



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Aid Service of Northeastern Minnesota
Case Service Report/Case Management System Review
June 21-25, 2010

Recipient No. 524006

I. EXECUTIVE SUMMARY

Finding 1: LASNEM's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Nevertheless, care needs to be taken by staff to ensure that the precise and accurate codes are always entered into the ACMS.

Finding 2: While LASNEM's intake procedures and case management system generally support the program's compliance related requirements, improvements are necessary.

Finding 3: The LASNEM staff needs training regarding the acceptance of over income clients. The case sample evidenced instances in which over income applicants were accepted without the documentation of the 45 CFR Part 1611 factors and approval by the Executive Director.

Finding 4: While LASNEM maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4, the case sample evidenced several case files for non-compliance regarding asset eligibility documentation.

Finding 5: LASNEM is in non-compliance with 45 CFR § 1626.6 (Verification of Citizenship).

Finding 6: While LASNEM is in compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer Agreements), care should be taken to ensure that timely and specific retainers are obtained in appropriate cases.

Finding 7: LASNEM 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: LASNEM is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were several staff case files which contained no description of the legal assistance provided.

Finding 10: LASNEM's application of the CSR case closure categories is inconsistent with the CSR Handbook (2008 Ed.), § 6.1.

Finding 11: LASNEM is not in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. (Timely closure).

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

Finding 13: 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: LASNEM is in compliance with the requirements of 45 CFR Part 1610.

Finding 16: LASNEM is not in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 17: LASNEM 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: LASNEM is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

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

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

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

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: Bank reconciliations for April 2010 were reviewed for all bank accounts and were found to be performed timely and accurate, however their corresponding approvals were not adequate and there was an instance where old outstanding checks were included in the reconciliation.

Finding 30: LASNEM has good segregation of duties and internal controls.

Finding 31: A review of the use of the company credit card disclosed no internal control deficiencies and that all charges were proper and supported by adequate documentation.

Finding 32: The review for payroll advances to employees disclosed that LASNEM does not allow payroll advances.

II. BACKGROUND OF REVIEW

On June 21-25, 2010, the Office of Compliance and Enforcement (“OCE”) conducted a Case Service Report/Case Management System (“CSR/CMS”) onsite visit at Legal Aid Service of Northeastern Minnesota (“LASNEM”).

The purpose of the visit was to assess LASNEM’s compliance with the LSC Act, regulations, and other applicable law. The visit was conducted by a team of four (4) attorneys and one (1) fiscal analyst; all of whom were OCE staff members.

The review was designed and executed to assess LASNEM’s compliance with basic client eligibility, intake, case-management, statutory and regulatory requirements, the reporting requirements set forth in the CSR Handbook (2008 Ed.) and the CSR Handbook (2001 Ed.), and to ensure that LASNEM has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LASNEM’s compliance with regulatory requirements 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1611 (Financial eligibility); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Part 1613 (Restrictions on legal assistance with respect to criminal proceedings); 45 CFR Part 1614 (Private attorney involvement); 45 CFR Part 1615 (Restrictions on action collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1620 (Priorities in use of resources); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1642 (Attorneys’ fees); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing); and Section 1007(b)(8) – (10) of the LSC Act, 42 USC §§ 2996f(b)(8) – (10) (Abortion, school desegregation litigation, Military Selective Service Act or desertion).

LASNEM is a non-profit legal services organization that provides free legal services to low-income and disadvantaged residents in LSC service area MN-1, which consists of the upper northeastern area alternatively referred to as the “Arrowhead region” or the “Iron Range.” LASNEM is headquartered in Duluth and maintains four (4) outer offices in Brainerd, Grand Rapids, Pine City, and Virginia.

In 2009, LASNEM received LSC basic field funding in the amount of \$445,607. LASNEM also received grant and contract support from various local, State and Federal, and private sources. According to LSC’s Recipient Information Network, the total non-LSC revenue received in 2009 was \$2,413,673. See www.rin.lsc.gov.

In preparation for the visit, OCE requested that LASNEM provide, among other things, a list of all cases reported to LSC in its 2008 CSR data submission (“closed 2008 cases”), a list of all cases reported to LSC in its 2009 CSR data submission (“closed 2009 cases”), a list of all cases closed between January 1, 2010 and April 30, 2010 (“closed 2010 cases”), and a list of all cases

which remained open as of April 30, 2010 (“open cases”). OCE requested that each list contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closure category assigned to the case, the funding code assigned to the case, and an indication of whether the case was handled by staff or by a private attorney pursuant to 45 CFR Part 1614. LASNEM was advised that OCE would seek access to case information consistent with Section 509(h), Pub. L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). LASNEM was instructed 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.

LASNEM advised OCE that it would afford OCE access through the use of staff intermediaries. Thereafter, LASNEM provided the requested materials. OCE then selected a sample of 580 case files to be reviewed during the visit. An effort was made to create a representative sample of cases which the team would review during the visit. The sample was distributed proportionately among open and closed cases, as well as among LASNEM’s various office locations. The sample consisted largely of randomly selected cases, but also included cases selected to test for compliance with those CSR instructions relative to timely closings, application of the CSR case closing categories, and duplicate reporting.

During the visit, LASNEM cooperated fully. It provided all requested materials in a timely manner. LASNEM afforded access to information in the case files through the use of intermediaries. LASNEM maintained possession of the files and disclosed financial eligibility information, the problem code, and the general nature of the legal assistance provided to the client. Additionally, LASNEM displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and Part 1636 statements. OCE also interviewed members of LASNEM’s upper and middle management, fiscal personnel, staff attorneys, and support staff. LASNEM’s case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed.

OCE visited all offices staffed by LASNEM and interviewed staff involved in the intake process and the PAI program as well as the management staff in the administrative office.¹ OCE reviewed 550 files; of which 128 files which were selected to test for compliance with certain regulatory and reporting requirements. The remaining 422 files that OCE reviewed were randomly selected.

An attempt was made to advise LASNEM of any compliance issues during the course of the visit. This was accomplished by notifying intermediaries and Managing Attorneys of any compliance issues identified during the case reviews. At the conclusion of the visit, OCE held a brief exit conference during which OCE advised LASNEM of its preliminary findings. OCE advised LASNEM that while no patterns of non-compliance were detected, there were instances

¹ The PAI Coordinator and the current Managing Attorney for Grand Rapids were out of the office the week of OCE’s onsite visit. The Executive Director and the newly hired Grand Rapids Managing Attorney were interviewed during the week of the visit regarding PAI procedures. On June 28, 2010, the following week after the visit, the PAI Coordinator was interviewed. PAI forms were faxed to the OCE on June 29, 2010.

of non-compliance with certain regulatory and reporting requirements, including duplicate reporting, timely closing of cases, and failure to obtain attestations of citizenship. The biggest concern from a compliance standpoint discovered is that several program policies are out of date and do not reflect changes in the LSC regulations or changes in the practices of LASNEM. It should be noted that LASNEM management was aware of this deficiency prior to the review and had begun taking steps to review and update these written policies. With the primary exception of the Intake Manual and the "Financial Eligibility Quick Reference Guide" (which will be discussed below) the primary program policies are set forth in the Employee Handbook (Revised: September 22, 2004).² The staff is familiar with the LSC regulations and the CSR Handbook and the frequently asked questions disseminated by LSC. LASNEM was instructed that such findings were merely preliminary and that OCE might well make further and more detailed findings in the report to follow.

Immediately prior to the beginning of the review, the program became aware of future cuts in its budget and began the difficult process of restructuring. While this did not impact the review, it will have a dramatic effect on the services which the program will be able to provide in the near future.

By letter dated September 15, 2010, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and Required Corrective Actions regarding the June 21-25, 2010 CSR/CMS visit. LASNEM was asked to review the DR and provide written comments. By letter dated November 12, 2010, LASNEM submitted its comments to the DR. OCE has carefully considered LASNEM's comments and made such revisions as it deems warranted. LASNEM's comments are reflected in this Final Report and have been attached as an appendix hereto.

² This includes the "Policies Addendum" (November 18, 1996).

III. FINDINGS

Finding 1: LASNEM’s automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Nevertheless, care needs to be taken by staff to ensure that the precise and accurate codes are always entered into the ACMS.

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.

The case sample evidenced several case files in which the closing coded entered in the ACMS was not same as documented in the case file.³ Also a few cases were noted in which the file was either closed but incorrectly remained open in the system or the file was reopened manually but not in the ACMS.⁴ Lastly, the case files evidenced that the LASNEM needs training regarding problem codes. A pattern was noted in which the staff deferred to problem codes ending in “9” meaning other when a more specific problem code was available.⁵

³ *See* closed 2008 Case Nos. BR-07-711190 and BR-08-14014 (problem codes in the file were different from problem codes yielded by ACMS). *See also* 2009 closed Case Nos. GR-09-18180; GR-09-17964; 09-22510; PAI GR-09-20863; PAI GR-09-22221; GRDU-09-18773 (in addition, the file was re-opened manually but not in ACMS). *See also* 2010 Closed Case No. DU-09-22248 (closing code not assigned) and open Case No. GR-07-12175.

⁴ Interviews with staff indicated that when the program converted to the PIKA case management system, some closed files did not convert over as closed. *See* 10/609/98P which was closed in 2001 and inadvertently reopened during PIKA conversion. This file was re-closed and reported in 2008. In addition, Case No. 07/065/05 on the open case list was actually closed on 9-12-05. *See also* Case Nos. DU-09-19850 (ACMS indicated the case was open, however the file revealed that the case was closed on 6-29-09); DU-10-24023 (ACMS indicated that case was open, however the file revealed that the case was closed on 5-10-10); and DU-09-22429 (case listed on the ACMS open file list that was generated on 4-3-09; however, the file reflected it had been closed on 3-9-10).

⁵ *See* closed 2008 Case Nos. GR-09-20623 (problem code 09 should be 02 or 77); GR-08-16822 (problem code 80 should be 81); PK-08-1455 (problem code 9 should be 02); GR-08-13397 (problem code 29 should be 25); BR-08-15034 (case file reflects matter was 03-Contracts/Warranties while ACMS reflects matter was a 99-Other Miscellaneous); and PK-08-14260 (case file reflects matter was a 37- Domestic Abuse while ACMS reflects matter was a 39-Other Family); and 2009 Closed Case Nos. GR-09-17964 (problem code 99 should be 2); and Case No. DU-09-19268 (case file reflects matter was a 34-Name Change while ACMS reflects matter was a 99-Other Miscellaneous).

See also closed 2010 Case Nos. DU-08-15778 (case file reflects matter was a 52-Medicare while ACMS reflects matter was a 99-Other Miscellaneous); PK-10-23358 (case file reflects matter was a 42-Neglected/Abused/ Dependent matter while ACMS reflects matter was a 39-Other Family); DU-08-16904 (case file reflects matter was a 59-Other Health while ACMS reflects matter was a 99-Other Miscellaneous); DU-10-22826 (problem code 39 should be 31); DU-1023273 (problem code 99 should be 02); DU-09-22126 (problem code 99 should be 03); and 09-091750 (problem code 29 should be 25).

Staff must ensure that the information entered into the ACMS is accurately recorded and is consistent with the information in the case file. Case files should be reviewed preferably by managing attorneys prior to closing and staff should be trained regarding the LSC problem codes.

In response to the DR, LASNEM indicated it concurs with LSC's Finding. According to LASNEM, all staff will be given additional training concerning the problem codes. Managers will review all extended service files at closing to ensure that appropriate problem codes have been assigned. Furthermore, LASNEM states that statistically significant samples of limited service cases will be reviewed quarterly to ensure that the correct problem codes have been used.

Finding 2: While LASNEM's intake procedures and case management system generally support the program's compliance related requirements, improvements are necessary.

The review demonstrates that LASNEM employs uniform intake access methods. The offices use the Intake Procedures Manual and a "Financial Eligibility Quick Reference Guide" discussed herein. The Managing Attorney in each office directly supervises intake staff.⁶ Offices conduct intake by telephone and by in-person intake. There is no telephone hotline in place. Managing Attorneys determine case acceptance and case handlers assign closing codes during the closing of their cases. The Managing Attorneys conduct periodic reviews of cases to assess timeliness, duplicate reporting and closing procedures. There were no formal opening or closing memoranda in use by the offices; however, there were generally initial notes found in the PIKA system.⁷

As part of the intake process, all offices gather essential eligibility and other compliance-related information using the PIKA ACMS, together with consistent written citizenship attestations forms.⁸ In addition, the Pine City office has a Citizenship/Eligible Alien Documentation Form that may be completed by an eligible alien; however, the eligibility screener reported she has never had an occasion to use such form. LASNEM screens all applicants for income, income prospects, assets, citizenship, conflicts, and case type. LASNEM is consistent in its use of the ACMS to conduct income and asset eligibility screenings, collect demographic information, perform conflict checks and case history searches (duplicate checks), verify citizenship and store this information in its electronic reporting database. The ACMS does not have a field to document whether there was inquiry into an applicant's income prospects. Nevertheless,

⁶ This will change after LASNEM's reorganization. LASNEM will close the Brainerd office. The Pine City office will remain open, however, there will no longer be a Managing Attorney located in the office. The Brainerd area will be managed by Grand Rapids; the Pine City area will be managed by Duluth office.

⁷ The Duluth office also has an "Opening File Checklist."

⁸ See also, below for a discussion on updating the alien eligibility forms.

interviews with the intake staff indicated that LASNEM is making a regular inquiry into reasonable income prospects.⁹ There were no defaults in essential categories identified.

Interviews with LASNEM staff disclosed that they had attended CSR training and had access to the CSR Handbook and the FAQs for CSRs. Interviews revealed that eligibility-screening practices are uniform and, with a few exceptions noted below, staff is knowledgeable about LSC regulations and the requirements of the CSR Handbook (2008 Ed.).

Intake staff were generally not familiar with the alien eligibility requirements of 45 CFR Part 1626, mainly because they have never had an occasion to determine eligible alien status because of the demographics of their area. Intake staff report they would consult their Managing Attorney to determine eligibility if and when the occasion arose. While most of the intake staff demonstrated an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments, one staff member interviewed did not. As will be discussed below, the LASNEM policy should be revised and updated and we would recommend that the staff receive training to familiarize themselves with the policies.

Prior to the review, LASNEM did not have updated formal written financial eligibility policies. The lack of clearly articulated income eligibility policies has led LASNEM to be in non-compliance with 45 CFR Part 1611 as it relates to the screening of applicants with incomes over 125% of Federal Poverty Guidelines (“FPG”), when determining group eligibility, as discussed below.

LASNEM uses a “Financial Eligibility Quick Reference Guide” (“Guide”) which sets forth the policy adopted by the LASNEM Board of Directors with respect to the income eligibility for services. In addition, LASNEM uses an “Intake Procedures Manual” (“Manual”) which also provides written guidance to determine financial eligibility. Both the Guide and Manual, provide that if the applicant is within 125% of the FPG they are eligible for LSC funded services.¹⁰ The Guide further provides that applicants may be represented if “total household income is at or below 200% of poverty and one of the income exceptions in the Justified Income field on the PIKA eligibility screen applies (“Justified Exceptions”).¹¹ However, the Guide does not set forth the exceptions. The exceptions are found in the ACMS and in the Intake Procedures Manual, and include subtracting certain expenses from income, such as child support or *excessive* fixed obligations or medical expenses, as well as considering certain categories of individuals, such as

⁹ LASNEM documents this screening by indicating the presence of income prospects on the Notes screen of PIKA. This notation is made only when the applicant reports prospective income. Staff report they began inquiring into reasonable income prospects during April 2010 following a discussion on intake procedures.

¹⁰ LASNEM policies provide that the “applicant’s gross household income must generally be at or below 125% of the federal poverty guidelines”). Additionally, LASNEM may represent clients who exceed the 125% threshold with other eligible non-LSC funding. *See* Intake Procedures Manual at pages 4-5.

¹¹ The Intake Procedures Manual sets the income ceiling at 185%. (Intake Procedures Manual at p. 9.) However, interviews demonstrated that staff screen applicants using the 200% income ceiling. The Intake Procedures Manual should be updated to reflect current LSC regulations, and LASNEM policy and practice.

being a “senior,” “HPRP client,” or participating in a government program for the poor.¹² Additionally, both the Justified Exceptions in the ACMS and the Manual lists “Executive Director Approval” and Emergency Services/Non-Priority” as justified exceptions for representation of over income applicants. However, the Manual provides that Executive Director Approval to accept seniors or HPRP clients whose income exceeds 125% of the FPG is not required.¹³ Neither the Manual nor the Justified Exceptions, consider non-medical expenses associated with age or disability, childcare or employment expenses, or the payment of current taxes or other significant factors. As a result, these expenses are not considered by eligibility screeners during the intake process. 45 CFR § 1611.5(a) contemplates that these expenses be considered during the eligibility screening of applicants whose income exceeds 125% of FPG but is less than 200% of FPG. Moreover, LASNEM, by policy, does not consider any exceptions to income if the applicant is LSC asset eligible and is over 200% of FPG. Accordingly, LASNEM’s intake policies are in non-compliance with 45 CFR § 1611.5(a).

Interviews revealed that staff were aware of the exceptions to income for those applicants with incomes exceeding 125% and some apply a spend-down analysis to determine eligibility (Brainerd and Pine City) rather than a factor analysis. File review revealed instances where the applicant appears to exceed financial eligibility guidelines as the authorized exceptions are contained in the ACMS Notes section. In addition, some members of the staff were not aware of the income ceiling of 200%.¹⁴

Similarly, interviews revealed that while LASNEM staff were familiar with the categories of assets that could be excluded from LASNEM asset calculation, they were not familiar with the asset ceiling amounts. One interviewed staff member reported that that asset ceiling for homestead exclusion was \$150,000, when LASNEM policy is \$100,000 homestead exclusion.¹⁵ The staff member further reported that the both the liquid and non-liquid asset ceiling amounts were \$12,000, when LASNEM policies exclude \$10,000 per one member household and \$12,500 for two member household and \$1,000.00 for each additional household member.¹⁶ Intake staff enters the amount of assets into the ACMS. The Managing Attorney determines whether the asset ceiling has been met. Beginning April of 2010, LASNEM required all cases exceeding the asset ceiling to be referred to the Executive Director for approval.

LASNEM does not have a group eligibility policy pursuant to 45 CFR Part 1611. LASNEM treats each member of the group as a separate client for eligibility purposes and opens a separate

¹² HPRP refers to the Homelessness Prevention and Rapid Re-Housing Program. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009, which includes \$1.5 billion for a Homelessness Prevention Fund. Funding for the HPRP program is being distributed based on the formula used for the Emergency Shelter Grants program.

¹³ Intake Procedures Manual, at page 5.

¹⁴ Interviewed staff report they refer over income and asset applicants to the Managing Attorney to determine eligibility.

¹⁵ Intake Procedures Manual at page 6.

¹⁶ Intake Procedures Manual at page 6.

case file for each group member. The one group case reviewed contained four group members. LASNEM had screened each member, opened, maintained, closed and reported four cases to LSC in the CSR submission.¹⁷ Review of sampled files evidenced that LASNEM does not inquire or collect information concerning whether the group lacked the practical means of obtaining funds to retain private counsel. These group eligibility practices are not in compliance with 45 CFR Part 1611.

LASNEM should develop financial eligibility policies consistent with 45 CFR Part 1611, provide its staff with training concerning their policies and ensure that cases reported to LSC by LASNEM in its CSR submission are in compliance 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines.

In response to the DR, LASNEM indicated it concurs with LSC's Finding. According to LASNEM, all staff received training concerning intake guidelines and LSC regulations in April 2010. LASNEM intends to make such trainings annual. All staff will be given additional training on intake guidelines as part of the 2011 training. Staff will also be given additional training on income and asset guidelines. Furthermore, LASNEM states that their policies and procedures are currently contained in their employee manual and several supplemental documents but that they are in the process of creating a separate policy manual that will centralize all of these policies and address the weaknesses identified in several of the findings. LASNEM anticipates that this new manual will be formally adopted by their board of directors at its March 2011 meeting. All staff will be trained on the new manual following its adoption.

Finding 3: The LASNEM staff needs training regarding the acceptance of over income clients: the case sample evidenced instances in which over income applicants were accepted without the documentation of the 45 CFR Part 1611 factors and approval by the Executive Director.

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.¹⁸ *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.

¹⁷See closed 2007 Case No. PK-06-01928.

¹⁸ 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.

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.

As discussed above, LASNEM uses a Financial Eligibility Quick Reference Guide which sets forth guidelines adopted by the LASNEM Board of Directors. According to the Guide, if an applicant's income is at or below 125% of the FPG they are eligible for service. If the applicant's income is above 125% but under 200% they are eligible if they meet one of the exceptions/factors listed in 45 CFR § 1611.5 and if a waiver is received from the Executive Director¹⁹ Sampled cases evidenced that LASNEM is not in full compliance regarding the screening and documentation of over income applicants as required by 45 CFR § 1611.5. CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. Exceptions were noted in sampled files of clients whose incomes were between 125% and 200% of FPG.²⁰ It appears that staff was confused regarding case files that are funded by the Title III senior grant. The grant allows representation of seniors over 65 without any income limitations. Although the grant allows LASNEM to accept seniors at any income level, some staff did not realize that if a senior client does not meet LSC eligibility guidelines their case cannot be reported to LSC.

LASNEM needs to create clear income eligibility policies in accordance with 45 CFR Part 1611 since its revision in 2005. LASNEM's Board should review and ratify the proposed revisions. LASNEM needs to train staff regarding the acceptance of over-income clients and the reporting

¹⁹ According to the Executive Director the income ceiling was raised from 185% to 200% at the end of 2009. Also, staff was reminded a few months prior to the onsite visit that an Executive waiver is needed for all files in which an over-income client is accepted.

²⁰ *See* closed 2009 Case Nos. BR-08-12573 (The file was opened on January 2008 and the client's income was 157.78% of FPG; the case file contained no Executive Director approval or consideration of any expenses); DU-09-21562; and DU-09-20442 (only exceptions noted in these two files was "senior" and cases lacked Executive Director approval); and DU-07-11273 (senior funded no exceptions and no waiver), and DU-08-17332 (no factors or waiver).

See also closed 2010 Case Nos. DU-10-22820 (missing waiver); DU-08-16999 (senior case over income no factors or waiver); DU-10-1022815 (no factors or waiver); DU-10-22815 (no factors or waiver); DU-10-22704 (listed as "senior" and no waiver); DU-08-17112 (listed as "senior" and no waiver); and DU-08-16824 (listed as "senior" and no waiver). The 2010 cases were all closed prior to April 2010 and are currently not CSR reportable.

of senior cases. Further, LASNEM needs to ensure that only LSC eligible client cases are reported to LSC and that over-income client cases include the factors considered in accepting the case and Executive Director waiver as required by LASNEM's Guide.

In response to the DR, LASNEM indicated it concurs, in part, with LSC's Finding. According to LASNEM, all staff received additional training in April 2010 regarding income eligibility exceptions. Executive Director waivers and the factors considered are reportedly now documented in each over-income file. In reference to Title III cases, LASNEM concurs that only LSC eligible cases ought to be reported, but LASNEM believes that they are already in compliance with this requirement. LASNEM states that when its grant activity reports are prepared, all non-LSC eligible Title III cases are screened out of the report statistics. LASNEM further states that under the terms of their Title III grant, they are required to provide services to any "case type eligible" senior regardless of the applicant's income or assets. Accordingly, their board of directors has authorized provision of services to seniors with no limit to income or assets. According to LASNEM, their staff members are aware of this exception and their ACMS contains this exception as a justification code for seniors who are over their normal income or asset guidelines. LASNEM states, however, that their written policies do not accurately reflect this policy. They will be correcting this weakness in their updated policies and procedures manual that they anticipate will be formally adopted by their board of directors at its March 2011 meeting.

Finding 4: While LASNEM maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4, the case sample evidenced several case files for non-compliance regarding asset eligibility documentation.

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.²¹ *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

²¹ 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.

only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

The case sample revealed that five cases in which the client assets were over LASNEM's asset eligibility level.²² LASNEM must ensure that all cases reported to LSC regardless of funding source meet LSC and LASNEM's asset requirements.

In response to the DR, LASNEM indicated it concurs with LSC's Finding. According to LASNEM, all staff will be given additional training on income and asset guidelines.

Finding 5: LASNEM is in non-compliance with 45 CFR § 1626.6 (Verification of Citizenship).

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.²³ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens,

²² *See* closed 2009 Case Nos. DU-09-20442 (Title IIIB Senior funded case in which the client's assets were \$309,000); DU-08-17332 (client's asset source is savings of \$60,000). *See also* closed 2010 Case Nos. DU-09-22248 (client's asset source is checking and savings of \$25,000); DU-08-16824 (Title IIIB Senior funded case in which the client's cash assets were \$60,000 and LASNEM asset ceilings for liquid assets for one person was \$10,000) and DU-08-17063 (Title IIIB funded case in which the client's equity in his home was \$120,000 and LASNEM asset ceiling for residences was \$100,000).

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

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.

The program policies with respect to “Restrictions On Certain Aliens” is set forth in the Employee Handbook and references the LSC regulations set forth at Part 1626.²⁴ Of concern is that the policy provided to staff was issued on November 18, 1996 and has not been updated in writing. As it turns out, the *practices* have been modified since then – for example, the Duluth staff were cognizant of the 2006 VAWA Amendments. In addition, the “Citizen/Alien Eligibility Determination Form” appears to have been updated 2001, yet it does not incorporate the Program letter 06-2 changes.

LASNEM is in non-compliance with 45 CFR § 1626.6, as there were 13 cases lacking written citizenship attestations.²⁵ There were five (5) cases lacking timely executed citizenship attestations²⁶ and three cases containing executed written attestations but lacking the dates of execution.²⁷ In addition, a review of the case sample files revealed PAI files in which citizenship attestations were missing. This will be discussed further in Finding 16.

LASNEM is admonished that Part 1626 is a substantive regulatory requirement, and continued noncompliance could result in the imposition of sanctions. Additionally, the failure to date the attestation makes it difficult to discern whether the citizenship attestation was obtained prior to the establishment of the attorney-client relationship and the citizen attestations are not as stated in the CSR Handbook (2008 Ed.), § 5.5 which requires a date. As noted, several attestations lacked the documentation required by CSR Handbook (2008 Ed.), § 5.5.

²⁴ See Employee Handbook (Rev. Sept. 22, 2004) at page 7-9 of the “Policies Addendum.”

²⁵ See closed 2009 Case Nos. GR-08-13387 (client was seen in person but no attestation); DU-09-22248 (client came to office no attestation); DU-09-22188 (closed file as F but no attestation in file); and DU-09-21940, (appeared in court with client no attestation).

See also closed 2008 Case Nos. DU-07-08190 (notes state client came to office but no attestation); PK-08-14050 (according to case notes attestation is in file but one could not be found); and PK-08-14556 (file contained evidence of telephone screening when case file reflected that written attestation could, and should, have been obtained because of the presence of ongoing written communication between the program and client).

See also closed 2010 Case Nos. PK-09-18378 (case with an H closing code lacked written citizenship attestation); BR-10-23145; BR-09-18759; BR-10-22616; IR0921270, (client made an in person appearance, but no attestation could be located. This file will be deselected or program will try to obtain an attestation from the client); and IR0920244 (client appeared in person, no attestation in file).

²⁶ See open Case No. 03/102/05D (Case file opened on 3-16-05 and written citizenship attestation obtained on 10-30-08); closed 2010 Case No. PK-10-23358 (written citizenship obtained after legal assistance concluded); closed 2009 Case Nos. DU-09-19850 (case file opened on 6-24-09 and written citizenship attestation obtained on 12-4-09) and 03/083/02d (case file opened on 3-11-02 and written citizenship obtained on 1-17-03); and closed 2008 Case No. BR-07-10708 (case filed opened on 8-29-07 and written attestation obtained on 4-25-08).

²⁷ See closed 2008 Case Nos. BR-08-10395; BR-08-14088; and BR-08-14923.

In response to the DR, LASNEM indicated it concurs with LSC's Finding. According to LASNEM, all staff received additional training on the citizenship verification requirements in April 2010. LASNEM will include training on this requirement each year in their annual procedures training. Additionally, managers will conduct periodic spot checks of statistically significant numbers of files to ensure compliance with this requirement.

Finding 6: While LASNEM is in compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements), care should be taken to ensure that timely and specific retainers are obtained in appropriate cases.

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.²⁸ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Four (4) sampled case files lacked a retainer agreement when a retainer was required,²⁹ one (1) sampled case contained a retainer agreement that lacked a description of the subject and scope of the legal services³⁰ and two (2) cases lacked timely executed retainer agreements.³¹

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this finding.

²⁸ 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.

²⁹ *See* closed 2009 Case Nos. BR-07-11211 (a case closed using a closing code of F-Negotiated Settlement without Litigation lacked a retainer agreement); GR-08-13387(closed as L without citizenship or retainer). *See also* closed 2010 Case Nos. DU-09-21940 (Closed 2010 as B but in appeared in court with client need attestation and retainer) and PK-09-18378 (case closed H-Administrative Agency Decision lacked a retainer agreement).

³⁰ *See* closed 2010 Case No. DU-10-23054 (the case contained an executed retainer agreement with a blank scope and subject matter).

³¹ *See* open Case Nos. 03/102/05D (case file opened on 3-16-05, and retainer not obtained until 10-30-08) and DU-09-22188 (opened 12/09, last activity in file 2/10 retainer signed 3/5/10). *See also* closed 2010 Case No. 03/083/02d (case file opened on 3-11-02 and retainer not obtained until 1-17-03).

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

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

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

The program policies with respect to these activities also incorporate by reference the LSC regulations set forth at Part 1636.³² Case files reviewed indicated that LASNEM is in compliance with the requirements of 45 CFR Part 1636. A statement of fact or a verified complaint was included in all files when required.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

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

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

Prior to the visit, LASNEM provided LSC with a list of its priorities. The priorities are stated for 2009-2010 as:

- Promoting safety, stability, and well being
- Preservation of shelter and related shelter needs
- Improving outcomes for children and the elderly
- Maintaining, enhancing and protecting income and economic security

The 2008 priorities were very similar:

- Maintaining, enhancing and protecting income and economic security;

³² *See* Employee Handbook (Rev. Sept. 22, 2004) at pages 13-15 of the "Policies Addendum."

- Preservation of shelter and related shelter needs;
- Maintaining and enhancing economic stability;
- Improving outcomes for children;
- Promoting safety, stability, and well being;
- Security and health care.

LASNEM is in compliance with 45 CFR Part 1620. The sampled files reviewed demonstrated that the program takes cases pursuant to the LASNEM's priorities.³³

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

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

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

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

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

³³ There was one (1) case reviewed which was not within the LSC adopted priorities, however it was funded with Title III funding and the client was only given counsel and advice. *See* closed 2009 Case No. DU-09-18021.

The case sample evidenced 18 staff cases without legal documentation.³⁴ Two (2) of cases were divorce cases. Interviews with staff and the review of the case sample revealed that applicants seeking a divorce are screened and placed on a waiting list for four months. These cases are referred to as Divorce Wait List cases.³⁵ Currently, during screening no advice is given only the facts of the case are documented and legal information is provided to the applicant. After screening, the applicant's file is closed and they are sent a divorce questionnaire and a pamphlet. The files are closed as advice and counsel ("A") and the case file is tickled in the case management system to call the client in four months to see if they are still interested in the divorce. If, after four months, the client is still interested they are provided representation. If the client does not express interest or cannot be located the file remains closed as A. LASNEM was advised that closing with the closing code A was incorrect due to the fact the client is not given advice during the initial screening and according to the CSR Handbook (2008 Ed.) sending a pamphlet is considered providing legal information not administering legal advice.³⁶ As such, once the divorce waiting list client has been screened their case cannot be closed as LSC reportable unless verbal (at time of screening) or written (documented in a letter to the client) legal assistance has been provide. The cases could be closed at this stage but they would not be CSR reportable until the client has received legal assistance in obtaining a divorce four months later. It was recommended that staff include advice in the questionnaire cover letters sent to the client or provide legal advice during the initial screening. Also, LASNEM was advised staff that divorce wait list cases should be re-opened in four months only if the second contact falls within the calendar year the case file is initially closed.

In addition, PAI files were noted for lack of legal documentation. This will be discussed further in Finding 16.

In response to the DR, LASNEM indicated it concurs with LSC's Finding. According to LASNEM, following the exit interview with LSC's review team an e-mail was sent to all case handlers reminding them of the importance of proper documentation. LASNEM states that this will be reinforced at the next procedures training. Managers are also currently conducting periodic reviews that should identify cases that are missing documentation. In addition, after the exit interview with LSC, LASNEM adopted a policy that the managing attorney of the referring office will review each PAI file prior to its closure to ensure that proper documentation has been obtained. Finally, and also subsequent to the exit interview with LSC, case handlers who work on "waiting list" clients were instructed to provide and document appropriate advice before placing a client on a divorce waiting list. The files of existing waiting list clients were reviewed

³⁴ See closed 2009 Case Nos. BR-09-18384 and BR-09-19791 (clients referred to other legal services providers and no advice documented in files); GR-09-20953; BR-09-22475; IR-09-21278; and IR-09-19493. See also, closed 2008 Case No. GR-08-16726 (client withdrew, no advice provided). See also, closed 2010 Case Nos. PK-10-23594 (client referred to other legal services provider and no advice documented in file); GR-10-24273 (case was transferred to judicare, no advice provided); GR-10-24529; GR-10-23040; (case transferred to judicare, no advice provided); BR-10-23145; BR-10-23902; BR-10-23312; BR-10-22672); and BR-10-23226. In addition, please see the cases in the following footnote.

³⁵ See Case Nos. DU-0922434 and GR-09-22291.

³⁶ See CSR Handbook (2008 Ed.), § 2.3.

at that time and, in cases where clients had not received advice, the clients were contacted and suitable advice was provided and documented.

Finding 10: LASNEM's application of the CSR case closure categories is inconsistent with the CSR Handbook (2008 Ed.) § 6.1.

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.

Several staff and PAI sample case file were noted for having the incorrect CSR case closing code.³⁷ A possible pattern was found regarding the incorrect use of closing codes (“F”) and (“K”). Case files were noted in instances where a cause of action had been filed and an agreement was reached however, the file was closed with a closing code F negotiated settlement without litigation.³⁸ Also, the application of the closing code K was incorrect in all but one instance.³⁹ In addition, LASNEM must determine whether it will close cases with the closing code (“Ia”) or (“G”) in instances where a cause of action is filed and an agreement has been reached and stipulated by the court. LASNEM must apply CSR closing codes consistently and correctly. It is highly suggested that the LASNEM staff is given additional training regarding closing codes.

In response to the DR, LASNEM indicated it concurs with LSC's Finding. According to LASNEM, the 2008 CSR Handbook is available in electronic form to all staff through the

³⁷ *See* closed 2009 Case Nos. GR-08-16821 (closed as H should be I); PK-09-199929 (case closed as Ib should be G); DU-09-19905 (closed as A should be B); DU-09-21428 (closed with a closing code of “court decision” when the more appropriate closing code would have been “counsel and advice”); DU-08-13525 (closed with a closing code of “other” when the more appropriate closing code would have been “Limited Action”); and DU-09-21044 (closed as Ib but should be A). *See also* closed 2010 Case Nos. GR-09-22221 (closed as B on list and L in ACM but should be H); and DU-10-22816 (closed as B should be A no contact to third party) and IR-10-22760 (both the file and the ACMS recorded no closing code).

See also closed 2008 Case Nos. DU-08-14327 (this was closed with a closing code of “D- Insufficient Merit to proceed” however this code should not have been used after January 1, 2008) and DU-06-05162 (this was closed with a closing code of “E - Client Withdrew” however this code should not have been used after January 1, 2008).

In addition, it appears that LASNEM apparently misunderstood the K closing code and used it for referrals and cases lacking legal advice. The result being that several reviewed cases lacking legal advice were closed with a K when they should have been deselected. *See* closed 2009 Case Nos. BR-09-17720; BR-09-18384; BR-09-20477; and BR-09-19438. *See also* closed 2010 Case No. PK-10-23594. LASNEM should review its use of the K closing categories, as it is not to be used for those cases where legal services are not provided to the client. These cases and other cases lacking legal advice are discussed in Finding 9.

³⁸ *See*, closed 2009 Case Nos. GR-08-13919 (closed as F should be Ia or G); GR-08-13968 (closed as F should be G); and Case Nos. GR-08-15065 (closed as F should be Ia or G). *See also* closed 2010 PAI Case Nos. 09-188833 (closed as F should be Ia or G) and GR-10-22953 (closed as F should be Ia or G).

³⁹ *See* closed 2009 Case Nos. GR-09-20216 (closed as K used for a case that should have been not reported); and closed 2010 DU-07-10663 (closed as K should be L); and DU-08-16758 (closed as K should be L).

company network. Following the exit interview with the LSC review team, all LASNEM staff were asked to review Chapter 8 of the CSR Handbook which explains the closing codes. Further training on the closing codes will be provided by LASNEM to all staff at the annual procedures training. In addition, managers are now conducting periodic reviews of closed files which will include a review of the closing codes used.

Finding 11: LASNEM is not in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. (Timely closure).

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a 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).⁴⁰ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

The sample case files evidenced that LASNEM is not in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a). The case sample revealed several cases that were dormant or untimely closed.⁴¹ The large amount of untimely

⁴⁰ The time limitation of the 2001 Handbook that a brief service case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

⁴¹ The following case files were all closed in an untimely manner: closed 2008 Case Nos. DU-05-00788 (this file was opened on 11/11/2005 and closed on 3/10/08; however the last activity in the file was March 8, 2006); DU-05-00930 (prior to the closing letter, last letter was July 2006. The client moved and the program was not able to locate her); BR-08-10395 (Case file opened on 8-9-07, Counsel and Advice on behalf of the client ceased on 10-17-07; however, case was not closed until 1-2-08); and BR-07-09455 (case file opened on 6-5-07, Counsel and Advice on behalf client ceased on 6-26-07; however the case was not closed until 1-2-08). In addition, as noted previously, closed 2008 Case No. 10/609/98P (actually closed in 2001 but re-opened when converted to PIKA in 2005, closed again in 2008).

See also closed 2009 Case Nos. BR-07-09561 (Counsel and Advice on behalf client ceased on 12-5-07; however, case was not closed until 6-3-09); DU-06-06830 (this was opened on 12/21/2006 and closed on 3/5/2009 as Counsel and Advice; however the last activity in the file was 4/30/2007); PK-07-09070 (last activity in file 2007); DU-07-
(This footnote is continued on the next page)

closing is a concern because it could subject LASNEM to being a defendant in a malpractice case. Currently, LASNEM does not have case procedures which require a periodic review of open files nor are LASNEM's managing attorneys required to review case files prior to closing. LASNEM must institute procedures which require staff and management to review open case list at least twice a year.

In response to the DR, LASNEM concurs with LSC's finding. According to LASNEM, a review was conducted in June following LSC's on-site review. The next review will be conducted at the beginning of December 2010 to ensure timely case closings prior to the end of the year.

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

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

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

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems

(footnote continued from prior page)

08672 (last activity in file 2007); DU-08-15915 (last activity in file 2008); DU-07-11273 (last activity in file 2007); DU-07-11759 (last activity in file 2008); DU-08-15222 (last activity in file 2008); DU-06-06608 (last activity 2006); and DU-07-10990 (last activity in file 2007); IR-08-15588 (opened 7/30/08 and closed as "A" 7/2/09); IR-09-14163 (opened 4/16/09; and closed as "A" on 2/5/09); and DU-06-02745 (opened 3/24/06 and closed as "A" on 3/29/09).

See also closed 2010 Case Nos. DU-08-17091 (case file opened on 6-12-07, legal assistance on behalf of the client ceased on 12-12-08; however, case was not closed with until 3-4-10); DU-07-11830 (this was opened on 11/14/2007 and closed on 1/6/2010; however the file went inactive for a period of time); DU-08-16882 (Counsel and Advice on behalf of the client ceased on 11-17-08; however case was not closed until 3-11-10); DU-08-16824 (Counsel and Advice on behalf of the client ceased on 11-11-08; however the case was not closed until 3-11-10); DU-08-17063 (case file opened on 12-4-08, Counsel and Advice on behalf of the client ceased on 12-16-08; however case was not closed until 3-11-10); DU-08-16999 (last activity in file was 2008), DU-08-17124 (last activity in file was 2008); DU-08-15660 (last activity in file was 2008); PK-08-16593 (last activity in file was 2008); BR-07-11047 (opened on 9/21/07 and closed "A" on 1/22/10); BR-07-10281 (opened on 8/1/07 and closed as "A" 1/22/10); and BR-08-13698 (opened 3/14/08 and closed as "B" on 5/24/10). These 2010 closings should be de-selected.

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.

LASNEM is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. The case sample included targeted files to test possible duplicate files. The sample case disclosed two (2) sets of duplicate files.⁴²

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

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

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

Sampled files reviewed, and interviews with staff indicate, that LASNEM is not involved in such activity. Discussions with the Executive Director also confirmed that LASNEM is not involved in these prohibited activities. The program policies on political activities incorporate by reference the LSC regulations set forth at Part 1608.⁴³ Similarly, the limited review of accounting records and documentation for the period of 2008 through May 2010 disclosed that LASNEM does not appear to have expended any grant funds, or used personnel or equipment in prohibited activities in violation of 45 CFR § 1608.3(b).

In response to the DR, LASNEM offered no comments with respect to this Finding.

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

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private

⁴² *See* Case Nos. DU-06-05243 (was closed in 2007 and incorrectly re-opened in 2008 and re-opened again in 2010, case file should be given new number for 2010 and current file should be deselected from CSR); and closed 2009 Case Nos. PK-08-15677 and PK-08-16231 were custody cases for same minor and should be one case.

⁴³ *See* Employee Handbook (Rev. Sept. 22, 2004) at page 29.

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

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

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

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

Finding 15: LASNEM is in compliance with the requirements of 45 CFR Part 1610.

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

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

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

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

- i) the existence of separate personnel;

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

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

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

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

From a limited review of the chart of accounts and detailed general ledger (“G/L”) for specific G/L accounts for 2008 through May 2010, and observations of the physical locations of all offices, LASNEM does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues. LASNEM does not have contracts with other organizations to provide certain personnel, accounting, information technology and other support services in a manner which complies with 45 CFR Part 1610.

The letter sent to donors fully complies with the requirements of 45 CFR § 1610.5 (Notification), that requires that recipients provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

Finding 16: LASNEM is not in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

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

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

The fiscal review of the PAI schedule disclosed in the Audited Financial Statements for Fiscal Year Ending ("FYE") June 30, 2009 determined that there was adequate fiscal compliance with 45 CFR Part 1614. Similarly, the review of PAI invoices disclosed that such invoices were itemized and detailed, however documentation was not attached to support that the legal work was performed; 45 CFR § 1614.3(d)(3) requires that documentation must be included to support that the legal work was performed (this will be discussed further below). Accordingly, it is recommended that that all PAI invoices include documentation that supports that the legal work was performed by the private attorney prior to making payment.

In accordance with 45 CFR § 1614.4 LASNEM created a 2009 PAI Plan. The plan outlines LASNEM's IOLTA funded sub-grant agreement with the Arrowhead Lawyers Care-Volunteer Attorney Program and the LSC funded Koochiching County Judicare Project. According to the plan, prior to its acceptance by the LASNEM Board, the plan was submitted to Bar Associations and client groups. Currently all of LASNEM's PAI case file activity is conducted out of the Grand Rapids branch office. A secretary in the office oversees the Koochiching County Judicare Project. According to LASNEM only three attorneys are in their Judicare pool. The current process is that that PAI applicants are screened the same as applicants assisted by staff. Once it is determined that a case should be forwarded to a PAI attorney, the client is notified by letter. The letter includes the name and address of three (3) PAI attorneys. The client is advised that they should select an attorney and contact them directly. The client is further instructed that if they cannot find an attorney to accept their case they are to call the office in 10 days. The letter also advises that the client is to pay a \$50.00 consultation fee to the attorney and that the attorney

can refuse to take the case until payment is made.⁴⁴ Once, one (1) of the three (3) attorneys agrees to accept the case, the attorney is to call the LASNEM office to notify LASNEM that they have accepted the client's case and provide an estimate of their fee. LASNEM then responds by mail advising the attorney that the case and the fee has been accepted. According to the PAI Coordinator, oversight is conducted of open files twice a year, June and December. Once a file is completed the attorney is asked to send a final order and a final invoice. The invoice is signed off by the Grand Rapids Managing Attorney and forwarded to the Duluth office for payment. The PAI files are closed by the PAI Coordinator who is responsible for selecting the closing code.⁴⁵ A review of the PAI files included in the case sample revealed non-compliance regarding verification of alien and citizenship status; documentation of legal advice; and closing code application.

As noted in Finding 4, LASNEM is not compliant regarding the verification of citizenship status as required by 45 CFR § 1626.6. Currently, if a PAI applicant's intake is not conducted in person, they are not asked to sign a citizenship attestation or provide proof of alien status to LASNEM. LASNEM was under the misconception that since the LASNEM staff did not see the applicant in person, it did not have to obtain citizenship verification. Subsequently, PAI files were noted for missing 45 CFR Part 1626 verification. LASNEM was advised that when the client is seen by the PAI attorney, or the legal services is provided is more in depth than limited services, the PAI file must include a signed declaration of citizenship or proof of alien status. It was recommended that PAI clients are not referred until the requirements of 45 CFR Part 1626 are met. LASNEM is reminded that case files with missing 45 CFR Part 1626 verifications should not be reported to LSC; nor should these cases be charged to LSC funding.

As stated in Findings 1 and 10, several PAI cases were noted for inaccurate information in the ACMS and incorrect application of closing codes. The case sample also evidenced that several PAI Judicare files did not include documentation of legal advice only attorney invoices. LASNEM was advised that they should not accept invoices alone from Judicare attorneys. The attorneys must submit proof of legal assistance before payment is rendered to them and before the file is reported to LSC. LASNEM was advised that if an attorney is paid for assisting in a bankruptcy then a copy of the bankruptcy order discharge or acceptance of the chapter 13 plan

⁴⁴ OCE was notified of the \$50.00 fee after the on-site visit had been conducted. After the PAI Coordinator was interviewed by phone on June 28, 2010 they were asked to submit a copy of the client letter. The letter was faxed along with other requested materials on June 29, 2010. Once the reviewer became aware of the fee the team leader was notified and an email was sent to the Executive Director on July 1, 2010. The Executive Director responded that he was not aware of the fee and would speak to the PAI Coordinator regarding the matter. A subsequent review by the Executive Director disclosed that none of the judicare attorneys charge the fee on a routine basis; one attorney, however, did charge the fee in contested divorce cases. The OCE, at the direction of the Vice President of Compliance and Performance, has sought advice from the Office of Legal Affairs ("OLA") regarding the practice of allowing PAI attorneys to charge applicants a fee in addition to receiving compensation from LASNEM is in compliance with 45 CFR § 1614.3(a). Specifically, OCE has sought guidance as to whether the phrase "the payment of nominal fees by eligible clients" only applies to "those modified pro bono plans" or to Judicare and reduced fee plans as well. The OLA opinion is still pending.

⁴⁵ As stated in Finding 1 in some instances the closing code in the file was different from that in the ACMS. Although there are no formal procedures that require the Managing Attorney to review files, it appears that the some files were reviewed and the closing code was changed.

must be submitted. LASNEM can retrieve the orders or status of cases from the Federal District Court web page if needed. If the client is assisted in a divorce or other family matter, then the attorney must submit a copy of a signed agreement or copy of the final order.⁴⁶

It is highly recommended that the PAI case files are reviewed by a supervising attorney prior to closing and prior to payment to the PAI attorney. It is also recommended that the PAI Coordinator receive training regarding closing codes.

In response to the DR, LASNEM indicated it concurs with LSC's Finding. According to LASNEM, after the exit interview with LSC's review team, a policy was adopted requiring all Judicare attorneys to submit pleadings or other evidence of the service provided prior to payment of any invoice. Notification was sent by LASNEM to all Judicare attorneys with pending matters. LASNEM states that all invoices since that time have been accompanied by suitable documentation. In addition, LASNEM has adopted a policy requiring submission of pleadings or other evidence of suitable legal work prior to making payment to a PAI attorney. Finally, the Managing Attorney of the referring office must review each PAI file prior to its closure to ensure that proper documentation has been obtained.

Finding 17: LASNEM 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.

A limited review of accounting records and detailed general ledger for 2009 through May 2010, disclosed that LASNEM is in general compliance with 45 CFR § 1627.4(a), all non-mandatory dues and fees are being paid with non-LSC funds.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

⁴⁶ See closed 2009 Case Nos. GR-09-20216; GR-08-16821; GR-09-20863; GR-09-199945; and open Case No. GR-07-11590.

Finding 18: LASNEM is in 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.

The review of 12 advocates timekeeping records selected from three (3) of LASNEM's offices for the pay periods ending December 31, 2009 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

LASNEM does not have on file the corresponding Quarterly Certification for Part-time Case Handlers, since such part-time case handlers do not work for organizations that engage in restricted activities in compliance with 45 CFR § 1635.3(d).

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the

recipient. *See* 45 CFR § 1642.3.⁴⁷ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.⁴⁸

None of the sampled files reviewed contained a prayer for attorney's fees. A limited review of the LASNEM fiscal records, the 2008 and 2009 Audited Financial Statements, and interview with the Director of Administration / CFO evidenced that there were no attorneys fees awarded, collected, and retained for cases serviced directly by LASNEM that would violate this Part. While the program policies with respect to attorneys' fees also incorporate by reference the LSC regulations set forth at Part 1642, they have not been updated to reflect the changes in Part 1642.⁴⁹ As the LSC policy was recently changed, LASNEM may wish to review this policy to determine whether it wants to make changes.

In response to the DR, LASNEM offered no comments with respect to this Finding.

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. The program policies with respect

⁴⁷ 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).

⁴⁸ LSC further determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. As well, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).

⁴⁹ *See* Employee Handbook (Rev. Sept. 22, 2004) at pages 22-23 of the "Policies Addendum."

to these activities also incorporate by reference the LSC regulations set forth at Part 1612.⁵⁰ Discussions with the Executive Director also confirmed that LASNEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

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. The program policies with respect to these activities which also incorporate by reference the LSC regulations set forth at Part 1615 and 1613.⁵¹ Discussions with the Executive Director also confirmed that LASNEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).⁵²

⁵⁰ *See* Employee Handbook (Rev. Sept. 22, 2004) at pages 2-3 of the “Policies Addendum.”

⁵¹ *See* Employee Handbook (Rev. Sept. 22, 2004) at page 32.

⁵² 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).

LASNEM is in compliance with 45 CFR Part 1617. None of the sampled files reviewed involved initiation or participation in a class action. The program policies with respect to class action lawsuits also incorporate by reference the LSC regulations set forth at Part 1617.⁵³ Discussions with the Executive Director also confirmed that LASNEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to this Finding.

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.

LASNEM is in compliance with 45 CFR Part 1632. None of the sampled files reviewed revealed participation in litigation related to redistricting. The program policies with respect to these activities also incorporate by reference the LSC regulations set forth at Part 1632.⁵⁴ Discussions with the Executive Director also confirmed that LASNEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to 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.

⁵³ *See* Employee Handbook (Rev. Sept. 22, 2004) at page 1 of the “Policies Addendum.”

⁵⁴ *See* Employee Handbook (Rev. Sept. 22, 2004) at page 11 of the “Policies Addendum.”

LASNEM is in compliance with 45 CFR Part 1633. None of the sampled files reviewed involved defense of any such eviction proceeding. The program policies with respect to these activities also incorporate by reference the LSC regulations set forth at Part 1633.⁵⁵ Discussions with the Executive Director also confirmed that LASNEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to 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.

LASNEM is in compliance with 45 CFR Part 1637. None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. The program policy with respect to this also incorporates by reference the LSC regulations set forth at Part 1637.⁵⁶ Discussions with the Executive Director also confirmed that LASNEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to 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.⁵⁷ This restriction has been contained in all subsequent appropriations acts.⁵⁸ This new restriction is a strict prohibition

⁵⁵ *See* Employee Handbook (Rev. Sept. 22, 2004) at page 12 of the "Policies Addendum."

⁵⁶ *See* Employee Handbook (Rev. Sept. 22, 2004) at pages 16-17 of the "Policies Addendum."

⁵⁷ *See* Section 504(a)(18).

⁵⁸ *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).

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.”

LASNEM is in compliance with 45 CFR Part 1638. None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity.⁵⁹ The program policies with respect to these activities also incorporate by reference the LSC regulations set forth at Part 1638.⁶⁰ Discussions with the Executive Director also confirmed that LASNEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to 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 may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

LASNEM is in compliance with 45 CFR Part 1643. None of the sampled files reviewed involved such activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNEM offered no comments with respect to 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

⁵⁹ Among the materials reviewed while on site, but not retained as exhibits, were materials prepared by the Office of the Minnesota Attorney General (“Conciliation Court”) and the Minnesota Legal Services Coalition (“Orders for Protection and Harassment Restraining Orders,” “Rights and Responsibilities of Unmarried Parents” and “A Guide to Public Housing in Minnesota.”)

⁶⁰ *See* Employee Handbook (Rev. Sept. 22, 2004) at page 18 of the “Policies Addendum.”

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 LASNEM 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.

In response to the DR, LASNEM offered no comments with respect to this Finding.

Finding 29: Bank reconciliations for April 2010 were reviewed for all bank accounts and were found to be performed timely and accurate, however their corresponding approvals were not adequate and there was an instance where old outstanding checks were included in the reconciliation.

The bank account reconciliations for the operating, client trust and investments accounts, a total of eight bank accounts, were reviewed. All were performed timely and accurate. However, the only the main operating account reconciliation was reviewed by the Executive Director, also, there was no indication of approval such as the initials of the Executive Director nor the date on which the review and approval were performed on the reconciliation. The Executive Director initialed the bank statement to indicate his review of the main operating account reconciliation. Additionally the review of the Trust Bank Account reconciliation (ITOLA Bank A/C) revealed two (2) old outstanding checks from 2003 and 2006 were included. LASNEM should follow the Accounting Guide for LSC Recipients and their own policy as stated in their Accounting Manual that old outstanding checks be investigated and resolved.

The Executive Director should review all the LASNEM bank account reconciliations and his review and approval should be indicated by him placing his initials and date of the review on the

bank reconciliation form. Additionally, all old outstanding checks should be investigated and then resolved by removing the checks (escheating them to the state when the payee cannot be contacted) from the reconciliations.

In response to the DR, LASNEM indicated it concurs with LSC's Finding. According to LASNEM, after the exit interview with LSC's review team ,they completed an investigation of all old outstanding checks and resolved each. LASNEM reports that a policy has been adopted requiring their Executive Director to review all the LASNEM bank account reconciliations and that the Executive Director's review and approval will be indicated by his initials and the date of the review being placed on the bank reconciliation form.

Finding 30: LASNEM has good segregation of duties and internal controls.

A review of the internal controls worksheet, accounting records and interviews with accounting staff disclosed that LASNEM has good segregation of duties, internal controls and defined procedures through their Accounting Manual.

In response to the DR, LASNEM offered no comments with respect to this Finding.

Finding 31: A review of the use of the company credit card disclosed no internal control deficiencies and that all charges were proper and supported by adequate documentation.

Company credit card use can be abused, internal controls over their use may be lacking and charges may not be for prudent business purposes and supporting documentation (receipts) may not be present.

The review disclosed that the CFO who approves the payment of the credit cards, and who has not been issued such cards, requires that all purchases be for necessary and prudent business purposes and be supported by receipts.

It was noted that there is only one company credit card (AMEX) issued to the Executive Director at LASNEM.

In response to the DR, LASNEM offered no comments with respect to this Finding.

Finding 32: The review for payroll advances to employees disclosed that LASNEM does not allow payroll advances.

It was disclosed through discussions with the Executive Director and CFO and the review of the Accounting Manual and the General Ledger, that payroll advances are not allowed nor issued by LASNEM.

In response to the DR, LASNEM offered no comments with respect to this Finding.

IV. RECOMMENDATIONS⁶¹

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

1. Provide training to staff regarding problem codes;
2. Streamline current eligibility policy to ease staff confusion regarding income and asset acceptance guidelines;
3. Require Managing Attorneys to review files prior to them being closed in the case management system;
4. Draft oversight procedures for PAI files; and
5. Require that PAI clients sign a citizenship attestation or provide proof of alien status prior to receiving the names of the PAI/Judicare attorneys.

⁶¹ 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, LASNEM is required to take the following corrective actions:

1. Review all its policies and procedures to ensure that they are current and consistent with revised LSC regulations and instructions; in particular, it should adopt:
 - a. financial eligibility policies consistent with 45 CFR Part 1611, ensure that staff is provided with training concerning these policies and ensure that cases reported to LSC by LASNEM in its CSR submission are in compliance 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines;
 - b. group eligibility policies consistent with 45 CFR § 1611.6, ensure that staff is provided with training concerning these policies and ensure that cases reported to LSC by LASNEM in its CSR data submission are in compliance with this section;
 - c. revised citizenship and alien eligibility policies, procedures and forms consistent with 45 CFR Part 1626 and Program Letter 06-02, Violence Against Women Act 2006 Amendments; and
 - d. revised policies consistent with 45 CFR Part 1642 Attorneys' Fees.

LASNEM concurs with LSC's Corrective Action 1. According to LASNEM, their policies and procedures are currently contained in their employee manual and several supplemental documents, but that they are in the process of creating a separate policy manual that will centralize all of these policies and address the weaknesses identified in several of the findings. They anticipate that this new manual will be formally adopted by the LASNEM board of directors at its March 2011 meeting. LASNEM states that all staff will be trained on the new manual following its adoption.

2. Ensure that the information in the case files is consistent with the information entered into the ACMS;

LASNEM concurs with, and offered no comments to, LSC's Corrective Action 2.

3. **Ensure each file is given the correct problem code;**

LASNEM concurs with LSC's Corrective Action 3. According to LASNEM, all staff will be given additional training concerning problem codes. Managers will review all extended service files at closing to ensure that appropriate problem codes have been assigned. Furthermore, LASNEM states that statistically significant samples of limited service cases will be reviewed quarterly to ensure that the correct problem codes have been used.

4. Ensure that staff is applying LASNEM's income and asset guidelines correctly;

LASNEM concurs with LSC's Corrective Action 4. According to LASNEM, all staff received training concerning intake guidelines and LSC regulations in April 2010 and they intend to make such trainings annual. LASNEM states that all staff will be given additional training on intake guidelines as part of the 2011 training.

5. Train staff regarding income and asset guidelines;

LASNEM concurs with LSC's Corrective Action 5. According to LASNEM, all staff will be given additional training on income and asset guidelines.

6. Ensure that only Title III cases in which the applicant is LSC eligible are reported to LSC;

LASNEM concurs, in part, with LSC's finding Corrective Action 6. According to LASNEM, they agree that only LSC eligible Title III cases ought to be reported, but believe that LASNEM is already in compliance with this requirement. LASNEM states that when it prepares its grant activity reports, all non-LSC eligible Title III cases are screened out of the reported statistics.

LASNEM states that this Corrective Action appears to be related to footnote 20, under Finding 3, and footnote 22, under Finding 4, which documented a number of Title III cases that were over either LASNEM's income or asset limits. Under the terms of their Title III grant, LASNEM explains that they are required to provide services to any case type eligible senior regardless of the applicant's income or assets. Accordingly, LASNEM states that their board has authorized provision of services to seniors with no limit to income or assets. LASNEM staff members are reportedly aware of this exception, and their ACMS contains this exception as a justification code for seniors who are over our normal income or asset guidelines. LASNEM continues to say that their written policies, however, do not accurately reflect this policy. They will be correcting this weakness in the updated policies and procedures manual referred to in their comment to Corrective Action 1. Finally, LASNEM explains that in practice the vast majority of their senior clients would be both income and asset eligible under their general guidelines.

7. Ensure that all over income clients files document the 45 CFR § 1611.5 exceptions that were considered in accepting the client and a Executive Director waiver as required by LASNEM's current eligibility guidelines;

LASNEM concurs with LSC's Corrective Action 7. According to LASNEM, in April 2010 all staff received additional training on the income eligibility exceptions. According to LASNEM, Executive Director waivers, and the factors considered, are now documented in each over income file.

8. Ensure that all cases include citizenship verification per the requirements of 45 CFR Part 1626;

LASNEM concurs with LSC's Corrective Action 8. According to LASNEM, all staff received additional training on the citizenship verification requirements in April 2010. LASNEM will include training on this requirement each year in their annual procedures training. Additionally, LASNEM states that managers will conduct periodic spot checks of statistically significant numbers of files to ensure compliance with this requirement.

9. Ensure that all case files reported to LSC include documentation of the legal assistance provided;

LASNEM concurs with LSC's Corrective Action 9. According to LASNEM, following the exit interview with the LSC review team, an e-mail was sent to all case handlers reminding them of the importance of proper documentation. LASNEM states that this will be reinforced at the next procedures training. LASNEM further states that as noted in the comment to Corrective Action 3, managers are now conducting periodic reviews that should identify cases that are missing documentation.

10. Ensure that all Judicare attorneys provide documentation of the legal assistance provided prior to rendering payment for services;

LASNEM concurs with LSC's Corrective Action 10. According to LASNEM, following the exit interview with the LSC review team, they adopted a policy requiring all Judicare attorneys to submit pleadings or other evidence of the service provided prior to payment of any invoice. Notification was sent to all Judicare attorneys with pending matters. LASNEM states that all invoices since that time have been accompanied by suitable documentation.

11. Ensure a staff attorney reviews PAI files prior to their closure;

LASNEM concurs with LSC's Corrective Action 11. According to LASNEM, following the exit interview with the LSC review team they adopted a policy requiring the managing attorney of the referring office to review each PAI file prior to its closure to ensure that proper documentation has been obtained.

12. Ensure that Divorce Waiting List applicants have been provided legal advice prior to being placed in the divorce waiting list if their cases are to be reported as "A" in the CSRs. In addition, this advice must be properly documented;

LASNEM concurs with LSC's Corrective Action 12. According to LASNEM, following the exit interview with the LSC review team, the case handlers who work with waiting list clients were instructed to provide and document appropriate advice before placing a client on a divorce waiting list. LASNEM states that the files of existing waiting list clients were also reviewed at that time and, in any cases in which clients had not received advice, the clients were contacted and suitable advice was provided and documented.

13. Provide all staff training regarding CSR closing codes;

LASNEM concurs with LSC's Corrective Action 13. According to LASNEM, the 2008 CSR Handbook is available in electronic form to all staff through the company network and that, following the exit interview with LSC's review team, all staff were asked to review Chapter 8 of the Handbook which explains closing codes. LASNEM states that further training on closing codes will be provided to all staff at the annual procedures training.

14. Ensure that all cases reported to LSC are given the correct closing code;

LASNEM concurs with LSC's Corrective Action 14. According to LASNEM, as noted in their comments to Corrective Action 13, additional training will be provided to all staff concerning closing codes. In addition, and as noted in their comment to Corrective Action 3, LASNEM managers are now conducting periodic reviews of closed files. LASNEM states that these reviews will include closing codes as well as problem codes, citizenship attestations, and documentation of legal work.

15. Ensure that all cases files are timely closed by review open case files at least twice a year;

LASNEM concurs with LSC's Corrective Action 15. According to LASNEM, they have adopted this as a policy. A review was reportedly conducted in June 2010 following LSC's on-site review. LASNEM states that the next review will be conducted at the beginning of December to ensure timely case closings prior to the end of the year.

16. Ensure that all PAI invoices include documentation that supports that the legal work was performed by the private attorney prior to making payment; and

LASNEM concurs with LSC's Corrective Action 16. According to LASNEM, and as noted in their comments to Corrective Actions 10 and 11, they have adopted a policy requiring submission of pleadings or other evidence of suitable legal work prior to making payment. Furthermore, LASNEM reports that the Managing Attorney of the referring office now reviews each PAI file prior to its closure as an additional safeguard.

17. The Executive Director should review all the LASNEM bank account reconciliations and his review and approval should be indicated by him placing his initials and date of the review on the bank reconciliation form. Additionally, all old outstanding checks should be investigated and then resolved by removing the checks (escheating them to the state when the payee cannot be contacted) from the reconciliations.

LASNEM concurs with LSC's Corrective Action 17. According to LASNEM, following the exit interview with LSC's review team, they completed an investigation of all old outstanding checks and resolved each. LASNEM states that they have also adopted a policy requiring the Executive Director to review all LASNEM bank account reconciliations and that such review and approval will be indicated by his initials and the date of the review being placed on the bank reconciliation form.

Law Office of
Legal Aid Service of Northeastern Minnesota

A law firm serving Aitkin, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Pine, and St. Louis Counties.

RESPOND TO:

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Fax: 218-326-6504 | <input type="checkbox"/> BRAINERD- SATELLITE
Westport Shopping Center
14091 Baxter Drive, Suite
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November 12, 2010

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

Dear Mr. Cardona,

Thank you for the opportunity to provide comment on the draft report for the June, 2010 CSR/CMS on-site review of our program. After reviewing the findings and the corrective actions laid out in the report, we have the following responses:

Corrective Action 1: Review all its policies and procedures to ensure that they are current and consistent with revised LSC regulations and instructions.

Comment: We agree with this corrective action. Our policies and procedures are currently contained in our employee manual and several supplemental documents. We are in the process of creating a separate policy manual that will centralize all of these policies and address the weaknesses identified in several of the findings. We anticipate that this new manual will be formally adopted by our board of directors at its March, 2011 meeting. All staff will be trained on the new manual following its adoption.

Corrective Action 2: Ensure that the information in the case files is consistent with the information entered into the ACMS.

Comment: We agree with this corrective action.

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Corrective Action 3: Ensure each file is given the correct problem code.

Comment: We agree with this corrective action. All staff will be given additional training concerning the problem codes. Managers will review all extended service files at closing to ensure that appropriate problem codes have been assigned. Furthermore, statistically significant samples of limited service cases will be conducted quarterly to ensure that the correct problem codes have been used.

Corrective Action 4: Ensure that staff is applying LASNEM's income and asset guidelines correctly.

Comment: We agree with this corrective action. All staff received training concerning intake guidelines and LSC regulations in April, 2010. We intend to make such trainings annual. All staff will be given additional training on intake guidelines as part of the 2011 training.

Corrective Action 5: Train staff regarding income and asset guidelines.

Comment: We agree with this corrective action. As indicated in the comment to corrective action 4, all staff will be given additional training on income and asset guidelines.

Corrective Action 6: Ensure that only Title III cases in which the applicant is LSC eligible are reported to LSC.

Comment: We agree that only LSC eligible Title III cases ought to be reported, but we believe that LASNEM is already in compliance with this requirement. When LASNEM prepares its grant activity reports, all non-LSC eligible Title III cases are screened out of the reported statistics.

This corrective action appears to be related to footnote 20 under Finding 3 and footnote 22 under Finding 4, which documented a number of Title III cases that were over either our income or asset limits. Under the terms of our Title III grant, we are required to provide services to any case type eligible senior regardless of the applicant's income or assets. Accordingly, our board has authorized provision of services to seniors with no limit to income or assets. Our staff members are all aware of this exception, and our ACMS contains this exception as a justification code for seniors who are over our normal income or asset guidelines. Our written policies, however, do not accurately reflect this policy. We will be correcting this weakness in the updated policies and procedures manual referred to in the comment to Corrective Action 1.

In practice the vast majority of our senior clients would be both income and asset eligible under our general guidelines.

Corrective Action 7: Ensure that all over income clients files document the 45 CFR § 1611.5 exceptions that were considered in accepting the client and an Executive Director waiver as required by LASNEM's current eligibility guidelines.

Comment: We agree with this corrective action. In April, 2010, all staff received additional training on the income eligibility exceptions. Executive Director waivers and the factors considered are now documented in each over income file.

Corrective Action 8: Ensure that all cases include citizenship verification per the requirements of 45 CFR Part 1626.

Comment: We agree with this corrective action. All staff received additional training on the citizenship verification requirements in April, 2010. We will include training on this requirement each year in our annual procedures training. Additionally, managers will conduct periodic spot checks of statistically significant numbers of files to ensure compliance with this requirement.

Corrective Action 9: Ensure that all case files reported to LSC include documentation of the legal assistance provided.

Comment: We agree with this corrective action. Following our exit interview with the review team in June, an e-mail was sent to all case handlers reminding them of the importance of proper documentation. This will be reinforced at the next procedures training. As noted in the comment to Corrective Action 3, managers are now conducting periodic reviews that should identify cases that are missing documentation.

Corrective Action 10: Ensure that all Judicare attorneys provide documentation of the legal assistance provided prior to rendering payment for services.

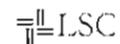
Comment: We agree with this corrective action. Following our exit interview with the review team in June, we adopted a policy requiring all Judicare attorneys to submit pleadings or other evidence of the service provided prior to payment of any invoice. Notification was sent to all Judicare attorneys with pending matters. All invoices since that time have been accompanied by suitable documentation.

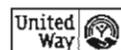
Corrective Action 11: Ensure a staff attorney reviews PAI files prior to their closure.

Comment: We agree with this corrective action. Following our exit interview with the review team in June, we adopted a policy that the managing attorney of the referring office will review each PAI file prior to its closure to ensure that proper documentation has been obtained.

Corrective Action 12: Ensure that Divorce Waiting List applicants have been provided legal advice prior to being placed in the divorce waiting list if their cases are to be reported as "A" in the CSRs. In addition, this advice must be properly documented.

Comment: We agree with this corrective action. Following our exit interview with the review team in June, case handlers who work with waiting list clients were instructed to provide and

 LSC



document appropriate advice before placing a client on a divorce waiting list. The files of existing waiting list clients were also reviewed at that time, and, in any cases in which clients had not received advice, the clients were contacted and suitable advice was provided and documented.

Corrective Action 13: Provide all staff training regarding CSR closing codes.

Comment: We agree with this corrective action. The 2008 CSR Handbook is available in electronic form to all staff through the company network. Following the exit interview with the review team in June, all staff were asked to review chapter 8 of the handbook, which explains the closing codes. Further training on the closing codes will be provided to all staff at the annual procedures training.

Corrective Action 14: Ensure that all cases reported to LSC are given the correct closing code.

Comment: We agree with this corrective action. As noted in the comment to Corrective Action 13, additional training will be provided to all staff concerning the closing codes. In addition, as noted in the comment to Corrective Action 3, managers are now conducting periodic reviews of closed files. These reviews will include the closing codes as well as problem codes, citizenship attestations, and documentation of legal work.

Corrective Action 15: Ensure that all case files are timely closed by reviewing open case files at least twice a year.

Comment: We agree with this corrective action and have adopted this as a policy. A review was conducted in June, following the on-site review. The next review will be conducted at the beginning of December to ensure timely case closings prior to the end of the year.

Corrective Action 16: Ensure that all PAI invoices include documentation that supports that the legal work was performed by the private attorney prior to making payment.

Comment: We agree with this corrective action. As noted in the comments to Corrective Actions 10 and 11, we have adopted a policy requiring submission of pleadings or other evidence of suitable legal work prior to making payment. Furthermore, the managing attorney of the referring office now reviews each PAI file prior to its closure as an additional safeguard.

Corrective Action 17: The Executive Director should review all the LASNEM bank account reconciliations and his review and approval should be indicated by him placing his initials and date of the review on the bank reconciliation form. Additionally, all old outstanding checks should be investigated and then resolved by removing the checks (escheating them to the state when the payee cannot be contacted) from the reconciliations.

Comment: We agree with this corrective action. Following our exit interview with the review team in June, we completed an investigation of all old outstanding checks and resolved each. We have also adopted a policy that the Executive Director will review all the LASNEM bank account reconciliations and his review and approval will be indicated by his placing his initials and date of the review on the bank reconciliation form.

In addition to the comments on the specific corrective actions mentioned above, I would like to take the opportunity to comment on the process of the CSR/CMS on-site review itself. I and all my leadership staff were deeply impressed by the transparency that Mr. Sulik and his team brought to the review process. He and his team were very responsive to inquiries about the process and provided clarifications promptly as needed. That responsiveness enabled us to efficiently assemble the large amount of data that the team reviewed.

We were also uniformly impressed by the respect shown by team members for the work being done at the offices they visited. Because of their sensitivity to the need for our staff to continue serving clients throughout the inspection process, every office reported that there were virtually no disruptions to client service despite the review team's presence.

While it is never enjoyable to have one's weaknesses exposed, we share LSC's commitment to accountability and its focus on high quality client service. We believe that the findings made by the review team were fair, and we appreciate the suggestions for improvement that they offered during their meetings with staff, in the exit interview, and in the corrective actions set out in the draft report. I commend Mr. Sulik and his team for the professionalism with which they carried out their duties. I and my staff felt that their conduct was exemplary.

Sincerely,

David C. Lund
Executive Director