



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Ocean Monmouth Legal Services, Inc.
Case Service Report/Case Management System Review
August 23-27, 2010

Recipient No. 331100

I. EXECUTIVE SUMMARY

Finding 1: The automated case management system (“ACMS”) used by OMLS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were several exceptions noted.

Finding 2: OMLS’ intake procedures and case management system support the program’s compliance related requirements. However, there were a few exceptions noted.

Finding 3: OMLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. However, OMLS is in non-compliance with 45 CFR § 1611.5, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), §§ 4.3 and 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines.

Finding 4: OMLS maintains the 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. However, two (2) exceptions were noted.

Finding 5: OMLS is in non-compliance with 45 CFR § 1626.6 (Verification on citizenship). Several sampled files lacked a written citizenship attestation when one was required.

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

Finding 7: OMLS is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1636.5.

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

Finding 9: OMLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). However, there were several staff files reviewed which contained no description of the legal assistance provided.

Finding 10: OMLS’ application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: OMLS in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3, as several staff case files reviewed were untimely closed.

Finding 12: With one (1) exception, 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: Sampled cases and fiscal review evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Finding 15: OMLS' accounting and financial records are in non-compliance with 45 CFR § 1610.5 (Donor notification Letters) OMLS is in compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 16: OMLS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. OMLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. OMLS may have failed to meet its 12.5% requirement pursuant to 45 CFR § 1614.6 and lacks written PAI policies and procedures as required by this Part. OMLS is in non-compliance with 45 CFR § 1614.3(6); cost allocations.

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

Finding 18: OMLS is in non-compliance with 45 CFR Part 1635 (Timekeeping requirements).

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

Finding 20: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1612.11.

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

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1617.4.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1632.4.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1633.4.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1637.5.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1643.5.

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

Finding 29: Fiscal review evidenced that OMLS is in non-compliance with the requirements of 45 CFR § 1630.3 (Costs Standards and Procedures) because several late fees and finance charges were satisfied with LSC funds.

Finding 30: Fiscal review evidenced that OMLS failed to develop written policies and procedures describing its cost allocation methodology for LSC and non-LSC funding sources.

Finding 31: Fiscal review evidenced weaknesses in the internal controls of OMLS as they relate to the payment of expenses from invoices.

Finding 32: Fiscal review evidenced segregation of duties weaknesses pursuant to the 2010 Accounting Guide for LSC Recipients.

Finding 33: Fiscal review evidenced internal control weaknesses in the check processing and cash disbursement procedures implemented by OMLS.

II. BACKGROUND OF REVIEW

On August 23 through August 27, 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 Ocean Monmouth Legal Services, Inc. ("OMLS"). 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 four (4) attorneys, (1) one program analyst, and one (1) fiscal analyst. Three (3) attorneys and the fiscal analyst were OCE staff members and one (1) attorney and one (1) program analyst were LSC consultants.

OMLS is a non-profit legal services organization that provides free legal services to low-income and disadvantaged residents in LSC service area known as NJ-12. OMLS is headquartered in Freehold, New Jersey and maintains an office in Tom's River, New Jersey.

During 2009, OMLS received LSC basic field and other funding totaling \$771,998. OMLS also received grant and contract support from various Federal, State, local, and private sources. According to LSC's Recipient Information Network, the total non-LSC revenue received in 2009 was \$5,778,871. See www.rin.lsc.gov.

For 2009, OMLS reported 4,053 closed cases in its CSR data. OMLS' 2009 self-inspection report noted a 5% self-inspection error, as there were six (6) exceptions out of 118 files reviewed by OMLS. The problem areas identified were non-telephone cases that lacked citizenship attestations or other documentation of alien eligibility; telephone cases, in which citizenship status was not noted; cases in which there was no written evidence of advice or representation, and cases reported more than once in 2009 with the same client, problem code, and set of facts.

In preparation for the visit, OCE requested by letter dated June 18, 2010, and by email, that OMLS provide certain case lists. Case lists requested included all cases reported to LSC in its 2008 CSR data submission, ("closed 2008 cases"), all cases reported to LSC in its 2009 CSR data submission, ("closed 2009 cases"), all LSC reportable cases closed between January 1, 2010, and July 15, 2010, a list of all non-LSC reportable cases closed between those same dates ("closed 2010 cases"), and all cases which remained open as of July 15, 2010 ("open cases"). OCE requested that two (2) sets of lists be compiled - one for cases handled by OMLS staff and the other for cases handled through OMLS' PAI component. OCE requested that each list contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closure category assigned to the case, the funding code assigned to the case, and an indication of whether the case was handled by staff or by a private attorney pursuant to 45 CFR Part 1614. OMLS was advised that OCE would seek access to case information consistent with Section 509(h), Pub. L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11 and 12, and the LSC *Access to Records* protocol (January 5, 2004). OCE instructed OMLS to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, OMLS provided the requested materials. OCE then selected a sample of approximately 631 case files to review during the visit. OCE made an effort to create a representative sample of

cases that the team would review during the visit. The sample was distributed proportionately among open and closed cases, as well as among OMLS' various office locations. The sample consisted largely of randomly selected cases, but also included cases selected to test for compliance with those CSR instructions relative to timely closings, application of the CSR case closing categories, and duplicate reporting.

During the visit, OMLS cooperated fully and provided requested materials. Initially, OMLS could not locate a significant number of files selected for review. During the week, many were located. It appeared that the difficulty in locating files related to significant staffing, structure, and service delivery changes implemented in the months and weeks before the review. These changes included the closure of the Long Branch office, a redistribution of some case handlers between the Freehold and Tom's River offices and, principally, the loss of support staff. In the Freehold office, which maintains files for both the Freehold office and the closed Long Branch office, all of the administrative support staff was terminated the week before the review causing case handlers and management staff to search for the selected files. By the end of the on-site review week, several cases on LSC review lists still were not located. In some instances, the program was able to locate partial folders relating to the case. LSC attempted to review the files with what information and documentation the program could produce. In some instances, a complete file review could be accomplished, but in other cases partial documentation was insufficient to demonstrate compliance and such files were designated as missing. The missing files are referenced herein.

OMLS afforded access to information in the case files through staff intermediaries. OMLS maintained possession of the files and disclosed financial eligibility information, the problem code, and the general nature of the legal assistance provided to the client pursuant to the OCE and OMLS agreement of August 6, 2010. Additionally, OMLS displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and Part 1636 statements. OCE also interviewed members of OMLS' upper and middle management, fiscal personnel, staff attorneys, and support staff. OCE assessed OMLS' case intake, case acceptance, case management, and case closure practices and policies in all substantive units. LSC fiscal staff reviewed OMLS' compliance with the LSC grant, including prohibited political activities, fee-generating cases, the use of non-LSC funds, the PAI component, the payment of membership dues and fees, timekeeping, attorney fees, cost standards and procedures, and other fiscal activities.

OCE visited all currently open offices staffed by OMLS and interviewed staff involved in the intake process and the PAI program as well as the management staff in the offices. OCE reviewed 621 files; of which, 94 files which were selected to test for compliance with certain regulatory and reporting requirements. The remaining 527 files were randomly selected. As stated previously, OCE did not review several missing files.

During the course of the visit, OCE attempted to advise OMLS of any compliance issues. OCE notified intermediaries, the Finance Director, Director of IT/PAI Coordinator/VAP Manager, Assistant Director/Director of Litigation and, Executive Director of any compliance issues identified during the review. At the conclusion of the visit, OCE held a brief exit conference during which OCE advised OMLS of its preliminary findings. OCE advised that the staff was familiar with the LSC regulations, the CSR Handbook, and the frequently asked questions disseminated by LSC. OCE further advised OMLS that while OCE detected limited patterns of non-compliance, there were

instances of non-compliance with certain regulatory and reporting requirements, including failure to obtain attestations of citizenship/alien eligibility status, timely closing of cases, ACMS inconsistencies, lack of income, asset, and retainer agreement documentation, and closing code category errors. The biggest concern from a compliance standpoint was that several program policies were out of date, internally inconsistent or non-existent, or did not reflect changes in the LSC regulations or changes in OMLS' own practices. The biggest concern from a fiscal standpoint relates to the possible failure of OMLS to meet its 12.5% PAI requirement and the need for OMLS to strengthen internal controls. OCE instructed OMLS that such findings were merely preliminary, that OCE might well make further and more detailed findings in the Draft Report, and they would have 30 days to submit comments. Afterwards, a Final Report would be issued that would include OMLS' comments.

By letter dated November 19, 2010, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions. OMLS was asked to review the DR and provide written comments. On December 15, 2010, OMLS requested an extension of time, until February 20, 2011, to submit its comments. That request was granted. On February 17, 2011, OCE received OMLS' comments that were dated that same day. OCE has carefully considered OMLS' comments, has incorporated them into this Final Report as appropriate, and are attached in their entirety.

III. FINDINGS

Finding 1: The automated case management system (“ACMS”) used by OMLS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were several exceptions noted.

Recipients are required to utilize ACMS and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2001 Ed.), ¶ 3.1 and CSR Handbook (2008 Ed.), § 3.1.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, OMLS’ ACMS is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were several instances where inconsistent information was maintained between the case files and the ACMS. For example, closed 2008 Case Nos. 08-13075906, 08-13076529, and 08-13076057, closed 2009 Case No. 09-13084528, and closed 2010 Case No. 10-13102479 lacked consistent problem definition information. Secondly, closed 2010 Case No. 10-13096226 lacked consistent closing category information. In addition, closed 2010 Case No. 09-13084962 lacked consistent closing date information. OMLS advises that they will correct the errors found in the identified 2010 cases.

There were a few cases that were designated as PAI cases in the ACMS, but the file reflected that OMLS staff attorneys had performed the legal services. One of these cases closed 2008 Case No. 08-14042244, was reported to LSC in the CSR data submission as a PAI case in error. Closed 2010 Case Nos. 10-13098167 and 10-13099804 and others similar to them in which a PAI attorney has not provided legal assistance, but staff has, should be closed as staff cases pursuant to the CSR Handbook (2008 Ed.), § 10.1(b)(i). OMLS advised that they will correct the errors found in the identified 2010 cases.

Additionally, closed 2008 Case Nos. 08-13080126 and 02-14030862, closed 2009 Case Nos. 09-13090443, 09-13085787, 09-13092009, 09-13082790, 09-1309115 and 09-13089585, and closed 2010 Case No. 09-13094240 could not be wholly or partially located. These files, and others like them, are not CSR reportable.

Interviews revealed that while OMLS conducts performance-based reviews with their advocate staff, they do not conduct formalized compliance reviews. While this practice may assist with the provision of high quality legal services, it may not provide sufficient oversight for compliance. Periodic effective and comprehensive management oversight review of cases at the time of case opening and case closing may be all that is necessary to identify the patterns of error or persons in need of targeted assistance. OMLS should develop additional case closure procedures to ensure the consistent maintenance of information in both ACMS and the case file, such as having their case handlers reconcile the information contained in the file with that yielded by ACMS at closing.

LSC notes that the program regularly and correctly maintains consistent information and the above-referenced cases were coded in error. As these inconsistencies related to isolated human errors

rather than systemic patterns of non-compliance, ACMS is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

In its comments to the DR, OMLS noted that its Management Team has implemented a protocol wherein they conduct performance reviews, which incorporate LSC compliance, on a quarterly basis. In its comments to the DR, OMLS further noted that it implemented the use of a form that must go into all closed files that will help insure continued LSC compliance. OMLS included a copy of this form as “Attachment “A” to the Response to the DR.

Finding 2: OMLS’ intake procedures and case management system support the program’s compliance related requirements. However, there were a few exceptions noted.

Intake Review

The following is an assessment of the intake procedures and case management systems of the Tom’s River and Freehold offices.¹

Freehold Centralized Intake

Presently OMLS uses a paperless centralized intake and limited assistance hotline model, referred to as the “Legal Line.”² The Legal Line operates out of the Freehold office. The Legal Line system remotely connects all OMLS offices by a voice over internet program (“VOIP”). The system directs each caller into a telephone-holding queue. Advocate staff, who are predominantly attorneys, answer calls by order of time called. The advocates complete the intake and immediately provide information, referral, advice or brief services to the client. They then immediately move to answer the next call after every intake or legal service is completed. Less frequently, the Legal Line provides extended services for one of its Legal Line clients. OMLS’ practice is to obtain written citizenship attestations and retainer agreements for all extended service cases. Additionally, the Freehold office conducts in-person intake for selected walk-ins, for emergencies and for those applicants unable to access the automated intake system. The Freehold office continues to conduct outreach intake at the local courthouse and other locations as circumstances permit.

Once the Legal Line advocate concludes services for the client, either the matter is closed or it is “referred” to the Tom’s River office or to an advocate in the Freehold office. A designated staff member (usually a paralegal) electronically receives the intake and transfers it to the appropriate advocate for acceptance. Upon acceptance, the advocate changes the office and advocate codes on the intake. Intake Advocacy staff review their open lists throughout the week to ensure that the advocates have accepted all cases. Management reports they review open case lists every three (3) months.

¹ OMLS closed its Long Branch office prior to the LSC visit and thus LSC assessed that office’s intake procedures and practices by interviewing a sampling of the remaining OMLS advocates previously assigned to the Long Branch office.

² The Legal Line began July 2010. Prior to this date, OMLS employed a centralized intake system in the Freehold office.

Tom's River Intake

Staff in the Tom's River office conducts telephone or in-person intake for applicants with emergencies, those who appear in person, and for those individuals unable to access the centralized intake system. The advocates complete a Kemps intake and immediately provide information, referral, advice or brief services to the client. If this advice does not resolve the client's legal problem, the intake is electronically transferred to the appropriate advocate in the Tom's River or Freehold office. Upon acceptance, the advocate changes the office and advocate codes on the intake. Intake Advocacy staff review their open lists throughout the week to ensure that the advocates have accepted all cases. Management reports they review open case lists every three months.

Advocacy staff in both Tom's River and Freehold offices conduct telephone and in-person intake by entering the applicant's information into the Kemps Case Management System ("ACMS"). OMLS is consistent in its use of the Kemps 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. There were no defaults in essential categories identified.

Although intake staff demonstrated familiarity with the citizenship and alien eligibility requirements of 45 CFR Part 1626, and report they require documentation of eligible alien status before conducting an intake, a citizenship compliance error was noted. Not all staff obtains written citizenship attestations or alien eligibility documentation from those applicants who walk into the office and use an OMLS telephone to apply for services through the Legal Line. OMLS is advised that all recipients are required to obtain written citizenship attestations/alien eligibility documentation whenever program staff has in-person contact with the applicant pursuant to 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5. As Part 1626 is regarded as a substantive regulatory requirement, OMLS should immediately provide clear guidance to its staff as to when a written attestation or alien eligibility status must be obtained, specifically that a citizenship attestation must be executed or alien eligibility status should be documented in every instance of in-person contact with applicants for legal services.

While OMLS staff is familiar with the income ceilings set by OMLS and the authorized exceptions to income for those applicants with incomes between 125% and 200% of FPG, OMLS does not apply these factors; but rather assigns these over income cases to alternate funding sources.³ Staff report, that if they did consider these factors, they would apply them as a "spend down" rather than apply a factor analysis to determine eligibility. 45 CFR § 1611.5(a)(4) only requires the program conduct a factor analysis.

Similarly, staff does not make reasonable inquiry into the applicant's income prospects in every case. Staff only inquires into reasonable income prospects if the applicant first discloses these prospects. These prospects are then documented in the Notes section of Kemps. OMLS is required to ensure that there is an inquiry into the reasonable income prospects of all applicants during every intake conducted pursuant to 45 CFR § 1611.7(a)(1).

³ See Finding 3, *infra*, for a more detailed discussion of the OMLS policy as it relates to determining eligibility for those applicants whose incomes exceed 125% FPG.

Although OMLS staff was familiar with the \$12,000.00 maximum asset ceiling policy set by the board, they did not demonstrate a full understanding or consistent consideration of exempt and non-exempt assets. There were two (2) patterns of error noted. Most staff could not articulate the full array of assets exempt from attachment by a creditor under Federal law or State law, including N.J.S.A 25:2-1. Secondly, there was no uniform treatment of some of these assets by the program as a whole.⁴ This confusion was the most apparent during deferred compensation asset determinations. For example, if a deferred compensation asset could not be practically liquidated, some staff members excluded it from consideration pursuant to OMLS' *exempt* asset policy. However, others included it under the *non-exempt* policy but reduced its value by 20% pursuant to this same policy, while still others completely excluded these assets pursuant to OMLS' Federal and State law exemption policy. Arguably, each of these varying inclusions or exclusions would be permissible under OMLS policy because the 2009 board-adopted *Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds* treats deferred compensation in various ways. This policy defines deferred compensation as an includable non-exempt asset. It further provides instruction that when valuing these assets, staff should reduce their value by 20% to reflect withdrawal fees.⁵ However, this same policy instructs staff that if an asset "cannot reasonably and/or practicably be liquidated" it is not to be included in the asset determination.⁶ The Financial Eligibility Guidelines further provide that a staff member shall not include in the asset determination assets exempt from attachment by a creditor under State law including N.J.S.A 25:2-1 or Federal law" (which includes certain deferred compensation assets).⁷ Thus under OMLS policy, deferred compensation assets could reasonably be interpreted as non-exempt or wholly or partially exempt. This may lead to differing eligibility results for the same applicant depending on which approach the staff member chooses to employ during the asset determination process. OMLS should review its policies to develop a program wide consistent treatment of exempt and non-exempt assets.

OMLS conducts group eligibility consistent with their policy and 45 CFR Part 1611. OMLS offers services to groups that are currently non-profit organizations focusing on activities or services that benefit low-income persons, communities, or that otherwise benefit the public interest. OMLS serves organizations unable to pay for legal services without significant impairment of their resources. OMLS' group eligibility policy complies with the requirements of 45 CFR Part 1611. One group case, closed 2008 Case No. 08-13078769, was reviewed. This review demonstrated that the program has developed an intake form and procedures to ensure that groups are eligible for services in compliance with 45 CFR §§ 1611.7(a)(2), (b), and (c).⁸ OMLS made considerable efforts to comply with 45 CFR Part 1611. OMLS researched whether the non-profit organization focused its activities on services that benefited low-income persons and/or their communities and whether the group was primarily composed of individuals who would be financially eligible for legal assistance. OMLS considered the socio-economic characteristics of the persons comprising the

⁴ See Finding 4, *infra*, for a more detailed discussion of the OMLS policy as it relates to determining asset eligibility.

⁵ See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, II (G) Ocean Monmouth Legal Services, Inc., adopted July 10, 2009 at page 2.

⁶ See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, Ocean Monmouth Legal Services, Inc., VIII (B)(5), adopted July 10, 2009.

⁷ See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, Ocean Monmouth Legal Services, Inc., VIII (B)(6), adopted July 10, 2009 and OMLS Schedule of Assets Exempt Under Federal and State Law.

⁸ LSC cautions that OMLS must continue to make independent factual determinations that the requirements of 45 CFR Part 1611 have been satisfied and could not solely rely on its intake questionnaire in which the group representative certifies that the group meets these requirements.

group to determine if those characteristics were consistent with those persons who are financially eligible for LSC assisted legal services. OMLS, however, could improve their documentation by perhaps maintaining summaries or copies of the financial records reviewed.

Form Review

During the review, LSC staff collected the intake, retainer, and other forms in use by OMLS. Based upon the review of the forms provided, the substantive units of OMLS appear to use similar consistent forms and retainer agreements, although they are not identical. The majority of these forms are generally compliant; however, improvements are required, as discussed below.

On the limited occasions OMLS provides outreach intake, staff gathers essential eligibility and other compliance-related information using a Manual Intake and Citizenship Attestation form. The Manual Intake form does not contain an inquiry into the reasonable income prospects of applicants. Additionally, this form does not include the authorized income exceptions pursuant to OMLS policy and 45 CFR § 1611.5 and only contains a partial list of the exempt assets pursuant to OMLS asset policy adopted pursuant to 45 CFR § 1611.(3).

Generally, the PAI program and the substantive legal units of OMLS each use a similar but different retainer agreement. The retainer agreements include substantively the same language but are tailored to accommodate the particular type of case handled by each unit. It appears that the retainer agreements used by the PAI program and the housing and bankruptcy units have omitted the client and/or date line(s) either when they were tailored to the unit or when printing additional copies from the computer.⁹ To fully comply with 45 CFR § 1611.9, OMLS should review the standard retainer agreements used by the program to ensure that date lines are present.

The implementation of LSC regulations should be consistent throughout the program. As such, OMLS should provide staff training on the program's policies regarding 45 CFR § 1611.7(a) (reasonable income prospects), 45 CFR § 1611.5 (exceptions to annual income ceiling), 45 CFR §§ 1611.3(2) (waivers of annual asset ceiling), 45 CFR § 1626.(6)(a), and CSR Handbook (2008 Ed.) § 5.3 and 5.5 and revise its paper intake and retainer agreement forms so that they are consistent with LSC regulations and OMLS policies.

In its comments to the DR, OMLS noted that its Management team has provided training to staff so they are fully familiar with any new forms or protocols implemented in response to this report.

In its comments to the DR, OMLS further noted changes in the following areas have been made:

Citizenship Forms

LSC indicates that when a client walks in to the Toms River Office and is placed on the phone with legal line, that staff did not obtain signed citizenship attestation forms. At the time of the visit, Legal Line was in operation for approximately one month and the entire staff was adjusting to this major overhaul of the delivery system. As a result, some staff thought that if the walk-in client did not

⁹ See 45 CFR § 1611.9(b). LSC regulations do not require retainer agreements for legal services provided to the client by a private attorney.

meet with an attorney in the office and instead received counsel and advice through the legal line that they did not have to have a citizenship form signed. OMLS implemented a protocol to correct this compliance issue.

Reasonable Income Prospects

OMLS has modified its financial eligibility policy and intake forms to indicate clearly that OMLS must inquire into reasonable income prospects. OMLS attached a copy of the Financial Eligibility Policy as “Attachment B” in the Response to the DR.

Spend Down Policy

OMLS has modified this policy. Any eligible clients over 125% are attributed to another funding source. Additionally, OMLS included a copy of this policy as “Attachment B” in the Response to the DR.

Assets Exempt/Non Exempt

OMLS has modified this policy to provide that there be no exceptions to the asset guidelines. Additionally, OMLS included a copy of this policy as “Attachment B” in the Response to the DR.

Group Representation

OMLS noted that it would include tax returns in the file of any non-profit/group represented.

Hand Intake Form

OMLS has updated its intake forms to include reasonable income prospects. The forms have been made accessible to all staff. Additionally, OMLS included a copy of this form as “Attachment C” in the Response to the DR.

Reporting of LSC Eligible Cases

OMLS acknowledges that it has not been reporting cases to the LSC for clients with incomes below 125% of poverty if they were supported by an alternate funding source. OMLS did not believe that it could report the same case to more than one funding source. After discussing it with team members during the visit, OMLS understands that it must report all LSC eligible cases in the CSR data submission regardless of the funding source. This information is already captured in OMLS’ current case management system by checking a box indicating LSC eligible despite the funding source. OMLS will report this information going forward.

Finding 3: OMLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), § 5.3, CSR Handbook (2008 Ed.), ¶ 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. However, OMLS is in non-compliance with 45 CFR § 1611.5, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), §§ 4.3 and 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines.

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.¹⁰ *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 Federal Poverty Guidelines (“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.

The OMLS Board most recently adopted its Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds (“Eligibility Guidelines”) on July 20, 2009.¹¹ The Eligibility Guidelines establish a Maximum Income Level at 125% of the FPG. The Eligibility Guidelines set forth a detailed description of the factors used to determine household size, income sources, authorized exceptions for persons with income under 200%, authorized exceptions for persons whose income exceeds 200%, and group eligibility screening. In addition, OMLS maintains income and asset guidelines in the program’s ACMS.

¹⁰ 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.

¹¹ The Board of Directors attempted to adopt 2010 Financial Eligibility Policies on July 20, 2010; however, was unable to do so because it lacked a quorum. OMLS advised that the Financial Eligibility Policies will be on the agenda for adoption at the next Board of Directors meeting that was scheduled to be held in October 2010. This does not as of yet present a compliance issue because review of financial eligibility policies by the governing body of the recipient is required at least once every three years. *See* 45 CFR § 1611.3(a).

While the board adopted authorized exceptions to the annual income ceilings for applicants whose incomes exceed 125 % FPG in 2009, the board should strongly consider reviewing these authorized exception factors. OMLS policies do not take advantage of recent revisions to 45 CFR Part 1611. For example, the board-adopted *Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds* permit OMLS staff to consider “the consequences for the individual if legal assistance is denied” for those applicants whose incomes are between 125 and 200% FPG when determining eligibility.¹² Additionally, OMLS staff may consider the "evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment" for those applicants whose incomes are between 125 and 200% FPG when determining eligibility.¹³ While OMLS may consider these circumstances as “significant other factors,” they are more in the nature of case acceptance criteria rather than financial eligibility criteria, and appear to be holdover language from the 1983 version of the financial eligibility regulations. OMLS may want to review this language in light of the current regulatory focus on criteria that concerns the applicant’s financial ability to afford legal assistance rather than the circumstances that resulted in the applicant’s limited financial means. Additionally, although not required by LSC regulations, OMLS may want to include the payment of current taxes in its authorized exceptions pursuant to 45 CFR § 1611.3(a)(5).

Interviews and case review further demonstrated that OMLS is not reporting cases to LSC in its data submission for clients with incomes below 125% of FPG if they are supported by an alternate funding source, such as State IOLTA funding and Special Programs for the Aging-Title III funding. Intermediaries revealed that it is the recipient's practice to exclude from CSRs all non-LSC cases evidencing income under 125% because OMLS believes it could not report the same case to more than one funding source. This presents a compliance issue, as the CSR Handbook (2008 Ed.) ¶ 4.3 instructs recipients to report all LSC eligible cases in the CSR data submission regardless of funding source. Examples include closed 2008 Case Nos. 08-13077446, 08-140441877, 08-13078551, 08-13076905, 07-13073937, 08-13078694, and 08-13081436, and closed 2009 Case Nos. 09-13088302, 09-13094660, and 09-13087632. These files all contained eligibility determinations for clients’ whose incomes were below 125% FPG and were supported with non-LSC funding. These files were not reported to LSC in the CSR data submission. OMLS must report in the CSR data submission all LSC eligible cases.

Sample cases and interviews with OMLS evidenced that OMLS does not apply the board authorized exception factors for applicants whose incomes are between 125 and 200% of FPG when determining financial eligibility. This practice presents a compliance issue for LSC reported cases and may lead to underreporting of LSC and non-LSC reported cases. For example, there were several files reported to LSC in the CSR data submission denoted as “LSC eligible” cases that contained financial eligibility determinations for clients whose incomes exceeded 125% FPG. These files did not contain documentation that the program considered any of the authorized exception factors and were over income. Therefore, closed 2009 Case Nos. 09-13093480, 09-13094178, 09-13094179, and 09-13090212, and closed 2010 Case Nos. 10-13096224 and 09-13091389, and others similar to them are non-CSR reportable. Secondly, non-LSC reported closed 2008 Case Nos. 07-14040826 and 08-14042414, closed 2009 Case Nos. 09-13083595 and 08-13079619, and open Case

¹² See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, IV (B)(7), adopted July 10, 2009.

¹³ See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, Section IV (B)(8), adopted July 10, 2009.

Nos. 10-13102985, 10-13102107, and 10-13102995, contained eligibility determinations for clients whose incomes exceeded 125% FPG. These files did not contain documentation that the program considered any of the authorized exception factors. All of these files may have been LSC eligible had OMLS applied the authorized exceptions to the annual income ceiling.

OMLS' failure to apply the board adopted authorized exceptions is a compliance issue. While 45 CFR § 1611.5(a) does not require recipients to adopt policies to qualify individuals with incomes that exceed 125% of FPG, the board has chosen to require staff to consider the regulatory factors and, accordingly, the program staff are bound by such policy.¹⁴ The board may choose to re-adopt these factors, because it is reasonable to assume that if OMLS follows its board policy, OMLS applies the regulatory factors to many, if not the majority, of the above referenced cases, and those similar to them may have income determinations between 125%-200% FPG. These cases would then become eligible to be reported to LSC in the yearly data CSR data submission. LSC recommends that the OMLS address this issue either by requiring intake screeners to adhere to the current income policy as they pertain to considering the authorized exceptions to the maximum income ceilings or to adopt new policies consistent with OMLS current intake screening practices.

Sampled cases evidenced that OMLS is in compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. However, OMLS is in non-compliance with CSR Handbook (2008 Ed.), § 4.3 and 45 CFR § 1611.5 and (6) CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines.

In its comments to the DR, OMLS noted that they have changed the financial eligibility guidelines and a waiver form has been created to address those over 200% of poverty that fall within the categories in 45 CFR § 1611.5. Additionally, OMLS included "Attachment D" as part of the response to the DR.

Upon review of the January 2011 Ocean Monmouth Legal Services' Financial Eligibility Policy, it was noted that the domestic violence exception is inconsistent with 45 CFR § 1611.3(e).

Finding 4: OMLS maintains asset eligibility documentation as required by 45 CFR § 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. However, two exceptions were noted.

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

¹⁴ *See* Financial Eligibility Guidelines for Legal Assistance Supported by LSC funds, IV. Exceptions to the LSC Standard Income Level, "In determining the eligibility of a person whose gross income exceeds the Standard Income Level but does not exceed 200% of the Federal Poverty Guidelines and he or she is not covered by the Exceptions in § IV (A) you should then consider the following additional factors...." (Emphasis added).

except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.¹⁵ 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 the OMLS Board of Directors on July 10, 2009 establishes the asset ceiling at \$12,000.¹⁶ The board policy includes liquid assets defined as "all assets that are readily convertible to cash, including cash, bank accounts, money markets, mutual funds, certificates of deposit, public market stocks and bonds."¹⁷ Non-liquid assets are defined as "personal property other than household furnishing and clothing; vehicles, real property, whether improved or not; retirement accounts, annuities, 401K accounts, IRA accounts, 403B accounts; and any other asset that cannot readily be converted to cash. For purposes of valuing retirement accounts, annuities, 401K accounts, IRA accounts and 403B accounts, OMLS will presume a 20% reduction for interest and penalties."¹⁸ Exempt from consideration is a principal residence; ordinary household furnishings and clothing; one automobile; work-related equipment which is essential to the employment or self-employment of an applicant or his/her family unit; non-liquid assets that cannot reasonably and/or practicably be liquidated to meet the costs of legal assistance; and non-liquid assets which are exempt from attachment by a creditor under State law including N.J.S.A 25:2-1 or Federal law.¹⁹ LSC regulations provide that recipients may exclude a household's principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.²⁰ A comparison of OMLS asset policies with 45 CFR Part 1611 indicates that OMLS asset policies are in need of improvement in the areas discussed in the below sections.

¹⁵ 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.

¹⁶ See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, Ocean Monmouth Legal Services, Inc., VIII (A), adopted July 10, 2009.

¹⁷ See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, Ocean Monmouth Legal Services, Inc., II (F), adopted July 10, 2009.

¹⁸ See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, II (G), Ocean Monmouth Legal Services, Inc., II, adopted July 10, 2009.

¹⁹ See Financial Eligibility Guidelines for Legal Assistance Supported by LSC Funds, Ocean Monmouth Legal Services, Inc, VIII. (B), adopted July 10, 2009; See also OMLS Federal and State Exempt Asset List.

²⁰ See 45 CFR § 1611.3(d)(1).

Some portions of OMLS' asset exemption policy are broader than allowed by LSC regulations. 45 CFR § 1611.3(d)(1) states that "vehicles used for transportation" may be excluded. In that, "one automobile" could include an automobile not used for transportation; the exception as listed in the program's policy, is broader than that which is allowed by the regulation.

OMLS policies treat assets inconsistently. In addition to the assets specifically exempt under OMLS policy ("policy"), OMLS provided LSC with an additional, lengthy and complicated listing of assets exempt under State or Federal law ("schedule").²¹ The assets described as being exempt under the policy conflict with the assets described as being exempt under federal or state law pursuant to the schedule. This is because assets listed as wholly or partially exempt in the schedule are listed as non-exempt in OMLS policy. For example, the board policy includes cash, bank accounts and public market stocks and bonds as non-exempt, countable assets; however, the State law schedule partially exempts shares of public market stock up to \$1000. Secondly, some of the assets listed as wholly exempt under the board policy are partially exempt under the State law schedule. For example, the board policy provides that "ordinary household furnishings and clothing" are exempt from consideration during the asset determination. However, the State law schedule excludes a maximum of \$1000 of a person's household goods and furniture.

This inconsistent asset treatment is likewise found within the deferred compensation asset policies. OMLS policy treats deferred compensation as a non-exempt asset while the exemption policy for assets under Federal law excludes interest in ERISA-qualified retirement and other employee benefit plans, IRAs and annuities.²² On its face, the board policy is inconsistent in its treatment of deferred compensation assets, defining pensions, annuities and IRAs as assets that are both exempt and non-exempt.

These varying exemption amounts raise the question as to the amount OMLS should be exempting and including during asset determinations. Interviews revealed that most staff does not adequately screen these asset categories, as some staff does not ask certain questions at all while others ask about assets but are not aware of specific exemption limit amounts. To the extent that these assets are partially or wholly exempt from attachment under state and federal law, there are concerns as to whether OMLS policy determines the total amount of deferred compensation and other assets consistent with 45 CFR Part 1611.

LSC requires programs to screen each applicant in accordance with its board-approved policy and if the policy includes the above-referenced asset categories, they must be the subject of inquiry and consideration in determining whether an applicant is eligible for assistance with LSC funds. Consistent asset screening under OMLS' current asset policy is an issue program-wide. LSC recommends that the OMLS address this issue either by requiring intake screeners to adhere to the current asset policy or to simplify its asset policy to focus questioning on those categories of assets which are most likely to screen out households whose financial status circumstances would allow them to hire a private attorney. LSC regulations do not require recipients to exempt all assets exempt from attachment under Federal and State law but does require them to screen consistently according to board-approved asset policies.

²¹ See OMLS Federal and State Exempt Asset List.

²² See OMLS Federal and State Exempt Asset Schedule.

With the exception of closed 2008 Case No. 07-13073925 and closed 2009 Case No. 09-13093480, the sampled case files reviewed revealed that OMLS 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. The above-identified case files, and those similar to them, are not CSR reportable.

In its comments to the DR, OMLS noted that it changed its financial eligibility guidelines and a waiver form has been created which allows the Executive Director or his designee to waive the asset ceiling according to 45 CFR § 1611.3 (d)(2). Additionally, OMLS included “Attachment E” as part of the response to the DR.

Upon review of the January 2011 Ocean Monmouth Legal Services’ Financial Eligibility Policy, it was noted that domestic violence exception is inconsistent with 45 CFR § 1611.3(e).

Finding 5: OMLS is in non-compliance with 45 CFR § 1626.6 (Verification of citizenship). Several sampled files lacked a written citizenship attestation when one was required.

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.²³ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient’s CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, “Violence Against Women Act 2006 Amendment” (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a “U” visa. LSC recipients are now allowed to include these cases in their CSRs.

OMLS is in non-compliance with 45 CFR § 1626.6 as several files lacked written citizenship attestations when one was required. Examples include closed 2008 Case Nos. 07-14040826 and 08-

²³ *See* Kennedy Amendment at 45 CFR § 1626.4.

13076082, closed 2009 Case Nos. 08-13077171, 09-13083834, 08-13079917, and 09-13086110, and open Case Nos. 10-13099731 and 09-13085578. In each of these example cases, the file lacked evidence of a written citizenship attestation despite OMLS staff having in-person contact with the client or the case being closed with an extended service closing code. However, the ACMS revealed that clients were verbally screened and responded that they were citizens. The above-identified case files, and those similar to them, are not CSR reportable.

Additionally, there were several files identified in the sample that contained executed citizenship attestations that did not comply with the format requirements established by the CSR Handbook (2008 Ed.) which requires that the citizenship attestation contain the following statement on a separate document or a separate signature line: “I am a citizen of the United States: _____ *Signature of applicant* Date:_____.”²⁴ While OMLS implemented this new attestation format on January 1, 2008, several cases opened after that date, and one case opened during 2007 but closed during 2009, contained the old citizenship attestation version that did not tie the client signature solely to the citizenship statement. Examples include closed 2008 Case Nos. 08-14042040, 08-13081860, 08-14042244, and 08-13075748 and closed 2009 Case Nos. 09-13090017, 08-13079619 and 09-13087950. As these issues were not found in the sample after 2009, this issue appears to have resolved itself by 2010, and thus no corrective action is required.

Lastly, closed 2008 Case No. 08-14043224, closed 2009 Case Nos. 08-13080214, 09-13093176, 08-13081907, and 09-13082886, closed 2010 Case Nos. 10-13098120 and 08-14042364, and open Case Nos. 10-13101968, 10-13102158, 10-13103056, 09-13090973, 09-13095176, and 10-13103055 contained the required documentation related to citizenship screening or alien eligibility; however, the documentation was undated or dated in a manner that made it difficult to determine timeliness. This failure to date the citizenship attestation may be related to the structure of the forms in use by OMLS. OMLS requests that applicants sign and date both a separate certification and separate citizenship attestation, both of which are placed together on one form. The first signature/date line is the certification line and the second signature/date line is for the citizenship attestation. As the first signature/date line was usually dated by the client, it is recommended that OMLS amend its forms to place the citizenship attestation first and the certification second to increase the likelihood that the attestation will be dated.

OMLS is admonished that Part 1626 is regarded as a substantive regulatory requirement, and continued non-compliance could result in the imposition of sanctions.

In its comments to the DR, OMLS noted that it provided staff with a comprehensive CSR training in July 2010. Regular trainings and performance evaluations will reinforce these requirements and greatly reduce, if not eliminate, any future non-compliance.

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

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form

²⁴ See CSR Handbook (2008 Ed.), § 5.5.

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). No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR Part 1614. *See* 45 CFR § 1611.9(b).

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.²⁵ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

OMLS is in substantial compliance with the requirements of 45 CFR § 1611.9. However, there were several errors noted. A few extended service cases lacked a retainer agreement when one was required, such as closed 2008 Case No. 08-13076082 and closed 2009 Case No. 08-13079917. Secondly, a few sampled files contained executed retainers but these retainers lacked a description of the legal services to be provided to the client, such as closed 2009 Case No. 09-13088515 and closed 2010 Case No. 10-13103124. One sampled file, closed 2010 Case No. 10-13100488, contained a retainer agreement that was executed after the legal services had concluded and thus was untimely. Finally, closed 2008 Case Nos. 08-13076969, 07-13073918, 07-13074909, and 06-13071708, closed 2009 Case Nos. 09-13089585, 09-13093294, 09-13090158, and 09-13083684, closed 2010 Case Nos. 09-13082841, 10-13096980, 08-14042364, 10-13103007, and 10-13102269, and open Case No. 09-13095176 all lacked the dates that the retainer agreements were executed; and, accordingly, it is difficult to discern whether the retainer agreements were timely executed.

The lack of a retainer does not preclude CSR reporting eligibility. Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC. It is recommended that compliance reviews include the review of the retainer agreements executed by OMLS and that the OMLS reviews its retainer agreement forms to ensure that these forms all contain a date line.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

Finding 7: OMLS is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1636.5.

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).

²⁵ 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.

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).

Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). However, during review, OMLS did not provide LSC with any written policies concerning this Part. Pursuant to 45 CFR § 1636.5, OMLS is required to adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document its compliance.

In its comments to the DR, OMLS noted that it implemented a written policy to address the requirements of 45 CFR Part 1636. Additionally, OMLS included a copy of this policy as “Attachment F” in the response to the DR.

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

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

Prior to the visit, OMLS provided LSC with a list of its priorities. The priorities include support for the families, preservation of the home, maintenance of economic stability, support for the client community, support for individuals and special populations and engaging in other activities that enhance the delivery of legal assistance to the client community through authorized activities, among which may include “advice and referral in other than program cases.”²⁶ The governing board of OMLS may want to consider expanding the “other” priorities to permit OMLS to provide brief and extended services in “other than program cases.” This may provide staff with the flexibility to provide expanded services in targeted cases without compromising OMLS’ ability to focus its limited resources towards the core legal services needs of the client community.

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

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

²⁶ *See* Priority Statement 2009, Ocean-Monmouth Legal Services, Inc., readopted on July 20, 2009.

Finding 9: OMLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). However, there were several staff case files reviewed which contained no description of the 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.

OMLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6. A few sampled case files reviewed failed to document the legal assistance provided. For example, closed 2010 Case Nos. 09-13084913, 08-13078722, 09-13084475, and 09-13095958 all lacked a description of the legal assistance provided. These files, and others like them, are not CSR reportable.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

Finding 10: OMLS’ application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

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.

Sampled files reflect that OMLS’ application of the CSR case closure categories is generally consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). However, there were instances of case closure category errors with three main patterns of error identified. Further improvement is required.

First, it appears that OMLS at some point-misunderstood closing category “G, Negotiated Settlement with Litigation,” with the result that several sampled cases were closed using incorrect closure

codes. The biggest pattern of error was the misuse of the “I, Court Decision,” closure code in landlord-tenant and family law cases. For example, closed 2008 Case Nos. 08-13075906, 08-14042086, 08-13081926, 08-14042905, 08-13076057, 08-13076987 and 08-13076608, closed 2009 Case Nos. 09-13088978, 08-13082391, and 08-13082260, and closed 2010 Case No. 10-13096980 were all closed with I(a) or I(b) closure categories although the documentation in the file reflects that the attorney conferred with the opposing party to reach a settlement prior to entering the courtroom. Many of these files were closed with a court decision because an attorney appeared before the judge, regardless of whether a settlement had been reached. The CSR Handbook requires programs to close files in which there are settlements of pending court actions with a “G, Negotiated Settlement with Litigation,” closing category even when the court issues an order memorializing the settlement.²⁷ Further, in a few sampled cases, the program mistakenly closed mediated landlord-tenant cases that contained settlements negotiated after litigation was initiated with an “F, Negotiated Settlement Without Litigation,” closing code because the court’s mediation process did not require the parties to appear before the judge to memorialize the settlement. Examples include closed 2009 Case No. 09-13089585 and closed 2010 Case Nos. 10-13101909 and 10-13097350. The CSR Handbook instructs that an “F” code cannot be used if a court or administrative action is pending.²⁸ The “G” closure category would have been the more appropriate closing category because there was pending litigation against the client. These cases and others similar to them should be closed using the “G” closing code.

The second pattern of error was the closure of cases “B, Limited Action,” when the highest level of service provided to the client was a legal consultation and the more appropriate closing code would have been “A, Counsel and Advice.” These closure code errors were found in closed 2008 Case No. 08-13075971 and closed 2009 Case Nos. 08-130777497, 09-13082844, and 09-13082831. These errors were found predominantly in the PAI case sample among the *pro bono* bankruptcy files. In these cases, advice was provided to the client during consultation. The attorney performed further legal work, but the client could not be located so the case was closed without the client receiving the benefit of the work performed by the attorney. Intermediaries reported that these cases were closed using the “B, Brief Services” category because the attorney performed research and/or prepared pleadings. However, this level of assistance was not provided to the client so the more appropriate closing code would have been “A, Counsel and Advice.” The CSR Handbook requires that all legal assistance reported to LSC must be provided to the client.²⁹ These cases and others similar to them should be closed using the closing code that reflects the highest level of service provided to the client.

A third pattern of error noted was the use of the “K, Other,” closing code for cases in which another closing code category more specifically described the nature of the legal services performed. For example, closed 2008 Case Nos. 08-13076242 and 08-13076179 and closed 2009 Case Nos. 08-13078499 and 08-13082498 were closed “K, Other,” when the documentation in the file reflected that advice and counsel, extensive services or brief services were actually provided to these clients and the closure codes of “A, Counsel and Advice,” “B, Brief Services,” and “L, Extensive Services,” would have more accurately described the nature of the legal services performed. The CSR Handbook requires that cases be closed in the category that best reflects the level of service provided

²⁷ See CSR Handbook (2008 Ed.), § 8.1.

²⁸ See CSR Handbook (2008 Ed.), § 8.3.

²⁹ See CSR Handbook (2008 Ed.), § 8.1(b).

and if a descriptive closure category is applicable, then the “K, Other,” code should not be used.³⁰ These cases indicate that OMLS should question its use of the “K” closing categories, as LSC did not anticipate that this closing category would be used frequently as most common services provided to clients should fit more accurately within another closing code category.

Finally, three (3) sampled files were closed using discontinued closure codes. For example, closed 2010 Case No. 09-13092077 was closed with the now defunct closing code “E, Client Withdrew,” when the more appropriate closing code would be “A, Counsel and Advice.” Closed 2010 Case Nos. 10-13102517 and 09-13084913 were closed with the now defunct closing code “C, Referred After Legal Assessment.” These codes were applied to cases closed after January 1, 2008 in error.

OMLS was advised of these patterns of error and immediately took action to implement the correct use of these closure code categories. However, OMLS must continue to take corrective action to ensure proper assignment of case closure categories throughout the program. Corrective action must include mandatory closure code training for all staff and the implementation of oversight to ensure the effectiveness of the training.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance and that while it does not consider the finding non-compliant; there were instances of case closure category errors and OMLS has accordingly taken corrective action. OMLS discussed the pattern of errors noted with staff immediately following the visit in a series of unit meetings and cleared up the erroneous use of “I,” “F,” and “B” closing code practices discovered during the visit. In addition, OMLS provided additional training on the LSC regulations, including the appropriate use of closing codes. OMLS anticipates that the meetings and trainings have corrected the problems.

Finding 11: OMLS in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3, as several case files reviewed were untimely closed.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).³¹ 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

³⁰ *See* CSR Handbook (2008 Ed.), § 8.1 at FN 41.

³¹ 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).

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).

OMLS is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3, as several case files were not closed in a timely manner.

The following case files, and those similar to them, should not be reported to LSC in any future OMLS' CSR data submission. Some illustrative examples include closed 2009 Case Nos. 07-14039973 (which was closed "A" on December 28, 2009. All legal activity ceased in this case file in the year 2007, and the file contains no documented activity after 2007), 07-14040469 (which was closed "A" on March 23, 2009. All legal activity ceased in this case file in the year 2007, and the file contains no documented activity in the file after 2007), and 07-14041139 (which was closed "B" on December 28, 2009. All activity ceased in this case file in the year 2008, and the file contains no documented activity in the file after 2008), and closed 2010 Case No. 08-13082288 (which was closed "A" on August 20, 2010, however, the documentation in the file indicated that case should have been closed during 2009). The documentation in the files of closed 2010 Case Nos. 09-13084913, 08-13078722, 09-13084475 and 08-13082208, reflects that no legal assistance was provided to the client and that these cases would have been more properly rejected and deselected. Some further examples include closed 2009 Case Nos. 07-14040469 and 08-14041978, and closed 2010 Case Nos. 09-13084223, 08-13081668, 09-13084741, 09-13089528, 09-13090901, 09-13090558, 09-13090779, 08-13081134, and 09-13088996. The case notes indicate that many of these files were dormant and only reviewed and closed after being selected for review by LSC.

Many of the example cases were dormant prior to closure because OMLS was waiting for the client to return with documentation or to complete a required process, such as credit counseling. When the client did not return the file languished. While OMLS has oversight practices in place, it should develop additional methods to prevent dormant and untimely closed files. OMLS staff may want to adopt the oversight methods in use by the VAP Program, such as closing and re-opening files when the client returns with documentation and/or completes counseling. Additionally, OMLS may choose to run case lists indicating files that have not had time entered for three (3) months, conduct semi-annual compliance reviews, and provide targeted training for those individuals who may require additional assistance.

In its comments to the DR, OMLS noted that they believe their finding of compliance to be a typographical error based on the detailed explanation of the finding in the report. Therefore, they responded as if they were found in non-compliance. Accordingly, for the last few months, the OMLS Management team has reviewed all the case handler open and closed cases on a monthly basis to prevent stale cases. Furthermore, the OMLS Management implemented comprehensive quarterly reviews to ensure future compliance.

Finding 12: With one exception, 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.

OMLS is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases as only one (1) duplicate case files was noted, closed 2008 Case Nos. 08-13077223 and 08-13076969.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

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

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

From the limited review of accounting records and documentation for the period January 1, 2008 through July 15, 2010, OMLS does not appear to have expended grant funds, personnel or equipment in prohibited political activities in violation of 45 CFR § 1608.3(b).

From interviews with management it appears that OMLS employees have not intentionally identified the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office under the requirements of 45 CFR § 1608.4(a).

In addition, no indications were found where, while engaged in legal assistance activities supported under the Act, OMLS' attorneys engaged in any political activity, any activity to provide voters with

transportation to the polls, or to provide similar assistance in connection with an election, or voter registration activity.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

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

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

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

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

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

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

Finding 15: OMLS' accounting and financial records are in non-compliance with 45 CFR § 1610.5 (Donor notification Letters) OMLS is in compliance with 45 CFR § 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:

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

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

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

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

The review of accounting records and detailed general ledger from January 1, 2008 through July 15, 2010, indicates that in addition to LSC funding, OMLS receives funding from various private, Federal, and State funding sources. OMLS failed to provide all donors who contributed \$250 or more to OMLS with written notification of the prohibitions and conditions that apply to the funds for

fiscal year 2010. OMLS' management was unaware that written notification was required to be sent to all donors who contributed \$250 or more. They assumed 45 CFR § 1610.5 only applied to Foundation grants. 45 CFR § 1610.5 provides that no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

OMLS is in non-compliance with 45 CFR § 1610.5 (Notification) and is required to notify all contributors with a written notification of the prohibitions and conditions which apply to donor funds.³²

In its comments to the DR, OMLS noted that it was committed to applying the regulation and would send separate, written notification to any source that provides funding in excess of \$250.

Finding 16: OMLS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. OMLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. OMLS may have failed to meet its 12.5% requirement pursuant to 45 CFR § 1614.6 and lacks written PAI policies and procedures as required by this Part. OMLS is in non-compliance with 45 CFR § 1614.3(6), cost allocations.

PAI Program

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

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

Recipients are required to develop a PAI Plan and budget. *See* 45 CFR Part § 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet

³² *See* 45 CFR § 1610.5(b) which provides that "a recipient is not required to provide such notification for receipt of contributions of less than \$250."

legal needs, and the results of consultation with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. See 45 CFR §§ 1614.4(a) and (b).

OMLS' undated PAI Plan, which complies with regulatory requirements, identifies its primary PAI component to be its Volunteer Attorney Program ("VAP"), which is a program that refers eligible clients to participating pro bono attorneys in the counties of Ocean and Monmouth. To increase private attorney involvement in the program's delivery system, largely due to funding cuts, the plan announces that in 2010 OMLS' focus will be to increase attorney participation and pro bono case referral by 10 percent, create new legal clinics, and conduct issue oriented community service education. The Plan states that OMLS has an Operational Manual that includes procedures and guidelines to ensure the VAP's compliance with LSC Regulations and program policies, and that OMLS will revise this manual in 2010. Interviews with the Executive Director, Deputy Director and the Pro Bono Coordinator revealed that the Operational Manual was unavailable for review because it was still in draft form. In response to a request from the team, the Pro Bono Coordinator produced a document entitled, "OMLS Pro Bono Procedure," dated June 1, 2003. Despite its date, it appears to be an accurate representation of the VAP procedures, as described during an interview with the Pro Bono Coordinator, perhaps needing only minor edits to bring it up to date.

Staff and senior management explained several activities of PAI. Specifically, OMLS participates in a Paralegal Internship program sponsored by Ocean County College's Cooperative Education Program. An OMLS staff attorney, who is an Adjunct Professor at the college, supervises the paralegals. Senior management could not explain how this program involves the use of private attorneys in the delivery of legal assistance. OMLS is cautioned that a *pro bono* paralegal assisted case does not fit within the definition of a reportable PAI case for CSR purposes. The CSR Handbook defines a PAI case as the provision of permissible legal assistance by a private attorney participating in a recipient's PAI program ...³³ Secondly, interviews initially produced conflicting information as to whether a year-old Daniel J. O'Hern Legal Assistance Medical Partnership (LAMP), a partnership between OMLS and Parker Family Health Center, produced PAI cases. It was determined that these cases are handled by a staff attorney and if any cases are referred to attorneys outside of the program they are not considered part of OMLS' PAI program.

The Deputy Director stated that the plan would be reworked next year to include its new initiatives and that some of the language in the current plan will be removed. It is recommended that OMLS finalize its Operational Manual to ensure that all written policies, including oversight and follow-up efforts, are up to date, accurate and centrally located.

Legal Assistance Partnership Program ("LAPP")

Consistent with its PAI Plan, OMLS worked with a newly opened Self-Help Resource Center, operated by the Superior Court of New Jersey, Monmouth Vicinage to develop partnership opportunities. The Self-Help Resource Center opened in March 2010 and in June OMLS began conducting intake at the center two times per month. The Deputy Director explained that legal services and other services are provided. Eligible clients receive advice, and additional

³³ See CSR Handbook (2008 Ed.), § 10.1.

representation may be provided, if appropriate. In addition, once per month, an attorney provides a presentation at the center on a different topic and, if attendees have legal issues, they can remain afterwards for intake and eligibility screening. The project is supervised by the Managing Attorney of the Freehold office, but the intake and clinic sessions are staffed by both staff attorneys and private attorneys, depending upon availability.

Intake and eligibility information is recorded directly into the ACMS using a laptop. The Managing Attorney of the Freehold office is responsible for oversight and follow-up on cases opened under the LAPP project. There were no clinics held during the week of the CSR/CMS review and the Managing Attorney was on vacation during this week. It is noted that OMLS is in the preliminary stages of entering into a similar partnership with the court in Ocean County. Planning and coordination meetings are underway and OMLS expects that the project will be launched in the latter part of 2010.

Volunteer Attorney Program

At the time of the review, the VAP had recruited a panel of approximately 50 attorneys willing to volunteer their time to provide legal assistance in primarily bankruptcy and expungement cases. On rare occasion, wills, Powers of Attorneys and name change cases are referred to pro bono panel members. Case review reveals that security deposit cases were referred in the past. A non-attorney Pro Bono Coordinator, who has been employed at the program for twenty-three years, administers the program. Based in Freehold, the Pro Bono Coordinator also serves as the IT Coordinator. The Executive Director is responsible for overall management, reviews VAP cases upon their closure, and records his time to each case when reviewed. In 2009, OMLS closed 78 VAP cases. Case lists prepared in response to the document request for the review reported that at the time of the review, the Pro Bono Coordinator stated that 57 VAP cases were open and 59 had been closed thus far in 2010.

Bankruptcy cases are intaked through the OMLS' regular intake and eligibility screening process and the Pro Bono Coordinator conducts the intakes for expungements. OMLS staff conducts the initial consultations and work up the case prior to referral to the *pro bono* attorney. Staff provides advice, obtain documents and ensure the applicant has completed prerequisites to referral, such as completing credit counseling. Upon acceptance as a VAP client, the Pro Bono Coordinator sends the client a letter enclosing the Retainer Agreement for Referral to a Volunteer Pro Bono Lawyer and the printed Kemps intake sheet that contains a verification of the accuracy of the information and a citizenship attestation. If the individual is a non-citizen, the Pro Bono Coordinator arranges to obtain a copy of the appropriate document demonstrating alien eligibility. Clients must return the documents before cases are placed with private attorneys. At that time, the Pro Bono Coordinator identifies an attorney willing to accept the case and sends the client and the attorney placement letters.

Oversight of PAI cases exceeds LSC requirements. The Pro Bono Coordinator tracks cases on the ACMS, which has a module specific to PAI, but also maintains written records in the form of a list of each case open and a calendar of scheduled follow-up dates. The placement letter to the client states that it is the client's responsibility to contact and meet with the attorney in two weeks. Accordingly, the Pro Bono Coordinator calls the attorney in two weeks to ensure that the private

attorney has met with the client and, in bankruptcy cases, collected the filing fees. It is the program's policy that the private attorney collects the filing fees prior to beginning the process of filing out the forms. If the client has made contact with the private attorney, the next contact is scheduled for one-month. If the client has not contacted the private attorney, the client receives a letter stating that if the client does not contact the private attorney in 10-days the case will be closed. With respect to bankruptcies, the Pro Bono Coordinator stated that she contacts the private attorney every 30 days until the bankruptcy is filed. If there is a delay in filing the case because the attorney is waiting for additional documentation from the client, the client receives a letter stating that if the documentation is not provided in ten days the case will be closed. After the case is filed, the Pro Bono Coordinator tracks the case on the Public Access to Court Electronic Records service, known as Pacer, which provides access to bankruptcy records. With respect to expungement cases, the Pro Bono Coordinator contacts the attorney once per month. All contact is by telephone or e-mail. She reports no difficulty in making contact with the private attorneys and obtaining case status information from them. File review reflects copious, detailed notes reflecting at least monthly contact with the private attorneys or Pacer system. The majority of the files document more than one status update per month.

Placement letters to the attorneys request that when the case is ready for closure, they provide the Pro Bono Coordinator with the date and reason the file was closed, and the number of hours spent on the case. Total pro bono hours are annually calculated and reported pursuant to the Madden Rule. In most bankruptcy cases, because of the frequent status checks on Pacer, the Pro Bono Coordinator is already aware when the final discharge is granted, which is printed and placed in the client file. With respect to expungements, the attorney emails the Pro Bono Coordinator when the final disposition letter is received. The final letter is not sent to the Pro Bono Coordinator for the client file, though the email and notes supporting closure and level of service are included in the file. The Pro Bono Coordinator selects the closure code, prints an ACMS case file summary sheet reflecting the closure date and code, and gives the file to the Executive Director for review.

PAI cases were selected for review; all files that contained errors are referenced in the appropriate sections throughout this report.

OMLS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. OMLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

PAI Program Fiscal Compliance

45 CFR Part 1614.3(e) requires programs to use financial systems and procedures and maintain supporting documentation to identify and account separately for costs related to PAI. Generally, such systems must accurately identify and account for the recipient's administrative and overhead, staff, and support costs related to PAI; payments to participating attorneys for support or direct client services rendered; and contractual payments to individuals or organizations that provide administrative, support, and/or direct client services on behalf of the recipient. *See* 45 CFR § 1614.3(e)

An examination of OMLS' PAI calculation revealed that two (2) staff members charged time to the PAI efforts based on estimated hours worked rather than actual hours worked. OMLS' practice of using estimated hours worked rather than actual was applied in the calculation of PAI expenses from January 1, 2008 through July 15, 2010. OMLS' practice is inconsistent with 45 CFR § 1614.3(e) and may have led to an over counting of PAI expenditures. Accordingly, the costs attributed to the PAI efforts are not valid expenses and OMLS should stop charging estimated hours worked towards the PAI effort, and only charge actual hours worked.

The methodology OMLS uses to allocate its indirect costs is Total PAI Salaries divided by Total Salaries. This methodology is reasonable, and acceptable, however, OMLS is under counting its PAI efforts because it is using the indirect cost allocation method to allocate its direct costs for fringe benefits. The direct fringe benefit costs associated with the PAI efforts should be based on actual costs. Direct fringe benefit costs should be included in the direct cost allocation rather than the indirect cost allocation. OMLS should stop allocating direct costs associated with its PAI efforts in its indirect cost allocation.

OMLS is also under counting its PAI expenses because the program does not include a portion of its Administrative salaries for personnel that indirectly work towards the PAI effort, as well as, other operating expenses (postage, printing, etc.). These expenses should be included in OMLS' indirect cost calculation, and allocation of PAI expenses. OMLS does not have written policies and procedures regarding its PAI methodology. The program's allocation method should be clearly documented as to both theory and methodology and included in their accounting manual, as required by 45 CFR § 1614.3(e)(1)(i),.

OMLS Interim Financial Statements for Fiscal Year 2010 reveals that OMLS' use of estimated hours in the cost allocations may have led OMLS to over count and over report its PAI requirement. Discussions with management also revealed that the program used estimated hours worked in the calculation of their PAI efforts for Fiscal Years 2008 and 2009. The program needs to recalculate its PAI requirement of 12.5% for Fiscal Years 2008, 2009, and 2010 to determine if the requirement was met. If the PAI requirement was not met for any of the Fiscal Years in question, the program must notify the Corporation. The recalculation should represent the amount of the shortfall (which is the difference between the requirement amount and the recalculated PAI amount for each of the three Fiscal Years) and it should be carried forward to the current Fiscal Year (2011).

OMLS' allocation of costs and expenses associated with the PAI effort are not in compliance 45 CFR Part 1614.3(e) and it may have failed to meet its 12.5% PAI requirement. OMLS must allocate salary expenses on actual hours worked, calculate direct fringe benefit costs related to the PAI effort by using actual direct costs, and include actual Administration salaries and other operating expenses (postage, printing, etc.) in its indirect calculation and allocation of PAI expenses. Additionally, OMLS must recalculate its PAI costs for FY 2008, 2009 and 2010 to determine whether the 12.5% requirement is met for those Fiscal Years. If the PAI requirement was not met, the Program must notify the Corporation.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance with 45 CFR § 1614.3(d)(3).

In its comments to the DR, OMLS further noted that it was in the process of drafting a new PAI policy to comply with 45 CFR § 1614.6.

OMLS further acknowledged its failure to comply with 45 CFR § 1614.3(d)(3) for fiscal years 2009 and 2010. The prior Executive director, who resigned abruptly in June 2009, failed to document and require others to document time spent on the PAI program that resulted in non-compliance. The present Management team, which was permanently installed in October 2010, immediately realized the compliance issue and made efforts to correctly document all PAI time.

In its comments to the DR, OMLS further noted that with respect to the re-calculation of the PAI requirement of 12.5% for fiscal years 2008, 2009, and 2010, the revised allocation method indicated that OMLS met its requirement for fiscal year 2008, but failed to meet the requirement for fiscal year 2009 and fiscal year 2010 by \$12,029 and \$26,210, respectively. Based on OMLS' assessment of the PAI program, OMLS can state with confidence that it is not the effort expended in the PAI program that was insufficient, but rather the *documentation* of this effort.

OMLS further acknowledged, that LSC informed OMLS, in a letter dated November 19, 2010, that it would add the fiscal year 2010 shortfall to the fiscal 2011 requirement. OMLS is awaiting LSC formal ruling with respect to the disposition of the 2009 shortfall.

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

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

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

The review of accounting records and detailed general ledger from January 1, 2008 through July 15, 2010, disclosed that OMLS is in compliance with 45 CFR § 1627.4(a) as all non-mandatory dues and fees are being paid with non-LSC funds. OMLS also uses non-LSC funds for the payment of annual dues or fees to government agencies, which are required for operation of the Program. Examples include dues to the State Bar of New Jersey and fees paid to the New Jersey's Secretary of State to secure OMLS' non-profit status. OMLS should be made aware that LSC funds can also be used for the payment of annual dues or certain fees mandated by/to government organizations. *See* 45 CFR § 1627.4(b).

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance. In its comments to the DR, OMLS further noted that the finding indicated that OMLS should be made aware of the circumstances for which LSC funds can be used for the payment of dues or fees.

In its comments to the DR, OMLS noted that it would review 45 CFR § 1627.4(b) and consider using LSC funds when paying dues or fees mandated by/to government organizations.

Finding 18: OMLS 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.

OMLS utilizes Kemps Caseworks for contemporaneous case and time management. Time spent by attorneys and paralegals from January 1, 2008 through July 15, 2010, was documented by daily time records that are manually maintained in a written format which records the amount of time spent on each case, matter, or supporting activity. Prior to the recipient's bi-weekly payroll processing period, the support staff enters the manual time records for attorneys and paralegals electronically into the Kemp's system. Once their time is entered electronically, OMLS' practice is to discard the time records that had previously been recorded manually. A sampling of the recipient's time records revealed that some attorneys and paralegals time could not be verified as being recorded contemporaneous because of this practice.

Fifteen advocate timesheets were compared against the time recorded in case files to determine if the time reported on the case appeared reasonable. The results of the review disclosed no exceptions. However, an examination of time and attendance records revealed time reported worked by some advocates on a specific day did not agree with time records reported and entered into Kemps for that same day. The information entered into the payroll system is based on information from the time and attendance records. The review of selected advocates timekeeping records disclosed that a few

advocates were paid on days where no time was reported in Kemps. Further discussions with management revealed that certain advocates do not enter their time into Kemps on a consistent basis.

OMLS should implement the necessary controls, and procedures to verify that the time reported on time and attendance records agrees to the time records reported by advocates showing that they worked. OMLS should stop the practice of discarding the support document that manually keeps track of the advocates daily time and begin to submit the document with their time and attendance records to Human Resources. This practice will ensure that there is a permanent document trail of the advocate's daily manual time records, and a comparison can then be made to the time and attendance records. In addition, OMLS may want to utilize the Kemps time keeping system to capture all time reported and worked (actual hours worked and leave time).

A review of OMLS employment classification status for attorneys and paralegals revealed that the program had one employee who was listed as part-time. From discussions with management it was determined that the employee did not work for any other organization and chose to go to part-time for health reasons. Therefore, the quarterly certifications for part-time attorneys and paralegals do not apply.

OMLS is in non-compliance with 45 CFR Part 1635 – (Timekeeping) because attorney and paralegal time reported cannot be verified as being contemporaneous, and time and attendance records cannot be verified to the time records from the Case Management System.

In its comments to the DR, OMLS noted that pursuant to 45 CFR § 1635, it has maintained contemporaneous time keeping records whether hand-written or computerized. As has been the long standing practice at OMLS, all case handler's either enter their time keeping directly into the case management system or maintain a written daily time sheet which is later entered into the system. Both methods of record keeping are done contemporaneously. Once the written time keeping record is entered into the system, it is discarded, as it would be burdensome to store the hand-written documents. On days when an employee is out sick, personal or vacation, there would be no hand-written or case management record of time for those days.

In its comments to the DR, OMLS further noted that in light of the discrepancies discovered during the visit, OMLS has implemented controls and procedures to verify that the time reported on time and attendance records (bi-weekly time sheet) agrees with the time records reported by the advocate showing that they worked. The procedures include management review/comparison of daily time entries prior to processing the bi-weekly payroll.

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

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.³⁴

None of the sampled files reviewed contained a prayer for attorneys' fees. Discussions with the Assistant Director and fiscal review also confirmed that OMLS is not involved in any attorneys' fee cases. However, OMLS does receive fees from the State of New Jersey for handling general assistance cases that pertain to Social Security benefits. OMLS should demonstrate why portions of the fees received from Social Security Benefit cases are not allocated back to the LSC fund. Additionally OMLS receives Cy Pres Awards, which are proceeds of class action litigation that are awarded to non-profit organizations with missions in line with the purpose of the litigation. OMLS should instruct their Independent Public Accountant Firm to note any future Cy Pres Awards in the notes to the Financial Statement.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance. In its comments to the DR, OMLS further noted that Part 1 of the finding indicated that OMLS must demonstrate why a portion of the fees received from Social Security Benefit cases are not allocated back to the LSC fund. In a series of email exchanges with the LSC fiscal examiner, OMLS indicated to the fiscal examiner that the funds received from the New Jersey Division of Family Development are contractual payments, not derivative income and, as such, are not subject to the provision of 45 CFR § 1630.12.

In its comments to the DR, OMLS further noted that Part 2 of the finding indicated that OMLS must disclose in the notes to its audited financial statements any CY Pres awards. In its comments to the DR, OMLS noted that it would inform its auditors of this recommendation.

Finding 20: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1612.11.

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,

³⁴LSC 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 Letter 10-1 (February 18, 2010)

and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

None of the sampled files and documents reviewed evidenced any lobbying or other prohibited activities. Discussions with the Assistant Director also confirmed that OMLS is not involved in this prohibited activity. However, OMLS did not provide LSC with any written policies concerning this Part. OMLS is required to adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document its compliance.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance. Additionally, OMLS included a copy of the policy as “Attachment G” in the Response to the DR.

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

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Assistant Director also confirmed that OMLS is not involved in this prohibited activity.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1617.4.

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).³⁵

³⁵ does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Assistant Director also confirmed that OMLS is not involved in this prohibited activity. However, OMLS did not provide LSC with any written policies concerning this Part. OMLS is required to adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document its compliance.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance. Additionally, OMLS attached a copy of this policy consistent with 45 CFR § 1617.4 as “Attachment H” in the Response to the DR.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1632.4.

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

None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Assistant Director also confirmed that OMLS is not involved in this prohibited activity. However, OMLS did not provide LSC with any written policies concerning this Part. OMLS is required to adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document its compliance.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance. Additionally, OMLS attached a copy of this policy consistent with 45 CFR § 1632.4 as “Attachment I” in the Response to the DR.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1633.4.

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 files reviewed involved defense of any such eviction proceeding. Discussions with the Assistant Director also confirmed that OMLS is not involved in this prohibited activity. However, OMLS did not provide LSC with any written policies concerning this Part. OMLS is

required to adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document its compliance.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance. Additionally, OMLS attached a copy of the policy consistent with 45 CFR § 1633.4 as “Attachment J” in the Response to the DR.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1637.5.

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 Assistant Director also confirmed that OMLS is not involved in this prohibited activity. However, OMLS did not provide LSC with any written policies concerning this Part. OMLS is required to adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document its compliance.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance. Additionally, OMLS attached a copy of the policy consistent with 45 CFR § 1637.5 as “Attachment K,” in the Response to the DR.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub.L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction that prohibited LSC recipients and their staff from engaging a client that it solicited.³⁶ This restriction has been contained in all subsequent appropriations acts.³⁷ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: “This part is designed to ensure that recipients and their employees do not solicit clients.”

None of the sampled files indicated program involvement in such activity. Discussions with the Assistant Director also confirmed that OMLS is not involved in this prohibited activity.

³⁶ *See* Section 504(a)(18).

³⁷ *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)

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1643.5.

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

None of the sampled files reviewed involved such activity. Discussions with the Assistant Director also confirmed that OMLS is not involved in these prohibited activities. However, OMLS did not provide LSC with any written policies concerning this Part. OMLS is required to adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document its compliance.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance. Additionally, OMLS attached this policy as “Attachment L” in the Response to the DR.

OMLS should delete “in certain public housing eviction proceedings” from this policy. *See* OMLS “Policy Consistent with 45 CFR § 1643 Restriction on Assisted Suicide, Euthanasia, and Mercy Killing.”

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

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

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

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

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that OMLS was not engaged in any litigation that 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.

In its comments to the DR, OMLS noted that it would continue its efforts to maintain compliance.

Finding 29: Fiscal review evidenced that OMLS is in non-compliance with the requirements of 45 CFR § 1630 (Costs Standards and Procedures) as several late fees and finance charges were satisfied with LSC funds.

OMLS is non-compliance with 45 CFR § 1630.3 as the review revealed that several late fees and finance charges were paid using LSC funds. OMLS paid \$39.00 and \$31.64 in late fees and finance charges respectively. OMLS should reimburse the LSC account for these charges and should take steps to ensure that LSC funds are not used for late fees and finance charges in the future.

In its comments to the DR, OMLS acknowledged its non-compliance with 45 CFR Part 1630. In its comments to the DR, OMLS noted that it would reimburse the LSC for all late charges satisfied with LSC funds. With respect to (2), OMLS notes that it has already implemented a procedure whereby, in the unlikely event that late fees are incurred, and OMLS is unsuccessful in its attempt to have them removed, the fees will not be satisfied with LSC funds.

Finding 30: Fiscal review evidenced that OMLS failed to develop written policies and procedures describing its cost allocation methodology for LSC and non-LSC funding sources.

OMLS receives funding from various sources and many of these funding entities stipulate the manner in which the funds may be used by OMLS. While OMLS was able to provide a brief overview of the calculation on how costs are allocated between the various funding entities, OMLS was not able to provide formal written policies or procedure detailing this cost allocation. OMLS must ensure that it has written policies and procedures detailing how cost is allocated between funding sources and incorporate these policies into its accounting manual.

In its comments to the DR, OMLS notes that it would reduce to writing the specific method of cost allocation for each funding source in a given fiscal year (including contractual payments received from the New Jersey Division of Family Development), and incorporate this documentation in the Financial Policies and Procedures Manual.

Finding 31: Fiscal review evidenced weaknesses in the internal controls of OMLS as they relate to the payment of expenses from invoices.

Random selections of invoices were reviewed from January 1, 2008 through July 15, 2010. From that selection, it was noted that a few payments had been made to vendors based on billing statements rather than actual invoices. OMLS should ensure that it is paying vendors from original invoices rather than billing statements.

In its comments to the DR, OMLS noted that it is their policy that an invoice, rather than a vendor statement, support payments. On occasion, however, a statement may indicate an invoice of which OMLS has no record and which the vendor is unable to reproduce. In these rare instances, OMLS will not release payment unless a thorough investigation determines that the invoice in question represents a valid obligation of the agency.

Finding 32: Fiscal review evidenced segregation of duties weaknesses pursuant to the 2010 Accounting Guide for LSC Recipients.

The Internal Control Worksheet prepared by the program shows that one (1) employee's responsibilities encompasses multiple phases of a transaction as it relates to the deposits and recording of cash receipts. When one (1) person controls multiple phases of a transaction, the risk of fraud increases dramatically. Therefore, OMLS should ensure that it practices reasonable segregation of duties pursuant to the 2010 Accounting Guide for LSC Recipients. Specifically, accounting duties should be segregated to ensure that no individual simultaneously has both the physical control and the record keeping responsibility for any asset, including, but not limited to, cash, client deposits, supplies and property. Duties must be segregated so that no individual can initiate, execute, and record a transaction without a second independent individual being involved in the process.

In its comments to the DR, OMLS noted that it is aware of the concentration of duties in the cash receipt functions that resulted from a drastic reduction in our support staff. In order to address this concern, OMLS is in the process of re-structuring the duties of current support staff to include the opening of the mail and the maintenance of the cash receipt log. OMLS continues to employ multiple members of management in the cash review process.

Finding 33: Fiscal review evidenced internal control weaknesses in the check processing and cash disbursement procedures implemented by OMLS.

The review of OMLS check registers and cash disbursement journals for January 1, 2008 through July 15, 2010 revealed several internal control weaknesses. The review revealed that laser check stock and bank check stock drawn from the same bank contained duplicate check numbers. The check numbers were not processed in sequence and were out of order. There were missing check numbers, payees, amounts, and checks. There were unidentified check numbers. There were payees with zero check amounts and no check number, as well as debit transactions missing payee names.

OMLS must take immediate action to destroy the check stock from the bank and use only the laser checks that are ordered through the MIP software provider. OMLS must implement safeguard procedures in their check processing pursuant to the Accounting Guide for LSC Recipients. This includes instituting a policy for destroying checks, conducting an inventory both for its stored and in use check stock, and establishing check printing requirements. Additionally, OMLS should ensure all debit transactions are recorded properly, listing all relevant information pertaining to the payee (name, date, amount, memo reference to purpose of check).

In its comments to the DR, OMLS noted it is their policy to process checks in numerical order. Occasionally, checks are spoiled in the printing process, resulting in breaks in the sequence. In order to account for missing check numbers, OMLS currently maintains spoiled checks in a binder along with the respective check register. In addition, voided checks (which appear in the check register as having a zero amount), are maintained in a similar manner.

OMLS must take immediate action to destroy the check stock from the bank and use only the laser checks that are ordered through the MIP software provider.

In its comments to the DR, OMLS further noted that it is prohibited from generating on-line payments. The only exception is the payment of employee elective salary deferrals. These payments are recorded in the accounting software through a Cash Disbursements transaction. Previously, OMLS processed the transaction without indicating the name of the vendor (i.e., investment manager). OMLS has since added the investment manager to its vendor file and indicates them as the vendor when they record the payment. Similarly, OMLS indicates the name of its bank as vendor when it processes an automatic debit for bank fees.

RECOMMENDATIONS³⁸

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

1. Revise its intake certification and citizenship forms to place the citizenship attestation section first and the intake certification section second;
2. Review its priorities, specifically, the “other” priorities to determine whether OMLS should expand its priorities to provide brief and extended services in “other than program cases;”
3. Store case files in the office where the advocate is located rather than in the office serving the client’s geographical area;
4. Develop a policy setting forth a time-period for file closure for all cases with no client activity. Institute periodic compliance reviews for all advocates to prevent dormancy and untimely closed files. As part of this review, management may choose to periodically generate a computer list of all open cases that have not had any time recorded for 90 days; and
5. Require staff to submit their daily timekeeping records contemporaneously with their time and attendance records to Human Resources and maintain copies of these records.

In its comments to the DR, OMLS made no specific response to the LSC recommendations.

³⁸ 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, OMLS is required to take the following corrective actions:

1. Ensure that dormant and untimely case files are not reported to LSC in its CSR data submission;

In its comments to the DR, OMLS stated that it has implemented new oversight processes and reviews all case handler open and closed cases on a monthly basis and conducts quarterly reviews to ensure compliance.

2. Ensure that all case files contain citizenship attestations, where appropriate, and ensure that staff receives training concerning 45 CFR Part 1626 and CSR Handbook (2008 Ed.), § 5.5, which requires recipients to obtain written citizenship attestations whenever program staff has in-person contact with the applicant;

In its comments to the DR, OMLS stated that it has provided staff with training so that they are fully aware of any new forms and protocols. This included developing a protocol to correct the compliance issues that resulted from some intake staff failing to obtain written citizenship attestation forms from applicants when OMLS first had in-person contact with the applicant.

3. Ensure that all staff are trained on the proper use of the closing code categories to comply with CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1;

In its comments to the DR, OMLS stated that it that it will continue its efforts to maintain compliance and that it provided staff training on CSR closure code categories.

4. Adopt written policies and procedures in compliance with 45 CFR Parts 1636, 1612, 1617, 1632, 1633, 1637, and 1643;

In its comments to the DR, OMLS provided documentation indicating that it adopted policies and procedures pursuant to 45 CFR Parts 1612, 1617, 1632, 1633, 1636, 1637 and 1643. LSC advises that OMLS should delete “in certain public housing eviction proceedings” from its “Policy Consistent with 45 CFR § 1643 Restriction on Assisted Suicide, Euthanasia, and Mercy Killing”.

5. Review its maximum annual asset ceiling policy for exempt and non-exempt assets and adopt a policy that is consistent in its characterization of exempt and non-exempt assets and satisfies the requirements of 45 CFR Part 1611 and ensure that all cases reported to LSC in the CSR data submission are in compliance with 45 CFR Part 1611;

In its comments to the DR, OMLS stated that it has modified its financial eligibility policy so that there are no exceptions to its asset guidelines. OMLS has created a waiver which allows the Executive Director or his designee to waive the asset ceiling according

to 45 CFR § 1611.3(d)(2). In its comments to the DR, OMLS further stated that it has provided staff training and now conducts compliance reviews on a quarterly basis to ensure compliance.

Upon LSC review of the January 2011 Ocean Monmouth Legal Services' Financial Eligibility Policy, it was noted that the domestic violence exception is inconsistent with 45 CFR § 1611.3(e).

6. Ensure that all staff consistently adhere to the income exception policy currently adopted by the board consistent with 45 CFR Part 1611, or alternatively, review its authorized income exception policy and intake forms and adopt a policy and develop intake forms that reflects the income screening practices of OMLS consistent with 45 CFR Part 1611;

In its comments to the DR, OMLS stated that it has modified its financial eligibility policy to eliminate consideration of any expenses for any applicant over 125% of FPG and has implemented a waiver form to address those over 200% of poverty that fall within the categories in 45 CFR § 1611.5.

Upon LSC review of the January 2011 Ocean Monmouth Legal Services Financial Eligibility Policy, it was noted that the domestic violence exception is inconsistent with 45 CFR § 1611.3(e).

7. Ensure that staff screen for income prospects pursuant to 45 CFR § 1611.7(a)(1); and that this screening is documented in all KEMPS, outreach and in-person intake forms in use;

In its comments to the DR, OMLS stated that it has modified its financial eligibility policy and intake forms to indicate clearly that there must be an inquiry into the reasonable income prospects of every applicant. In its comments to the DR, OMLS further stated that it has provided training to staff so that they are fully familiar with the intake forms and protocols.

8. Ensure that all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements are reported to LSC, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly reported pursuant to CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3;

In its comments to the DR, OMLS stated that it would report all LSC eligible cases in the CSR data submission regardless of the funding source. OMLS would be using the LSC eligible check box in its case management system to select all LSC eligible cases for reporting in the LSC data submission regardless of the funding source.

9. Review case files required to have a Retainer Agreement and verifying that all agreements are properly signed and dated, and contain a detailed scope and subject matter of the representation;

In its comments to the DR, OMLS stated that it would continue its efforts to maintain compliance.

10. Adopt fiscal written policies and procedures in compliance with 45 CFR Part 1614 cost allocation methodology and develop a written funding source cost allocations which includes cost allocations for fees received from Social Security Benefit cases, both which shall be in the accounting manual;

In its comments to the DR, OMLS stated that it would reduce to writing the specific method of cost allocation for each funding source in a given fiscal year (including contractual payments received from the New Jersey Division of Family Development), and incorporate this documentation in the Financial Policies and Procedures Manual.

11. Ensure that it allocates its PAI direct and indirect costs in accordance with 45 CFR § 1614.3(e)(3). OMLS must recalculate its PAI costs for FY 2008, 2009 and 2010 to determine whether the 12.5% requirement is met for those Fiscal Years. If the PAI requirement was not met for any of the Fiscal Years in question, the Program must notify the Corporation;

In its comments to the DR, OMLS stated that it re-calculated the PAI requirement of 12.5% for fiscal years 2008, 2009, and 2010, the revised allocation method indicated that OMLS met its requirement for fiscal year 2008, but failed to meet the requirement for fiscal year 2009 and fiscal year 2010 by \$12,029 and \$26,210, respectively. In its comments to the DR, OMLS further stated that in a letter dated November 19, 2010, LSC informed OMLS that it would add the fiscal year 2010 shortfall to the fiscal 2011 requirement. OMLS is awaiting LSC formal ruling with respect to the disposition of the 2009 shortfall.

12. Ensure compliance with the requirements of 45 CFR § 1610.5 “donor notification” by notifying donors of the prohibitions and conditions which apply to LSC funds;

In its comments to the DR, OMLS stated that it would send separate, written notification to any source that provides funding in excess of \$250. OMLS is reminded that 45 CFR § 1610.5(b) requires written notification for any contributions of \$250 or more.

13. Ensure the segregation of duties as required by Chapter 3-4 of the Accounting Guide for Legal Services Corporation (2010 Edition) and LSC Program Letter 10-2;

In its comments to the DR, OMLS stated that it was in the process of re-structuring the duties of OMLS support staff to include the opening of the mail and the maintenance of the cash receipt log. In its comments to the DR, OMLS further stated that it would continue to employ multiple members of management in the cash review process.

14. Strengthen its fiscal internal control related to check processing and cash disbursements, specifically, by implementing a safeguard procedure for check destruction, check inventory, check numbering and manual printing of checks;

In its comments to the DR, OMLS stated that it would continue to implement its policy to process checks in numerical order. In its comments to the DR, OMLS further stated that in order to account for missing check numbers, in the event that checks are spoiled in the printing process resulting in breaks in the sequence, OMLS would continue to maintain spoiled checks in a binder along with the respective check register. In addition, OMLS would continue to maintain voided checks (which appear in the check register as having a zero amount), in a similar manner.

OMLS must take immediate action to destroy the check stock from the bank and use only the laser checks that are ordered through the MIP software provider.

15. Strengthen fiscal controls to ensure that OMLS pays expenses from original invoices and that all debit transactions are recorded properly, listing all relevant information pertaining to the payee and that LSC funds are not used for late fees and finance charges; and

In its comments to the DR, OMLS stated that it would continue its policy that an invoice, rather than a vendor statement support payments. In its comments to the DR, OMLS further stated that in the rare instance when a statement may indicate an invoice of which OMLS has no record and which the vendor is unable to reproduce, OMLS will not release payment unless a thorough investigation determines that the invoice in question represents a valid obligation of the agency.

In its comments to the DR, OMLS further stated that the investment manager was added to the vendor file and indicates them as the vendor when they record the payment. Similarly, OMLS now indicates the name of its bank as vendor when it processes an automatic debit for bank fees.

In its comments to the DR, OMLS acknowledged its non-compliance with 45 CFR Part 1630. OMLS stated that it would reimburse the LSC for all late charges satisfied with LSC funds. In its comments to the DR, OMLS further stated that it has implemented a procedure whereby, in the unlikely event that late fees are incurred, and OMLS is unsuccessful in its attempt to have them removed, the fees will not be satisfied with LSC funds.

16. Ensure timekeeping requirements are followed pursuant to 45 CFR Part 1635 and implement sufficient procedures to ensure that timekeeping records are entered contemporaneously and accurately as required by 45 CFR § 1635.3(b)(1).

In its comments to the DR, OMLS stated that it would continue to maintain its current contemporaneous time keeping record system for hand-written and computerized time keeping entries. In its comments to the DR, OMLS further stated that it would continue

to discard the contemporaneous written time keeping record once it is entered into the system, as it would be burdensome to store the hand-written documents.

In its comments to the DR, OMLS stated that it has implemented controls and procedures to verify that the time reported on time and attendance records (bi-weekly time sheet) agrees with the time records reported by the advocate showing that they worked. In its comments to the DR, OMLS stated that these procedures include management review/comparison of daily time entries prior to processing the bi-weekly payroll.

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TARA REDMOND
STEPHEN D. GERMOND IV
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VEENA VALLYATHAN
NICOLE LEVINE

PLEASE RESPOND TO THE FREEHOLD OFFICE

February 17, 2011

Danilo A. Cardona, Director
Office of Compliance and Enforcement
3333 K Street, NW 3rd Floor
Washington, DC 20007-3522

RE: CSR/CMS Visit, Recipient No. 331100

Dear Mr. Cardona,

We would like to take this opportunity to thank Lisa Melton and her team for their hard work, patience and guidance during the week long compliance visit that took place at Ocean Monmouth Legal Services, Inc. in August 2010. The visit and findings were extremely informative to the new management team and to the staff. The visit and draft report have resulted in changes to the program that will undoubtedly improve our policies, practices and the services we provide to our clients.

Accordingly, we respond to your findings as follows:

Finding 1: The automated case management system ("ACMS") used by OMLS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were several exceptions noted.

Response: The OMLS Management Team has implemented a protocol wherein we will conduct performance reviews which will incorporate LSC compliance on a quarterly basis. We have also implemented the use of a form that must go into all closed files which will help insure continued LSC compliance. *(See Attachment A)*

Finding 2: OMLS's intake procedures and case management system support the programs compliance related requirements. However, there were a few exceptions noted.

Response: The OMLS Management team has provided the staff training so they are fully familiar with any new forms or protocols implemented in response to this report.

Citizenship Forms – The reviewers indicate that when a client walks in to the Toms River Office and is placed on the phone with legal line, that staff did not obtain signed citizenship attestation forms. At the time of the visit, Legal Line was in operation for approximately one month and the entire staff was adjusting to this major overhaul of our delivery system. As a result, some staff thought that if the walk-in client did not meet with an attorney in the office and instead received counsel and advice through our legal line that they did not have to have a citizenship form signed. A protocol has been implemented and has corrected this compliance issue.

Reasonable Income Prospects – Our financial eligibility policy and our intake form have both been modified to clearly indicate that we must inquire into reasonable income prospects. *(See Attachment B – Financial Eligibility Policy)*

Spend Down Policy – This policy has been modified. Any eligible clients over 125% are attributed to another funding source. *(See Attachment B)*

Assets exempt/non exempt – This policy has been modified. There are no exceptions to our asset guidelines. *(See Attachment B)*

Group Representation - we will be sure to include tax returns in the file of any non-profit/group that we represent.

Hand Intake Forms – We have updated our intake forms to include reasonable income prospects. The forms have been made accessible to all staff. *(See Attachment C)*

Finding 3: OMLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. However, OMLS is in non-compliance with 45 CFR § 1611.5, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), §§ 4.3 and 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines.

Response: Our financial eligibility guidelines have been changed and a waiver form has been created to address those over 200% of poverty that fall within the categories in 45 CFR §1611.5. *(See Attachment D)*

Finding 4: OMLS maintains the asset eligibility documentation as required by 45 CFR § 1611.3 (c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, CSR Handbook (2008 Ed.), § 5.4. However, two exceptions were noted.

Response: Our financial eligibility guidelines have been changed and a waiver form has been created which allows the executive Director or his designee to waive the asset ceiling according to 45 CFR §1611.3 (d)(2). *(See Attachment E)*

- Finding 5:** OMLS is in non-compliance with 45 CFR § 1626.6 (verification on citizenship). Several sampled files lacked a written citizenship attestation when one was required.
- Response:** OMLS provided staff with a comprehensive CSR training in July 2010. Regular trainings and performance evaluations will reinforce these requirements and greatly reduce if not eliminate any future noncompliance
- Finding 6:** OMLS is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.
- Response:** OMLS will continue its efforts to maintain compliance.
- Finding 7:** OMLS is in compliance with the requirements of 45 CFR Part 1636 (client identity and statement of facts). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR § 1636.5.
- Response:** We have implemented a written policy to address the requirements of 45 CFR §1636. (See Attachment F)
- Finding 8:** Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and §1620.6(c) (priorities in use of resources).
- Response:** OMLS will continue our efforts to maintain compliance.
- Finding 9:** OMLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (description of legal services provided). However, there were several staff files which contained no description of legal services provided.
- Response:** OMLS will continue our efforts to maintain compliance
- Finding 10:** OMLS's application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.), and Chapters VIII and IX, CSR Handbook (2008 Ed.).
- Response:** See our response to Finding 9.
- Finding 11:** OMLS is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3, as several staff case files reviewed were untimely closed.
- Response:** Although the finding indicates that OMLS is in compliance, we believed this to be a typographical error based on the more detailed explanation of the finding in the report. Therefore we have responded as if we were found in non-compliance. Accordingly, for the last few months, OMLS Management has reviewed all case handler open and closed cases on a monthly basis which should prevent stale cases. Furthermore, comprehensive quarterly reviews will also ensure future compliance.
- Finding 12:** With one exception, sample cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Response: OMLS will continue its efforts to maintain compliance.

Finding 13: **Sampled cases and fiscal review evidenced compliance with the requirements of 45 CFR Part 1608 (prohibited political activities).**

Response: OMLS will continue its efforts to maintain compliance.

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

Response: OMLS will continue its efforts to maintain compliance.

Finding 15: **OMLS's accounting and financial records are in non-compliance with 45 CFR § 1610.5 (Donor notification Letters).**

Response;

OMLS is committed to applying the regulation and will send separate, written notification to any source that provides funding in excess of \$250.

Finding 16: **OMLS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. OMLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. OMLS may have failed to meet its 12.5% requirement pursuant to 45 CFR § 1614.6 and lacks written PAI policies and procedures as required by this part. OMLS is in non-compliance with 45 CFR § 1614.3(6); cost allocations.**

Response: OMLS will continue our effort to maintain compliance with 45 CFR 1614.3(d)(3).

OMLS is in the process of drafting a new PAI policy to comply with 45 CFR § 1614.6.

OMLS acknowledges our failure to comply with 45 CFR 1614.3(6) for fiscal years 2009 and 2010. The prior Executive Director, who resigned abruptly in June 2009, failed to document and require others to document time spent on the PAI program which resulted in our non-compliance. Our present management team, which was permanently installed in October 2010, immediately realized this compliance issue and made efforts to correctly document all PAI time.

With respect to the re-calculation of the PAI requirement of 12.5% for Fiscal Years 2008, 2009, and 2010, the revised allocation method indicated that OMLS met its requirement for fiscal year 2008, but failed to meet the requirement for fiscal year 2009 and fiscal year 2010 by \$12,029 and \$26,210, respectively. Based on the assessment of our program, we can state with confidence that it is not the *effort* expended in the PAI program that is insufficient, but rather the *documentation* of this effort.

In a letter dated November 19, 2010, the LSC informed OMLS that it would add the fiscal year 2010 shortfall to the fiscal year 2011 requirement. We will await LSC formal ruling with respect to the disposition of the 2009 shortfall.

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

Response: OMLS will continue its efforts to maintain compliance. The finding indicates that OMLS should be made aware of the circumstances for which LSC funds can be used for the payment of dues or fees. OMLS will review 45 CFR § 1627.4(b) and consider using LSC funds when paying dues or fees mandated by/to government organizations.

Finding 18: OMLS is in non-compliance with 45 CFR Part 1635 (timekeeping requirements).

Response: Pursuant to 45 CFR 1635, OMLS has maintained contemporaneous time keeping records either hand written or computerized. As has been the long standing practice at OMLS, all casehandler's either enter their time keeping directly into the case management system or maintain a written daily time sheet which is later entered into the system. Both methods of record keeping are done contemporaneously. Once the written time keeping record is entered in to the system, it is discarded as it would be burdensome to store the hand written documents. On days when an employee is out sick, personal or vacation, there would be no hand written or case management record of time for those days.

In light of the discrepancies discovered during the visit, OMLS has implemented controls and procedures to verify that the time reported on time and attendance records (bi-weekly time sheets) agrees with the time records reported by the advocate showing that they worked. The procedures include management review/comparison of daily time entries prior to processing the bi-weekly payroll.

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

Response: OMLS will continue its efforts to maintain compliance. Part one of the finding states that OMLS must demonstrate why a portions of the fees received from Social Security Benefit cases are not allocated back to the LSC fund. In a series of email exchanges with the LSC fiscal examiner, OMLS indicated that the funds received from the New Jersey Division of Family Development are contractual payments, not derivative income and, as such, are not subject to the provisions of 45 CFR 1630.12

Part 2 indicates that OMLS must disclose in the notes to its audited financial statements any Cy Pres awards. We will inform our auditors of this recommendation.

Finding 20: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (restrictions on lobbying and certain other activities). However, OMLS lacked

written policies and procedures to guide staff in complying with this part pursuant to 45 CFR §1612.11.

Response: OMLS will continue its efforts to maintain compliance. In addition, see policy consistent with 45 CFR §1612.11. *(See Attachment G)*

Finding 21: **Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).**

Response: OMLS will continue its efforts to maintain compliance.

Finding 22: **Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1617 (class actions). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR §1617.4.**

Response: OMLS will continue its efforts to maintain compliance. In addition, see policy consistent with 45 CFR §1617.4. *(See Attachment H)*

Finding 23: **Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1632 (redistricting). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR §1632.4.**

Response: OMLS will continue its efforts to maintain compliance. In addition, see policy consistent with 45 CFR §1632.4. *(See Attachment I)*

Finding 24: **Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1633 (restriction on representation in certain eviction proceedings). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR §1633.4.**

Response: OMLS will continue its efforts to maintain compliance. In addition, see policy consistent with 45 CFR §1633.4. *(See Attachment J)*

Finding 25: **Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1637 (representation of prisoners). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR §1637.5.**

Response: OMLS will continue its efforts to maintain compliance. In addition, see policy consistent with 45 CFR §1637.5. *(See Attachment K)*

Finding 26: **Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1638 (restriction on solicitation).**

Response: OMLS will continue its efforts to maintain compliance.

Finding 27: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1643 (restriction on assisted suicide, euthanasia, and mercy killing). However, OMLS lacked written policies and procedures to guide staff in complying with this part pursuant to 45 CFR §1643.5.

Response: OMLS will continue its efforts to maintain compliance. In addition, see policy consistent with 45 CFR §1643.5. *(See Attachment L)*

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007(a)(8) (abortion), 42 USC 2996f § 1007 (a)(9) (school desegregation litigation), and 42 USC 2996f § 1007 (a)(10) (military selective service act or desertion).

Response: OMLS will continue its efforts to maintain compliance.

Finding 29: Fiscal review evidenced that OMLS is in non-compliance with the requirements of 45 CFR § 1630 (Cost Standards and Procedures) as several late fees and finance charges were satisfied with LSC funds.

Response: OMLS acknowledges non-compliance with 45 CFR 1630 and will reimburse the LSC for all late charges satisfied with LSC funds. With respect to (2), OMLS has already implemented a procedure whereby, in the unlikely event that late fees are incurred, and OMLS is unsuccessful in its attempt to have them removed, the fees will not be satisfied with LSC funds.

Finding 30: Fiscal review evidenced that OMLS failed to develop written policies and procedures describing its cost allocation methodology for LSC and non-LSC funding sources.

Response: OMLS will reduce to writing the specific method of cost allocation for each funding source in a given fiscal year (including contractual payments received from the New Jersey Division of Family Development), and incorporate this documentation in the Financial Policies and Procedures Manual.

Finding 31: Fiscal review evidenced weaknesses in the internal controls of OMLS as they relate to the payment of expenses from invoices.

Response: It is OMLS's policy that an invoice, rather than a vendor statement support payments. On occasion, however, a statement may indicate an invoice of which OMLS has no record and which the vendor is unable to reproduce. In these rare instances, OMLS will not release payment unless a thorough investigation determines that the invoice in question represents a valid obligation of the agency.

Finding 32: Fiscal review evidenced segregation of duties weaknesses pursuant to the 2010 Accounting Guide for LSC Recipient.

Response: OMLS is aware of the concentration of duties in the cash receipt functions that resulted from a drastic reduction in our support staff. In order to address this concern, we are in the process of re-structuring the duties of our current support staff to include the opening of the mail and the maintenance of the cash receipt log. We also continue to employ multiple members of management in the cash review process.

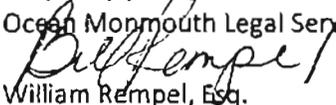
Finding 33: Fiscal review evidenced internal control weaknesses in the check processing and cash disbursement procedures implemented by OMLS.

Response: Based on our discussion with the LSC examiner, we have since destroyed the manual check stock. In the rare event that we need to issue a hand-written check, we will use the laser check stock.

It is OMLS's policy to process checks in numerical order. Occasionally, checks are spoiled in the printing process, resulting in breaks in the sequence. In order to account for missing check numbers, OMLS currently maintains spoiled checks in a binder along with the respective check register. In addition, voided checks (which appear in the check register as having a zero amount), are maintained in a similar manner.

OMLS is prohibited from generating on-line payments. The only exception is the payment of employee elective salary deferrals. These payments are recorded in the accounting software through a Cash Disbursements transaction. Previously, we processed the transaction without indicating the name of the vendor (i.e., investment manager). We have since added the investment manager to our vendor file and indicate them as the vendor when we record the payment. Similarly, we indicate the name of our bank as vendor when we process an automatic debit for bank fees.

In closing, we would like to once again thank the LSC team for taking the time to visit Ocean Monmouth Legal Service, Inc. and for the recommendations made in the draft report. We hope that you find our responses to be acceptable and informative. We are committed to improving our compliance the LSC regulations and the important services we provide to our client communities.

Very truly yours,
Ocean Monmouth Legal Services, Inc.

William Rempel, Esq.
Executive Director

ATTACHMENT

A

CASE SERVICE REPORTING SELF-INSPECTION PROCEDURE

CLOSED CASE FILE CHECKLIST

OMLS File Number: _____

1.	Verify that the following eligibility is present for each case sampled:	Present	Not Present
	a. Amount of household income	_____	_____
	b. Number of household members	_____	_____
	c. Amount of Household assets	_____	_____
	d. Attestation of citizenship, except in telephone cases	_____	_____
	e. Indication of citizenship status in telephone cases only	_____	_____
2.	Verify that there is a notation in each case sampled indicating:	Present	Not Present
	a. The type of assistance provided	_____	_____
	b. The date(s) on which the assistance was provided	_____	_____
	c. The name(s) of the caseworker(s) providing the assistance	_____	_____
3.	Verify that the assistance provided in each case sampled was:	Verified	Not Verified
	a. Counsel & advice or another type of assistance defined by Section VIII of the CSR Handbook, 1999 edition	_____	_____
	b. Provided by an attorney or paralegal	_____	_____
	c. Not otherwise restricted by the LSC Act, regulations and appropriations law	_____	_____
	d. Case Notes	_____	_____
	e. Retainer (if applicable)	_____	_____
4.	Time Record printed? ***No Longer Required	YES _____	NO _____

ATTACHMENT

B

OCEAN MONMOUTH LEGAL SERVICES FINANCIAL ELIGIBILITY POLICY

I. Purpose and Applicability

The purpose of this policy is to establish criteria to ensure that Ocean Monmouth Legal Services, Inc. gives preference to the legal needs of those residents of the service area least able to obtain legal assistance.

II. Definitions

- A. Income: means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient
- B. Total Cash Receipts: include, but are not limited to, wages and salaries before any deductions; income from self employment after deduction for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits; veteran's benefits; training stipends; alimony; child support payments; military family allotments ;public or private employee pension benefits; regular insurance or annuity payments; income and dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. They *do not* include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one time insurance payments for injuries sustained; non-cash benefits; and up to \$2000.00 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute. In establishing the income of an individual who is a *victim of domestic violence*, only the income of the individual shall be considered.
- C. Resident members of a household: all persons residing together who contribute to the support of an applicant's household.
- D. Assets: means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant. In establishing the assets of a *victim of domestic violence*, only the assets of the individual shall be considered. Assets excluded include household's principal residence, vehicles used for transportation and assets used in producing income.

III. Eligibility

- A. Income Levels: Having given consideration to the resources of the Program, the local client population, the availability and cost of private attorneys in the area, and the local cost of living, the standard income level for legal services shall be as follows:

1. LSC Grant: The maximum income level for legal services supported by LSC funds shall be 125% of the current federal poverty guidelines; a person/household whose income is derived solely from a governmental program for low income individuals or families can be deemed financially eligible for services without making an independent determination on income or assets;
2. IOLTA Grant: The maximum income level for legal services supported by IOLTA shall be 175% of the current federal poverty guidelines;
3. State Subgrant/Title 20: The maximum income level for legal services supported by the State Subgrant and Title XX shall be 200% of the current federal poverty guidelines;

B. Exceptions for Income above 200%

In exceptional cases a person may receive services if his or her income exceeds 200% of the federal poverty guidelines if (a) the person's income is primarily committed to medical or nursing home expenses and that if, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for services or (b) the applicant is seeking legal assistance to maintain benefits provided by a government program for low income individuals or families. Before a person may be assisted under either exception, prior written authorization based upon receipt of written documentation must be obtained from the Executive Director or his/her designee

C. Assets Ceiling

1. Unless otherwise authorized by the Executive Director or his/her designee pursuant to 45 CFR 1611.3(d)(2) legal assistance *shall not* be provided to any person who has assets, in excess of \$15,000.00 after the application of the exclusions set forth in C(2). The assets of all resident members of the household that are available to the person seeking legal assistance shall be counted.
2. The following assets are to be excluded entirely and are not to be considered in determining an individual's eligibility:
 - a) household's principal residence;
 - b) vehicles used for transportation;
 - c) assets used for producing income
3. The Executive Director of the Program may, in unusual or extremely meritorious situations, waive the asset ceilings set forth above. If a waiver is granted, the written rationale for same shall be placed in the client's file. The Program shall maintain a separate central file which shall reflect how many such waivers are granted and the rationale for each shall be set forth. This file shall contain no individual client identification of any kind.

D. Group Representation:

A group, corporation, or association may be eligible for legal assistance if it provides information, such as its income, income prospects, and assets, showing that it lacks and has no practical means of obtaining, funds to retain private counsel and either:

- 1) The group, or for non-membership groups the operating body, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or
- 2) The group's principal activity is the delivery of services to LSC eligible individuals and the legal assistance sought relates to such activity (e.g., a group running a food bank might seek assistance with its tax-exempt status, leasing property for food storage, or other services, as long as the legal assistance is necessary in order to provide the service (i.e., food) to the community).

In determining whether the group is primarily composed of eligible individuals or the service is provided to eligible community members, you need not verify the financial circumstances of each member but may consider the financial or other socio-economic characteristics of the persons comprising the group to determine if those characteristics are consistent with those persons who are financially eligible.

Finally, while these group eligibility requirements apply only to legal assistance supported by LSC funds any legal assistance provided to any group regardless of its funding source must be otherwise permissible under the LSC Act and its implementing regulations.

E. Change in circumstances

If a client becomes ineligible for the Program's services during a time when representation is being provided, due to a change of circumstances, and if the change is likely to continue so as to allow the client to afford private counsel, representation shall be discontinued unless to do so would be inconsistent with the attorney's professional responsibility. If representation is to be discontinued, such shall be done in an orderly fashion providing the client sufficient time to secure new counsel.

Nothing contained herein shall require the Program to discontinue representation of a current client based on ineligibility which results solely from the change of eligibility standards reflected in this new policy statement, and the Program may continue that specific representation to its conclusion.

F. Procedure:

In making financial eligibility determinations regarding individual applicants:

1. The program must adopt a simple form and procedure for determining eligibility, which must be in a form that promotes trust between the attorney and client;

2. The program must make reasonable inquiry regarding sources of income, income prospects and assets;
3. All information obtained on the intake form must be preserved for inspection by LSC in a manner that protects the identity of the client;
4. If there is substantial reason to doubt the accuracy of the information provided at intake, the program shall make appropriate inquiry as to the accuracy of the eligibility information, consistent with the attorney/client relationship.

G. Review

These guidelines on eligibility shall be reviewed at least once every three years by the Program's governing body.

ATTACHMENT

C

"INITIAL AND UNOFFICIAL INTAKE FORM WHICH IS SUBJECT TO CHANGE"

Date Opened: _____ Intake Done By: _____
Staff Member Name

Intake Type: _____
 On Site, Phone, Outreach, etc.

Client First Name: _____ M.I. _____ Last Name: _____

Non-Adverse Spouse _____

Social Security No. _____ Referral Source: _____
Be as specific as possible

ADVERSE PARTY (If separated or divorced please list and check for conflict. List them even if this is a landlord/tenant or Social Security case. List all parents of children above & check for conflict before proceeding)

FINANCIAL INFORMATION

Adults _____ *children* _____

Income Source	Weekly	Monthly	Yearly
Alimony			
Workers Comp.			
Disability			
Employment			
General Assistance			
Other Disability			
SSI (check for children)			
TANF			
Veteran's Benefits			
Child Support			
SSD			
Other or Unknown			

Pension			
Social Security			
Trust, Interest, Div.			
Unemployment			
**REASONABLE INCOME PROSPECTS (PLEASE LIST ALL)			

CERTIFICATION

I hereby certify that the information I have provided on these two pages, including the information concerning my citizenship status and finances, is true and correct to the best of my knowledge. I authorize Ocean-Monmouth Legal Services to obtain any and all information needed to verify this information. I further understand that I must inform Ocean-Monmouth Legal Services within ten (10) days if my financial circumstances change in any significant way. I further understand that, if I have intentionally provided false information or intentionally withheld information to obtain legal assistance, Ocean-Monmouth Legal Services may refuse to represent me, or may withdraw as my Counsel and that Ocean-Monmouth Legal Services may seek compensation for legal services rendered.

Dated: _____ **Client Signature** _____

I am a citizen of the United States _____ **Dated:** _____
(Signature of Applicant)

ATTACHMENT

D

Waiver

**Those over 200% of poverty that fall within the categories in 45 CFR §1611.5
Authorized exceptions to the annual income ceiling.**

(a) Consistent with Ocean Monmouth Legal Services (hereafter "OMLS" or "the program") policies and this part, OMLS may determine an applicant whose income exceeds the applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the programs applicable asset ceiling established pursuant to § 1611.3(d), or the asset ceiling has been waived pursuant to § 1611.3(d)(2), and:

____ (1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

____ (2) The Executive Director, or his/her designee, has determined on the basis of documentation received, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service.

Date _____

ATTACHMENT

E

ATTACHMENT

F

POLICY CONSISTANT WITH 45 CFR §1636

CLIENT IDENTITY AND STATEMENT OF FACTS

1. Purpose

The purpose of this rule is to ensure that, when Ocean Monmouth Legal Services (hereafter "OMLS" or "the program") files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant or engages in pre-complaint settlement negotiations, the program identifies the plaintiff it represents to the defendant and ensures that the plaintiff has a colorable claim consistent with LSC regulations.

2. Requirements.

When the program files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before the program engages in pre-complaint settlement negotiations with a prospective defendant on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

(1) Identify each plaintiff it represents by name in any complaint it files, or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented; and

(2) Prepare a dated written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint, insofar as they are known to the plaintiff when the statement is signed.

The statement of facts must be written in English and, if necessary, in a language other than English that the plaintiff understands. In the event of an emergency, where the program reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the program may proceed with the litigation or negotiation without a signed statement of facts, provided that the statement is prepared and signed as soon as possible thereafter.

3. Access to written statements

Written statements of facts prepared in accordance with this part are to be kept on file by the program and made available to LSC or to any Federal department or agency auditing or monitoring the activities of the program or to any auditor or monitor receiving Federal funds to audit or monitor on behalf of a Federal department or agency or on behalf of LSC. This part does not give any person or party other than those listed in paragraph (a) of this section any right of access to the plaintiff's written statement of facts, either in the lawsuit or through any other procedure. Access to the statement of facts by such other persons or parties is governed by applicable law and the discovery rules of the court in which the action is brought.

4. Applicability and Record Keeping

This part applies to cases for which private attorneys are compensated by the program as well as to those cases initiated by the programs staff. The program shall maintain records sufficient to document its compliance with this part.

ATTACHMENT G

POLICY CONSISTANT WITH 45 CFR § 1612.11
RESTRICTIONS ON LOBBYING
AND CERTAIN OTHER ACTIVITIES

The purpose of this Policy ensure that Ocean-Monmouth Legal Services (hereafter "OMLS"), a Legal Services Corporation (hereafter "LSC") funding recipient, does 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. The policy also provides guidance on when OMLS may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support legal services activities, and when they may respond to requests of legislative and administrative officials.

Prohibited legislative and administrative activities:

OMLS shall not attempt to influence:

- (1) The passage or defeat of any legislation or constitutional amendment;
- (2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;
- (3) Any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, OMLS or LSC; or,
- (4) The conduct of oversight proceedings concerning OMLS or LSC.

OMLS shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order. OMLS shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense associated with an activity prohibited in LSC regulations.

Grassroots lobbying:

OMLS shall not engage in any grassroots lobbying.

Permissible activities using any funds:

OMLS may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

OMLS may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or LSC regulations.

LSC regulations do not prohibit nor is it intended to prohibit a recipient from:

- (1) Applying for a governmental grant or contract;
- (2) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the program's rules, regulations, practices, or policies;
- (3) Informing clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations;

- (4) Communicating directly or indirectly with LSC for any purpose including commenting upon existing or proposed LSC rules, regulations, guidelines, instructions and policies;
- (5) Permitting its employees to participate in bar association activities, provided that OMLS's resources are not used to support and is not identified with activities of bar associations that are devoted to activities prohibited by LSC regulations;
- (6) Advising a client of the client's right to communicate directly with an elected official; or
- (7) Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.

Permissible activities using non-LSC funds:

If the conditions of the applicable LSC regulation is met, OMLS and its employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to the program to:

- (1) Testify orally or in writing;
- (2) Provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation; or
- (3) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561, *et seq.*, or comparable State or local laws.

Communications made in response to these requests may be distributed only to the party or parties that made the request and to other persons or entities only to the extent that such distribution is required to comply with the request.

No employee of OMLS shall solicit or arrange for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

OMLS shall maintain copies of all written requests received and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of LSC upon request.

OMLS may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.

OMLS may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the program, including a pending or proposed legislative or agency proposal to fund the program.

Public demonstrations and activities:

During working hours, while providing legal assistance or representation to OMLS clients or while using OMLS resources provided by LSC or by private entities, no person shall:

- (1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or
- (2) Encourage, direct, or coerce others to engage in such activities.

No employee of OMLS shall at any time engage in or encourage others to engage in any:

- (1) Rioting or civil disturbance;
- (2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, LSC regulations, or the rules of professional responsibility of the jurisdiction where the program is located or the employee practices law.

Nothing in this policy shall prohibit an attorney from:

- (1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or
- (2) Taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

Training:

OMLS may not support or conduct training programs that:

- (1) Advocate particular public policies;
- (2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking;
- (3) Disseminate information about such policies or activities; or
- (4) Train participants to engage in activities prohibited by the Act, other applicable law, or LSC regulations, guidelines or instructions.

Nothing in this policy shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them:

- (1) To provide adequate legal assistance to eligible clients; or
- (2) To provide advice to any eligible client as to the legal rights of the client.

Organizing:

OMLS may not use funds provided by LSC or by private entities to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity. This policy shall not be construed to apply to:

- (1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or
- (2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

OMLS and its employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

Recordkeeping and accounting for activities funded with non-LSC funds.

No funds made available by LSC shall be used to pay for administrative overhead or related costs associated with any activity listed in 45 CFR § 1612.6. OMLS shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6. OMLS shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6, together with such supporting documentation as specified by LSC.

ATTACHMENT

H

POLICY CONSISTANT WITH 45 CFR § 1617
CLASS ACTIONS

This policy is intended to ensure that Ocean-Monmouth Legal Services (hereafter "OMLS"), a Legal Services Corporation (hereafter "LSC") funding recipient, does not initiate or participate in class actions.

Definitions:

Class action means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

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

Initiating or participating in any class action does not include representation of an individual client seeking to withdraw from or opt out of a 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.

Prohibition:

OMLS is prohibited from initiating or participating in any class action.

ATTACHMENT

I

POLICY CONSISTANT WITH 45 CFR § 1632
REDISTRICTING

This policy is intended to ensure that Ocean-Monmouth Legal Services (hereafter "OMLS"), a Legal Services Corporation (hereafter "LSC") funding recipient does not engage in redistricting activities. For the purposes of this policy, OMLS includes sub-recipients of LSC funds and employees of OMLS's sub-recipients.

Definitions:

Advocating or opposing any plan means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

Redistricting means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

Neither LSC, OMLS or any LSC recipient shall 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.

This policy does not prohibit any litigation brought by OMLS under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting.

ATTACHMENT

J

POLICY CONSISTANT WITH 45 CFR § 1633
RESTRICTION ON REPRESENTATION
IN CERTAIN EVICTION PROCEEDINGS

This Policy is designed to ensure that in certain public housing eviction proceedings Ocean-Monmouth Legal Services (hereafter "OMLS") a Legal Services Corporation (hereafter "LSC") funding recipient, refrain from defending persons charged with or convicted of illegal drug activities.

Definitions:

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

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

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

Prohibition:

Recipients are prohibited from defending any person in a proceeding to evict that person from a public housing project if:

(a) The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and

(b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

Recordkeeping:

OMLS shall maintain records sufficient to document its compliance with this part.

ATTACHMENT

K

POLICY CONSISTANT WITH 45 CFR § 1637
REPRESENTATION OF PRISONERS

This Policy is designed to ensure that in certain public housing eviction proceedings Ocean-Mor.mouth Legal Services (hereafter "OMLS) a Legal Services Corporation (hereafter "LSC") funding recipient, do not participate in any civil litigation on behalf of persons incarcerated in Federal, State or local prisons.

Definitions:

Incarcerated means the involuntary physical restraint of a person who has been arrested for or convicted of a crime.

Federal, State or local prison means any penal facility maintained under governmental authority.

Prohibition:

OMLS may not participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison, whether as a plaintiff or as a defendant, nor may OMLS participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration.

Change in circumstances:

If, to the knowledge of OMLS, a client becomes incarcerated after litigation has commenced, OMLS must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

Recordkeeping:

OMLS shall maintain records sufficient to document the recipient's compliance with this policy.

ATTACHMENT

L

POLICY CONSISTANT WITH 45 CFR § 1643
RESTRICTION ON ASSISTED
SUICIDE, EUTHANASIA,
AND MERCY KILLING

This Policy is designed to ensure that in certain public housing eviction proceedings Ocean-Monmouth Legal Services (hereafter "OMLS) a Legal Services Corporation (hereafter "LSC") funding recipient, do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by LSC regulations.

Definitions:

Assisted suicide means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

Euthanasia (or mercy killing) is the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

Suicide means the act or instance of taking one's own life voluntarily and intentionally.

Prohibition:

OMLS may not use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

- (a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;
- (b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or
- (c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

Applicability:

Nothing in the LSC regulations shall be interpreted to apply to:

- (1) The withholding or withdrawing of medical treatment or medical care;
- (2) The withholding or withdrawing of nutrition or hydration;
- (3) Abortion;

- (4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or
- (5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing.

Nor shall the LSC regulations be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in the regulations.

This policy does not apply to activities funded with OMLS's non-LSC funds.

Recordkeeping:

OMLS shall maintain records sufficient to document its compliance with LSC regulations.