



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Assistance Foundation of Metropolitan Chicago
September 8-12, 2008
Case Service Report/Case Management System Review

Recipient No. 514020

I. EXECUTIVE SUMMARY

Finding 1: LAFMC's automated case management system ("ACMS") is insufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were numerous instances of inconsistent information in the ACMS and the case files.

Finding 2: LAFMC's intake procedures and case management system do not support the program's compliance related requirements.

Finding 3: LAFMC does not maintain 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.

Finding 4: LAFMC does not maintain asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: LAFMC is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

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

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

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

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

Finding 10: LAFMC'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.).

Finding 11: LAFMC is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. However, a few staff case files reviewed were untimely closed.

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

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

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

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

Finding 16: LAFMC is in non-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

Finding 17: LAFMC 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: LAFMC is in non-compliance with 45 CFR Part 1635 (Timekeeping requirement).

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

Finding 20: Sampled cases and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). However, a review of LAFMC's policies and procedures evidenced non-compliance with 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 non-compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

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).

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: LAFMC performs bank reconciliations monthly and timely.

Finding 30: A review of LAFMC's internal controls and segregation of duties disclosed that too many accounting duties are placed on one of the two accounting assistants.

Finding 31: LAFMC's credit card payments are correctly documented and allocated.

II. BACKGROUND OF REVIEW

On September 8-12, 2008, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Legal Assistance Foundation of Metropolitan Chicago ("LAFMC"). 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 three LSC attorneys, three attorney consultants, two management analysts, one LSC fiscal analyst and one fiscal consultant.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that LAFMC has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LAFMC for compliance with regulatory requirements 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees); 45 CFR 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LAFMC's upper and middle management, staff attorneys and support staff. LAFMC's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2006 through July 31, 2008. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed 825 case files which included 90 targeted files.

LAFMC is a LSC recipient that operates 6 offices. LAFMC received, in 2008, \$6,260,443 as LSC Basic Field funding and \$241,866 for Migrant funding. OCE last conducted an on-site visit to LAFMC on May 22-26, 2000 in response to the 1999 GAO report. The OCE Final Report was issued October 23, 2000.

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

LAFMC'S Loop Service Office (main) and the Northwest, Southside and Westside branch offices are located in Chicago, Illinois. The two remaining branch offices, North Suburban and South Suburban are located in Evanston and South Holland, Illinois. Each of LAFMC offices conduct intake and participate in PAI activity. The executive staff includes the Executive Director, two Deputy Directors, Comptroller, Agency Administrator, Supervisor/PAI Coordinator, Director of Information Technology, and Director Development Marketing. In addition, each of LAFMC's offices also has at least one Supervising Attorney.

Since 2003, LAFMC has reported between 21,000 and 22,000 cases per year. For 2006, LAFMC reported 21,472 closed cases in its CSR data. LAFMC's 2006 self-inspection report indicated a 4% error rate with exceptions noted in 7 files out of 155 cases reviewed. The problem areas identified were: non-Telephone cases in which citizenship/alien status was not documented (and client is not eligible under VAWA 2006 or TPVA-*See* Program Letters 05-2 or 06-2); cases in which there is no written evidence of advice or representation; and cases in which assets information was not recorded.

For 2007 LAFMC reported approximately 21,636 closed cases in its CSR data. LAFMC's 2007 self-inspection report indicated a 5% error rate with exceptions noted in 8 files out of the 150 cases reviewed. The problem areas identified were: cases in which asset information was not recorded and non-telephone cases which lacked a citizenship attestation or documentation of alien eligibility (and client not eligible under VAWA 2006 or TVPA-*See* Program Letters 05-2 or 06-2).

By letter dated July 11, 2008, OCE requested that LAFMC provide a list of all cases reported to LSC in its 2006 CSR data submission ("closed 2006 cases"), a list of all cases reported in its 2007 CSR data submission ("closed 2007 cases") a list of all cases closed between January 1, 2008 and July 31, 2008 ("closed 2008 cases"), and a list of all cases which remained open as of July 31, 2008 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LAFMC staff and the other for cases handled through LAFMC's PAI component. LAFMC was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 9 and 10, and the LSC *Access to Records* (January 5, 2004) protocol. LAFMC was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2006, 2007, and 2008 closed and 2008 open cases, as well as a proportionate distribution of cases from LAFMC's office. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LAFMC agreement of August 19, 2008, LAFMC staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.² LAFMC's management and staff cooperated fully in the course of the review process. As discussed more fully below, LAFMC was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as Supervising Attorneys in the branch offices and the Executive Director in the main office.

After the conclusion of the visit, on September 16, 2008, OCE conducted an exit conference via conference call during which LAFMC was made aware of the areas in which a pattern of non-compliance was found. Distinctions between 2006, 2007, and 2008 case were found. OCE cited instances of non-compliance in the areas of intake, case management, execution of citizenship attestations, execution of retainer agreements, documentation of legal advice, application of closing codes, and timekeeping inconsistencies and violations regarding attorney fees, and class actions. LAFMC was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments.

LAFMC was provided a Draft Report ("DR") and given an opportunity to comment. By email, dated January 21, 2009, LAFMC requested an extension of time to submit its comments. OCE responded on January 22, 2009 and granted LAFMC an extension to submit its comments to the DR. LAFMC's comments were received on February 2, 2009. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

Comments to the DR indicated that eleven case numbers were wrong. The case numbers noted were reviewed and corrected or deleted when applicable. However, some case numbers were not changed because they were correctly documented per the case lists submitted to OCE.

Also, comments to the DR stated that the information contained in footnote 6 is incorrect, that OCE did not speak to the full time receptionist in the South Side office but to a temporary employee instead. However, the intake reviewer's interview notes clearly indicate that the full time receptionist had just returned from medical leave. Therefore, the footnote is not amended.

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

III. FINDINGS

Finding 1: LAFMC's automated case management system ("ACMS") is insufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were numerous instances of inconsistent information in the ACMS and the case files.

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

LAFMC's ACMS was assessed to determine if it met the requirements of the CSR Handbook (2008 Ed.), § 3.1 and other applicable authority. Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LAFMC's ACMS is in non compliance to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were numerous instances of inconsistent information in the ACMS and the case files. LAFMC must ensure that the proper information is entered into the ACMS, that cases appear on the appropriate case lists, and remove all defaults regarding income and assets.

Case sample review and the overview of LAFMC's case management system revealed that LAFMC has an income and asset default in violation of Program Letter 02-06 which states that a recipient's ACMS cannot have income, asset or citizenship defaults. LAFMC advised LSC that the income and asset default of (-888) was purposely entered in the ACMS as a way of detecting if staff had screened applicants properly. LAFMC's version of Kemps does not require an actual amount be entered in the income or asset field. As a result, the -888 default was created to determine if income and asset amounts were entered in the ACMS. According to LAFMC, at the end of the year, LAFMC runs a report to indicate any case file that has -888 entered as income or asset. Those cases that are detected are removed from the CSR or the advocate is asked to call the client to retrieve the required information. LAFMC informed OCE that when LAFMC switches to the Legal Server case management system in 2009, the -888 default will not be necessary because Legal Server requires that a numerical amount be entered in the income field before a case can be closed. Until such time, LAFMC is advised that the defaults must be removed in compliance with Program Letter 02-06.

Also, some staff computer desk tops still included eliminated closing codes E and M in the drop down box for closing codes.³ As a result, closing code E was incorrectly being utilized by some staff.

Comments to the DR stated that the -888 income and asset defaults and closing code options E and M will not exist in the new ACMS, Legal Server which LAFMC is expected to launch no

³ LAFMC incorrectly created and used closing code M instead of K during the 2006 and 2007 CSR reporting period. This will be discussed in Finding 10.

later than April 1, 2009. In the meantime LAFMC stated that they have removed the closing codes E and M from the drop-down menu on all of LAFMC's computers and will run error reports twice a year to detect case files that include the -888 default or closing code E or M.

On January 27, 2009, LAFMC submitted a waiver request regarding the removal of the -888 defaults. LAFMC requested that they would not be required to remove the defaults since they are switching their ACMS to Legal Service in April 2009 and the removal of the defaults would not be cost or time effective. On January 29, 2009, OCE granted the limited waiver until the date that LAFMC switches to its new case management system or May 2009, whichever ever comes first. The limited waiver was granted on the condition that LAFMC conduct monthly -888 error reports for cases that remain open and closed in 2009. Once the monthly error reports are completed, LAFMC is required to attest in writing to OCE the number of -888 case files indicated from each monthly report. LAFMC is required to submit an attestation no later than the 6th of each month starting with February 6, 2009.

Lastly, LAFMC indicated that case files noted in the DR regarding Q closing codes were all non-LSC cases. As such, the cited cases have been removed from the Final Report.

Finding 2: LAFMC's intake procedures and case management system do not support the program's compliance related requirements.

It is important for all LSC recipient eligibility screeners and intake staff to apply LSC and program compliance requirements correctly and consistently during intake. This ensures that LSC's compliance requirements are met for all applicants and the regulations are applied fairly to all applicants regardless of who performs the screening. Specific OCE team members were responsible for interviewing intake staff, reviewing intake forms, and assessing LAFMC's case management system. Two OCE team members interviewed staff in all of the LAFMC's offices including those individuals who conduct intake for LAFMC's special projects regarding the implementation of LAFMC's intake procedures and LSC's requirements. Intake staff were asked to recite screening and intake questions, income and asset policies and intake procedures and to provide forms used during the screening and intake process. In addition, LAFMC's case management system was tested to ensure compliance. A review of LAFMC's intake case acceptance and case management practices revealed that, at the time of the OCE visit, client information regarding eligibility was not recorded consistently and accurately as required by 45 CFR Part 1611 and the LSC CSR Handbook (2008 Ed.).

Currently, LAFMC's eligibility screening and substantive issue intake is decentralized to neighborhood service offices and project staff.⁴ Each of the six service offices (Loop, Northwest, North Suburban, West Side, South Suburban and South Side Service Offices) conducts intake. In addition, LAFMC operates 16 special projects which sometimes conducts outreach intake. Depending upon the project and its case acceptance guidelines, most projects

⁴ It is noted that LAFMC plans to move to a centralized intake model. It is currently in the process of trying to identify funding for the initiative.

conduct direct intake, receive referrals from service offices, or a combination thereof.⁵ Most of the projects receive some non-LSC funding which allows them to serve clients above the LSC financial guidelines. The Loop Service Office and most of the project staff are located with the Administrative and Go Support (tech) staff in the downtown Chicago office. The Crime Victim Project is located out of the West Side Service Office and the Ombudsmen Project is located out of the North Suburban Service Office. Several projects have one or more staff located in other offices.

Except for the use of certain closing codes, most interviewees demonstrated a solid understanding of program and LSC requirements. Over half of the LAFMC staff attended LSC training on the new CSR Handbook. Follow-up trainings were conducted by a Deputy Director. The Deputy Director responsible for management of the projects meets with each of the project Supervising Attorneys every month individually and as a group; to discuss new compliance and other developments at such meetings. Emails and other updates are sent to staff who feel they are kept informed of new policies and procedures. All staff had copies of the CSR Handbook (2008 Ed.) and, while some were unfamiliar with the FAQs, both are electronically available on a shared computer drive which also has other program-wide compliance forms and documents.

Eligibility screening procedures are generally consistent throughout LAFMC's offices. Intake practices vary depending on whether intake is conducted in the Loop Service office, branch offices or conducted during outreach. In the Loop Service Office, except for limited outreach intake, staff screens applicants for eligibility by following the questions in the order they are presented on the screens of the ACMS. Income and asset ceilings are programmed into the database. In the five branch offices, practices and procedures were substantially identical, with only minor distinctions with the exception of the Crime Victims Unit.⁶ Intake and eligibility screening is conducted in two steps. The initial income and eligibility screening is completed by a receptionist and then the case is passed along to the intake specialist who conducts a more thorough intake.

The manual intake forms utilized in the branch offices vary from one office to the other, and do not follow the same format as the ACMS. Once the forms are completed, the receptionist reviews the document to assure that it was completed properly and then enter the information in Kems. The receptionist then forwards the case to the assigned intake specialist. If intake is being conducted over the telephone then the receptionist completes a manual intake form and then enters the information into Kemp. In both instances, conflict checks are completed after the receptionist has obtained all necessary information to determine the client's financial eligibility. A few of the screeners indicated that they do a conflict check first if they know it is a divorce or domestic violence case.

⁵ The week of the on-site visit the LAFMC was preparing to begin outreach intake at a Hispanic women's social service provider. The outreach will be focused on domestic violence. The Loop Service Office staff will be alternating with Northwest Service Office staff once per month. The provider will identify an individual in need of the service and will fax basic information to the Intake Specialist in the Northwest Service Office who will screen the applicant. Eligible applicants will be offered an appointment in either the Northwest or Loop Service Offices or at the social service provider if they want to wait until the next outreach intake date.

⁶ The receptionist in the South Side office had just returned from an extended medical leave and was unclear regarding many of the questions asked; however, based on information received from the Supervising Attorney and the intake specialist intake screening is conducted in the same manner in this office as the other four offices.

LAFMC's procedure to qualify an individual whose income is between 125%-150% of the Federal Poverty Guideline ("FPG") is consistent in all offices; the LAFMC board declined to increase the upper ceiling from 150% to 200% when 45 CFR Part 1611 was revised in 2005. If an applicant's income is between 125%-150% of the FPG, a "Financial Eligibility Determination" form is triggered on the ACMS. Staff must indicate the appropriate exemption, which match those allowed by the regulations. There is no spend-down, only the selection of an exemption. The Attorney on Duty or the Supervising Attorney must review the exemptions and indicate such review. However, interviews and case sample review disclosed that LAFMC's staff does not apply LAFMC's policy regarding over-income clients accurately. This will be discussed further in Finding 3.

In all offices, walk-in and outreach applicants who are citizens sign the Citizenship Attestation Form or otherwise demonstrate alien eligibility. Non-citizens must produce appropriate documentation. Telephonic applicants are verbally screened during intake. If a case is accepted for extended representation, the Citizenship Attestation Form is mailed to the client or the client signs it at the time of the first appointment, depending upon the case's time parameters. Except as noted below, staff demonstrated a strong knowledge of citizenship/eligible alien screening requirements, including the changes reflected in the VAWA reauthorization.

Below are intake issues that were identified during the assessment of LAFMC various projects. The issues identified will be discussed in further detail under the appropriate Findings.

Adult SSI Project

Lack of citizenship screening was noted regarding the Adult SSI Project. The Adult SSI Project is funded pursuant to a contract with the Illinois Department of Health Services ("IDHS") to assist individuals receiving TANF or transitional assistance and have medical problem in obtaining SSI. All cases are received by the project through referrals from IDHS. On a weekly basis staff pick up between 40-50 referrals from IDHS. Each referral includes printouts from the IDHS computer of benefits currently received by the individual and household information, a release form, notification that the case may be referred, and preliminary medical write-ups. This information does not include an indication whether the individual is a U.S. citizen or eligible alien. It is assumed that the individuals referred must be a U.S. Citizen or eligible alien to receive such benefits; however, LAFMC does not initially have information as to which status the individual is nor can LAFMC provide documentation to substantiate its assumption that the individuals referred must be a U.S. Citizen or an eligible alien. Therefore, in those instances in which the client does not appear in person and only receives advice via an advice letter, the citizenship/alien status cannot be verified. This matter will be discussed further in Finding 5.

Chicago Seniors/Consumer Law Project

Screening issues were noted regarding the Chicago Seniors/Consumer Law Project PAI case files. The vast majority of the Chicago Seniors/Consumer Law Project cases handled are for senior citizens (age 60 years and over). Pursuant to city funding, there are no financial eligibility limits. The project's Intake Specialist opens a Kemps record and calls back the applicant to complete a full screening. All LSC required eligibility questions are asked but if the senior does not wish to provide financial information or if the case exceeds LSC requirements, staff is

instructed not to check the LSC Eligible field on the ACMS and the case is deselected from CSRs. However, a review of PAI case files revealed that clients who are assisted using Title III funding are not screened consistently for income and assets. As such, the case files do not qualify as PAI. At the time of OCE's visit, LAFMC staff was incorrectly coding such cases as "P" for PAI in the ACMS. This matter is discussed further in Finding 16.

Illinois Migrant

LAFMC receives LSC Migrant funding for the State of Illinois to assist eligible farm workers in issues involving the Migrant and Agricultural Worker Seasonal Protection Act, wage claims pursuant to the Fair Labor Standards Act, the Illinois Minimum Wage Law, and the Illinois Wage Payment and Collection Act, housing, health, family law, income tax issues and civil rights. There are no written intake procedures. A review of files revealed that the clients' alien status was not documented properly. This matter will be discussed further in Finding 5.⁷

Crime Victims Project

The Crime Victims Project has its own set of intake procedures. The intake is conducted by the project's paralegal. The staff uses different intake forms which are initially completed by hospital staff. According to project staff in some instances, the client is contacted and a more in depth intake is conducted but not always. Consequently, several of the cases reviewed for this project lacked financial eligibility information. LAFMC must ensure that agency personnel who conduct intake on behalf of the program are trained properly to ensure that adequate intakes are conducted.

An assessment of LAFMC's intake procedures uncovered that LAFMC must take corrective action to ensure that staff screens for prospective income during intake screening and to ensure that all cases are screened properly particularly those cases whose intake screening is conducted by an outside agency. Also, LAFMC must ensure that the agency personnel is properly trained and conduct oversight of the agency to ensure that properly trained personnel are consistently conducting intake. LAFMC must provide to OCE with its comments, evidence that third party agencies that conduct intake are trained regarding LSC regulations and requirements and that oversight is conducted to ensure that agency personnel is conducting intake properly.

In addition, it is recommended that LAFMC require that conflict checks be completed before screeners obtain financial information from applicants, revise the manual intake forms to ensure that are consistent with the ACMS, and require all branch offices to utilize the same manual intake forms.

In the comments to the DR, LAFMC stated that the implementation of its new ACMS in April 2009 will alleviate the need for manual intake forms. Also, in November 2009, LAFMC hopes to change to a centralized telephone screening which it hopes will eliminate the variation that arises from local custom or variations in training. According to LAFMC, all of the intake specialists are currently being trained to a uniform LSC compliant standard in preparation for moving to the centralization screening unit. The training will be reinforced, for all case handlers when Legal Server is launched.

⁷ It is noted that LAFMC also has an Immigration Project but at the time of OCE's on-site visit, the project was not conducting outreach.

The comments to the DR also stated that the Crime Victims Project's intake procedures have been revamped as part of an overall reinvigoration of that project. Instead of relying on the financial information received from hospitals (The main source of referrals for crime victim cases). Now LAFMC contact crime victims directly to obtain accurate financial eligibility information. According to LAFMC, this allows LAFMC to develop a better relationship with the crime victim and his/her family, and allows LAFMC an opportunity to provide legal help in areas other than crime victim compensation if such help is needed. In cases where LAFMC is for whatever reason unable to obtain full financial eligibility information, those cases will not be reported to LSC. (LAFMC notes that they have funding from Illinois Attorney General and the Illinois Criminal Justice Information Authority to do the above-mentioned work).

Finding 3: LAFMC does not 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.

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.⁸ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

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

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

⁸ 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.

Sampled cases evidenced that LAFMC is in non-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. LAFMC's case sample files evidenced lack of income determination and applicants who were financially ineligible. *See* case nos. 06E-6191670, 07E-42198029, 08E-70232026, 08E-16244843, 08E-22233267, and 08E-42245506. These files and others like them are not CSR reportable.

LAFMC's Client Eligibility Standards were adopted by its Board of Directors in April 2008. The policy is updated every April to reflect the revised income eligibility guidelines. The LAFMC's Board elected not to increase its ceiling from 150% of the Federal Poverty Guidelines ("FPG") to 200% as allowed by the revisions to 45 CFR Part 1611. The LAFMC income guidelines allow legal assistance to be provided to individuals whose income is more than 125% but less than 150% of the Board established poverty levels under the following income exceptions: 1) Current income prospects, taking into account seasonal variations in income if it appears unlikely that on an annual basis such person would exceed the maximum current income level; 2) Fixed debts and obligations, including federal, state and local taxes from prior years; 3) Child care, transportation, and other expenses necessary for employment; 4) Expenses associated with age or physical infirmity of resident family members; 5) Medical expenses and in exceptional instances with the prior, written approval of the project director based on written documentation received by the recipient and available for review by the Corporation, if a person's gross income is primarily committed to medical or nursing home expense, a person may be served even if that person's gross income exceeds 125% of the poverty level; and 6) Other significant factors related to financial inability to afford legal assistance such as the cost of obtaining private legal representation with respect to the particular matter in which assistance is sought and the consequences for the individual if legal assistance is denied.

For cases which the applicant's income is between 125%-150% of the FPG, a "Financial Eligibility Determination" form is triggered during data entry. Staff must select an appropriate exemption from the enumerated list. The Attorney on Duty or the Supervising Attorney, depending upon the unit or project, must review the exemptions and indicate such review; they are granted the authority to make such acceptance decisions, at least preliminarily for the advice cases. The potential extended representation cases are reviewed at the case acceptance meeting by the Supervising Attorneys.

However, LAFMC's eligibility policy and its implementation do not comply with the requirements of 45 CFR Part 1611. LAFMC's eligibility policy does not require reasonable inquiry into an applicant's income prospects and none of the staff interviewed ask such questions. It is noted that the policy does require inquiry into income prospects for group clients, required by 45 CFR § 1611.6(b)(1) but it is silent on such inquiry for individual clients. Interviews with staff revealed that staff does not screen for income prospects.

In regards to group representation, the LAFMC group eligibility policy complies with the requirements of 45 CFR Part 1611; however, LAFMC's group eligibility form is not compliant. The eligibility form is tailored to the requirements pre-revision of 45 CFR Part 1611.⁹ Alone this form is insufficient to meet the requirements of the group eligibility screening requirements

⁹ Regulation 45 CFR Part 1611 was revised effective September 7, 2005.

of the revised 45 CFR Part 1611. The program is required to gather documentation to evidence eligibility and statements to that effect by the group are not sufficient. LAFMC was sent a sample of a Group Eligibility form to assist them in revising their form to meet the current requirements of 45 CFR § 1611.6(b)(2).

In addition, LAFMC's eligibility policy does not reflect the authorized exceptions stated at 45 CFR § 1611.5, but rather reflects the exemptions stated in the pre-revision of 45 CFR Part 1611. See 45 CFR § 1611.5(b)(1), 48 *Federal Register* 54201, 54205 (November 30, 1983). While LAFMC is not required to adopt the authorized exceptions stated at 45 CFR § 1611.5, it must comply with its own guidelines. According to the LAFMC eligibility policy, when determining whether to accept an applicant whose income is over 125% but under 150% of the FPG, a supervisor must consider additional exemptions listed in paragraph F of the policy guidelines before providing legal assistance based on consideration of the exemptions identified in paragraphs D or E. This requirement is consistent with the pre-revision 45 CFR Part 1611. Staff interviews and sample cases evidenced that the second set of exemptions listed in paragraph F are not being considered when applying 45 CFR § 1611.5. Cases were identified in which each documented "other significant factors related to financial inability to afford legal assistance" as the basis for determining financial eligibility. None of the files demonstrated LAFMC's consideration of the second set of exemptions. The majority of the identified case files are reportable. They included documentation that would apply to one of the enumerated exemptions in paragraph F. However, it is highly recommended that LAFMC revise its financial eligibility policy to conform to the 2005 revised version of 45 CFR Part 1611. For example, see case nos. 08-62245156 and 08E-62246079.

Also, it appears that some staff are not applying the exemptions correctly that are enumerated in 45 CFR § 1611.5. As stated the above mentioned cases all cite "other significant factors" as the reason the client case was accepted. However, a review of the files revealed that none indicated any unusual circumstances and that the applicant should have been accepted under one or more of the more specific authorized exceptions. Interviews with staff indicate that some staff are not comfortable choosing an appropriate exemption and rely on the attorney to select an exemption when reviewing a file. LAFMC was advised that the current LSC regulation's enumerated exceptions are permissive and recipients are at liberty to include some, none, or all of the authorized exceptions in its financial eligibility policies. See 45 CFR § 1611.5; see also 70 *Fed. Reg.* 45545, at 45553 (August 8, 2005). The exceptions generally reflect factors that impact the applicant's ability to afford legal assistance, including "other significant factors". See 45 CFR § 1611.5(a)(4)(vii). However, the supplementary information published with the regulations indicates that LSC did not intend for "other" to be used routinely. Rather, the supplementary information suggests that "other" should only be used in unusual circumstances. See 70 *Federal Register* 45545, 45555 (August 8, 2005). LAFMC should ensure that all staff understands how to apply the 45 CFR § 1611.5 exemptions correctly.

LAFMC must: ensure that all clients case files include documented income determination; ensure that staff screen for income prospects pursuant to 45 CFR § 1611.7(a)(1); ensure staff is applying the 45 CFR Part 1611 exemptions correctly; revise its group eligibility form; and, as stated in Finding 1, remove defaults in the income field pursuant to Program Letter 02-06.

Comments to the DR stated that LAFMC has revised its income policy to track the language of the revised version of 45 CFR Part 1611 regarding applicants whose income fall within 125% and 150% of the FPIG. The Board however, has chosen not to raise LAFMC's income eligibility standards to 200% of the FPIG, as permitted by the 45 CFR Part 1611. Also, the revised policy eliminates "Other" as exemption option. LAFMC attached a copy of the revised policy with its comment and stated that the revised policy will be included in LAFMC's Policies and Procedures Manual.

LAFMC acknowledges that currently, LAFMC does not routinely ask applicants about their income prospects.

Comments to the DR stated that LAFMC has created a new group eligibility form which will be added to LAFMC Policies and Procedures Manual. The new form was created using the Georgia Legal Services form as a guide. LAFMC states that all case handlers have been instructed to use the new form for any group representation cases remaining open or opened after December 31, 2008.

Comments to the DR stated, and as mentioned in Finding 1, LAFMC was granted a waiver regarding the removal of the income and assets -888 defaults.

Finding 4: LAFMC does not maintain asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.¹⁰ *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 §

¹⁰ 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.

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.

According to the Client Eligibility Standards approved by the LAFMC's Board, the asset guidelines were revised January 2006 in response to the revision of 45 CFR Part 1611. The guidelines, establishes the liquid and non-liquid asset ceiling at \$8,000. Exempt from consideration are assets of the family unit to which the individual seeking representation does not have access; the applicant's primary residence; one burial plot per household member, and the cash value of life insurance policies; the case value of pension or retirement plans or funds; and one motor vehicle.

In LAFMC's 2007 self-inspection, case files were identified which asset information was not recorded. During the visit, LAFMC declared that its Board approved a policy permitting asset eligibility determinations based upon the applicants' receipt of certain governmental benefits in lieu of asset screening. As such, staff are trained to enter (\$1.00) in the "Government Entitlements" field on the Kemps eligibility page for clients who receive a government benefit. However, a case sample review revealed that LAFMC has multiple ways in which they indicate assets for a client who receives a government benefit. The first method used is that of a negative three (-3) being inserted in the asset section of the intake sheet. *See* case nos. 08-42233637 and 08-42234366. The next method used is a figure of "\$1.00". *See* case nos. 07E-6214248 and 07-6204713. The third method involved placing a negative one (-1) in the asset section of the intake sheet. *See* case nos. 08E-42243237 and 07E-34214875.

Also, contrary to LAFMC's assertion, LAFMC's Board approved financial eligibility policy does not allow for the substitution of a notation of receipt of a means-tested government benefit in lieu of a full asset screening as required by 45 CFR §§ 1611.3 and 1611.4. Prior to LSC's revision of 45 CFR Part 1611 in 2005, recipients were permitted to determine an applicant's asset eligibility without additional review if the applicant received governmental benefits for low-income individuals and families. As a result of the 2005 revision, the practice was expanded to permit recipients to determine an applicant's income *and* asset eligibility without additional review, but only if such policy is adopted by the Board of Directors. *See 70 Federal Register* 45545, 45553 (August 8, 2005) and 45 CFR §§ 1611.3(f) and 1611.4(c), and CSR Handbook (2008 Ed.), § 5.4. LAFMC was advised that it may not substitute the asset screening unless the Board adopted policy reflects such an allowance. OCE was advised that the Executive Director planned to raise the issue at the Board meeting that was to be held September 2008. It was the Executive Director's hope that the government benefit exemption would be included in LAFMC's asset policy during the meeting. LAFMC was reminded that the Board in accordance with 45 CFR § 1611.4 must provide in minutes that the Board has determined that the income standard of the governmental program(s) are at or below 125% of the FPG and that the governmental program has eligibility standards which include an asset test.¹¹

¹¹ During the drafting of the Draft Report, LAFMC advised OCE that the May 10, 2000 Board Minutes and the Resolution allowing the government benefit asset exemption were located. However, the Resolution was not signed and did not identify any specific government programs. LAFMC was advised that the Resolution should be revised in accordance to 45 CFR § 1611.4. LAFMC's Executive Director stated that a revised Resolution would be presented and hopefully approved at the next Board meeting scheduled for December 10, 2008.

Also, as stated in Finding 1, LAFMC's Kemps has a default to \$-888.00 per year in the asset total fields, contrary to Program Letter 02-06. The case sample identified that the asset totals reflected the defaults. *See* case nos. 07E-18223971, 06E-6171404, 06E-6174339. Also, case files were identified in which there was no evidence of asset screening and the client did not receive a government benefit. *See* case nos. 02E-22038808 and 07E-6211578.

LAFMC must take corrective action to ensure that all case files include asset documentation, remove the asset default, revise its eligibility policy to include an asset government exemption, and standardized how the government benefit exemption is noted in the ACMS.

Comments to the DR stated and as mentioned in Finding 1 comments, LAFMC was granted a waiver regarding the removal of the income and assets -888 defaults.

In addition, comments to the DR stated that on December 10, 2008, LAFMC's Board approved a new resolution which was submitted with the comments to the DR. The new resolution allows screeners to dispense with inquiry about a client's income if the client's household receives Temporary Assistance to Needy Families (TANF) or SSI and has no other sources of income. The new resolution allows LAFMC to dispense with the asset inquiry if the client is receiving TANF, SSI, Medicaid (but not benefits under certain expanded Medicaid programs), or Food Stamps. The comments stated that LAFMC's staff has been instructed to follow the procedures outlined in the new resolution. Also, LAFMC's staff has been instructed to enter -1 in the first of three asset fields, and 0 in the remaining fields and to indicate what benefit program is being invoked when a client is receiving benefits under any of the programs that eliminate the need for an asset inquiry.

Finding 5: LAFMC is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (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.¹² 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.

In LAFMC's 2006 and 2007 self-inspection, non-telephone cases were identified which lacked a citizenship attestation or documentation of alien eligibility (and client not eligible under VAWA 2006 or TVPA-*See* Program Letter 05-2 or 06-2). During the OCE visit, the case sample was reviewed and intake forms were assessed for compliance with 45 CFR Part 1626. In the course of LAFMC telephone intake process, applicants are queried with regards to their U.S. citizenship or eligible alien status. The ACMS includes four options with regard to citizenship: citizen, eligible alien, undocumented alien, Kennedy Amendment and other. Callers who indicate that they are eligible aliens are requested to bring in their INS documentation at the time of their appointments. One of LAFMC's branch offices utilizes a citizenship attestation that is non-compliant with 45 CFR §1626.6(a) and CSR Handbook (2008 Ed.), § 5.5. The office represents individuals with respect to crime victim compensation. Reviewing these cases indicated that the office was collecting citizenship attestations through a special retainer agreement specifically designed for crime victim compensation. The retainer included a citizenship attestation in the body of the retainer and had only one signature line. This type of retainer was acceptable for case files that were opened on or prior to December 31, 2007. On January 1, 2008 the CSR Handbook (2008 Ed.) went into effect. The CSR Handbook (2008 Ed.) indicates that the citizenship attestation may be on a separate document or contained within another document provided there is a separate signature line tied only to the citizenship attestation.¹³ The intermediary indicated that the retainer had been revised however there was a group of retainer agreements that were used for cases that were opened in 2008. *See* case no. 08E-36238820. LAFMC must ensure that all files opened beginning January 1, 2008 and that are reported in the 2008 CSRs include a complaint citizenship attestation when required.

Interviews with staff and a review of the case sample evidenced that LAFMC is in non-compliance with 45 CFR § 1626.6, as there were several case files that did not include a citizenship attestation when required or the citizenship attestation was missing the date of execution. *See* case nos. 06E-6191670, 07E-36208208, 07E-42220595, 06E-36173186, 04E-18103149, 08E-81231480, and 06E 81186034. LAFMC is admonished that Part 1626 involves a restriction on legal assistance, and as such, even a small pattern is considered non-compliant from a documentation perspective.

In addition, LAFMC must improve its procedures regarding eligible alien documentation. The program primarily evidences review of eligible alien documentation by copying it for the file. However, LAFMC does not document the date in which the documentation is copied. Therefore the program cannot evidence that it was reviewed prior to commencement of representation. *See*

¹² *See* Kennedy Amendment at 45 CFR § 1626.4.

¹³ *See* CSR Handbook (2008 Ed.), § 5.5.

case nos. 08E-42239465, 06E-26190971, 07E-34214875, 05E-42128639, 06E-34179520, 07E-422252, and 08E-34241437. The Illinois Migrant Project uses different procedures to evidence screening of alien documentation. Since most intakes are outreach, the staff and law students utilize a form which captures the date the documents are screened. Nevertheless, migrant cases were identified which contained a copy of the documentation, but lacked the form and date that the copies were made. It therefore cannot be determined if the documentation was screened in a timely manner. *See* case nos. 06-18184510, 03E-18058662, and 06E-18181964. To evidence that screening occurred prior to the commencement of representation, it is recommended that the LAFMC staff member making the copy of documentation and write the date of review on the copy. In those instances of outreach intake, LAFMC must ensure that the alien documentation form is completed.

Also, as stated in Finding 2, the case sample review evidenced LAFMC's Adult SSI Project does not obtain from IDHS information as to whether individuals referred to LAFMC are U.S. citizens or eligible aliens. It is understood that the individuals referred must be a U.S. Citizen or eligible alien to receive such benefits; however, LAFMC does not initially have information as to which status. Currently, LAFMC does not conduct independent intake assessments of the referrals from IDHS instead LAFMC relies upon the information gathered by IDHS which is sufficient with respect to income, assets, household information and other basic information regarding the individual. LAFMC's practice is to enter the referred individuals into Kemps as a citizen. Only when extended representation is contemplated, is the individual required to come in for an interview and sign a citizenship attestation or provide evidence of alien eligibility. *See* case nos. 08E-31235793, 07E-31228993, 08E-31235770, 08E-31247414, and 08E-31235101.

LAFMC's current practice is problematic for cases ending with advice or brief service. 45 CFR Part 1626 does not require citizenship attestation for individuals if the only service provided is brief advice and consultation by phone and does not include continuous representation. In this instance, if a client does not receive extended representation, LAFMC cannot verify if a client has been asked their citizenship status either by telephone or in person as required by Program Letter 99-3. Program Letter 99-3 requires recipients to make appropriate inquiry of each telephone applicant and record such responses. Therefore, LAFMC must obtain citizenship information from IDHS, make independent contact with the individuals upon receipt of the referral, or have IDHS verify in writing that all IDHS recipients have to be an U.S. citizen or an eligible alien. LAFMC is reminded that if IDHS refers an eligible alien, there must be documentation on the intake sheet and/or in the ACMS as to what type of alien documentation the referred party possesses.

Comments to the DR stated that the Crime Victims Project's retainer agreement had been replaced and LAFMC now requires a separate attestation of citizenship or proof of other eligible alien status for all crime victim clients. According to LAFMC, all cases opened on January 1, 2008 or later now use the proper documentation.

LAFMC's stated in the comments that LAFMC staff has been reminded that a client's citizenship status must be obtained orally in telephone-only cases, and obtained in writing for cases that begin with a face to face encounter or involve longer-term representation without face to face contact. Staff was also reminded that citizenship forms must be dated. Also, staff

members and summer interns doing outreach for the Migrant Project have been reminded to complete the alien documentation form and put it in the client's file.

According to LAFMC there is no realistic change of having the Illinois Department of Human Services ("IDHS") to adjust its procedures to comport with LSC's requirements. Therefore, LAFMC will not open cases for referrals from IDHS unless LAFMC see and obtain the relevant documentation directly from the client.

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

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.¹⁴ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LAFMC is not compliant with the requirements of 45 CFR § 1611.9. LAFMC's retainer agreement form is utilized by the majority of staff.¹⁵ After the retainer is signed by both the advocate and client, a yellow carbon-copy of the retainer is provided to the client. Several projects use this format with a pre-printed scope and nature of assistance to be provided tailored to their work. However, case sample evidenced several files that did not include a retainer, retainers with missing signatures and retainers whose scope lacked an adequate description of the legal assistance provided. *See* case nos. 07E-16208472, 07E-42204061, and 08E-16244843 (a case lacking an executed retainer agreement). *See* case nos. 07E-61220298, and 06E-61185388 (retainer agreements not signed by the advocate). *See also* case nos., 05E-81123660, 07E-18211518, 07E-18215518, and 06E-6179197, and 05E-42128639 (retainer lacked a description of the legal services to be provided to the client).

As stated in Finding 5, although the Crime Victims Project staff had amended its retainer to include a separate signature line for the citizenship attestation in compliance the CSR Handbook (2008 Ed.), staff incorrectly utilized the old retainers for cases opened after December 31, 2007. LAFMC acknowledge this error and has since destroyed all former retainers.

LAFMC must take corrective measures to ensure that case files include a retainer when required; such retainers must be executed properly with both the advocate and client signatures; and

¹⁴ 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.

¹⁵ As stated in Finding 5, the Crime Victims Unit utilizes a different retainer.

provide a description of the legal assistance that is to be provided. LAFMC is reminded that the retainers' scope must explain the legal assistance that is to be provided not just the document the legal issue. In addition, LAFMC must ensure that the non-compliant Crime Victims Project retainers are not included in any case files opened after December 31, 2007.

Comments to the DR stated that LAFMC recognizes that files with missing or defective retainers can be reported to LSC, although they cannot be closed higher than brief service. Also, the Crime Victim Project has destroyed all copies of its non-compliant retainer. The comments stated that all LAFMC's attorneys have been reminded that the retainer should describe the scope of legal services to be provided and not just the legal problem the client presents.

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

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

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

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

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

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

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

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

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

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 9: LAFMC is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

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

If the applicant's legal problem is outside the recipient's priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

LAFMC is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6 as majority of the case sample files contained a sufficient description of the legal assistance provided. *See* case nos. 07-18223978, 07E-18217563 07E-61197503, 07E-61226776, 07E-7202647, and 07E-15200663. These cases and others like them are not CSR reportable.

Also, the case sample review identified Chicago Seniors and Hopp Project office advice letters that include non-compliant language. Many Senior and Hopp cases are resolved with the advice provided during intake; however, these cases are also reviewed. In most instances after the review, an advice letter is sent to the client summarizing the advice previously provided on the phone. Advice letters are often accompanied by pamphlets or other handouts. The case sample disclosed that certain advice letters included the statement "we cannot represent you" but provide legal advice which is counted as Counsel and Advice on CSRs. LAFMC is reminded that to be eligible for CSRs, the case must be accepted, even if such acceptance is for limited legal advice.¹⁶ The current advice language states that the client's case was not accepted.

¹⁶ *See* CSR Handbook (2008 Ed.), § 2.1.

Therefore for reporting purposes the matter would not be considered a case and thus not reportable. Accordingly, it is recommended that LAFMC review its advice letters and change the current language. Appropriate language for the letter includes phrases such as “your file has been accepted for limited representation or advice” or “your case has not been has accepted for extended representation but LAFMC can provide you with the following advice”.

A review of the case sample also revealed instances in which third party advice is being administered and reported to LSC. A review of the 2008 case sample and staff interviews disclosed that LAFMC provides legal advice to individuals through a third party who provides the individual’s financial eligibility and citizenship status to LAFMC. LAFMC never speaks or has contact with the individual. *See* case no. 08E-70236390. LAFMC explained that the clients/individuals are generally physically incapacitated and residents of nursing home settings. The case workers from these non-profit agencies will call LAFMC on behalf of the residents. The case worker will provide LAFMC with financial eligibility information and citizenship verification as well as informing the LAFMC advocate of the resident’s legal problem. The LAFMC advocate then gives the legal advice to the case worker who relays it to the resident. At no time does the LAFMC advocate ever talk directly to the resident or “client.” During case review, the intermediary indicated these cases are funded by non-LSC funds. However, the case reviewed was on a LSC 2008 closed case list and it appeared this case was intended to be reported to LSC.

The CSR Handbook definition of case requires that a client be eligible, client’s matter is within priorities, the case be accepted, legal assistance is provided, and the legal problem is not prohibited.¹⁷ The CSR Handbook further states that the provision of legal assistance creates an attorney-client relationship.¹⁸ In this instance there is no indication that a case has been created for an attorney-client relationship to be established. According to the fact presented, the case worker does not provide evidence that they have any legal authority to seek assistance on the client’s behalf. Therefore, the eligibility information provided cannot be used to ensure that the individual is financially eligible thus; the individual’s matter cannot be accepted as a case. Legal assistance is not known to be provided in this instance because LAFMC never speaks to the resident thus, it is not known if the resident ever receives the legal information provided.

Consequently, if LAFMC wishes to report these matters to LSC, LAFMC must take corrective action to obtain evidence that the case worker is the individual’s legal guardian or has been given the authority to seek assistance on behalf of the client. Alternatively, LAFMC may consult with its bar ethics committee and provide OCE with local authority that allows a case worker to seek advice on behalf of nursing home residents. Otherwise, these cases must not be reported to LSC.

Comments to the DR stated that LAFMC staff has been reminded in order for encounter to be considered a reportable case, the notes in a paper file or an ACMS file must contain a clear indication that individualized legal assistance was provided. According to LAFMC, the Project and Service Office letters have been revised and the rejection language has been removed. The now included the following language; “Your case has been accepted only to give you the following legal advice. LAF will not take any further action on your case”.

¹⁷ *See* CSR Handbook (2008 Ed.), § 2.1.

¹⁸ *See* CSR Handbook (2008 Ed.), § 2.2.

Comments to the DR also stated that LAFMC agrees that no attorney-client relationship is established when information is provided by a third party and advice is given to the third party unless the third party had the legal authority to act on a client's behalf. Thus, where an attorney-client relationship does not exist, LAFMC will treat the encounter as a matter not a case.

Finding 10: LAFMC'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.),

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.

LAFMC is substantially compliant with the requirement of the CSR Handbook (2001 Ed.) Section 8.0 and the CSR Handbook (2008 Ed.), Chapter 8.0. A review of the case sample revealed that LAFMC applied the CSR closing codes appropriately in the majority of the case files. However exceptions were noted in a few files. *See* case nos. 08-6224273, 07E-18213055, 07E-18212116, 04E-34116794, and 05E-52131646

Also, interviews with staff and a review of the case sample revealed that LAFMC utilizes two closing codes, "Q" and "X", in addition to LSC's codes A through L codes. The Guidelines for Cases, used for training purposes, describes the uses of these codes. The "Q" code is to be used when an applicant is given a referral without advice, is over-income, over assets, and is undocumented or outside LAFMC priorities. The "X" code is to be used if the case was created in error. Cases with these codes are not included in CSRs. However, as stated in Finding 1, a few cases were found in which reportable LSC cases were incorrectly given the "Q" closing code.

Until January 1, 2008 LAFMC incorrectly utilized an "M" code instead of the LSC code "K" for other. LAFMC staff was instructed by memo October 2005, to close case files in which the client received more than brief service but not extended service as "M". Consequently, LAFMC was incorrectly utilizing the "K" code for rejected or otherwise un-reportable cases. LAFMC practice prior to January 2008 was to exclude cases closed with K from CSRs and the cases closed with M were reported as K in the CSRs. LAFMC learned during the 2007 LSC CSR Handbook (2008 Ed.), training that recipients were prohibited from using the K code for any other purpose than that described in the CSR Handbook. Accordingly, when the new closing codes were implemented in 2008, LAFMC made the appropriate changes. LAFMC staff was instructed to cease utilizing the closing codes "C", "D", "E", "J" and "M" and the closing codes were subsequently removed from the case management system. However, a review of the case files revealed that some 2007 and 2008 case files cases were incorrectly closed with the closing code M. *See* case nos. 07-34214042, 07-91206336, 06E-62159128, 07E-6216572, and 07E-7198665.

LAFMC was made an aware of the OCE team findings and ran a test of its own. The test revealed that that the Kemps system will allow the user to put in any letter code even if it does not appear in the drop-down box of permissible codes. As such, some advocates were allowed to still utilize defunct closing codes. To ensure correct case closure and reporting, LAFMC stated that they will generate lists of the defunct codes and instruct staff to cease using the incorrect codes.

LAFMC must take corrective action to ensure that all defunct closing codes are removed from its current ACMS. LAFMC must ensure that staff is trained not to use the defunct closing codes and the codes are not applied to cases files closed after December 31, 2007. In addition, interviews evidenced that some case handlers are confused as to the appropriate use of these two codes, as well as some of the revisions to the LSC closure codes. Additional staff training is recommended.

Comments to the DR stated that LAFMC will continue to use closing code X for a case that has been opened in error, and closing code Q for cases that are not errors but are not reportable to LSC. All staff members have been reminded that a case that is funded by someone other than LSC but is otherwise reportable to LSC should be closed with a valid LSC closing code (not Q) and reported to LSC.

According to LAFMC they were not aware, until the OCE visit, that some of the case handlers had outdated versions of Kemp's on their computers that contained obsolete closing codes in the drop-down menu or that Kemp's allowed a person to enter any letter as a closing code. In reaction to OCE findings, LAFMC has made sure all computers have the correct version of the drop-down menus on them and has advised staff to only to use the current LSC closing codes not C, D, E, J, and M. According to LAFMC, a recent error report reflected no use of those codes.

LAFMC stated in the comments that the new ACMS Legal Server, will not permit a user to enter any closing code that is not found in the closing code drop-down menu. Staff will receive Legal Server training and LAFMC will conduct frequent trainings and record them for later viewing.

Finding 11: LAFMC is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. However, a few staff case files 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).¹⁹ There is, however,

¹⁹ 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

an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

LAFMC is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.) ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as a few files were found not to be timely closed or dormant. *See* case nos. 96-22-12, 06E-18183737, 06E-61168073 06E-52167909 and 06E-6170670. Some of the case files identified included Migrant case files that were dormant. *See* case no. 06-18184510. Interviews with the migrant staff revealed that it is not unusual for staff to lose contact with some clients for over a year. In such instances, the case is left open while an effort is made to locate the client. According to LAFMC Migrant Project staff, this method is used to help determine which clients need to be located. After discussions with the Executive Director and the Migrant Project supervisor, it was agreed that a new system must be created to ensure that cases are not left open to become dormant.

Comments to the DR stated that LAFMC staff has been reminded that cases that are not closed in a timely fashion may not be reported to LSC. Also, the Migrant Project has adopted a policy which the Executive Director has approved. The policy requires that, when client contact is lost, such cases must be closed within 15 months of the first contact. A copy of the new policy was attached as an exhibit.

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

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

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

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).

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.

LAFMC is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. As part of the case sample, cases files were targeted as potential duplicates. None of the targeted cases targeted were found to be duplicates.

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 13: LAFMC is in 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.

The limited review of accounting records and documentation for the period January 1, 2006 through July 15, 2008 as well as interviews with management disclosed that LAFMC does not appear to have expended any grant funds, or used personnel or equipment in prohibited political activities in violation of 45 CFR §1608.3(b), therefore, LAFMC is in compliance. Discussions with the Executive Director also confirmed that LAFMC does not engage in any restricted political activity.

However, when asked if written policies for implementation of the restrictions of 45 CFR Part 1608 were available to LAFMC staff, the Executive Director noted that the LAFMC Manual of Policies and Procedures section 1.1 states: “Legal Assistance Foundation of Metropolitan Chicago (LAFMC) staff is required to comply with the LSC regulations. Staff is referred to a computer link which contains the LAFMC policy subdirectory. A review of LAFMC’s policies revealed that they are to be found in several locations and none of them included any prohibition of activities as defined in Part 1608.

It is recommended that the Program consider implementing a written policy covering the prohibition of activities as defined in 45 CFR Part 1608 for inclusion in its Manual of Policies and Procedures.

Comments to the DR stated that, per OCE's recommendation, LAFMC now has a written policy on the prohibition of activities as defined in 45 CFR Part 1608. The policy will be included in LAFMC's Policies and Procedures Manual. The newly drafted policy was attached as an exhibit.

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).

LAFMC is in compliance with 45 CFR § 1609.4, which requires that each recipient shall adopt written policies and procedures to guide its staff in complying with 45 CFR Part 1609 and shall maintain records sufficient to document the recipient's compliance with this part. A review of LAFMC's policies for 45 CFR Part 1609 found that the LAFMC Manual of Policies and Procedures, Section 1.7 properly defines the process for acceptance of fee generating cases and the requesting of fees.

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

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

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

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

restricted activities, or use its resources to subsidize the restricted activities of another organization.

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

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

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

- 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).

LAFMC complies with 45 CFR § 1610.8(b) which requires program integrity certification by the governing body for years 2006, 2007 and 2008. LAFMC receives grants and donations from several sources. An examination of the financial documents evidence that funds received by the recipient from sources other than the Corporation are accounted for as separate and distinct receipts and disbursements in accordance with 45 CFR § 1610.9.

However, LAFMC's donor letter is not complaint with 45 CFR § 1610.5. LAFMC was requested to provide documentation of compliance with 45 CFR § 1610.5 which requires that the recipient provide to donor of funds in the amount of \$250 or more, written notification that the recipient receives LSC funding and of the prohibitions and conditions which apply to the use of the donated funds by the recipient. The sample donor letter provided stated the "...*contribution will be used only in full compliance with the restrictions and prohibitions imposed by federal law*". LAFMC donor letters should be more specific and cite the specific prohibitions and the conditions which apply to the funds as required by 45 CFR § 1610.5. It should be noted that LAFMC provided correspondence that indicated that LAFMC considered use of more specific language in February 2007 however, the letter was not amended at the direction of the previous Executive Director who was acting in a consultant capacity. As a result, the current donor letter does not comply with the requirements of 45 CFR § 1610.5 and LAFMC must revise it.

It is recommended that LAFMC incorporate language such as "*LAFMC may not expend any funds for any activity prohibited by the Legal Services Corporation Act, 42 U.S.C. 2996 et seq. or by Public Law 104-134 to its donor letter.*" The sample language clearly provides to donors the prohibitions and conditions which apply to the donated funds as required to 45 CFR § 1610.5.

The comments to the DR stated that LAFMC has revised its donor letter to comply with the requirements of 45 CFR § 1610.5. The comments also stated that the decision to use the prior language was made by the current Executive Director not the previous Executive Director as indicated during the review.

Finding 16: LAFMC is in non-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.

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.

As part of the assessment of LAFMC's PAI activity, LAFMC's Comptroller, the PAI Coordinator, and the branch office Supervisors were interviewed and, a review of the LAFMC's PAI plan and sample PAI case file review was conducted. Areas of non-compliance were identified in screening, documentation of legal assistance, and timekeeping.

A review of timekeeping records disclosed that many of the records frequently lacked any descriptive detail or were completely blank. As presented, many PAI time charges had descriptions that did not make clear the relevance to PAI activities and instead of linking time charges to a specific case (i.e. case number or name) the identifier simply said "case related." As result of all of the above the PAI time substantially lacks proper support and the PAI allocation of this time is in question. *See* 45 CFR § 1614.3(e)1(i). LAFMC must include in the ACMS notes that document why the type spent can be attributed to PAI. For instance, when an attorney trains private attorneys, the attorney should enter in the timekeeping records the hours spent during training and the type of training that was conducted i.e., "PAI training for private attorneys".

Review of the LAFMC PAI plan indicates that it meets all the requirements of 45 CFR § 1614.4(b) which states: The recipient shall consult with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations with the recipient's service area and shall summarize their response. LAFMC's PAI plan for January 1, 2008, to December 31, 2008, is designed to support 11 separate PAI initiatives: pro se divorce clinic, pro bono panel, intake assistance project, pro bono co-counseling project, children's SSI project, food stamp & medical assistance advocacy pro bono project, pro bono legal consultant project, law firm pro bono project, VAWA project, U & T Visa project, and senior attorneys pro bono project, all in an effort to meet the 12.5% PAI requirement

A review of case files for the different above-mentioned initiatives indicated that LAFMC is in non-compliance with 45 CFR § 1614.3(d)(3) which requires oversight of the PAI case files. In the majority of the PAI case files reviewed eligibility was appropriately determined, the legal issues were within LAFMC's priorities, and each of the files was either timely closed or active. However, some exceptions were noted.

Currently, LAFMC conducts a pro se divorce clinic twice a month which assist clients in preparing for court in uncontested dissolution cases. The clinics are taught in two sessions. The

clinic is facilitated by a VISTA volunteer who works out of the LAFMC downtown office. Each clinic participant meets with a volunteer attorney to review completed court documents for accuracy as well as to discuss any issues pertinent to the participant's case. The case sample disclosed that the clinic case files do not include sufficient documentation of legal assistance provided to ensure compliance with the requirements of Section 2.2 of LSC CSR Handbook which states: "For CSR purposes, legal assistance is defined as the provision of limited service or extended service on behalf of a client or clients that meets the criteria of the CSR Closing Categories contained in Chapter VIII. Legal assistance is specific to the client's unique circumstances and involves a legal analysis that is tailored to the client's factual situation. Legal assistance involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented. The provision of legal assistance creates an attorney-client relationship." The majority of case files reviewed for the Pro Se Uncontested Divorce Clinic merely state that the client attended the clinic but do not however, address the legal advice that was provided specific to their case. LAFMC needs to take corrective action to ensure that the Pro Se Uncontested Divorce Clinic cases include documentation specific to the client's case to ensure compliance with the requirements of Section 2.2 of the CSR Handbook. *See* case nos. 07E-6205713, 08E-8242515, and 08E-6237710. It was recommended that a legal advice checklist be created for the private attorneys to fill out and submit for each client.

In addition, review of cases for the pro se divorce clinic revealed dormancy in cases in which clients have expressed an interest in attending the clinic but have not yet attended. *See* case nos. 07E-6200648 and 06-81185781. LAFMC must ensure that no-show clinic attendees' case files are closed timely.

As stated in Finding 2, interviews with the Pro-Bono Coordinator and a review of the Senior Title III Pro Bono Project case files revealed that the one of the volunteers who conducts intake screening as well as provide legal assistance to clients under the program's Title III grant for senior does not consistently screen the clients for income and asset eligibility. The case files, however, are being closed as PAI. *See* case nos. 08E-52249029, 07E-6230161, and 08E-6246015.

LAFMC was advised that in any instance in which a client is not screened for income and asset eligibility or has been determined not to be LSC eligible, the client's case should not be closed as PAI.²⁰ Additionally, the time spent on the cases should not be attributed to PAI. It was recommended that if LAFMC wanted to report these cases to LSC and attribute the time spent to PAI then they must train the volunteers to screen all applicants in accordance to LAFMC's eligibility policies. If LAFMC decides, however, not to screen the applicants then the cases should be closed as matters and not attributed to PAI or reported to LSC.

LAFMC must take corrective action to ensure that that PAI time is documented in accordance with 45 CFR § 1614.3(e)(1)(i) and that all PAI clients are screened to ensure eligibility. Lastly, it is recommended for the Pro-Se Divorce Clinic files that the VISTA attorney who conducts the clinic be identified in the ACMS rather than the LAFMC paralegal.

²⁰ OCE acknowledges that LAFMC does have a government asset exemption which allows applicants who received certain benefits not to be screened for assets.

The comments to the DR stated that LAFMC has indicated to staff that that they are required to enter sufficient notes to permit the determination of PAI activity. LAFMC has adopted new procedures regarding the Pro Se Clinic. The attorney on every case opened in the clinic will be the VISTA attorney who supervise the clinic and is not an employee of LAFMC. Second, every participant in the clinic will have an opportunity to meet privately with the attorney. The notes in each case file will contain the name of the private attorney with whom the client consulted and a brief summary of the nature of the consultation. Those applicants who do not attend the scheduled clinic appointments will have their cases closed with the closing code X and will not be reported to LSC.

Also, the comments to the DR stated that LAFMC has decided that unless asset and income information is obtained from a Title III client, the case will not be treated as PAI or reported to LSC.

LAFMC noted in the comments that Legal Server, once implemented, will make compliance with all LSC requirements easier. Legal Server will determine based on the information entered if the client is LSC eligible instead of relying solely on the case handler.

Finding 17: LAFMC 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 for the calendar year ending 2005 through December 31, 2006 disclosed that LAFMC is in compliance with 45 CFR § 1627.4(a).

The review of accounting records, the detailed general ledgers for the full calendar years 2006 and 2007, and through July 15, 2008, and the vendor list disclosed that LAFMC pays with non-LSC funds, for non-mandatory membership fees or dues to any private or non-profit organization, whether on its behalf or an individual in compliance with 45 CFR § 1627.4. There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 18: LAFMC 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.

LAFMC maintains two separate time recording systems; the payroll system which includes a combination of manual and computerized sub-systems and the use of several non-integrated software packages and the Case-time management system which uses Kemps Case Works.

The Payroll system requires individual offices and/or work units to maintain a manual weekly timesheet reflecting each day's reportable time by category (work, sick, vacation, etc) which is approved by the unit manager and forwarded weekly to the Accounting Office. Data from these forms are used to verify work status and to update benefits files (i.e. leave/non pay time used) which is maintained using *Sage Abra* payroll and human resources software, and is used in verifying data entered on a self developed spreadsheet used to verify the (outsourced) *Paylocity* bi-monthly payroll processing data (accessed on-line). Printouts from the *Abra* system identify any discrepancy in leave available. A sample of 14 attorneys was selected from three work groups for review. Manual timesheets for the selected employees were compared to the payroll system for the months of July 2007 and 2008. No pattern of error was noted

However, the payroll system, as implemented, has no time lag between the last day for which an employee is paid and the payday. This is a weakness which does not protect the program from making payments to persons not providing services and not having adequate vacation/sick time,

and which requires that any overpayments be recovered in the following pay period. LSC recommends instituting a time lag for all newly hired staff.

The Program utilizes *Kemps Case Works* software for tracking attorney and paralegal time on cases, matters and activities to meet the requirements of 45 CFR § 1635.3(b). This requires time spent by attorneys and paralegals to be documented by time records which record the amount of time spent on each case, matter, or supporting activity and 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.

A comparison of data for the same personnel and time period between the payroll and *Kemps* yielded numerous inconsistencies between the time reported in the payroll and the *Kemps* systems. As a test, daily time reported in *Kemps* was compared to time and leave as reported in the program payroll system. Some of the inconsistencies are attributable to obvious error, some due to time spent not reflected in the payroll system and some where the systems are simply irreconcilable. In two instances, it was found that payroll time exceeded that reported in *Kemps*. While the Collective Bargaining agreement recognizes an attorney is anticipated to work beyond the hours of the basic payroll work week, there are no circumstances where the Payroll time should exceed time reported in *Kemps*. In addition, as mentioned in the previous Finding, there were inconsistencies regarding the time entered in case/time system and the time documented in the payroll system for the Supervising Attorney for the Migrant Project. When inconsistencies occur it calls into question the accuracy of reported case, matter, or supporting activity data. LAFMC is in the process of moving to a new case/time management system, Legal Server. This would be an opportunity to explore the implementation of an integrated payroll system which could utilize the contemporaneous time postings on Legal Server for payroll purposes

LAFMC does not comply with 45 CFR § 1635.3(d), which requires the certifications of an attorney who works part-time for a recipient and part-time for an organization engaging in activities prohibited by LSC regulations. Part-time employees are required on a quarterly basis and on a form determined by LSC, to certify that they have not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient and has not used recipient resources for restricted activities, except for *de minimis* action. The Supervising Attorney of the Illinois Migrant Project is 80% funded by LAFMC. He works one day per week at the Farm Worker Advocacy Project which conducts restricted activities. The Executive Director stated that they were unaware of this requirement and accordingly has not asked for the quarterly report since they began their tenure.

The DR directed that the Supervising Attorney must immediately provide the quarterly certification of the form required by Program Letter 2000-5. With its response to the DR, LAFMC was required to provide copies of any such certifications executed following the on-site review.

Comments to the DR stated that the LAFMC attorney that works for LAFMC 80% and 20% for an independent non-profit that represents undocumented migrant workers, has provided as required by Program Letter 2000-5, certifications for the third (September 30, 2008) and fourth

(December 31, 2008) quarters of 2008. The attorney understands that the certifications must be provided quarterly as long as they are an attorney with LAFMC. The third and fourth quarter certifications were attached as exhibits.

LAFMC also attached to the comments timekeeping and time allocation procedures for the LAFMC attorney who works for LAFMC and the independent non-profit.

Finding 19: Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees). However, LAFMC must revise its co-counseling agreement to make clear that LAFMC cannot claim, collect or retain attorney 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).

LAFMC was found in compliance with 45 CFR § 1642.5(b) by properly identifying attorney fee receipts through its Chart of Accounts which properly segregates such receipt reported in the General Ledger. LAFMC properly segregates receipt of attorney fees which are reported in the General Ledger and the 2006 and 2007 Audited Financial Statements.

Although LAFMC evidenced compliance with 45 CFR § 1642.5(b), it must be noted that, examination of the LAFMC's 2006 Audited Financial Statement evidenced attorney fees totaling \$946,823. A follow-up was conducted with the General Ledger which determined that \$940,641 of that total related to a single case, *Memisovski, et al v. Maram, et al.* which was found to be a class action case and according to the Executive Director the case originated in 1992. Funds were received in three increments: March 16, 2006 (\$432,795.60), August 15, 2006, (\$152,353.69), and August 30, 2006 (\$355,491.96).

LAFMC's Executive Director provided documents that indicated that the attorney fees were subject of a current investigation being conducted by LSC's Office of Inspector General ("OIG") regarding the allocation of the received funds under 45 CFR § 1642.5(b). The OIG had concluded that the attorney fees should have been recorded as derivative income to LSC but were not. At the time of the visit, LAFMC was in the process of responding to the OIG report by September 22, 2008 and developing a written policy to ensure future compliance. Based on the current status of the OIG inquiry, OCE's review of this matter was terminated.

Also, a review the case sample and interview of the Migrant Project staff disclosed that the project routinely co-counsels with private attorneys on wage cases and those statutory fees may be awarded. As such, several of the complaints reviewed included a prayer for attorney fees. The typical language contained in this prayer for relief request "Reasonable attorneys' fees for" followed by the name(s) of the private attorney(s). The language does not continue to explicitly state that LAFMC does not and cannot request attorneys' fees. LAFMC was referred to the

language found in External Opinion EX# 2002-1008. LAFMC's Senior Management was advised that appropriate language must be added to such prayers.

Comments to the DR stated that LAFMC had revised its pleadings for co-counsel cases to include language that explicitly states that LAFMC does not and cannot request attorney fees. The required language was attached as an exhibit.

Comments to the DR also gave an update regarding attorney fees that were awarded in the *Memisovski, et al v. Maram*. Per the OIG request, LAFMC developed a written policy to ensure that attorney fees awarded in LSC funded cases would be hence forth recorded as derivative income. Also, LAFMC advised that it was there understanding that the OIG has referred this issue to OCE for further action.

Finding 20: Sampled cases and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). However, a review of LAFMC's policies and procedures evidenced non-compliance with 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, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

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

However, LAFMC is in non-compliance with 45 CFR § 1612.11 which requires that each recipient shall adopt written policies and procedures to guide its staff in complying with this part. LAFMC's management was asked if such policies were available to LAFMC's staff. OCE was informed that although a formal policy was not implemented, a training module used for all staff included a "No Lobbying" guideline. A review of LAFMC's formal policies noted that written policies are to be found in LAFMC's Manual of Policies and Procedure, the Collective Bargaining Agreement and LAFMC's Personnel Policies for Supervisory Attorneys and Other non-Union Personnel. A review of each of these documents did not find any written policy as required by 45 CFR § 1612.11.

The DR directed that LAFMC must create written policies and procedures to guide staff to comply with 45 CFR § 1612.11

Comments to the DR stated that LAFMC developed a policy regarding lobbying restrictions and the policy would be included in LAFMC's Policies and Procedures Manual. A copy of the new policy was attached as an exhibit.

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 Executive Director also confirmed that LAFMC is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 22: Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define "initiating or participating in any class action" as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).²¹

LAFMC is not in compliance with 45 CFR Part 1617. The case sample review disclosed an open case for a named client in a class action filed by a private attorney and co-counseled by the Supervising Attorney of the Migrant Project while working for the Farmworker Advocacy Project, an organization that conducts work restricted by the LSC regulations. The Supervising Attorney is an 80% LAFMC-funded employee. The case file was opened on June 26, 2006 and the complaint was filed as a class action. At the time of the review, the case was still open in the ACMS.

²¹ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

LAFMC time records for the case reflects 4.5 hours of work subsequent to the filing of the complaint; such work includes discussion about the case with an LAFMC paralegal in the Migrant Project, review of a motion to transfer venue, review pleadings, organizing the file and work with respect to two other named class members who are not clients of LAFMC. LAFMC could not produce a 45 CFR § 1635.3(d) certification signed by the Supervising Attorney. Moreover, the activities reflected in the time records exceed the de minimis standard set forth in the regulation. Consequently, the activity is in non-compliance with 45 CFR § 1617.3.

After meeting with LAFMC's management team and the Supervising Attorney, LAFMC agreed to create new case management procedures regarding Migrant Project files. LAFMC was instructed that the Supervising Attorney must cease reporting time for this case while working at LAFMC. The case must be closed in the ACMS and in response to the Draft Report, LAFMC must provide an accounting of the time spent by the Supervising Attorney and the LAFMC Paralegal in the class action, as well as evidence that the class action has been closed in the ACMS.

Comments to the DR stated that LAFMC agreed that case number 06-18173247 should have been closed when it was referred out and no other time should have been posted. LAFMC attached as exhibits to the DR, a time record showing the time attributable to the case and a Kemp's record evidencing that the case had been closed.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

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

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

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

the health or safety 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 Executive Director also confirmed that LAFMC is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

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

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

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

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 which prohibited LSC recipients and their staff from engaging a client which it solicited.²² This restriction has been contained in all subsequent appropriations acts.²³ 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."

²² *See* Section 504(a)(18).

²³ *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).

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

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

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

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

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

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 LAFMC was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 29: LAFMC performs bank reconciliations monthly and timely as required.

The monthly and timely reconciliation of bank accounts represents a fundamental control, as stipulated in the Accounting Guide for LSC recipients and failure to follow it may be interpreted as negligence, especially, when full segregation of duties cannot be ensured.

A review of 12 bank reconciliations for the payroll, operating, investments, and client trust accounts for the months of May, June, and July 2008, disclosed that they are being reconciled and approved monthly and timely.

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

Finding 30: A review of LAFMC's internal controls and segregation of duties disclosed that too many accounting duties are placed on one of the two accounting assistants.

A limited review of the Internal Control Worksheet disclosed that there are many duties performed by one of the two accounting assistants.²⁴ LAFMC should segregate some of the duties the accounting assistant has in order to ensure that no one individual simultaneously has both the physical control and the recordkeeping responsibility for any asset, including, but not limited to cash, checks, petty cash, and payroll. Duties must be segregated so that no individual

²⁴ This accounting assistant I performs the following duties: opens the mail; lists cash receipts in Cash Receipts Log; restrictively endorses checks received; receives cash receipts from person opening mail; prepares the bank deposit ticket; posts receipts to the Cash Receipts Journal, posts receipts to Accounts Receivable and General Ledger; receives duplicate deposit ticket stamped by bank; has custody of the Petty Cash Funds; maintains the Petty Cash Fund records; calculates and prepares the payroll; maintains the Payroll Journal; and maintains Client Trust Account records.

can initiate, execute, and record transactions without a second independent individual being involved in the process.

LAFMC concurs with this Finding.

Finding 31: LAFMC's credit card payments are correctly documented and allocated.

A random sampling of 14 credit card charges that were incurred in December 2006 were reviewed, and all of the charges, with only one exception, were properly documented with original receipts attached and also coded to the appropriate funding source. The one exception was a charge for \$75.95 from a restaurant for which the receipt could not be physically located nor the supporting documentation be found. However, other accounting documents disclosed that the charge was paid with non-LSC funds.

Also, the random sampling of 10 credit card payments that incurred in 2007, and 12 credit card payments that incurred in May of 2008, revealed that all of them were properly documented with original receipts attached and also coded to the appropriate funding source. No exceptions were found for 2007 and 2008.

There are no recommendations or corrective actions required.

LAFMC concurs with this Finding.

IV. RECOMMENDATIONS²⁵

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

1. Review all manual intake forms to ensure consistency;
2. Conduct conflict checks prior to obtaining financial information;
3. Revise its financial eligibility policy to conform to the 2005 version of 45 CFR Part 1611;
4. Require staff write the date on which alien documentation is received;
5. Create a legal advice/assistance check list for the PAI clinic attorneys;
6. Draft policies covering the prohibition of activities as defined in 45 CFR Part 1608 and include the in LAFMC's Manual of Policies and Procedures; and
7. Segregate some of the internal controls to ensure checks and balances.

²⁵ 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, LAFMC is required to take the following corrective actions:

1. Ensure that the automated case management system is sufficient to record accurate and timely information regarding the case files;

Comments to the DR stated that the -888 income and asset defaults and closing code options E and M will not exist in the Legal Service ACMS which LAFMC is expected to launch no later than April 1, 2009. In the meantime LAFMC stated that they have removed the closing codes E and M from the drop-down menu on all of LAFMC's computers and will run error reports twice a year to detect case files that include the -888 default or closing code E or M.

2. Ensure that all income and asset defaults are removed;

LAFMC requested a waiver regarding the removal of the income and asset defaults. LAFMC was granted a waiver until May 2009. Until such time, LAFMC is required to run monthly -888 error reports of all open and closed files. LAFMC is required to attest to the findings of the error report to LSC.

3. Ensure that an updated group eligibility form is drafted and implemented;

Comments to the DR stated that LAFMC has drafted and implemented a new group eligibility form which was attached as exhibit.

4. Ensure that all applicants are screened properly, in particular screenings that take place during outreach;

Comments to the DR stated that LAFMC has instituted new intake policies and forms and that the new ACMS will assist in intake consistency. The comments also stated that LAFMC is trying to establish a centralized intake system by November 2009.

5. Ensure that when a follow-up intake is not conducted for referrals that the third party screening agency is properly trained to screen for eligibility;

Comments to the DR stated that LAFMC has revamped its intake procedures to require LAFMC to contact applicants directly for financial eligibility information instead of relying on a third party.

6. Ensure that staff applies the 45 CFR Part 1611 exemptions in accordance with LAFMC eligibility policy;

Comments to the DR stated that LAFMC's Board revised the income policy to coincide with the revised version of 45 CFR Part 1611. The comments stated that all intake staff have been trained a uniform compliant LSC intake standards.

7. Revise asset eligibility policy to add the government benefit asset exemption in accordance with 45 CFR § 1611.3;

Comments to the DR stated that on December 10, 2008, LAFMC's Board approved a new resolution regarding LAFMC's government benefit asset exemption in accordance with 45 CFR § 1611.3. A copy of the revised policy was attached as an exhibit.

8. Standardized the procedures as to how government benefit clients assets are documented;

Comments to the DR stated that staff has been told how to correctly indicate in the ACMS when an applicant is receiving government benefits that would eliminate the need for an asset inquiry.

9. Ensure that all retainers executed after December 31, 2007 are in accordance with the CSR Handbook (2008 Ed.) § 5.5;

Comments to the DR stated that the Crime Victim Project has destroyed all copies of non-compliant retainers.

10. Ensure that all applicants are properly screened for citizenship/alien status;

Comments to the DR stated that staff had been reminded citizenship status must be obtained orally in telephone cases and in writing for cases that have a face to face encounter. Staff has also been reminded to date attestations and retainers. Comments to the DR also stated that the Migrant staff has been reminded to complete the alien documentation form and place in the client's file.

11. Provide information that verifies that all Adult SSI clients are citizens or legal aliens;

Comments to the DR stated that LAFMC had decided that they will not open cases of referrals from the Illinois Department of Human Services unless LAFMC sees the applicant and is able to obtain citizenship status from the applicant first hand.

12. Ensure that retainers are executed when required;

Comments to the DR stated that staff was reminded that retainers are needed for all case files that are closed as extended services.

13. Review advice letters to ensure that they do not include language that rejects the clients case;

Comments to the DR stated that LAFMC has revised it Project and Service offices' advice letters. The rejection language has been removed and replaced with language that advises the client that there case is only being accepted for limited advice.

14. Provide documentation that case workers have authority to obtain legal advice on behalf of a third party;

Comments to the DR stated that LAFMC agrees with OCE's findings and will only open a case file when a third party has the legal authority to act on the clients behalf. If such authority is lacking, the encounter will be considered a matter.

15. Ensure that all LSC closing codes are applied properly;

Comments to the DR stated that staff training regarding closing codes will coincide with the training of the new ACMS Legal Server.

16. Ensure that staff is not utilizing defunct closing codes;

Comments to the DR stated that LAFMC has made sure that all current computers have the correct version of the closing code drop-down screen and told staff only to use the closing codes listed and have reiterated that staff is not use closing codes C, D, E and J.

17. Ensure Migrant Project cases are closed timely;

Comments to the DR stated that Migrant Project has adopted a policy that for cases in which there is no contact with the client. The case files must be closed within 15 months of the first contact. A copy of the policy was attached as an exhibit.

18. Ensure PAI time is documented in accordance with 45 CFR Part 1614.3(e)(1)(i);

Comments to the DR stated that staff was told that they must enter sufficient notes to permit the determination of PAI activity.

19. Ensure all PAI allocated files include eligibility screening documentation as required by 45 CFR Part 1611;

Comments to the DR stated that LAFMC has decided that unless income and asset information is obtained regarding Title III cases, they will not be treated as PAI or reported to LSC.

20. Ensure all reported PAI files include sufficient legal advice documentation;

Comments to the DR stated that all Pro Se Divorce Clinic cases will be handled by the Vista Attorney who supervises the clinic and not a LAFMC employee. The notes in the case will contain the name of the private attorney, and a brief summary of the consultation with the attorney.

21. Develop written procedures regarding timekeeping, and time allocation for the Supervising Attorney for the Migrant Project and the Farms Workers Advocacy Project in accordance with 45 CFR § 1635.3;

Comments to the DR stated that new timekeeping procedures for the Supervising Attorney were developed in accordance with 45 CFR § 1635.3. A copy of the procedures was attached as an exhibit.

22. Provide LSC with a copy of certifications completed in accordance with 45 CFR § 1635.3 since the on-site review;

Comments to the DR stated that the Supervising Attorney for the Migrant Project has completed certifications in accordance with Program Letter 2000-5. Copies of the certifications were attached as exhibits.

23. Revise the current donor letter in accordance with External Opinion EX # 2002-1008;

Comments to the DR stated LAFMC has revised its donor letter in accordance with External Opinion EX# 2002-1008. A copy of the revised language was attached as an exhibit.

24. Create written policies and procedures to guide staff to comply with 45 CFR § 1612.11; and

Comments to the DR stated that LAFMC had created a policy regarding restriction on lobbying and certain activities and included the new policy in the LAFMC Policies and Procedure Manual. A copy of the policy was attached as an exhibit.

25. Ensure that all class actions case files are closed.

Comments to the DR stated that the one class action that was open at the time of the visit was closed. LAFMC attached, as an exhibit to the comments to the DR, timekeeping records and Kemp's records to evidence that the file was closed.