSR data is preserved for duplication. LSHV is reminded that the CSR Handbook (2008 Ed.), § 3.4 requires that programs shall have the capacity to generate or recreate its CSR data reported to LSC.

In its comments to the DR, LSHV indicated that it had attempted to discover the basis for the case number discrepancies but was unable to do that except to note that at the time the case lists were prepared for the visit it was discovered that there was a problem in the ACMS which prevented it from exporting cases to Excel properly. LSHV's IT provider assisted LSHV to overcome this difficulty so that the case lists could be forward to OCE. LSHV believes that perhaps there was some anomaly in the ACMS which prevented certain closed cases from exporting properly to Excel.

**Finding 2: LSHV is substantially compliant in ensuring that LSHV's intake staff applies LSC's and LSHV's compliance requirements correctly and consistently during intake.**

It is important for all LSC recipient eligibility screeners and intake staff to apply LSC and program compliance requirements correctly and consistently during intake. This ensures that LSC's compliance requirements are met for all applicants and the regulations are applied fairly to all applicants regardless of who performs the screening. Two OCE team members were responsible for interviewing intake staff, reviewing intake forms, and assessing LSHV's case management system. OCE team members interviewed staff in all of LSHV's offices (including those individuals who conduct intake for LSHV's special projects) regarding the implementation of LSHV's intake procedures and LSC's requirements. Intake staff were asked to recite screening and intake questions, income and asset policies, and intake procedures and to provide forms used during the screening and intake process. In addition, LSHV's case management system was tested to ensure compliance.

Interviews revealed that eligibility-screening practices are uniform and, with a few exceptions noted below, staff is knowledgeable about LSC regulations and the requirements of the CSR Handbook (2008 Ed.). LSHV utilizes a centralized intake model which is located in the Newburg office. Intake staff members from the White Plains and Yonkers branch offices log in remotely. Additionally, each branch office conducts telephone or in-person intake for emergencies, walk-ins and for those individuals unable to access the centralized intake system. The Managing Attorney in the Newburg office supervises the centralized intake staff, while the other Managing Attorneys supervise the intake staff within the offices they manage.

LSHV utilizes a uses a telephone system that remotely connects all LSHV offices by a voice over internet program. The system directs each caller into a telephone-holding queue by area of legal problem. While in queue, the system provides applicants with certain pre-recorded legal information designed to answer frequently asked questions and provide information about LSHV

staff and PAI services. Intake staff answers calls by order of time called and has a five-minute window between calls to finalize the intake before the next call rings through to their station. Then the completed intake is electronically transferred to the individual Managing Attorneys of the appropriate branch office. The receiving Managing Attorney again reviews the completed intake for compliance, accuracy and completeness and assigns it for services.

Once LSHV staff retrieves the call, they conduct the intake and enter the applicant's information into the TIME system. LSHV is consistent in its use of the TIME ACMS to conduct income and asset eligibility screenings, collect demographic information, perform conflict checks and case history searches (duplicate checks), verify citizenship and store electronic reporting data.

An assessment of the TIME ACMS revealed that there is not a field that captures whether there was inquiry into an applicant's income prospects. During intake staff interviews most staff reported that they inquire into an applicant's income prospects and when an applicant reports prospective income, LSHV's staff documents the prospective income in the notes screen of TIME. In addition, LSHV intake staff does not document their inquiry into reasonable income prospects when an applicant does not report prospective income. LSHV staff should document in the notes screen both a negative or positive response to the prospective income query to evidence that the inquiry was made by the intake staff.

LSHV has an intake paralegal in each branch office to conduct walk-in and phone intakes. All of the intake paralegals were aware of the VAWA-Letter (Program Letter 06-2) and how it applies to the acceptance of applicants who are victims of Domestic Violence and Trafficking. As part of the non-centralized intake process, staff gathers essential eligibility and other compliance-related information using standardized manual intake and citizenship attestation forms. LSHV utilizes the intake form to pre-screen all non-centralized intake applicants for income, assets, citizenship, conflicts, and case type. At the time of the on-site visit, the intake form did not capture the inquiry of an applicant's prospective income. However, during the on-site visit, one of LSHV's branch offices revised its manual intake form, which it uses for individual and group eligibility, to include an inquiry into an applicant's reasonable income prospects. LSHV's management must ensure that all offices receive the revised intake form. In its comments to the DR, LSHV noted that all offices are now using the version of the intake form which was developed during the on-site visit. The comments indicated that the updated form had been distributed to all offices and that managing attorneys are ensuring that the correct form is being used. LSHV also noted that, despite the previous form not containing a specific inquiry regarding income prospects, LSHV staff had always made such an inquiry but had only recorded instances in which they received a positive answer.

LSHV also, conducts outreach intake and conducts clinics at various locations. The majority of outreach intake is conducted utilizing the LSHV manual intake form and citizenship attestation forms. Staff or a volunteer will conduct intake offsite and the information is later entered into the ACMS. In some instances, applicants are screened by another organization prior to being referred to LSHV for assistance. This is the case for clients referred from the Pace Law School courthouse Domestic Violence Clinic. In those instances, a LSHV staff person will verify the intake information forwarded by the clinic and enter the information into the ACMS.

Although, LSHV paralegals are allowed to apply 45 CFR Part 1611 factors without the permission of a supervisor, the applicable branch Managing Attorney must fill out a waiver form the *Exclusion to Maximum Income Level or Asset Ceiling* form ("EMILAC") for each over-income applicant that is accepted. LSHV's staff routinely considers authorized exceptions for over-income and over-asset applicants and as required by its eligibility policy, the branch offices Managing Attorneys execute the EMILAC approving the exclusions from the applicant's income or assets. However, the EMILAC form is inconsistent with LSHV's 2008-2009 eligibility policy. LSHV's policy requires 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 125% of Federal Poverty Guidelines ("FPG"). However, the EMILAC form provides that a person will be served if his income exceeds 150% of the national poverty level or 187.5% of FPG. Moreover, LSHV's policy provides that if an applicant's income is above 125% of the FPG, but does not exceed 200% of FPG, the applicant is eligible to receive services upon consideration of certain authorized exceptions. Currently, the EMILAC form does not contain a maximum income ceiling, nor does it list all of the authorized exceptions described in LSHV's policy. LSHV was advised that revision to the EMILAC must be made so that it is consistent with its eligibility policy.

In addition, LSHV's intake staff did not demonstrate complete knowledge of 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR § 1611.3(2) (waivers of annual asset ceiling). Some intake staff members, when interviewed, reported that applicants with income over 125% of FPG were not eligible for services under any circumstances. Also, interviews demonstrated that some intake staff members failed to consider the payment of current taxes or expenses associated with job training or educational activities to prepare for employment. LSHV was advised that although intake staff members refer over-income and over asset applicants to the Executive Director or Managing Attorney to determine eligibility, they should still be able to demonstrate knowledge of LSC regulations, guidelines and instructions.

LSHV is reminded that the implementation of LSC regulations should be consistent throughout the program. As such, LSHV should provide staff training on the program's policies regarding 45 CFR § 1611.2(i), 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR § 1611.3(2) (waivers of annual asset ceiling) and its manual intake and EMILAC forms should be revised so that they are consistent with LSHV financial policies. Also, it is recommended that LSHV document exempt assets in the notes screen of TIME rather than in the asset fields. This will be discussed further in Finding 4.

It should be noted that LSHV's sub-grantee's 2009 intake forms, procedures and eligibility guidelines were reviewed and found to be inconsistent with LSHV policies. The screening for income and assets was inconsistent with LSHV 2008-2009 financial eligibility policies. LASRC considered exceptions authorized by 45 CFR §§ 1611.5(a)(3) and (4) up to 187.5% of the FPG while LSHV's policies provide for consideration of these exception up to 200% of the FPG. In addition, LASRC's asset policy consider automobiles, personal property and include an additional consideration of whether the applicant may obtain a secured loan from a commercial bank in an amount equal to the net value of the assets. LASRC also considers liquid and non-liquid assets and appeared to be compliant with 45 CFR Part 1611 prior to its revision in 2005.

Since LASRC's sub-grant agreement was not renewed there are no recommendations or corrective actions regarding this matter.

LSHV's comments to the DR offered no response to this Finding.

**Finding 3: LSHV's intake forms for acceptance of over-income clients need to be revised and LSHV is not compliant regarding the intake screening of group eligibility clients as required by 45 CFR § 1611.6.**

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.<sup>7</sup> *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, and 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.

LSHV's Financial Eligibility Policy was adopted by its Board on February 23, 2009. The Financial Eligibility Policy indicates that financial eligibility will be determined pursuant to the income guidelines most recently promulgated by LSC. As stated in Finding 2, some intake staff was not clear of all the 45 CFR Part 1611 exceptions and how to execute them. Also, interviews with intake staff and the review of the case sample evidenced that one intake staff member incorrectly records the receipt of food stamps as income.

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<sup>7</sup> 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.

All sampled cases reviewed evidenced that individual applicants were screened for income eligibility. However, some sample case files were noted for non-compliance because the client was over-income and the case file lacked the required EMILAC form. *See* case nos. 10-WP-GP000725; 09-WP-HS006832; 09-WP-HS004675; and 08-WP-DV005570.

LSHV's group eligibility policy complies with the requirements of 45 CFR Part 1611. However, LSHV's current group intake practices are not in compliance with its eligibility policy or 45 CFR § 1611.6. When determining group eligibility, LSHV documents whether the group entity is composed primarily of LSC eligible applicants who constitute a majority of the group's members. This is done by filling out a manual intake form and citizenship attestation for each member of the group. On a separate sheet the income of each group member and the total number of LSC income eligible and non-eligible group members is documented. As stated previously, at the time of the visit, the LSHV's manual intake form did not include an inquiry into reasonable income prospects and LSHV does not record both negative and positive response to the inquiry into the ACMS. Also, interviews with staff evidenced that LSHV staff incorrectly believes that if a majority of the group's membership satisfies LSC's financial eligibility requirements, then the group automatically demonstrates limited access to private counsel. This practice is not in accordance with 45 CFR § 1611.6 or LSHV's group policy. The regulation requires that a recipient provides information that the group entity has no practical means of obtaining private counsel and either the group is primarily composed of members that are LSC financially eligible or the group's principal activity and the one being provided is one that provides delivery of services to persons in the community who are eligible financially for LSC funded legal assistance.

Currently, LSHV's form and intake group procedures only determine if the majority of the group's members are financially eligible for LSC legal assistance. The LSHV staff, and the forms used, fail to document information as to whether the group lacks, and has no practical means of obtaining, funds to retain private counsel. Also, LSHV fails to consider the resources available to the group such as the group's income prospects. Furthermore, LSHV strictly focuses on groups primarily composed of individuals who would be financially eligible for LSC-funded legal assistance only. LSHV fails to consider collecting any of the required information from groups whose principal activity is the delivery of services to persons in the community who would be financially eligible. LSHV must change its current practice and create a separate intake form for group clients. Both the new group eligibility form and the intake procedures must reflect the requirements of 45 CFR § 1611.6 and ensure that eligibility information is collected for all group cases. The Draft Report noted that if LSHV would like a sample group eligibility form it should contact OCE for assistance.

In its comments to the DR, LSHV disagreed with LSC's conclusion that LSHV was not compliant regarding intake screening for group clients. Although LSHV's comments indicated that the finding of non-compliance was based solely on the program's failure to document the group's ability to retain private counsel in one (1) case, as noted above the non-compliance finding was based not only on the failure to document the ability to retain private counsel, but also LSHV's failure to consider available resources such as prospective income and a failure to have a means of collecting eligibility from groups whose principal activity is the delivery of services to persons in the community who would be financially eligible. LSHV's comments

stated that the program has not traditionally represented many groups<sup>8</sup> and that, in recent history, the program has not provided services to any group that has as its principle activity the provision of services to persons in the community that are LSC eligible. Nonetheless, LSHV's comments stated that the program had restructured its protocol to evaluate groups in conformance with LSC guidelines, so that a specific finding that the group will not be able to retain an attorney will be included in the intake determination. Additionally, LSHV's comments noted that the program's manual intake forms have been updated to include inquiry into reasonable income prospects and now require recordation of either a positive or negative response.

**Finding 4: LSHV does maintain 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.<sup>9</sup> *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 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 LSHV's Board of Directors in 2009 establishes the asset ceiling for a household of one at \$5,000, a household of two at \$7,500, and households of three or more at \$10,000. Exempt from consideration is the applicant's or household's principal residence; automobiles needed by the applicant or household members for transportation; work-related tools and/or equipment essential to the income of the household, provided that the tools/equipment are currently or will within the next year be used to produce income; assets of the household members where the applicant is a victim of domestic abuse and the asset is owned

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<sup>8</sup> LSHV's comments stated that, in 2009, the program began to receive a special stream of funding to represent tenant associations and that LSHV has found that the majority of the members of these associations to be LSC eligible.

<sup>9</sup> 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.

or jointly owned by the abuser, or there is a practical legal impediment to the applicant's access to such assets; and any other assets that are exempt from attachment under New York State or Federal law.

Sampled case files reviewed revealed that LSHV maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.<sup>10</sup> However, it was recommended that LSHV revise its policy regarding the documentation of exempt assets. LSHV's asset screening process includes an inquiry into the valuation of vehicles. LSHV's policy provides that vehicles required for transportation may not be counted and are exempt assets. However, LSHV records and includes in the asset determination, exempt and non-exempt vehicles. This practice makes it difficult to discern whether the asset is exempt or non-exempt. It is recommended that LSHV document exempt assets only in the notes section of TIME. *See* case nos. 09-WP-EL000979 and 09-WP-HS004788.

LSHV's comments to the DR offered no response to this Finding.

**Finding 5: LSHV is in non-compliance with the documentation requirement of 45 CFR § 1626.6 (Restrictions on legal assistance to aliens).**

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (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.<sup>11</sup> Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which

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<sup>10</sup> 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.

<sup>11</sup> *See* Kennedy Amendment at 45 CFR § 1626.4.

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.

LSHV is in non-compliance with 45 CFR § 1626.6. Interviews with staff and sampled cases evidenced that LSHV requires all applicants who claim to be citizens execute a written attestation. However, a few case files were missing citizenship attestation or proof of alien status and several case files contained undated executed citizenship attestations. *See* case nos. 09-WP-HS005935; 07-WP-DB001261; 09-WP-DB006182; and 09-WP-HS006262. LSHV was advised that the failure to date the attestation makes it difficult to discern whether the citizenship attestation was obtained prior to the establishment of the attorney-client relationship as required by the CSR Handbook (2008 Ed.), § 5.5. LSHV believes that applicants fail to notice the line tied to the date on the citizenship attestation form currently in use by LSHV. During the visit, one of LSHV’s branch offices revised the citizenship attestation form to make the signature line more visible to clients. LSHV must ensure that all branch offices receive the revised citizenship attestation.

Also, some of PAI case sample files did not include citizenship attestations, documentation of alien status or included an undated citizenship attestation. As a result, it was recommended that LSHV revise its PAI referral procedures and not forward PAI files until a citizenship attestation or proof of alien status has been provided. *See* case nos. 09-WP-GP-008243 and 09-WP-PB-003684.

In its comments to the DR, LSHV disagreed with LSC’s conclusion that LSHV was not in compliance with the documentation requirements of 45 CFR § 1626.6. Although LSHV’s comments state that OCE’s finding of non-compliance was based on the fact that a few of the case files reviewed did not contain a date next to the applicant’s signature, as noted above, not only did several files contain undated executed citizenship attestations but a few case files were missing citizenship attestations or proof of alien status entirely. LSHV’s comments to the DR also indicate that the PAI Unit has revised its procedures to ensure that cases are not placed with volunteer attorneys until after an executed and dated citizenship form has been obtained.

Based on these facts, LSHV requested that OCE change this Finding to indicate that the program is in compliance with 45 CFR Part 1626, however even one exception in the documentation requirements requires a finding of non-compliance.

Finally, LSHV’s comments to the DR noted that the revised citizenship form, described above, has been distributed to all offices and is uniformly in use.

**Finding 6: LSHV is in 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.<sup>12</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Although not required, LSHV requires PAI clients to sign a LSHV retainer. The retainer states that LSHV will try to place the client's case with a pro-bono attorney. Sampled cases evidence that LSHV staff is in compliance with the requirements of 45 CFR § 1611.9 and obtains a retainer agreement when required. No pattern of non-compliance was found regarding staff cases. However a review of the sub-grantee 2009 cases revealed cases in which the executed retainers failed to describe the nature of the legal work correctly. *See* case nos. 09-010-60000900 and 09-010-6001110. The sub-grantee agreement is no longer in existence thus no recommendation or corrective actions are required.

LSHV's comments to the DR offered no response to this Finding.

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

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

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

The case sample evidenced that LSHV executes a verified pleading or a signed statement of fact when required and is in compliance with the requirements of 45 CFR Part 1636.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

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<sup>12</sup> 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.

**Finding 8: LSHV is in compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).**

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

Prior to the visit, LSHV provided LSC with a list of its priorities. The priorities are stated as: Delivery of legal services; Advice, brief service and referral; Preservation of housing and housing related needs; Maintaining, enhancing, and protecting income and economic stability, safety, and well-being; and Improving outcomes for children.

LSHV is in compliance with 45 CFR Part 1620. None of the case sample files reviewed evidenced cases that were outside of LSHV's priorities.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 9: LSHV complies with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).**

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

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

LSHV complies with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6. However, a few staff and PAI case files were cited as non-complaint due to the lack of documentation of legal of advices. *See* case nos. 09-WP-DB000303; 10-WP-EL000440; 09-WP-HS004828; 09-WP-DB000303; 09-WP-GB000217; and 09-WP-PB001662.

In its comments to the DR, LSHV disagreed with LSC's original finding which stated that LSHV was not in compliance with the CSR Handbook's requirement that all cases reported in the CSR contain a description of the legal advice or services provided. LSHV's comments stated that OCE's finding of non-compliance was based, in part on two (2) cases which LSHV argued had been closed as not LSC eligible and should not have been cited. Upon reviewing the noted cases, LSC agrees that the cases should not have been cited and has removed them from the Final Report. As noted on page 7 of this Final Report, the cases cited herein are examples of non-compliance noted during the on-site visit and do not encompass every non-compliance instance found, therefore additional cases which reflected no evidence of the legal advice or assistance provided have been added in the removed cases' place. However, after reevaluating the totality of the cases reviewed, in light of LSHV's argument, LSC determined to change this finding to note that the program is in compliance with this portion of the CSR Handbook (2008 Ed.).

Also, LSHV conducts pro-se clinics in remote locations, such as the local library where there is limited or no access to copy machines. As a result, it is not the practice of LSHV to maintain copies of its completed *pro se* clinic pleadings. LSHV is reminded that in order to support levels of assistance brief service ("B") and above, it must to maintain copies of the *pro se* pleadings or other appropriate documentation in the case file. *See* case no. 09-WP-GP001377. The DR mandated that LSHV's management must instruct staff that if they wish to close the pro-se clinic cases with the closing code B then they must include a copy of the completed pro-se pleading. In its comments to the DR, LSHV noted that it has changed its practice and now maintains copies of all pleadings prepared for clients.

**Finding 10: LSHV's application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).**

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 LSHV's application of the CSR case closing categories is in compliance with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). No pattern of non-compliance was found in regards to the application of closing code of LSHV staff cases. There is a potential issue regarding the application of closing codes for PAI cases that will be addressed in Finding 16.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 11: LSHV is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 (Timely Closure).**

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 referral after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).<sup>13</sup> 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 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).

LSHV is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a), however, several of the case sample files reviewed appeared to be dormant or untimely closed. LSHV's 2008 and 2009 self-inspections each noted that cases had been cited for untimely closures. During the current onsite visit, a pattern of dormancy and untimely closed cases was found in all offices. *See* case nos. 09-WP-GB-0053; 06-PO-DV00277; 07-WP-DB004131; 04-WP-FL003666; 09-WP-DB004415; 08-WP-EL003732; 06-PO-DV00277; 07-WP-EL001346; and 07-WP-HS005402. All the above cited files should and cannot be reported to LSC.

LSHV staff should set-up staff and PAI procedures in which open files are reviewed at least twice a year and pro-bono PAI files at least once a year to ensure dormancy does not occur.

In its comments to the DR, LSHV disagreed with LSC's initial conclusion that LSHV was not in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 regarding dormancy and the timely closing of cases. LSHV's stated that 07-WP-HS-005402 was timely closed in 2007, however review of the data collection instruments ("DCI") associated with that case number revealed that although the file indicated that activity had ceased in 2007, the file remained open on the ACMS and was reported to OCE on the open case list provided in advance of this visit. LSHV's comments also noted that 09-WP-GB-0053 was not an LSHV case number and stated that the closest case number to the one cited was still open and active. Review of the DCI used during this visit revealed that the proper case number was 09-WP-GP-005397 – a case which was opened in July 2009 and not closed, as an "A" until

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<sup>13</sup> 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).

April 2010. LSHV's comments stated that, in 2008, the program began reviewing closed cases at the end of the year in order to identify and remove any advice or brief service cases which were opened before September 30 of the prior year and closed in the current year. If this is true, this case number and others like it would be identified and removed prior to submission of CSR data. LSHV is cautioned to review the cases listed in this Finding carefully to ensure they are not included in future CSR data submissions.

**Finding 12: Sample cases evidenced 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.

LSHV is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. The case sample included targeted files to test possible duplication. The case sample disclosed one set of duplicate files. *See* case nos. 09-WP-HS000269 and 09-WP-GB005019.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 13: LSHV is in compliance with 45 CFR Part 1608 (Prohibited Political Activities).**

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party

office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

A comprehensive review of the program's vendor list along with a large sample of vendor payments spanning the review period (January 1, 2008 to March 15, 2010) showed zero exceptions. Interviews with staff disclosed that LSHV does not appear to have expended any grant funds, or used personnel or equipment in prohibited activities in violation of 45 CFR § 1608.3(b).

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 14: LSHV is in compliance with 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).

LSHV is in compliance with 45 CFR § 1609.4, which requires that each recipient shall adopt written policies and procedures to guide its staff in complying with 45 CFR Part 1609 and shall maintain records sufficient to document the recipient's compliance with this part. None of the sampled files reviewed involved legal assistance with respect to a fee-generating case.

Discussions with the Executive Director also confirmed that LSHV is not involved in any fee-generating cases.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 15: LSHV is in compliance with the requirements of 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

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:

- the existence of separate personnel;
- the existence of separate accounting and timekeeping records;
- the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- 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).

OCE visited all of LSHV's branch offices. LSHV's Mt. Vernon office is located in a suite with two other entities one of which represents undocumented aliens. There is signage to separate the three entities and the suite is funded entirely by the County of Westchester. As such, it appears that LSHV's office locations are in compliance with 45 CFR Part 1610.

In addition, a list of all donations in excess of \$250 for the years 2008, 2009 and up to March 15, 2010 was requested and obtained. Subsequent review of selected thank you letters to various donors showed that the program adheres to the requirement for written acknowledgement of the donated amount. The written notifications, however, lack in specificity and do not conform to the requirements of 45 CFR § 1610.5(a) that donors should be notified of the prohibitions and conditions which apply to the funds.

LSHV must ensure that all donor letters sent to comply with the specific language of 45 CFR § 1610.5(a).

LSHV's comments to the DR offered no response to this Finding.

**Finding 16: LSHV is in non-compliance with the requirements of 45 CFR Part 1614 regarding oversight of PAI files and allocation of PAI time and expenditures.**

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.

LSHV has several PAI programs that include clinics and volunteer programs in which private attorneys receive CLE credits in exchange for representing one client per year. LSHV has a panel of attorneys who agree to represent clients. Clients are assigned to a panel attorney who will assist them with their matter. LSHV has clinics that assist clients regarding divorces, domestic violence, landlord tenant disputes and bankruptcy. LSHV's PAI component requires clients to be screened for LSC eligibility and priorities.

Except for the bankruptcy clinic all other clinic applicants are screened and intake is conducted offsite and the information is entered into the ACMS after representation. Bankruptcy clinic applicants are screened by LSHV's intake staff prior to their attendance to the clinic. Intake screening for panel and assigned cases is conducted through centralized intake or walk-in intake.

A review of PAI files evidence non-compliance regarding the oversight and closing of Matrimonial Assigned Counsel ("MAC") cases. The MAC cases include divorce defendants and plaintiffs who are assisted by LSHV's staff and PAI attorneys. The applicants are screened for eligibility, durational residence and meritorious defense of cause of action. LSHV's staff prepares pro-se motions for the client requesting leave to proceed as poor person and, assignment of counsel and motion to stay pending an assignment of counsel if the client is the defendant in the action. Once an assignment of counsel order is signed by the presiding judge, LSHV assigns the client a PAI attorney. At the time of the June 2010 visit, LSHV's practice was to close the case once the client met with the PAI attorney. The files were then closed as I(a) or I(b) if the opposing counsel files a motion of opposition regarding the motions for poor person status or assignment of counsel. During the June 2010 visit, LSHV was advised that its PAI procedures were non-compliant.

PAI activity requires involvement of a private attorney which is defined in 45 CFR § 1614.1(d). LSC programs are required to oversight the activity of PAI attorneys per 45 CFR § 1614.3(d) and the CSR Handbook (2008 Ed.), § 10.1. Moreover, the CSR Handbook requires programs to ensure that PAI cases are closed timely and that pro-bono cases are closed no later than a year after the legal assistance has ceased.<sup>14</sup> LSHV current PAI case procedures are not compliant because they do not allow LSHV to oversight the legal assistance given by the PAI attorney nor does the current practice allow for the case file to be closed once the PAI legal assistance has ceased. The case sample evidenced that LSHV does not conduct oversight of PAI files as required and incorrectly closes PAI files prior to completion of the PAI representation. Since LSHV intends to close the cases as PAI, they should not close the file until the PAI attorney has completed his or her work. LSHV was advised that they should conduct follow-up at least once a year for pro-bono cases. Oversight may be conducted via-email, phone or letter. LSHV may contact the attorney, client, or retrieve information from the online court records. LSHV was further advised that they should utilize their ACMS tickler system to remind them to conduct oversight of a case file. It is recommended that LSHV refer to the CSR Handbook (2008 Ed.), § 10.4 for case oversight and follow-up guidance.<sup>15</sup>

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<sup>14</sup> CSR Handbook (2008 Ed.), §§ 10.3 and 10.4.

<sup>15</sup> LSHV's 2009 sub-grant agreement with LASRC required LASRC to handle 30 MAC cases which would be counted towards LSHV's annual PAI requirement. As such, PAI case sample included files from LASRC. Like LSHV's PAI files, LASRC PAI files were closed prior to the completion of the PAI activity and no oversight was

In addition, LSHV must ensure that when closing a PAI file the correct closing code is applied. LSHV is to look at the CSR Handbook (2008 Ed.), §§ 8.2 and 10.1(b) for guidance. In instances in which both program staff and a private attorney provide legal assistance, but have not co-counseled the case, the program should close the case as a staff or a PAI case depending on whether the staff or private attorney provided the highest level of legal assistance. Prior to referring the client to a PAI attorney, MAC clients are provided brief service by LSHV's staff. LSHV's staff assists with drafting pro-se motions for divorce clients. Therefore, in order for LSHV to close the MAC cases as PAI, the assigned PAI attorney must provide higher service than brief service. If the PAI attorney does not do so the case must be closed as a staff case. However, the time expended in referring the client to a PAI attorney can be charged to PAI.

In its comments to the DR, LSHV noted that it has changed its procedure for closing of MAC cases. As noted above, prior to 2010 those cases were closed with an LSC disposition of I(a) or I(b) upon the entry of an order by the Administrative Judge assigning private counsel to represent a party in a matrimonial case. LSHV reported that it now keeps these files open in order to monitor the progress of the case through the court system and closes them when the matter is finally disposed by a judgment or order of the court.

It was noted that LSHV had not completed its 2010 PAI Plan at the time of the OCE visit. OCE requested to see a draft copy of the PAI Plan and the request was denied by LSHV. LSHV advised that the PAI Plan would be completed and submitted with the LSC grant application in June. At the time of the OCE Follow-up visit in October 2010, LSHV submitted their 2010 PAI Plan to LSC. LSHV's PAI Plan described the proposed program in the manner prescribed. The LSHV 2009 and 2010 Private Attorney Involvement Plans outline a program of recruiting volunteer and/or pro bono attorneys and law student interns to independently represent LSHV clients; to assist clients in pro se motions and clinics and to volunteer for "in-house" assignments.

Also, during the May 2010 visit, OCE conducted a review of LSHV's PAI activity and allocation. The 2008 audited financial statements disclosed in the breakdown of PAI expenses the amount of \$37,401 as "other expenses." LSHV was asked for an explanation as to the nature of these other expenses but was not provided with an explanation. Furthermore, for the current year 2009, the Director of Finance and Administration could not provide the LSC fiscal team with a breakdown of all PAI expenses to date, nor an explanation as to what methodology is being used to keep track of PAI eligible expenses (direct and indirect), nor an indication as to whether actual or estimated figures are being used.

LSHV provided General Ledger summaries detailing the itemized PAI expenses including those listed as "Other Expenses" in the 2008 Audited Financial Statement. Also requested and received were the 2008 and 2009 *Statements of Support, Revenue and Expenses and Changes in Net Assets for the Legal Services Corporation Grants* as reflected in the Auditors Financial Statements under OMB-Circular A-133, which reflect a more expansive breakdown of these

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conducted by LASRC or LSHV. LASRC did not report any open files thus it was assumed no PAI case files remained opened. The LASRC sub-grant agreement was not renewed in 2010. Thus no recommendations or corrective action is required. See case nos. 09-010-60000900 and 09-010-6001110.

expenses. The Audited Financial Statement for FYE December 31, 2009 was received and reviewed subsequent to the May 2010 LSC visit. The Audited Financial Statement reported in the “*Statement of Support, Revenue and Expenses and Changes in Net Assets for Legal Services Corporation Grants*”, expenditures dedicated to the PAI effort in the amount of \$243,687 which translates to 12.77% of the total basic field grant of \$1,907,837.

LSHV has in each of the years 2008 and 2009, reported in its Audited Financial Statement the expenditure of funds meeting the 45 CFR § 1614.1(a) requirement of (12.5%). In the examination of provided financial records, it was noted that all expenditures reported were those charged to LSC funding.<sup>16</sup> However, the Audited Financial Statement also, revealed the fact that the cost of the Pro Bono Coordinator is not reflected in the PAI expenditures as PAI costs although their duties would qualify under the requirements of 45 CFR Part 1614. Examination of the November 15, 2007, agreement between the New York Unified Court System (which funds this position) and LSHV effective reflect no impediment which would disqualify these costs from being reported as PAI expenditures by LSHV. Initial costs budgeted for 2008 included \$64,576 in personnel and \$5,200 in equipment and travel and expenses. While the 2009 PAI Plan appears to have been submitted without the actual figures inserted in the text, it does specify the intent to include the grant from the New York State Office of Court Administration. The 2010 Plan reflects a proposed expenditure of \$238,480 in LSC funds and \$82,852 in non-LSC, representing an expenditure equal to 16% of the 2010 LSC Basic Grant of \$2,059,965. However, despite the stated intention of including these non-LSC expenditures as PAI costs, the program’s Audited Financial Statements fail to do so. (One may surmise that this is partially an effect of the limitations of the accounting software currently utilized).

45 CFR § 1614.3(e)(1)(i) requires that ... “*If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities.*” LSHV’s PAI costs for 2008 to September 2010 reflected payroll and related expenses attributable to attorneys and paralegal staff. LSHV’s payroll is processed by an outside contractor based on data submitted by LSHV. This data, maintained on an Excel spreadsheets and, is the source for journal entries posting the payroll to the general ledger. The posting allocates the payroll costs to various funds, including PAI. Examination of these subsidiary journals found that various percentage factors were being utilized to assign portions of payroll cost of selected attorneys and paralegals to PAI. Discussions with staff determined that these percentages changed with workload and assignments based on review by the Deputy Director and the Director of Finance and Administration and were believed to be generally reflective of time spent or expected to be spent however, that is immaterial in light of the regulatory requirements. The Deputy Director and the Director of Finance and Administration were advised of the deviation from the requirements of 45 CFR Part 1614 and possible corrective measures were discussed to bring the Program into compliance.<sup>17</sup>

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<sup>16</sup> LSHV utilizes Blackbaud Financial Edge fund accounting software which is somewhat inflexible in its reporting capabilities for programs utilizing multiple fund sources. Subsidiary recordkeeping will be required to properly report PAI.

<sup>17</sup> Since the salary cost distribution worksheet is a portion of a larger workbook used as a management tool for fund management, it is suggested that compliance could be gained by periodic corrective journal entries to reflect actual time as recorded in the LSHV TIME system.

LSHV must ensure compliance with 45 CFR Part 1614. As such, the Draft Report directed that LSHV should conduct a re-computation for the year 2010. The re-computation must include the inclusion of non-LSC funding expenditures for PAI and the utilization of direct payroll cost reflected in contemporaneous timesheets of attorneys and paralegals. This may require affected staff reviewing and restating fund sources on the 2010 TIME records as it was noted that while time and case data was complete, not all had fund codes attributed. Once developed, the process should be incorporated as appropriate in LSHV's Accounting Manual and Policies.

Inasmuch as the Program has substantially underreported actual PAI expenses by not including expenses paid from fund sources other than LSC, it would not be recommended to require restatement of PAI expenses for prior years due to the fact that little would be gained.

In its comments to the DR, LSHV stated that expenses which benefit more than one (1) grant are to be allocated based upon a simplified allocation method (as per OMB Circular A-122D.2 (2004)) whereby costs are first separated as either direct or indirect. Direct costs are charged directly to the benefitting grant, where as indirect costs are allocated based upon an equitable distribution method by which an indirect cost rate is developed to distribute indirect costs to individual grants. Expenses which benefit more than one (1) grant are allocated among the grants benefitted where such charges are allowable under the contract. Expenses such as postage, office supplies, copier leases, etc. are allocated by office pro rata based upon the specific grant amount in relation to the total grant amounts serviced through that office. The proper allocation to be utilized is to be found in the financial folder by year. The appropriate period allocation is utilized to distribute the cost. Allocation percentages are to be updated at least quarterly and/or whenever major changes occur. The procedure which was shown to OCE staff in October 2010 requires that when a cost is allocated among grants utilizing the indirect allocation method described above, the accounts payable clerk prints out and attaches – to the invoice – the excel report showing how the cost was allocated among the various grants affected. LSHV's comments to the DR indicated that, although a similar method for allocation was utilized in the past, no prints outs had been attached to the invoices.

Finally, LSHV's comments noted that OCE had advised the program that it should include the costs associated with the New York State Office of Court Administration Pro Bono Coordinator Grant as PAI eligible expenditures in its annual Audited Financial Statements. LSHV noted that this information had been provided to its outside auditor.

**Finding 17: LSHV is in compliance with the fiscal requirements of 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:

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.

Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a government organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

A limited review of accounting records, detailed general ledger documents for 2008, 2009, and through March 15, 2010, and the vendor list disclosed that LSHV is in compliance with 45 CFR § 1627.4(a). No non-mandatory dues and fees are being paid with LSC funds.

There are no recommendations or required corrective actions at this time.

LSHV's comments to the DR offered no response to this Finding.

**Finding 18: LSHV is in substantial compliance with the requirements of 45 CFR Part 1630 (Indirect cost allocations)**

45 CFR § 1630.3(f) states where a recipient has only one major function, i.e., the delivery of legal services to low-income clients, allocation of indirect costs may be by a simplified allocation method, whereby total allowable indirect costs (net of applicable credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly. The distribution base may be total direct costs, direct salaries and wages, attorney hours, numbers of cases, numbers of employees, or another base which results in an equitable distribution of indirect costs among funding sources.

During the May 2010 visit, LSHV provided statements of Revenue and Expense attributed to LSC funding for each of the years 2008 and 2009. This General Ledger summary utilized Chart of Account Codes as defined in the LSHV Accounting Manual to provide a line item breakdown of expenses attributed to LSC funding. These General Ledger Reports, conform to the *Statements of Support, Revenue and Expenses and Changes in Net Assets for the Legal Services Corporation Grants* as reflected in the Auditors Financial Statements under OMB-Circular A-133 as submitted.

LSHV had utilized an allocation system based on the percentage of funding provided. The system was not documented in the LSHV Accounting Manual or in Program Policies; however, computational spreadsheets used in prior years are maintained in the system. The Director of Finance & Administration who assumed duty in several weeks prior to the May 2010 visit, had created a more accurate system by adjusting for funding, contracts and programs unique to specific branch offices. The DR directed LSHV that the process for development and use of the system for allocation of indirect costs should be incorporated in the LSHV Accounting Manual. In its comments to the DR, LSHV reported that its Accounting Manual had been updated to include LSHV's methodology of its allocation of costs. Further, as noted above, LSHV's comments noted that a summary of the allocations made is now printed out and attached to each invoice.

In addition, during the visit of May 2010, charges to "Travel" and "Miscellaneous/Sundry Expenses" were reviewed for supporting documentation. While the majority of charges

reviewed did not show any exceptions, two charges were not adequately documented. 1) \$1,000 charge represents 33.33% of a credit card charge of \$3,000 from Wappings Falls Auto and was classified as “travel”, and 2) \$2,622.06 represents an entire credit card bill that was classified as “miscellaneous/sundry expenses” and was charged in its entirety to LSC funding. Viewed in the context of 45 CFR § 1630.2(g)(2)(3) the cost is not supported by adequate documentation; and therefore the cost incurred appeared unnecessary or unreasonable and did not reflect the actions a prudent person would take in the circumstances.

Both abnormalities were brought to the attention of the Director of Finance and Administration who promised to make the appropriate journal entry corrections to restore \$3,622.06 to LSC funds. In its comments to the DR, LSHV reported that the inaccurate allocations noted above have now been corrected. Additionally, limited review of company credit card statements revealed that LSHV had incurred a \$39 late fee on one of the statements. This was discussed with program management who was unable to determine the fund code used to pay the late fee. Therefore, it could not be determined if LSC funds were used to pay these charges.

During the October fiscal follow-up the questioned \$3,000 credit card charge of which \$1,000 had been charged to LSC the charge was determined to be the initial payment on a vehicle leased by LSHV (a Toyota) of which \$1,000 had been allocated to LSC. No document establishing the allocation was located. Following notice by the LSC Visitation Team in May 2010, the charge to LSC was reversed by general journal entry on 5/27/2010, and the LSHV General (unrestricted) fund was charged.

Regarding the questioned credit card statement of 2/12/2010 in the amount of \$2,622.06, the credit card vendor file was found to be deficient in documentation of many of the individual specific charges however, there was a note at the top of one page indicating “Fund 10” (LSC), and LSC was not in fact allocated any of the reflected costs.

It was noted that LSHV had established a written “*Policy Regarding Use of Office Credit Card*” which briefly established the limits and authority to use the corporate credit card, and established a documentation and approval process (use of a Check Request Form). Examination of the credit card (Chase) vendor file found that compliance with the policy was not complete in that not all uses were approved by use of the “Check Request Form” and in other instances while such forms were approved, the form and subsequent receipts were filed in the vendor file of the supplier of goods and services and were not available to verify receipt prior to payment of the credit card charges. The lack of supporting documentation required the Accounts Payable Clerk to conduct monthly follow-up to determine the validity of the various charges as well as determine what accounts and fund sources were appropriate to be charged.

It is noted that the current revision of the LSHV Accounting Manual has no reference to the use or documentation of the corporate credit card. The Program should review the current credit card policy to ensure that it provides adequate controls over its use for cash disbursements and ensure that staff follows controls in all instances when required. Also, ensure that the LSHV Accounting Manual provides for procedures to record and document approvals for expenditures; a process to document receipt of goods or services, and the allocation of costs to appropriate accounts and fund sources. In completing this task, the Program should reference the Accounting

In its comments to the DR LSHV reported that it had revised its credit card policy and had updated its Accounting Manual accordingly.

**Finding 19: LSHV is in non-compliance with 45 CFR Part 1635 (Timekeeping requirements).**

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

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

Although LSHV maintains a contemporaneous timekeeping system for cases, matters and supporting activities, this data is not effectively used to allocate the direct costs in a manner directed by 45 CFR Part 1630. The LSHV salary allocations process requires revision to utilize the TIME System data as the basis for allocation of payroll costs among grant sources.

During the May 2010 visit, several instances were noted where the time entered into the TIME system was for less than the total numbers of hours in the pay period, contrary to 45 CFR § 1635.3(b)(1) which requires, in part, that time records comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. LSHV pays its staff attorneys and paralegals on salary. All attorneys and paralegals are required to enter their timekeeping information in two (2) separate data bases. Hours by activity are entered in the TIME system in six (6) minute increments. Hours are also entered in the payroll system based on the total hours

worked each day; a standard LSHV work day is comprised of seven (7) hours. Prior to 2010, payroll was handled by ADP. On January 1, 2010, the program began to use SAAS for payroll.

A limited review was performed of timekeeping records for staff attorneys and paralegals. Based on this review it was determined that time records are entered in the TIME system contemporaneously. Also, from a limited sample of five (5) case files it was determined that time records supported the time entered into case files.

However, there were several instances noted where the time entered into the TIME system was for less than the total numbers of hours in the pay period, contrary to 45 CFR § 1635.3(b)(1) which requires, in part, that time records comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. A comparison to the corresponding time entries into the SAAS payroll system revealed that the total hours were correct for the total number of hours in that pay period. The Director of Finance & Administration advised that the hours in both the TIME and SAAS timekeeping databases should be in agreement and that the employee's Managing Attorney is supposed to catch and reconcile any discrepancies in hours reported.

LSHV is a bargaining unit organization and working requirements are incorporated in the Collective Bargaining Agreements and the Legal Services of the Hudson Valley Standards of Practice. Section IV. File Maintenance Procedures defines the contemporaneous entry of all work activity in tenth of an hour (6 minute) increments in the TIME system and Section I. B. Timekeeping, expands that beyond client services to all activity including leave, holiday, office closing. These guidelines have been reinforced by memorandums to staff from the Executive Director reminding the staff of the need to comply with contemporaneous timekeeping requirements contained in the Collective Bargaining Agreements.

In addition to the TIME system, all staff is required to submit an electronic time report as a part of the Balance Point Payroll System. These payroll entries reflect a seven hour workday as mandated by the Collective Bargaining Agreement and any vacation, sick, holiday or personal leave taken. The system accrues leave earned by each employee. Payroll is paid semi-monthly with salaries determined by collective bargaining agreement or in the case of management, individually. Payment is based on an annualized daily rate based on approval of the electronic timesheets by their immediate supervisor. Payroll is electronically transmitted to Balance Point for processing and payment is made from the Payroll account. The Accounts Payable Accountant prepares a journal entry on a monthly basis to distribute the payroll charges to the various funding sources.

During the October 2010 follow-up fiscal review a limited sample of two (2) attorney and two (2) paralegal time records in the TIME system and the Payroll System over a 30 day period were tested to determine the consistency of the data. Data was compared to fund sources reported in the TIME reports to which these employee's salaries were allocated. It was noted that in only one instance was time under reported in the TIME system (6 minutes) as compared to the Payroll System, a deviation which is statistically insignificant.

However, all four (4) of the tested legal staff had a portion of their salary charged to LSC's PAI in this time period, during which only one reflected time charged to LSC PAI in the TIME system. Additionally, in the case of a paralegal, 100% of whose salary for this period is charged to LSC (both PAI and Basic), TIME records reflect time expended on programs funded by other grants. It was also noted that the TIME reports of all staff included time charged to cases, matters or activities for which no fund source was designated. These findings indicate that the LSHV's payroll allocation process as presently implemented is not adequate to meet the requirements of 45 CFR § 1630.3(a)(3) requiring the showing that the costs are allocable to the grant or contract. In its comments to the DR, LSHV noted that coding to "No Fund Code" is no longer an option in the time system. The comments also reported that LSHV had taken steps to ensure that all cases have funding codes attributed to them. In regards to the four (4) staff members referenced above, LSHV's comments indicated that the percentage of salary of this staff which might be charged to PAI is so small that it may not have been charged during the two (2) months tested, but could be made up for during the rest of the year. Finally, LSHV's comments stated that the Accounting Manual has been updated to reflect the changes made in the payroll system and that time charges for the year will be reviewed and adjustments made as necessary.

To correct this deficiency, LSHV must enforce its policies regarding the use of the TIME system by ensuring staff understands and utilizes funding codes in their TIME entries and that the data in the TIME system is utilized to allocate these direct costs<sup>18</sup> to the appropriate funding source. It is recommended that LSHV utilize a single program for case and time management and reporting which could directly integrate with the program's payroll system. If a single program is not possible then LSHV must ensure that the monthly journal entry prepared to distribute the payroll charges of attorneys and paralegals to the various grants should be based upon the time they report and record in the TIME system.

In its comments to the DR, LSHV noted, as indicated above, that the program utilizes TIME to keep client data and that staff have been trained to input all hours of work, contemporaneously with the expenditure of the time, into the database. LSHV's comments also noted that payroll is handled by an outside contractor and that staff have been trained to input their hours separately into web-based software for payroll.

LSHV's comments explained that there have been issues with the integration of TIME into the program's IT network. LSHV's comments indicated that TIME does not communicate well with any of LSHV's other IT programs and that there is no mechanism available to allow for the staff hours in TIME to be exported into any other program. LSHV reported that it had explored, with the originator of TIME, the potential to augment the TIME system so that it could be integrated with payroll systems. The comments stated that "because payroll vendors each use specifically constructed software, they are all very different and individually not compatible with each other. Any mechanism that would export data to one payroll provider would not work for another. With that in mind, we (LSHV) will further explore the potential for TIME to be supplemented to produce reports in Excel that could be absorbed into payroll software."

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<sup>18</sup> Direct costs as opposed to indirect costs such as occupancy, supplies, etc for which an allocation process such as a percentage of funding may be appropriate.

LSHV's comments also noted that "any exportation of staff hours into another program would require that client information be protected." LSHV's comments continued that "[a]ny procedure which would allow TIME to communicate directly with another software program would at this point in time limit availability of a program to move to alternate payroll companies because of the need to construct an individualized mechanism."

**Finding 20: LSHV is in compliance regarding 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.<sup>19</sup> 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 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.<sup>20</sup>

None of the sampled staff case files reviewed contained a prayer for attorneys' fees.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 21: LSHV is in compliance with the LSC Accounting Guide (2010) which requires recipients to create an Accounting Manual.**

The LSC Accounting Guide (2010) § 3-4.5 requires the establishment of an Accounting Manual which specifies the procedures to be followed to comply with the Fundamental Criteria.

During the May 2010 visit, LSHV's Accounting Manual was being revised. The newly hired Director of Finance and Administration, was in the process of revising and updating the Accounting Manual and at the time of the LSC visit and shared a draft version with the fiscal team. It was agreed upon, that a final version of the accounting manual should be adopted by the program by July 1, 2010. LSHV completed the revision of its Accounting Manual in August 2010, and furnished a copy to LSC.

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<sup>19</sup> 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).

<sup>20</sup> 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).

The review of documentation and interviews with staff and management evidenced general compliance with the requirements of LSC's Grant Assurances to comply with the LSC Audit Guide for Recipients and Auditors and the Accounting Guide. The processes described in general, provide for appropriate segregation of fiscal duties and define the procedures and processes to maintain the financial integrity and fiscal management and reporting system of the program. It also establishes technical guidelines and assigns duties to ensure the providing of physical security to the accounting system through password access protection, data back-up and off-site data storage. However, it was noted that Accounting Manual had not established adequate guidelines defining the use and documentation of use of corporate credit cards; the timing and method used to establish allocation of indirect or shared costs attributed to LSC and the procedures by which LSHV determines and records PAI expenses, all of which are noted as weaknesses in the LSHV fiscal program.

Also, it is noted that in the areas of weakness found, the systems in question are in areas not incorporated in the Accounting Manual. These include: the Program has not established adequate guidelines defining the use and documentation of use of corporate credit cards (See Finding 18); the timing and method used to establish allocation of indirect or shared costs attributed to LSC (See Finding 19) and the procedures by which it determines and records PAI expenses (See Finding 16). The DR directed, as stated previously, that segments defining the policies and processes established by LSHV to establish appropriate fiscal control over these areas should be incorporated in the Accounting Manual.

As noted above, LSHV's comments to the DR noted that the Accounting Manual has been updated to include LSHV's credit card policy and its methodology for allocation of costs.

**Finding 22: LSHV is in substantial compliance with the LSC Accounting Guide (2010) which requires the timely reconciliation of bank ledgers.**

The Fundamental Criteria, Control Activities (Accounting Guide for LSC Recipients Part 3-5.2(d)) defines the Key Element of monthly bank account reconciliation to the general ledger and the documentation thereof, as does the LSHV Accounting Manual. During the May 2010 visit, it was noted that LSHV did not comply with these requirements. A review of LSHV's bank statement reconciliations could not be completed. The program was asked to provide three months of bank reconciliations for each of its bank accounts covering the period January through March of 2010. Program management advised numerous times that the reconciliations were nearly complete; however, they were not provided during the on-site visit.

A review of LSHV's procedures revealed that LSC funds are deposited upon receipt to the LSHV general checking account by direct deposit. LSC funds are expended from this account with the exception of salary, wherein LSC allocations are transferred to the payroll account, which is a zero balance account utilized solely for payroll purposes. During the October 2010 visit, a review of LSHV's bank reconciliation's for 2010 reflected that all accounts with the exception of the general checking were now being reconciled in a timely manner. The general checking, which on average clears payments of over \$600,000 per month, has continued to require excessive time to complete.

The DR directed that LSHV needs to take action to ensure compliance with the Fundamental Criteria as reflected in the LSHV Accounting Manual regarding timely completion of bank statements to the General Ledger.

LSHV's comments to the DR stated that LSHV is now current with its bank reconciliations and intends to continue to be so.

**Finding 23: The sample case review and interviews with LSHV's management 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 case files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also confirmed that LSHV is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 24: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).**

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

None of the sampled case 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 confirmed that LSHV is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 25: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).**

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define "initiating or participating in any class action" as any involvement, including acting as co-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).<sup>21</sup>

LSHV is in compliance with 45 CFR Part 1617. None of the sampled case files reviewed involved initiation or participation in a class action. Discussions with the Executive Director also confirmed that LSHV is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 26: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

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

None of the sampled case files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also confirmed that LSHV is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 27: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).**

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<sup>21</sup> 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).

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

None of the sampled case files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also confirmed that LSHV is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 28: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

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

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 confirmed that LSHV is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

**Finding 29: The sample case review and interviews with LSHV's management evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).**

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.<sup>22</sup> This restriction has been contained in all subsequent appropriations acts.<sup>23</sup> This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated

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<sup>22</sup> *See* Section 504(a)(18).

<sup>23</sup> *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).

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 case files, including documentation, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director also confirmed that LSHV is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LSHV’s comments to the DR offered no response to this Finding.

**Finding 30: The sample case review and interviews with LSHV’s management evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

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

None of the sampled case files reviewed involved such activity. Discussions with the Executive Director also confirmed that LSHV is not involved in these prohibited activities.

There are no recommendations or corrective actions required.

LSHV’s comments to the DR offered no response to this Finding.

**Finding 31: The sample case review and interviews with LSHV’s management evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).**

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

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or

secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

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

All of the sampled case files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that LSHV 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.

There are no recommendations or corrective actions required.

LSHV's comments to the DR offered no response to this Finding.

#### **IV. RECOMMENDATIONS<sup>24</sup>**

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

1. Revise TIME ACMS to include a prospective income field or document in the notes section of TIME both the positive and negative responses to the prospective income inquiry;
2. Provide training for staff regarding the 45 CFR § 1611.2(i), 45 CFR § 1611.5 (exemption to annual income ceilings), and 45 CFR § 1611.3(2) (waivers of annual asset ceilings);
3. Document exempt assets in the notes screen of TIME;
4. Revise the PAI case procedures and do not place a client with a PAI attorney until a signed citizenship attestation has been obtained;
5. Utilize the TIME ticker system to remind PAI staff to review PAI files;
6. Review open case files at least twice a year to check for dormancy; and
7. Utilize a single accounting system that integrates fund accounting, and case and time reporting with payroll.

In its comments to the DR, LSHV noted that it accepts the above recommendations as best practices, but reiterated that staff already inquires about prospective income and assets.

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<sup>24</sup> 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, LSHV is required to take the following corrective actions:

1. Ensure that the correct information is entered into the ACMS and that files are correctly recorded as PAI or staff;

In its comments to the DR, LSHV stated that it has changed the manner in which cases are coded so that all financially eligible clients with cases identified as PAI are now counted under the LSC PAI code.

2. Ensure that CSR data is preserved for duplication as required by the CSR Handbook (2008 Ed);
3. Ensure that all LSC eligible case files are reported regardless of funding source;
4. Ensure both negative and positive responses to prospective income inquiries are recorded;

In its comments to the DR, LSHV stated that it already ensures applicants are asked about prospective income. Prospective income is not in the basic TIME program. LSHV's Deputy Director will add a Q&A into TIME that as to be downloaded into each intake to capture that information with a positive or negative response. Additionally, prospective income is required on the new manual intake form.

5. Ensure that all intake staff do not include Food Stamps as income;

In its comments to the DR, LSHV reported that trainings will occur at all local office staff meetings within the next six (6) months. Trainings on group representation will be done specifically for people doing for intake, and for those staff most likely to represent groups.

6. Update the EMILAC waiver form so that it is consistent with LSHV's eligibility policy and that all over-income accepted client files include the EMILAC form;

In its comments to the DR, LSHV reported that the form had been updated and was already in use by staff.

7. Ensure that all intake staff has an understanding of 45 CFR Part 1611 and LSHV's income and asset exemptions;
8. Ensure that all branch offices have received the updated manual intake form and citizenship attestation that were revised during the on-site visit;

In its comments to the DR, LSHV reported that all branch offices have received the updated manual intake form and the citizenship attestation which was revised during OCE's visit. Both forms are now in use at all offices.

9. Ensure that a separate group eligibility form is created and implemented and that staff is trained regarding the requirements of 45 CFR § 1611.6;

In its comments to the DR, LSHV reported that trainings will occur at all local office staff meetings within the next six (6) months. Trainings on group representation will be done specifically for people doing for intake, and for those staff most likely to represent groups.

10. Ensure that all reported staff and PAI case files include a signed and dated citizenship attestation or proof of alien status as required by 45 CFR Part 1626;

11. Ensure that all files reported to LSC include documentation of legal advice specifically those instances in which the client was assisted in filling out a form or a pro-se motion. A copy of the completed document must be included in the file if the case file is to be closed brief service or higher;

In its comments to the DR, LSHV reported that trainings will occur at all local office staff meetings within the next six (6) months. Trainings on group representation will be done specifically for people doing for intake, and for those staff most likely to represent groups.

12. Ensure that that all case files reported to LSC are closed timely;

In its comments to the DR, LSHV stated that, in 2008, the program began reviewing closed cases at the end of the year in order to identify and remove any advice or brief service cases which were opened before September 30 of the prior year and closed in the current year.

13. Ensure that oversight of PAI files is conducted to document the status of the legal assistance provided and to ensure that PAI files are closed timely;

In its comments to the DR, LSHV reported that the Pro Bono Director has already changed the oversight of MAC PAI cases. Letters are being sent and the court website is being checked to ascertain progress on cases that have been assigned.

14. Ensure that MAC PAI cases are not closed until the PAI attorney has completed his or legal assistance;

In its comments to the DR, LSHV reported that the Pro Bono Director has already changed the oversight of MAC PAI cases. Letters are being sent and the court website is being checked to ascertain progress on cases that have been assigned.

15. Ensure all reported MAC case files are closed correctly as PAI or staff cases and with the proper closing code per the CSR Handbook (2008 Ed.), §§ 8.2 and 10.1;

In its comments to the DR, LSHV stated that it has changed the manner in which cases are coded so that all financially eligible clients with cases identified as PAI are now counted under the LSC PAI code.

16. Ensure that the Accounting Manual be revised to include adequate guidelines defining the use and documentation of use of corporate credit cards; the timing and method used to establish allocation of indirect or shared costs attributed to LSC and the procedures by which LSHV determines and records PAI expenses;

In its comments to the DR, LSHV reported that it has revised its Accounting Manual as noted above.

17. Ensure that staff is trained properly regarding the use TIME system and proper documentation of time;

18. Perform a re-computation of costs for the 2010. The re-computation must include the inclusion of non-LSC funding expenditures for PAI (Pro Bono Coordinator costs) and utilization of direct payroll cost reflected in contemporaneous timesheets of attorneys and paralegals;

19. Revise its salary allocation process to include the utilization of the TIME System data as the basis for allocation of payroll costs among grant sources; and

In its comments to the DR, LSHV reported that it has revised its Accounting Manual as noted above to include its methodology for allocation of costs.

20. Ensure that bank accounts are reconciled in a timely manner.

In its comments to the DR, LSHV noted that the program is now current with its bank reconciliations and intends to continue to be so.



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*Emile*

OFFICE OF COMPLIANCE  
& ENFORCEMENT  
2011 FEB -2 A 11:43  
LEGAL SERVICES CORP  
RECEIVED

January 28, 2011

Danilo A. Cordona, Director  
Legal Services Corporation  
Office of Compliance & Enforcement  
3333 K Street, SW 3<sup>rd</sup> Floor  
Washington, DC 20007-3522

Re: Legal Services of the Hudson Valley  
May 3-7 and October 5-7, 2010  
Case Service Report/Case Management System Review

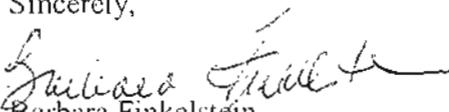
Dear Mr. Cardona:

I am in receipt of the Legal Services Corporation's Draft Report for on-site Case Service Report/Case Management System review of Legal Services of the Hudson Valley which took place on May 3-7 and October 5-7, 2010.

I have carefully reviewed your draft report and provide the attached comments. I hope you will incorporate some of my comments in your final report. If you have any questions please let me know.

I appreciate your offer to be available to LSHV as a resource regarding the subjects addressed in the report or any other compliance related matter. I also appreciate the courtesy and assistance of both teams of reviewers who visited LSHV's offices. Thank you.

Sincerely,

  
Barbara Finkelstein  
Executive Director



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January 28, 2011

RESPONSE TO DRAFT REPORT  
LEGAL SERVICES CORPORATION  
Office of Compliance and Enforcement

Legal Services of the Hudson Valley  
May 3-7 and October 5-7, 2010  
Case Service report/Case Management System Review

**Comments on Overall Report:**

LSHV is gratified that LSC's Office of Compliance and Enforcement (LSC OCE) finds that LSHV is substantially compliant in its ability to ensure that CSR information is accurately reported and case file information is accurately and timely recorded.

LSHV disagrees with a number of LSC OCE's findings of non-compliance as follows:

Finding 3- LSC OCE found that LSHV is not compliant regarding the intake screening of group eligibility as required by 45 CFR Sec. 1611.6. LSC OCE found that LSHV's group representation policy complies with the requirements of 45 CFR Part 1611, that LSC financial eligibility for each member of the group is documented, but that information regarding the groups' ability to retain private counsel is not documented. This non-compliance finding is based on finding one (1) group representation case where information regarding the ability to retain private counsel was not noted in the file. LSHV disagrees with the finding of non compliance on the basis of one case and over such an extremely limited inquiry.

Finding 5 -- LSC OCE found that LSHV is not in compliance with the document requirements on legal assistance to aliens because a few of the case files did not contain dates in addition to applicant signature. LSC OCE acknowledges in its report that all staff interviewed knew the requirements of the regulation and that all files sampled contained signatures. LSHV believes a few cases where dates were inadvertently omitted by the applicant does not equal non compliance. LSHV understands the concern about ensuring that PAI cases contain citizenship attestation and asks that Finding 5 be changed to state that LSHV is in compliance with the document requirements on legal assistance



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LSHV RESPONSE TO LSC OCE Draft Report

January 28, 2011

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to aliens but must ensure that PAI cases contain citizenship attestations. LSHV does not believe finding two PAI cases where citizenship attestations were missing constitutes non compliance (one of the cases cited as non compliant does not exist in our records).

Finding 9 – LSHV contests LSC OCE’s finding that LSHV is not in compliance with LSC’s CSR handbook because a few cases did not contain the description of legal advice. Two of the cases cited 09-WP-EL006158 and 08-WP-GB003291 were closed as not LSC eligible and should not have been cited under Finding 9. The other two cases were PAI cases, one held open to find out what the outcome was (as LSC requires), but then inadvertently included as an LSC case when it should have been excluded, and the other inadvertently closed as a staff case instead of being excluded when the PAI volunteer did not respond. Again, LSHV is clearly in compliance with the directive to record a description of legal assistance provided and two cases out of 435 sampled do not comprise non compliance.

Finding Number 11 – LSC OCE found that LSHV is in non-compliance regarding the requirements of CSR Handbook 3.3 to timely close cases, but every case cited under that finding was indeed closed in a timely manner. See LSHV response below under Finding 11.

In sum, LSHV submits that the cases cited in findings 3, 5, 9, and 11 are de minimus findings and we strongly contest the non compliance determinations in those findings. We ask that LSHV be found to be in compliance with those requirements.

Additionally, LSHV points out that the number of non compliant cases cited in LSC OCE’s report is 5.05% (taking out untimely case closing finding 11 and two of the cases under finding 9) of the actual cases reviewed. LSC’s yearly program self inspection of data requirement permits programs to have a 10% error rate before corrective action is required. With this low percentage of sampled cases containing errors, LSHV submits that LSC OCE can be assured that LSHV’s CSR data meets LSC standards for accuracy. We ask that LSC OCE mention the overall error rate found at the compliance visit was well within the error rate required to be compliant.

**Finding 1:**

**PAI undercounting:** The draft report finds that certain of the PAI cases were improperly coded so that they were counted as staff cases instead of PAI cases. LSHV receives funding from the New York State Office of Court Administration and prior to LSC OCE’s visit was coding PAI cases under an LSC PAI code and an Office of Court Administration Code. We have changed the manner in which cases are coded so that all financially eligible clients with cases identified as PAI are now counted under the LSC PAI code. The only cases now coded under the Office of Court Administration PAI

## LSHV RESPONSE TO LSC OCE Draft Report

January 28, 2011

Page 3

code are those clients who are over 200% of the federal poverty income guidelines but still low income and cannot afford an attorney. We can then exclude those PAI cases as not reportable to LSC.

**Case Counts:** The draft report finds that there were discrepancies between the case numbers reported in 2008 and 2009 to the totals on the lists provided for the visit.

On January 14, 2011, we ran reports from our client database – Time. For closed cases we found 4,921 cases for 2008 and 5,108 cases for 2009. When we add the cases from our subcontractor, Legal Aid Society of Rockland County, for 2008 we get 4,921 plus 249 which equals 5,170 (914 fewer cases than reported). For 2009 we get 5,108 plus 262 which equals 5,370 (29 fewer cases than reported).

We added the totals from the separate lists that we provided to LSC: For 2008 the LSHV lists totaled 4,890; for 2009 the LSHV lists totaled 4,833. (LASRC cases are not included in these counts.) We cannot explain this discrepancy except to say that at the time that we prepared the lists for the visit we discovered that there was a problem in the Time system that prevented it from exporting case counts to Excel properly. We sought assistance from the writer of the program and from our IT provider so that the lists could be prepared and forwarded. Perhaps there was some anomaly that prevented certain of the closed cases from exporting properly to Excel. LSHV can send new case lists to LSC OCE either exported to an excel spreadsheet or by way of printed case lists.

### **Finding Number 2:**

**Manual intake form:** All offices use the version of the manual intake form developed during the site visit. The updated form has been distributed to all offices and managing attorneys are ensuring that they are being used. Prior to LSC OCE's visit, LSHV staff always inquired about prospective income, but only recorded instances where applicants indicated they had prospective income prospects.

### **Finding Number 3:**

**Group Eligibility:** LSHV has traditionally not represented many groups, perhaps one or two per year. In 2009 LSHV began to receive a special stream of funding from one of its counties to represent tenant associations. The majority of the members of those associations have been LSC eligible. (We have not in recent history provided services to any group that has as its principal activity the provision of services to persons in the community who are LSC eligible.) It is further the experience of LSHV that outside of New York City private attorneys do not take tenant oriented cases. Nonetheless, LSHV has restructured its protocol to evaluate groups in conformance with LSC guidelines, so that a specific finding that the group will not be able to retain an attorney will be included in the intake determination.

**Prospective income:** The manual intake forms have been updated to include inquiry into reasonable income prospects and require recordation of a negative response.

**Finding Number 5**

**Dates on Citizenship Attestations:** The draft report finds that some citizenship attestations, though signed, were undated. During the visit the citizenship form was updated to locate the date on the same line as the signature, thereby reducing the potential for clients to fail to add the date. This updated form has been distributed to all offices and is uniformly in use.

**PAI files and citizenship attestations:** The report finds that some PAI files did not contain citizenship attestations, or had undated attestations. The PAI unit has revised its procedures to ensure that cases are not placed with volunteers until after an executed and dated citizenship form has been obtained.

One of the PAI files cited as non-compliant does not exist in our records: 09-WP-DV00159 is an incorrect case number and cannot be traced. The closest case number, 09-WP-DV000159 does not exist.

**Finding Number 9**

**Description of case information:** The report finds that LSHV is not in compliance with CSR Handbook 5.6 in that certain files did not contain description of legal advice. Two of the files cited were for clients who did not respond to attempts to contact them. These files were closed as not LSC eligible because no advice was given: 09-WP—EL006158 and 08-WP-GB003291. (The 08 case was a potential pai case and was held open longer than a staff case would have been because of the nature of PAI case assignments.) The third case cited 09-WP-DB000303, was assigned to a PAI volunteer and was mistakenly closed as a staff case without follow-up to the volunteer.

The Deputy Director and Managing Attorneys at LSHV have in the past stressed at staff meetings the need to record the advice and service given to clients. We will continue to remind staff, individually and at meetings, of the need to record this information.

**Retention of pleadings from clinics:**

The draft report finds that LSHV did not keep copies of pleadings prepared for clients in certain of its pro se clinics. LSHV has changed this practice and now maintains copies of all pleading prepared for all clients. We consider this a best practices model, not a violation of LSC requirements.

**Finding Number 11**

**Untimely case closing:**

The draft report finds that LSHV is not in compliance with CSR Handbook 3.3 because some of the files reviewed were dormant or untimely closed. Two of the cited files are not properly included in the list: 09-WP-GB-0053 is not an LSHV case number; the closest case number to the one cited, 09-WP-DV00053 is still open and active.

07-WP-HS005402 was timely closed in 2007. Another, 07-WP-DB004131 had activity in January 2010, and was properly closed as not LSC eligible when the client did not respond. This case was opened as an SSI denial, and the duration of the process for an SSI case demands most often that these cases remain open for long periods of time.

The other cases cited would not have been reported as LSC eligible. In 2008 LSHV began reviewing closed cases at the end of the year, following CSR Handbook 3.5, to identify any advice or brief service cases that were opened before September 30 of the prior year and closed in the current year. The cited cases would have been found in the review and excluded. Therefore, it is LSHV's opinion that none of the cases cited by OCE as untimely case closing should be included in finding number 11.

**Finding Number 16:**

LSHV has changed the procedure for closing of Matrimonial Assigned Counsel cases. Prior to 2010 those cases were closed with an LSC disposition of I (a) or I (b) upon the entry of an order by the Administrative Judge which assigned private counsel to represent a party in a matrimonial case. LSHV now keeps those files open to monitor the progress of the case through the court system, and closes them when the matter is finally disposed by a judgment or order of the court.

During the October visit OCE was provided with General Ledger Summaries detailing the itemized PAI expenses including those listed as "Other Expenses" in the 2008 Audited Financial Statements. In addition OCE requested and were provided copies of the Statement of Support, Revenue and Expenses and Change in Net Assets for the Legal Services Corporation Grants for 2008 and 2009 as reflected in the Auditors Financial Statements under OMB-Circular A-133.

In Response to LSC's question regarding allocation of expenses - Expenses which benefit more than one Grant (Fund) are to be allocated based upon a simplified allocation method (Simplified Allocation Method as per OMB Circular A-122 D.2 (2004) and 45 CFR 1630.3(f)) whereby costs are first separated as either direct or indirect. Direct costs are charged directly to the benefitting grant, whereas Indirect costs are allocated based upon an equitable distribution method by which an indirect cost rate is developed to distribute indirect costs to individual grants. Expenses which benefit more than one grant are allocated among the grants benefitted where such charges are allowable under the

contract. Expenses such as postage, office supplies, copier leases, etc. are allocated by office pro rata based upon the specific grant amount in relation to the total grant amounts serviced through that office. The proper allocation to be utilized is to be found in the financial folder by year. The appropriate period allocation is utilized to distribute the cost. Allocation percentages are to be updated at least quarterly and/or whenever major changes occur. Current procedure which was shown to OCE staff in October require that when a cost is allocated among grants utilizing the indirect allocation method described above, the accounts payable clerk prints out and attaches to the invoice the excel report showing how the cost was allocated to the various grants affected. In the past although a similar method for allocation was made, no print out was attached to the invoice, requiring you to go into Blackbaud to retrieve the allocation of the invoice. Our files for allocation going back to 2005 were shown to LSC in October, and the current methodology explained.

OCE stated that LSHV should include the costs associated with the New York State Office of Court Administration Pro Bono Coordinator Grant as PAI Eligible Expenditures in our Audited Financial Statements as the duties qualify under the requirements of 45 CFR Part 1614. LSHV has forwarded this information to its outside auditor.

Also see our response under Finding Number 19.

**Finding Number 18:**

It was noted by OCE that 45 CFR 1630.3(f) states where a recipient has only one major function, i.e. the delivery of legal services to low-income clients, allocation of indirect costs may be by a simplified allocation method, whereby total allowable indirect costs (net of credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly. LSHV uses a simplified allocation method for indirect expenses based on the percentage of funding provided. This methodology was explained in detail to OCE staff. It was also shown that allocation spreadsheets used in prior years were maintained in the system.

It was noted by OCE that the current revision of LSHV's Accounting Manual did not include LSHV's methodology for allocation of costs. The accounting manual **Section 4100** has been updated to include LSHV's methodology of its allocation of costs as per attached. It should be noted that a summary of the allocation made by invoice is printed out and attached to each invoice which was demonstrated to the LSC auditors in October.

It was noted that the current revision of LSHV's Accounting Manual did not include its credit card policy. The accounting manual **Section 4100** has been updated to include LSHV's Updated Credit Card Policy as per attached.

Two incorrect expense allocations were noted during the May visit. These allocations were made by the prior accounting staff. These were brought to the attention of the current Director of Finance who timely corrected the 2 allocations made in error. These corrections were noted during the October visit.

**Finding Number 19:**

As observed by LSC-OCE during the site visit in May 2010, LSHV employs the Time database to keep client data. Time is the system created by The Western New York law Center used by most LSC programs in New York State. It manages client data, LSC eligibility data, and hourly service data (among a great many other things) for LSHV. Staff is trained to input all hours of work, contemporaneously with the expenditure of the time, into the database. Payroll is handled by an outside contractor. Staff input their hours separately into a web-based software for payroll.

The Time system is constructed from Visual Fox Pro language, which is a Microsoft product. We have had issues with the integration of Time into our IT network. It is easy to use and understand on the staff level, but does not communicate with any of our other programs, other than reports that export to Excel and letters that export to Microsoft Word. There is no mechanism available in Time to allow for exportation of staff hours into any other program.

We explored, with the originator of Time, the potential to augment the Time system so that it could be integrated with payroll systems. Because payroll vendors each use specifically constructed software, they are all very different and individually incompatible with each other. Any mechanism that would export data to one payroll provider would not work for another. With that in mind we will further explore the potential for Time to be supplemented to produce reports in Excel that could be absorbed into payroll software.

Further, any exportation of staff hours into another program would require that client information be protected. The creation of a spreadsheet exportable to Excel, while it would not directly communicate with payroll software because in effect would create an intermediate step, would protect confidentiality. Any procedure which would allow Time to communicate directly with another software program would have to be individually constructed to protect confidential information, and would at this point in time limit availability of a program to move to alternate payroll companies because of the need to construct an individualized mechanism. We will continue to look into the feasibility of such a step.

Note that coding time to No Fund Code is no longer an option in the time system. In addition steps have been taken to insure that all cases have funding codes attributed to them.

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With respect to the finding that four of the tested legal staff had a portion of their salary charged to LSC PAI in the time period sampled but only one reflected time charged to PAI, LSHV submits that the percentage of salary of this staff is so small that it may not have been charged during the two months tested, but could be made up for during the rest of the year. Further to insure compliance with 45 CFR Part 1614 coding time to No Fund Code is no longer an option in the time system. In addition steps have been taken to insure that all cases have funding codes attributed to them. The Accounting Manual has been updated to reflect the changes made in the payroll system. Time charges for the year will be reviewed and adjustments made as necessary. Therefore, this finding should not be definitive.

**Finding Number 21:**

LSHV requested and received in June, 2010 an extension until August, 2010 for submission of its accounting manual. In August, after receiving LSC's updated accounting guide for LSC Recipients Effective August 23, 2010 LSHV requested and received an extension of time through August 20, 2010 in order to enable LSHV to incorporate and review the new LSC guidelines as per attached e-mails.

The accounting manual Section 4100 has been updated to include the LSHV's **Credit Card Policy**.

The accounting manual Section 4100 has been updated to include LSHV's **methodology of its allocation of costs**.

**Finding Number 22:**

LSHV is now current in its **Bank Reconciliations** and intends to continue to be so. See attached 12/31/2010 Bank Reconciliations for the various accounts dated 1/26/11.

## **Response to Recommendations**

LSHV accepts LSC OCE's recommendations as best practices but notes that staff already inquire about prospective income and assets.

## **Response to Required Corrective Actions**

LSHV submits that Corrective Actions Nos. 2, 3, 6, 7, 11, and 17 are already part of LSHV's practice and procedure and should not be required corrective actions. LSHV cannot assure that it will be able to comply with No. 19 inasmuch the TIME system is a statewide database system that may not be able to be changed to meet corrective action No. 19. With respect to No. 9, LSHV submits that its eligibility form is adequate to record eligibility for group representation.

LSHV intends to take or has already taken corrective action noted in #1, 4, 5, 8, 9, 10, 13, 14, 15, 16, 18 and 20 as follows:

1, 15. LSHV has changed the manner in which cases are coded so that all financially eligible clients with cases identified as PAI are now counted under the LSC PAI code.

4. LSHV already ensures applicants are asked about prospective income. Prospective income is not in the basic Time program. LSHV's Deputy Director will add a Q&A into Time that has to be downloaded into each intake to capture that info with a positive or negative response. Additionally, prospective income information is required in the new manual intake form.

6. EMILAC waiver form was updated and is attached hereto. This form is already in use by staff.

5, 9, 11 - Trainings will occur at all local office staff meetings during the next six months. Trainings for intake on group representation will be done specifically for people doing intake, and for those staff most likely to represent groups.

8. All branch offices have received LSHV's updated manual intake form and citizenship attestation revised during LSC OCE's visit. The updated manual intake form is in use and is attached hereto in English and Spanish. The revised citizenship attestation form is in use and is attached here.

12. LSHV asks that corrective action No.12 be eliminated inasmuch as all of the cases sampled by LSC OCE were closed in a timely fashion.

13 - 14. LSHV's Pro Bono Director already changed the oversight of the PAI cases involving matrimonial assigned counsel cases. She was already sending letters and checking the court website for progress on cases that have been assigned.

16,19,20. LSHV has revised its Accounting Manual and attaches hereto the revised sections relating to Allocation of Expenses which benefit more than one grant, corporate credit cards, and payroll. Bank accounts are currently reconciled in a timely manner. Attached hereto is a copy of the December, 2010 bank reconciliation.

Inasmuch we strive to be as compliant as possible with LSC regulations, program letters, handbooks and other guidance, all areas reviewed by LSC OCE will be reviewed at local staff meetings over the next six months.

We appreciate the help and assistance given to us by both teams of reviewers.



**MAIN OFFICE**

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Excerpts from accounting manual as updated:

**Allocation of Expenses which benefit more than one Grant (Fund)**

Expenses which benefit more than one Grant (Fund) are to be allocated based upon a simplified allocation method (Simplified Allocation Method as per OMB Circular A-122 D.2 and 45 CFR 1630.3(f)) whereby costs are first separated as either direct or indirect. Direct costs are charged directly to the benefitting grant, whereas Indirect costs are allocated based upon an equitable distribution method by which an indirect cost rate is developed to distribute indirect costs to individual grants. Expenses which benefit more than one grant are allocated among the grants benefitted where such charges are allowable under the contract. Expenses such as postage, office supplies, copier leases, etc. are allocated by office pro rata based upon the specific grant amount in relation to the total grant amounts serviced through that office. For example if a postage bill of \$1,000 is incurred for a particular office and grant XX is in the amount of \$200,000 out of a total of \$1,000,000 of grants serviced by that office for the period, then  $(200,000/1,000,000)$  or 20% of the charge would be allocated to grant XX and the balance the postage bill of 80% allocated proportionately to the other grants serviced by the office for that period.

The proper allocation to be utilized is to be found in the financial folder by year. The appropriate period allocation should be utilized to distribute the cost. Allocation percentages should be updated at least quarterly and/or whenever major changes occur.

When a cost is allocated among grants utilizing the indirect allocation method described above, the accounts payable clerk shall print out and attach to the invoice the excel report showing how the cost was allocated to the various grants affected.

**Policy Regarding Use of Office Credit Card**

LSHV maintains a credit card in the name of the corporation for the payment of legitimate office expenses. Cards shall be issued to members of management in such numbers and locations as deemed necessary by the Executive Director to carry out the business of LSHV.

The office credit card may be used only by pre-approval of the Executive Director, Director of Finance, or designee of the Executive Director, with limited exceptions as below.

**WESTCHESTER**

30 South Broadway  
Yonkers, NY 10701  
Ph: 914.376.3757  
Fax: 914.376.8739

**WESTCHESTER**

100 East First St., Suite 810  
Mt. Vernon, NY 10550  
Ph: 914.813.6880  
Fax: 914.813.6890

**DUTCHESS**

147 Union Street, Suite 101  
Poughkeepsie, NY 12601  
Ph: 845.471.0058  
Fax: 845.471.0244

**ULSTER**

101 Hurley Avenue, Suite 3  
Kingston, NY 12401  
Ph: 845.331.9373  
Fax: 845.331.4813

**ORANGE/SULLIVAN**

123 Grand Street  
Newburgh, NY 12550  
Tel: 845.569.9110  
Fax: 845.569.9120

Requests for use of the office credit card will be submitted on a payment request form, and designation made therein that it is for use of the credit card.

The only client expenses that may be paid by use of the office credit card are court filing fees that cannot be waived, in courts that provide secure, on-line payment by credit account. Clients must pay in advance to LSHV the full amount of the filing fee, unless the filing is done on an emergency basis. Explanation of the emergency must be included on the payment request form.

Other use of the office credit card shall be by permission of the Executive Director for expenses related to the day to day business of LSHV.

Exceptions to pre-approval: The Executive Director, Director of Finance and Deputy Director may use the office credit card for incidental office expenses without pre-approval when the expense is less than \$100.00, or in emergency circumstances when contact with another of the named administrators above is not feasible.

Receipts for purchases with the office credit card shall be obtained and submitted to the LSHV Finance Department and there kept with the original payment request.

Use of Company Credit Card for personal use is strictly prohibited, regardless of the fact that the employee is an authorized user. If a personal and/or disallowed charge is found made by an employee that charge may be deducted from the employee's paycheck and the employee may be subject to disciplinary action.

All cash advances or ATM withdrawals are disallowed as program policy.

Access shall be denied and the credit/debit card is to be returned at or prior to time of termination for any employees, or for those employees who are transferred to positions incompatible with the use of the credit/debit card.

Current Credit Card Statements are to be timely reviewed along with supporting documentation, to validate disbursements and to avoid finance charges and late fees.

Authorized users shall agree in writing to the LSHV's credit card policy in order to receive or continue using a company credit card.

#### 4200 – Payroll

The Accounting Office must have a Personnel File containing the employee's I-9. In addition the employee's W-4, insurance and pension election forms, hiring, evaluations, salary information and termination information for each employee. In addition an HR file is kept in the office of the Executive Director. Each employee is required to electronically submit through our payroll system daily time sheets to his/her immediate supervisor on a semi-monthly basis for review. In addition requests for time off must be approved by his/her immediate supervisor. The payroll system accrues vacation earned and accrued, sick days earned and accrued, and personal time. Overtime is not allowed unless pre-approved by the person's managing attorney and must be for extenuating circumstances.

#### Procedure

Payroll is paid on a semi-monthly basis from an imprest account. Salaries of staff attorneys and legal workers are determined by collective bargaining agreements.

Management salaries are determined on an individual basis and noted in their files. The Payroll Accountant is responsible for inputting payroll information into the Payroll system. On a semi-monthly basis he/she reviews that proper amounts are entered for each person's salary, confirms that employees are properly charged for their share of insurances, employee contributions to pension plans, union dues check-off, garnishments, etc., and that the amounts withheld for taxes are correct.

LSHV employs the Time database to keep client data. It manages client data, LSC eligibility data, and hourly service data (among a great many other things) for LSHV. Staff is trained to input all hours of work, contemporaneously with the expenditure of the time, into the database, and immediate supervisors are required to review time sheets for accuracy and completeness. Coding time to No Fund Code is no longer an option in the time system. All cases must have funding codes attributed to them.

Payroll is handled by an outside contractor. All employees are required to input time daily into our payroll system. At the end of each semi-monthly period, attorney payroll information is given to Managing Attorneys for approval and is then submitted to the Payroll Accountant for processing through the Payroll System. All non-legal administrative employee time is approved by their immediate supervisor. Once the payroll is reviewed by the Director of Finance and Administration, it is electronically transmitted to the Payroll Service for processing. After delivery, reports from the Payroll service are reviewed by the Payroll Clerk for accuracy and then given to the Director of Finance and Administration for approval. Payroll including employee deductions are prepared and posted to the general ledger by Senior Accountant. The Accounts Payable Accountant prepares a monthly journal entry utilizing the data in the Payroll Allocation Worksheet to distribute the payroll charges to the various grants. This entry is reviewed by the Director of Finance and Administration and posted to the General Ledger. Time charges per the Time System shall be compared to the journal entry amounts from the Payroll Allocation Worksheet by grant and adjustments made as necessary on at least a quarterly basis.

All attendance and payroll records are kept in the Accounting Office.