



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

**LEGAL AID SOCIETY**  
Case Service Report/Case Management System Review

September 13-17, 2010

Recipient No. 618010

## I. EXECUTIVE SUMMARY

**Finding 1: Sampled cases evidenced that LAS' automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.**

**Finding 2: LAS' intake procedures do not support the program's compliance related requirements.**

**Finding 3: Sampled cases evidenced that LAS substantially maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG).**

**Finding 4: Sampled cases evidenced that LAS maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.**

**Finding 5: Sampled cases evidenced non-compliance with 45 CFR § 1626.6 (Verification of Citizenship).**

**Finding 6: Sampled cases evidenced non-compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).**

**Finding 7: Sampled cases evidenced 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: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). Two (2) cases reviewed did not contain a description of the legal assistance provided.**

**Finding 10: Sampled cases evidenced that LAS' application of the CSR case closure categories are inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).**

**Finding 11: Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.) § 3.3 as there were 17 staff case file reviewed that were not closed in a timely manner.**

**Finding 12: Sampled 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: The limited review of the detailed general ledger and other accounting documents for January 2009 through August 2010 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: LAS is in compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

**Finding 16: LAS is in non-compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; LAS is in compliance with 45 CFR § 1614.4(3)(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data; LAS is in compliance with 45 CFR § 1614.4(3)(e)(ii) which is designed to ensure that programs shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees.**

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

**Finding 18: Sampled cases evidenced non-compliance with 45 CFR Part 1635 (Timekeeping requirements).**

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

**Finding 20: Sampled cases reviewed 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: A review of LAS' internal control policies and procedures found the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System. (Chapter 3 - Accounting Guide for LSC Recipients).**

**Finding 30:** Bank reconciliations for July and August 2010 were reviewed for all bank accounts and were found to be performed timely, accurately, and with the corresponding approvals.

**Finding 31: LAS' Accounting Manual meets the requirements of the 2010 Accounting Guide for LSC Recipients.**

**Finding 32:** The review of payables disclosed that payments had sufficient supporting documents; however, the majority of the supporting documents have no indication of payment

**Finding 33:** LAS gives salary advances for emergencies to be repaid within the following pay period.

## II. BACKGROUND OF REVIEW

On September 13-17, 2010, the Legal Services Corporation's (LSC) Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) review on-site visit at the Legal Aid Society (LAS). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of three (3) LSC attorneys, and one (1) LSC fiscal analyst.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that LAS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LAS for compliance with regulatory requirements of: 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);<sup>1</sup> 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees);<sup>2</sup> 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LAS' upper and middle management, staff attorneys and support staff. LAS' case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through August 1, 2010. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 338 case files which included 45 targeted files.

LAS is an LSC recipient that operates a main office and a HIV/AIDS Legal Project Office located in Louisville, KY. LAS' executive staff consists of an Executive Director and Advocacy Director. LAS received a grant award from LSC in the amount of \$1,141,662 for 2008; and \$1,256,416 for 2009.

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

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

For 2009, LAS reported 3,448 closed cases in its CSR data. LAS' 2009 self-inspection report indicated a 6.7% error rate with exceptions noted in 11 files out of 164 reviewed. For 2008, LAS reported 3,759 closed cases in its CSR data. LAS' 2008 self-inspection report indicated a 7.4% error rate with exceptions noted in 12 files out of the 163 cases reviewed.

By letter dated July 12, 2010, OCE requested that LAS provide a list of all cases reported to LSC in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases reported in its 2009 CSR data submission ("closed 2009 cases"), a list of all cases closed between January 1, 2010 and August 1, 2010 ("closed 2010 cases"), and a list of all cases which remained open as of August 1, 2010 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LAS staff and the other for cases handled through LAS' PAI component. LAS was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12 and the LSC *Access to Records* (January 5, 2004) protocol. LAS was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2008, 2009, and 2010 closed cases and open cases, as well as a proportionate distribution of cases from LAS' offices. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LAS agreement of August 5, 2010, LAS staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.<sup>3</sup> LAS' management and staff cooperated fully in the course of the review process. As discussed more fully below, LAS was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review; as well as Managing Attorneys in the branch offices and the Executive Director in the main office.

On September 17, 2010, OCE conducted an exit conference during which LAS was provided with OCE's initial findings. LAS was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments.

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<sup>3</sup> In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

By letter dated November 23, 2010, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions regarding the September 13-17, 2010 CSR/CMS visit. LAS was asked to review the DR and provide written comments. By letter dated December 14, 2010, LAS requested an extension to respond to the DR; which was granted. By letter dated February 1, 2011, LAS submitted its comments in response to the DR. OCE has carefully considered LAS' comments and made such revisions as it deems warranted. LAS' comments are reflected in this Final Report and have been attached as an appendix hereto.

### III. FINDINGS

**Finding 1: Sampled cases evidenced that LAS' automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.**

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

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LAS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

There were 19 cases reviewed from the sample where the information in the file was inconsistent with that in the ACMS. *See* for example Case No. 09E-44058689, a 2009 closed case where the closing date shown on the computer-generated case list is December 10, 2009; however, the case notes indicate that the file was closed on December 14, 2009; *See also* Case No. 08E-44054810; 2009 closed case where the closing date shown on the computer-generated case list is June 30, 2009; however, the case notes indicate that the file was closed on July 9, 2009; *See also* Case No. 08E-41054798, a 2009 closed case where the case list indicated that this file was wholly funded with LSC funds; however, the case notes indicate that this case was funded with an alternate funding source; *See also* Case No. 09E-41060430, a 2010 closed cases where the case list indicated that this case was funded with non-LSC funds; however, the file reveals that the case was wholly funded with LSC funds; *See also* Case No. 05E-41029705, an open case with a family law problem code, however, the facts in the case indicate the case involves a collection issue; *See also* Case No. 10E-41065019, a 2010 closed case that involves a landlord/tenant issue; however, the problem code in the ACMS is "99", other miscellaneous; *See also* Case No. 09E-41063073, a 2010 closed case that was closed utilizing the closing code "B" in the file; however, the closing code "L" is listed on the ACMS. "B" is the correct closing code; *See also* Case No. 09E-41061771, a closed 2010 case that was closed with the closing code "A" in the case file, however, the closing code "L" is listed on the ACMS. Closing code "A" is the correct closing code; *See also* Case No. 07E-41039102, a 2010 closed case that was closed utilizing the closing code "B" in the case file; however, the closing code "L" is listed on the ACMS. "B" is the

correct closing code; *See also* Case No. 10E-41064343, a 2010 closed case that was closed utilizing the closing code “B” in the case file; however, the closing code “L” is listed on the ACMS. “B” is the correct closing code; *See also* Case No.10E-41067146, a 2010 closed case that was closed utilizing the closing code “B” in the case file; however, the closing code “L” is listed on the ACMS. “B” is the correct closing code; *See also* Case No. 09E-42061665, a 2010 closed case where the number in the household was “0” in the ACMS. Case notes indicated that there were four (4) people in the household.

LAS should ensure that the correct case file information is entered and recorded in the automated case management system.

In response to the DR, LAS provided training to staff in October 2010 to properly and timely use the ACMS so to ensure that reports and data exported from the ACMS accurately reflects the services provided, client eligibility information, and other related documentation. According to LAS, it’s ACMS and the reports it produces depend greatly upon accuracy of data input by the user. To guard against the production of reports that may contain inaccurate entries in the underlying data, LAS management indicated it has defined methods in which to sort and filter data in running reports. According to LAS the three identified LAS managers who produce reports are sufficiently familiar with the filtering and sorting processes to ensure any inadvertent data errors are excluded and do not compromise the integrity of final reports.

In LAS’ response to the DR, it requested that that Case Nos. 09E-44058689, 08E-44054810, 08E-41054798, and 09E-41060430 not be included in the finding above.

09E-44058689 – LAS indicated that it’s ACMS record shows a closing date of 12/10/2009. The case notes reflect that the case-handler made an entry on 12/11/2009 “review file and close”. According to LAS at this office, the case-handler gives the file to a secretary to make the entries into the ACMS as he directs, then the case-handler reviews the final printout for accuracy. This entry indicated this process and LAS views this as a timely and proper entry and record in the ACMS. The list provided to OCE shows date closed as 12/10/2009 which is consistent with the closing date on the client data sheet. LAS reports are generated based on this entry in this field in the client data sheet, not by a time entry in case notes which indicated an administrative task was completed. There is no variance between the client data sheet and the report produced.

After careful consideration of LAS’ comments, no change is warranted in the findings regarding this case. Although there are no inconsistencies with the information on the client data sheet and the report produced, there are inconsistencies between the information documented in the file with that on the client data sheet and the report it produced.

08E-44054810 – LAS indicated that the ACMS record shows a closing date of 6/30/2009. The list provided to OCE shows a date closed of 6/30/2009. There is no variance between the client data sheet and the report produced.

After careful consideration of LAS’ comments, no change is warranted in the findings regarding this case. Although there are no inconsistencies with the information on the client data sheet and



the report produced, there are inconsistencies between the information documented in the file with that on the client data sheet and the report it produced.

08E-41054798 – LAS indicated that the ACMS lists the funding code for this file as LSC. According to LAS the case notes attached to this client file indicate an initial assessment that this client may have an issue that could be resolved by LAS’s Low-Income Tax Clinic; after a quick review by the tax attorney it was determined that the issue should be handled by the staff attorney for the county where the client resided. LAS indicated that this service was funded through LSC funds as the client data sheet in the ACMS notes.

After careful consideration of LAS comments, a change is warranted in the finding regarding this case.

09E-41060430 – LAS indicated that the case list provided to OCE lists this case as funded with non-LSC funds. The ACMS lists the funding code for this file as PAI, which represents a blend of revenue sources not necessarily LSC. According to LAS, this case started as a pro-bono case and was coded as Case Type “P” and placement with a volunteer attorney was attempted; however, because of the client’s vision impairments, LAS determined that the service was better performed by staff. LAS indicated that the case was then assigned to a staff attorney, the Case Type was changed to “S” for “staff” and the service completed. The staff attorney provided the service and the case was funded with non-LSC funds. LAS indicated that the ACMS correctly lists this service as an “S” case-type, for staff, and it correctly appears on the case list provided to OCE as a non-LSC staff case.

After careful consideration of LAS comments, no change is warranted in the findings regarding this case. LAS in its response indicated that the services were provided by a staff attorney, however, the case data information has funding listed as PAI.

As for Case Nos. 09E-41063073, 09E-41061771, 07E-41039102, 10E-41064343, and 10E-41067146 cited in the DR, LAS indicated that the variance between the client file showing a A/B closing code and the ACMS reflecting a closing code “L” is a result of a management policy decision that CSR closing codes were tied to complexity of case service and hours of case activity. As a result, according to LAS it believed many of the CSR case entries by individual case handlers at time of case closure underestimated the complexity of the service based on hours of service; these were changed to a higher level of service “L” in the ACMS in an attempt to ensure that the services were properly reflected in the reports. According to LAS, these five instances cited may support OCE’s determination in Finding 10, but it seems inappropriate to use them for a finding that the ACMS has failed to properly document and record the underlying data. LAS indicated that the failure in these five instances cited is the good faith attempt by LAS to correct what it believed to be a systemic problem – staff closing cases with an A or B when LAS believed the case should have a closing code L based on the number of service hours involved. According to LAS the error is a policy error arising from LAS’ misinterpretation of CSR closing codes, but not evidence of a flawed ACMS and how it is used to collect and record data.

LAS indicated that its current ACMS is capable and sufficiently detailed in operations to provide LAS with the ability to respond timely to funders with accurate data and reports. To the extent that OCE has identified instances in the DR in which information in the ACMS appears to be in variance from information in the client file, LAS recognized a need, on an ongoing basis, to ensure staff are properly trained on the ACMS and provided with refresher training, as necessary.

After careful consideration of LAS' comments, LSC agrees that a change in the finding is warranted. Although there were several inconsistencies between the case files and the ACMS, these inconsistencies were caused by misinformation entered into the ACMS rather than the ACMS being insufficient.

**Finding 2: LAS' intake procedures do not support the program's compliance related requirements.**

The intake procedures were assessed at the Main Office and the HIV/AIDS Legal Project Office by interviewing the intake staff person responsible for conducting intake screenings. The interviews revealed that the intake procedures performed at both offices do not support the program's compliance related requirements with respect to obtaining writing citizenship attestations for walk-in clients, performing conflict and duplicate checks during the intake process, inquiring as to the applicant's reasonable income prospects and considering all authorized exceptions and factors when screening an applicant for income eligibility. Additionally screeners include the value of food stamps in the income category when calculating income.

**HIV/AIDS LEGAL PROJECT**

The HIV/AIDS Legal Project conducts the majority of its intake over the telephone, but occasionally completes an in-person intake form when an applicant walks into the office without first calling the program for assistance. The HIV/AIDS Legal Project's telephone intake procedure is as follows: first, the intake coordinator verifies that the applicant is intending to contact the HIV/AIDS Legal Project for a legal services related matter. Then, the applicant is asked to identify whether he/she was referred by another legal services organization. The intake staff person then obtains all of the information necessary to complete the Intake/Problem Assessment Form and completes the form manually. It is at this time that the applicant's income/asset eligibility, citizenship status and legal issue(s) are verified. If the applicant appears eligible for services, the intake staff person accepts the case, enters the information into the Kemps Automated Case Management System (ACMS) and creates a physical case file with the corresponding ACMS case number. Once the file has been created, the intake staff person schedules an appointment for the applicant to meet with the Managing Attorney to discuss their request for legal assistance in further detail.

Upon scheduling the appointment with the Managing Attorney and creating the physical case file, the completed Intake/Problem Assessment Form is provided to the Managing Attorney for review prior to the appointment with the client. If the applicant fails to attend the scheduled appointment, the Managing Attorney sends a letter to the applicant informing them that their file

will be closed if they do not contact the office to reschedule the appointment. Once the Managing Attorney concludes the visit with the client, the case is closed using the Case Closing Form. The Case Closing Form allows for the Managing Attorney to identify the highest level of service provided to the client, as well as confirm the client's eligibility. In certain instances, when the Managing Attorney would like to clarify the reason for case closure, he will send the client a case closure letter, which indicated that the client's legal needs have been resolved and that the case will be closed. The case closure letter also provides the client with the opportunity to evaluate the legal services that have been received.

The intake staff indicated that conflict and duplicate checks were not performed in the ACMS system at any time during the intake screening. The intake staff also indicated that, with respect to duplicate cases, applicants are asked if they have been assisted by LAS in the past. If they have been assisted by LAS, and are otherwise eligible for service, this information is noted on the Intake/Problem Assessment form and then reviewed by the Managing Attorney after the physical case file has been created and forwarded for consideration.

The intake staff interviewed reported that no inquiry is made into the reasonable income prospects of applicants; this information is also not included as an inquiry in the Intake/Problem Assessment form. As such, the HIV/AIDS Legal Project of LAS does not consistently screen for reasonable income prospects as required by 45 CFR § 1611.5(a)(4)(i), which mandates that LAS inquire into every applicant's reasonable income prospects during intake.

The intake staff demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. Intake staff reported they verify citizenship status during the intake screening and would require documentation of eligible alien status before completing an intake. Once the applicant provides this information, the Managing Attorney would determine if the applicant is an eligible alien pursuant to 45 CFR Part 1626 (the intake staff interviewed could not recall an instance of a non-citizen receiving legal assistance from the HIV/AIDS Legal Project). The intake staff interviewed did not demonstrate an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments.

Those interviewed reported that written citizenship attestations are obtained for those applicants who walk into the office, prior to their meeting with the Managing Attorney. This is in compliance with 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5, which requires Recipients to obtain written citizenship attestations whenever program staff has in-person contact with the applicant. Intake staff interviewed indicated that although the citizenship attestation form requirement was revised effective January 1, 2008, to require a separate signature and date line for the attestation, the pre-2008 citizenship attestation form continued to be used after January 1, 2008. Intake staff indicated that the pre-2008 citizenship form is no longer in use and will not be used for future citizenship attestations.

Intake staff reported that in instances where a walk-in applicant, who has been properly screened, does not meet with the Managing Attorney on the same day as the walk-in visit, the citizenship attestation is signed on the day the client meets with the Managing Attorney. This is not in compliance with 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5, which requires recipients to obtain written citizenship attestations whenever program staff has in-person contact with the applicant, regardless of whether a follow-up meeting is scheduled. Intake staff indicated

that they would change their policy to have every walk-in applicant sign a citizenship attestation at the time of the intake screening, regardless of whether they meet with the Managing Attorney that day, or on a later date.

The intake interview revealed some confusion regarding the income ceilings set by LAS. The intake staff expressed understanding that an applicant will be considered eligible if their income is under 125% of the Federal Poverty Guidelines (FPG). If the applicant's income exceeds 125% of the FPG, then the case is referred to the Managing Attorney to make the determination of whether the applicant is eligible to receive services. Intake staff is not aware of how economic factors can be applied to those applicants whose incomes exceed 125%, but are less than 200% of the FPG, and is also not aware of the authorized exceptions to the requirement that an applicant's income remains below 125% in order to be deemed eligible for services. Additionally, intake staff is not aware of the process of having the income eligibility requirement waived, when applicable, for those applicants whose income is between 125% and 200% of the FPG. The economic factors, authorized exceptions and waiver procedure enumerated in 45 CFR §§ 1611.4 and 1611.5 have been adopted by the LAS Board of Directors and are included in LAS' financial eligibility guidelines.

In response to the DR, LAS indicated it agrees with LSC's findings that its staff members were not uniformly following the processes required by LAS in conducting intake screening. LAS indicated that it met with staff on December 10, 2010 and provided them with training on:

- Citizenship verification requirements (e.g., written attestation signed if in-person contact with applicant);
- Reasonable income prospects (e.g., making an inquiry into reasonable. Income prospects);
- Exceptions to annual income ceiling (e.g., economic factors to consider for applicants whose incomes exceed 125% of the FPG);
- Waivers of annual income ceiling (e.g., as approved by the Executive Director);
- Revisions of the Problem Assessment Form used by the HIV/AIDS Legal Project so it inquires into those areas required by LSC regulations (e.g., reasonable income prospects, etc.);
- The guidance offered by 45 CFR § 1626.4, Program Letter 06-02, and the 2006 VAWA Amendments involving non-citizen applicants; and
- Conflict checks and duplicate record checks.

According to LAS, it will monitor staff member's adherence to these procedures on a monthly basis.

#### Louisville (Main Office)

Applicants may apply for services either by calling, writing, or walking into the office and speaking to the receptionist. Except for cases accepted by staff members, all applicants are directed to call the Intake/Brief Services (IBS) for intake and screening.

For walk-in applicants the intake screener provides the clients with a packet which includes a manual intake form, retainer agreement, and citizenship attestation form. Once the forms are completed the receptionist reviews the documents to ensure that they were completed properly and then enters the information into the ACMS. The applicant's eligibility information is entered directly into the ACMS when intake is conducted by telephone. There is inconsistency among intake staff as to when conflict checks are conducted. According to one intake screener, conflict checks are completed after the client's financial eligibility information is obtained. The second intake screener indicated that she does a conflict check prior to obtaining the client's financial eligibility information.

Intake screeners include the value of food stamps in the income category, which is computed in applicant's total income. Intake screeners are not familiar with LAS' asset policy and were only aware of three factors for an income exception. Questions regarding prospective income, as required by 45 CFR § 1611.5(a)(4)(i), are not asked by the intake screeners.

Group cases are screened but are not reported to LSC. Currently LAS' group eligibility policy fails to comply with the requirements of 45 CFR § 1611.6(a).

LAS should provide training to intake staff on the program's policies regarding 45 CFR § 1626.6(a) (citizenship verification); 45 CFR § 1611.7(a) (reasonable income prospects screening); 45 CFR § 1611.5 (exceptions to annual income ceiling); and 45 CFR § 1611.3(c)(2) (waivers of annual income ceiling) and revise its Intake/Problem Assessment form so that they are consistent with LSC regulations and LAS' financial policies. Intake staff should also be trained on the applicability of 45 CFR § 1626.4, Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance. Additionally, intake staff should incorporate duplicate and conflict checks into the intake screening process to ensure that all applicants are properly screened prior to case acceptance.

Furthermore, LAS staff should not include the value of food stamps when computing an applicant's income.

In response to the DR, LAS has undertaken training of all staff charged with intake functions to ensure that they are educated as to the relevant rules, factors, and processes to properly screen for eligibility and document these decisions in the ACMS. Furthermore, LAS indicated it will conduct a monthly review of a random sampling of applicant files for the first six months of 2011 to ensure these trainings have produced compliance with LAS' identified processes.

In response to the DR, LAS indicated its practice was not, and is not, to include the value of food stamps in calculating income. According to LAS, this notation was made in the income chart because the ACMS did not otherwise provide any field for this entry. LAS indicated it has since modified the ACMS to allow for intake screeners to inquire and document whether an applicant is receiving food stamps. The food stamps information is now documented by a check box as part of the asset test which LAS conducts. According to LAS the modification of the ACMS and subsequent training of staff eliminates the risk of any error in including food stamps as income.

**Finding 3: Sampled cases evidenced that LAS substantially maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG).**

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.<sup>4</sup> *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

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

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

LAS' Board of Director's approved financial eligibility policy needs revision. Currently LAS' income and asset policy allows for a determination of an applicant's eligibility without conducting an independent determination of income or assets if the income is derived from a governmental program; however, the policy fails to list specific government programs. 45 CFR § 1611.4 (c) requires that LAS' Board of Directors determine that the income standards of the governmental program are at or below 125% of the FPG and that the governmental program has eligibility standards which include an assets test. Since LAS has failed to list specific government programs, they are not able to comply with 45 CFR § 1611.4(c). LAS should revise its income and asset policy by specifying and determining that the income standards of the governmental programs are at or below 125% of the FPG and that the governmental program has eligibility standards which include an assets test.

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<sup>4</sup> A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

There were 15 cases reported to LSC in which the client's income exceeded 125% of the FPG and no authorized exceptions were recorded in the file as required by 45 CFR § 1611.5(a). *See* for example Case No. 10E-41068995, an open case in which the client's income exceeded 125% of the FPG and no authorized exceptions were noted in the file; *See also* Case No. 07E-4144328, a 2008 closed case in which the client's income exceeded 125% of the FPG and no authorized exceptions were noted in the file; *See also* Case No. 09E-4162231, a closed 2010 case in which the client's income exceeded 125% of the FPG and no authorized exceptions were noted in the file; *See also* Case No. 10E-41063272, a 2010 closed case in which the intake information indicated that the total household income (for one person) was \$1,300.00, which exceeds 125% of the FPG and no authorized exceptions were noted in the file; *See also* Case No. 10E-41066240, a 2010 closed case in which the intake information indicated that the total household income (for one person) was \$1,213.00, which exceeds 125% of the FPG; *See also* Case No. 09E-42059623, a 2009 closed case in which the intake information indicated that the applicant was employed and worked full time but no value was recorded for the income; *See also* Case No. 09E-44058689, a 2009 closed case in which the intake information indicated that the total household income (for one person) was \$1,160.00, which exceeds 125% of the FPG for a one-person household, and the case file did not contain evidence of income exceptions.

When the client's income exceeds 125% of the FPG, LAS must ensure that authorized exceptions are noted in the case file for every case that is funded with LSC funds and is intended to be included in the CSR data submission reporting.

Additionally, there were several cases reviewed where the client's income exceeded 125% of the FPG and no authorized exceptions were recorded, however, due to the nature of the case, i.e. bankruptcy or foreclosure, the client obviously had a fixed debt and obligation. Although these cases are considered compliant, LSC recommends that LAS be consistent in clearly documenting the authorized exceptions if the client's income exceeds 125% of the FPG regardless of the nature of the case.

In response to the DR, LAS indicated it has taken steps to ensure rigorous compliance with the requirements of 45 CFR Part 1611. LAS indicated it has modified its ACMS to create a specific inquiry and field in which to record those factors which may allow LAS to determine an applicant eligible when the household income exceeds 125% but is no more than 200% of the FPG. According to LAS this modification allows the screener to record in a specific field any or all factors which allow for eligibility for when the household income exceeds 125% but is also no more than 200% of the FPG.

**Finding 4: Sampled cases evidenced that LAS maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.**

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

except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.<sup>5</sup> *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d)(2).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

The Financial Eligibility Standards approved by the LAS' Board of Directors on August 10, 2010, establishes an asset ceiling of \$8,000 for an individual, and increases by \$3,000 for each additional member of the applicant's household. Exempt from consideration is the applicant or household's principal residence; vehicles used for transportation; personal and household effects; trusts from household funds for education and medical expenses; value of farmland essential to employment or self-employment; work-related equipment essential to employment or self-employment; cash value of IRA or Keogh Plans; items of valued of the family unit or household to which the individual's access is legally or practically impeded; and assets excluded under the Food Stamp, AFDC, and SSI programs.

All sample case files reviewed contained the required documentation to comply with LSC's asset eligibility requirements.

LAS' Board of Directors approved financial eligibility policy needs revision. Currently LAS' income and asset policy allows for a determination of an applicant's eligibility without conducting an independent determination of income or assets if the income is derived from a governmental program; however, the policy fails to list specific government programs. 45 CFR § 1611.4 (c) requires that LAS' Board of Directors determine that the income standards of the governmental program are at or below 125% of the FPG and that the governmental program has eligibility standards which include an assets test. Since LAS has failed to list specific government programs, they are not able to comply with 45 CFR § 1611.4 (c). LAS should revise its income and asset policy by specifying and determining that the income standards of the governmental programs are at or below 125% of the FPG and that the governmental program has eligibility standards which include an assets test.

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<sup>5</sup> A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.



In response to the DR, LAS stated that its Board of Directors approved an amended policy regarding eligibility for those clients whose income is derived from a governmental program. The amended policy now specifies those governmental programs which have an asset test which allows for a determination of an applicant's eligibility without LAS conducting an independent determination of assets or income. Furthermore, according to LAS its Intake Manual and ACMS has now been modified to require specific actions to document which governmental program is the basis of the eligibility determination. LAS indicated that intake screeners have been trained on the use of this new policy and the process involved in correctly documenting this in the ACMS.

**Finding 5: Sampled cases evidenced 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.<sup>6</sup> Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

Sampled cases evidenced 21 case files that were not compliant with the requirements of 45 CFR § 1626.6. *See* Case No. 08E-41054884, a 2009 closed case with no citizenship attestation. This file was closed under closing code "L", extended services, pursuant to the program providing assistance to the client by engaging in negotiations with a utility company; *See also* Case No. 09E-43062748, an open case with no citizenship attestation. The case notes indicate that there

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<sup>6</sup> *See* Kennedy Amendment at 45 CFR § 1626.4.

had been in person contact between the client and the program attorney. The case notes indicate that this case will not be included in the CSR reporting for 2010; *See also* Case No. 08E-41050757, an open case where LAS had in person contact with the client and failed to obtain a citizenship attestation; *See also* Case No. 07E-41041870, a 2010 closed case where LAS had in person contact with the client and failed to obtain a citizenship attestation; *See also* Case No. 09E-41059870, a 2010 closed case where LAS had in person contact with the client and failed to obtain a citizenship attestation; *See also* Case No. 09E-44055860, a 2010 case where LAS had in person contact with the client and failed to obtain a citizenship attestation; *See also* Case No. 06E-4103770, an open case where LAS had in person contact with the client and failed to obtain a citizen attestation; *See also* Case No. 09E-42061665, a 2010 closed case where LAS had in person contact with the client and failed to obtain a citizenship attestation; *See also* Case No. 09E-42059416, a 2010 closed case where LAS had in person contact with the client and failed to obtain a citizenship attestation; *See also* Case No. 09E-42059299, a 2009 closed case where LAS had in person contact with the client and failed to obtain a citizenship attestation; *See also* Case No. 09E-42059084, a 2009 closed case where LAS had in person contact with the client and failed to obtain a citizenship attestation; *See also* Case No. 05E-41024986, a 2009 closed case that was opened March 23, 2005; however, the only signed citizen attestation in the file was dated August 5, 2009 which was subsequent to LAS' representing the client in the divorce action; *See also* Case No. 08E-41048435, an open case contained a signed and dated citizenship attestation; however, it was not signed in a timely manner. The case was open in 2008 and the signed attestation was not obtained until December 20, 2010; *See also* Case No. 09E-41058701, an open case that contained a signed and dated citizen attestation; however, it was not signed in a timely manner. The case was open on June 16, 2009 but the citizen attestation was not signed until June 7, 2010; *See also* Case No. 09E-41058701, an open case where the client is an eligible alien; however, the case file does not contain evidence of the documentation that was submitted to the LAS to verify the client's eligibility; *See also* Case No. 07E-41044251, an open case that contained a signed and dated citizenship attestation; however, it was not signed in a timely manner. The case was open on September 24, 2007 but the citizen attestation was not signed until March 16, 2009. Additionally, the citizen attestation did not comply with the requirements of CSR Handbook (2008 Ed.), § 5.5.

Also among the 21 cases found non-compliant, 11 of these cases contained citizenship attestations that did not conform to the requirements CSR Handbook (2008 Ed.), § 5.5, which requires that the citizenship attestation contain the following statement on a separate document or a separate signature line: "I am a citizen of the United States: Signature of applicant Date: \_\_\_\_\_." *See* Case Nos. 09E-44058689, 09E-4405546, 08E-44054420, 08E-44051548, 08E-44050679, 08E-41050757, 07E-41039328, 05E-41029705, 10E-41020291, 07E-41039102, and 07E-41038974.

LAS is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). LAS must ensure that all case files contain citizenship attestations, where appropriate, and that all attestations comply with the requirements of CSR Handbook (2008 Ed.), § 5.5.

LAS indicated it had modified its citizenship attestation process in 2008 after LSC changed its rules so as to disallow any yes/no or check-box to satisfy the citizenship attestation requirements. This modification to its retainer form occurred in August 2008 and was distributed to staff.

According to LAS, some staff failed to destroy prior versions of the retainer form and it was still in limited use after January 1, 2009. Furthermore, some staff members failed to contact clients with open cases in January 2008 and these clients failed to execute the new form containing the required written citizenship attestation. LAS indicated it has reviewed all cases closed in 2010 and all currently open cases to ensure that this regulatory requirement is met. According to LAS it is satisfied that it has sufficiently reviewed its cases to be reported to LSC as part of its 2010 CSRs so as to ensure compliance with this requirement. Additionally, according to LAS it undertook training of all case handlers at its mandatory trainings in October 2010 following the OCE visit to emphasize the importance of obtaining signed citizenship attestation statements.

**Finding 6: Sampled cases evidenced non-compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).**

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.<sup>7</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LAS is in non-compliance with the retainer requirements of 45 CFR § 1611.9 as there were 15 cases reviewed from the sample that lacked a sufficient retainer agreement when required. *See* Case Nos. 08E-41048435, 09E-41056662, 10E-41064026, 09E-4155486, 08E-4105231, 09E-41060633, 09E-41060299, 07E-41038974, 09E-41057211, 09E-41058375, and 09-13094651. These are cases which contained a signed retainer agreement, however failed to contain a description of the scope of legal services to be provided by LAS; *See also* Case Nos. 08E-41050757, 07E-41041870, 09E-41059870, and 08E-41054884, which are cases that failed to contain a retainer agreement when required.

LAS must ensure that the retainer agreements contain a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided in order to comply with 45 CFR § 1611.9(a).

According to LAS, case handlers are trained to execute this retainer agreement with the client when service extends beyond advice and counsel and involves in-person contact with the client. According to LAS, it will commit to further training of staff on the necessity of executing retainer agreements which must include descriptions of the scope of the work involved. LAS indicated it will monitor closed cases for compliance with this requirement and will institute, as

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<sup>7</sup> However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

necessary, random inspection to ensure continued compliance. In response to the DR, LAS indicated it conducted training on this specific issue at its mandatory training of all case handlers in October 2010 following the visit from OCE.

**Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).**

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

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

Case files reviewed indicated that LAS is in compliance with the requirements of 45 CFR Part 1636. Of the 338 cases reviewed only one (1) case file reviewed did not contain a signed statement of facts when it was required. *See* Case No. 08E-41046466, a 2008 closed case that was closed under the closing code “I(b)”, court decision: contested. The case notes indicate that the LAS program attorney represented the client, as the plaintiff, at a domestic violence order (DVO) hearing. The file did not contain a statement of the facts of the case that was signed by the client.

LAS must ensure that each file is in compliance with the requirements of 45 CFR Part 1636 by reviewing all case files required to have a signed statement of facts and verifying that all statements are properly executed and included in the case file.

In response to the DR, LAS indicated it obtained a copy of the petition in Case No. 08E-41046466, which is now included in the case file. LAS is in compliance with 45 CFR 1636.

**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.

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

LAS agrees with this finding that it is in compliance with 45 CFR §§ 1620.4 and 1620.6(c).

**Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).** Two (2) cases reviewed **did not contain a 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.

LAS is in substantial compliance as there were 13 cases reviewed from the sample that failed to contain a description of the legal assistance provided. *See* Case Nos. 09E-440607970, 08E-41054164, 08E-41054511, 08E-41054513, 07E-4104065, 8E-41049956, 10E-41067826, 10E-41065347, 10E-41066553, 10E-41066553, 10E-41067655, 09E-41061977, and 09E-41061978; all of these cases have either been open for over a year with no documentation of legal advice being provided or are closed with no documentation of legal advice provided.

Prior to closing a case, LAS must ensure that any legal assistance provided is properly documented in all case files where applicable, and that case files lacking documented legal assistance are not reported to LSC during the CSR data submission.

According to LAS, of the 13 cases referenced in the DR, 11 of these cases would not have been reported to LSC because the client withdrew, failed to connect with the volunteer attorney, or for some other reason, preventing the delivery of services to the client. As such, LAS indicated that these 11 cases were properly coded within its ACMS as “not CSR reportable.” Thus, they would not have been included in LAS’s 2010 CSRs. LAS believes the number of cases in which no description of legal assistance rendered in the representative sample OCE cites is much reduced from those listed in this finding and requested LSC reconsider this finding.

After careful consideration of LAS' comments, LSC agrees that of the 13 cases cited in the DR only 2 of these cases are non-compliant; however, this does not warrant a change in the finding as listed in the DR.

**Finding 10: Sampled cases evidenced that LAS' application of the CSR case closure categories are inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were 72 instances of case closing code errors.**

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

The files reviewed demonstrated that LAS' application of the CSR case closing categories are inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

The files reviewed demonstrated that LAS' application of the CSR case closing categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were 72 instances of case closing code errors.

Twenty-four (24) of these cases reviewed utilized the closing code "K" for deselected cases. *See* for example Case Nos. 10E-41063528, 10E-41065019, 10E-41065347, 10E-41064332, 10E-41065100, 10E-41064674, 05E-41027046, 09E-41060809, 10E-41067583, and 10E-41068273. According to the Executive Director the LAS practice is to apply closing code "K" for all deselected cases. Neither Closing Code "K" nor any other of the Case Closing Codes "A-L" may be used for any case except one that meets all the requirements for a CSR case to be reported to LSC (*See* Chapters II and V of the 2008 CSR Handbook). Accordingly, the use of Closing Code "K" to denote a deselected case – or any other case in which legal assistance was not rendered to an eligible client – is a misuse of that Closing Code. It is not permissible to use code letter "K" concurrently for the Case Closing Code "Other" and for another purpose as this causes confusion and ambiguity in the Case Management System and the CSR records. Nor is it acceptable to use any other code letter from "A-L" for the purpose of denoting a rejected or deselected case. While LSC did not explicitly discuss such use of LSC Case Closing Code letters, the last sentence of Section 3.5 recommends a method for identifying and de-selecting cases that are not to be reported to LSC: "For example, one method is to close such case files with a closing code such as "X" (or any other letter near the end of the alphabet) that would be used to designate the case file as a non-CSR case." The very reason that the phraseology "X" (or any other letter near the end of the alphabet) was used is to clearly separate such codes from the codes used to identify cases to be reported to LSC.

There were 30 PAI clinic cases which were closed as "B" however the notes in the case files indicate that "A" is the applicable Closing code. According to the intermediary, the clients in these cases attended a clinic in which all clients are initially advised in a group setting. The clients are then provided with the appropriate forms which they complete. Subsequently, the

clients individually meet with an attorney at which time the attorney reviews the forms and advises them as to the next step they must take in their case. Based on the level of service provided by LAS, these cases should be closed as an “A”. See for example Case Nos. 09E-41062119, 10E-41065293, 10E-41063272, and 09E-41062563.

According to LAS it disagrees with the finding regarding Case Nos. 09E-41062119, 10E-41065293, 10E-41063272, and 09E-41062563 based on its review of the CSR Handbook and the FAQ. In response to the DR, LAS referenced question 5, on page 51 of the CSR Handbook’s Frequently Asked Questions:

**Question 5** – At a PAI meeting among staff, we were discussing closing codes for pro se divorce cases and the following scenario was raised:

At our pro se divorce clinics pro bono attorney instructs a group of clients on filling out uncontested divorce packet; he also provides individual advice to each client. After clinic, clients often require further assistance with their paperwork, and a legal aid staff attorney or paralegal may assist them over a period of several weeks or months, answering questions and reviewing their paperwork.

When the client receives their divorce decree and the case is ready to be closed, what are the appropriate funding and closing codes. Should they be closed as PAI-extended service; LSC-extended service; or PAI-advice & counsel?

**Answer** – The decision between PAI and staff is fact-specific, depending on which is deemed to provided the highest level of legal assistance in the case (see §10.1(b)(iv) of the 2008 CSR Handbook). If both provided the same level of assistance (i.e. B, Limited Service), then it should be whichever provided the majority of the legal assistance (and this is a judgment call that would not be questioned if the assignment is within reason).

Whether the cases should be closed as A, Counsel and Advice, B, Limited Service, or L, Extensive Service, is also fact-specific, depending on the type and amount of legal assistance rendered to the client in each case.

According to LAS, it has determined, given the level of assistance tailored to each individual client at the pro se clinic to ensure that the forms reflected each client’s particular circumstances, that the appropriate level of assistance was “B” – Brief Service. This conclusion appeared consistent with LSC’s guidance in its Handbook and its acknowledgement that it is fact-specific.

LAS indicated that it accepts OCE’s interpretation as to how it wants its closing codes applied in these circumstances and LAS will adopt this practice relating to its assisted pro se clinics. However, LAS requested that OCE consider the ambiguity of the guidance in this area and reconsider whether these 30 instances cited warrant inclusion in this finding.

After careful consideration of LAS’ comments, LSC has determined that revisions to this finding are unwarranted. The determination in this finding by OCE regarding these specific cases is consistent with the definitions of the CSR Closure Categories in the CSR Handbook (2008 Ed.)

and the Frequently Asked Questions. According to CSR Handbook (2008 Ed.), § 8.2, a case closed in which the program provided legal advice to an eligible client should be closed as Counsel and Advice (e.g., the advocate ascertained and reviewed relevant facts, exercised judgment in interpreting the particular facts presented by the client and in applying the relevant law to the fact presented, and counseled the client concerning his or her legal problem. As stated in the DR, according to the intermediary, the clients in these cases attended a clinic in which all clients are initially advised in a group setting. The clients are then provided with the appropriate forms which they complete. Subsequently, the clients individually meet with an attorney at which time the attorney reviews the forms and advises them as to the next step they must take in their case. LSC agrees with LAS' that the determination of a closure category for a case is fact specific; and based on the facts presented in these cases to LSC during the CSR/CMS Review, a proper determination was made, which requires these specific cases to be closed utilizing the closing code "A", counsel and advice.

There were no consistent problems with the remaining 18 closing code errors found. *See* for example Case No. 10E-41067488, a 2010 closed case which was closed utilizing the closing code "L", extensive service. The case handler made approximately four phone calls on the client's behalf to a water utility company. The level of service rendered does not rise to the level of extensive service as defined in the CSR Handbook (2008 Ed.). Closing code "B", limited action, is the appropriate closing code; *See also* Case No. 09E-41063072, a 2010 closed case that was closed with the closing code, "B", limited action. The case handler only sent the client an advice form letter, therefore closing code "A", counsel and advice, is the applicable closing code; *See also* Case No. 08E-41054997, a 2010 closed case that was closed with the closing code "I(a)", uncontested court decision. The client was the respondent in the case and filed an answer to the opposing party's petition. Subsequently no action was taken by the opposing party and the court dismissed the case. Since the client contested the opposing party's petition the applicable closing code is "I(b)", contested court decision; *See also* Case No. 10E-41063749, a 2010 closed case that was closed with closing code "B", limited action. The case handler made an appearance in court to withdraw a modification motion that was before the court. The applicable closing code is "L", extensive service; *See also* Case No. 08E-41055103, a 2009 closed case that was closed utilizing the closing code "G", negotiated settlement with litigation. The case handler represented the client at a grievance hearing before a housing authority administrative body. Subsequent to the hearing, the administrative agency issued its opinion regarding the client's proposed rent reduction and a related eviction action was dismissed pursuant to the agency's decision to reduce the rent obligation. Closing code "H", administrative agency decision, is the applicable closing code; *See also* Case No. 09E-41057685, a 2009 closed case that was closed utilizing the closing code "F", negotiated settlement without litigation. The case handler assisted the client in attempting to get the client transferred to another school. There was no indication in the file or the case notes that a settlement on behalf of the client had been negotiated and reached. Closing code "L", extensive service, is the applicable closing code; *See also* Case No. 08E-41054884, a closed 2009 case that was closed utilizing the closing code "L", extensive service. The case handler provided brief advice to the client regarding the client's bankruptcy options and contacted the client's utility company (on one occasion) to discuss the possibility of a payment arrangement. Closing code "B", brief services, is the applicable closing code.



LAS must conduct training to ensure proper application of the CSR case closure categories.

In response to the DR, LAS indicated it has conducted a mandatory training on closing codes. According to LAS it will monitor case handlers' compliance and adherence to these closing codes during periodic reviews of closed cases in 2011 and will determine if further training is necessary.

According to LAS of the 72 cases cited by OCE as non-compliance in the DR, 54 of these cases involved only two (2) common issues: 1) LAS' CSR deselecting method; and 2) the proper closing code for assisted pro-se clinics. LAS indicated that both issues are policy issues which LAS made and which affect the 54 cases noted in the sample reviewed by OCE. According to LAS, it acted in good faith at the time these policy decisions were.

In the DR, OCE cited to 24 cases that had been deselected from the CSRs reported to LSC. In these cases, LAS indicated it uses a method of "checking" or "unchecking" the "CSR eligible" box in the ACMS. According to LAS, its method of deselecting cases from reporting those cases which should not be reported to LSC in its CSRs. These cases also may have used a "K" closing code for the "Reason Closed"; however, according to LAS this is not the method it uses to deselect a case. LAS indicated it relies upon the CSR checkbox for this determination. According to LAS this method has reliably served in ensuring the integrity of its CSR reports to LSC in recent years. LAS indicated that in its 2009 CSR reports, out of 3,448 case services, LAS reported 24, or only .7%, cases were closed with closing code "K" and similar results are reflected for previous years.

LAS indicated, that since 2008, it has devised a method to properly deselect those cases which would not be reported as part of its CSRs and this has been the use of the CSR eligible checkbox and LAS does use the closing codes A-L for other case services that are deselected and not reported to LSC (e.g., Title III cases). According to LAS, the use of closing codes for these deselected cases would appear immaterial since these cases are not part of the CSR report and cannot affect the integrity of the information provided to LSC.

Nonetheless, following OCE's visit, LAS indicated it has implemented a new process which adds new steps and provides further safeguards to assure LSC that LAS has an appropriate "deselection" process. According to LAS it has added a new "Reason Closed" closing code – "X" for no service. It has also created a new "Case Type" – "X". These two (2) codes are now used for reflecting a case where there has been no service or there is no evidence of service in the file. A case handler must still use the "CSR eligible" box to indicate whether the case is CSR reportable. However, according to LAS case handlers are not to use closing code "K", unless they speak with a supervisor and discuss why the underlying facts of the case would require the use of closing code "K".

**Finding 11: Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.) § 3.3 as there were 17 staff case file reviewed that were not closed in a timely manner.**

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, limited action, 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, limited action, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).<sup>8</sup> There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

LAS is in non-compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as there were 17 files reviewed that were not closed in a timely manner. *See* for example Case No. 05E-41029705, a case that was opened in 2005. The last documented work in the file was in 2005; *See also* Case No. 10E-41020291, a case that was opened originally in 2005. There is a letter in the file which was written to the client in 2010 stating that the opposing party cannot be reached. There is no evidence of work in the file from 2005 to 2010; *See also* Case No. 07E-4144328, a case that was opened in 2008. The last documented work in the file is July 28, 2008; *See also* Case No. 08E-41054164, a case that was opened on November 4, 2008. There was no evidence of any legal advice in the case file. According to the notes in the file, LAS sent several status checks to the PAI attorney, however, no response was received from the attorney; *See also* Case No. 08E-41054511, a case that was opened on November 20, 2008. There was no evidence in the case file that any legal assistance had been provided to the client. Several update requested had been sent to the attorney with no response; and *See also* Case No. 07E-41038977, a closed 2009 case that was opened on January 11, 2007, and was closed under closing code “A”, counsel and advice. The case notes indicate that on January 11, 2007, the client was initially provided advice regarding a bankruptcy filing. The case notes further indicate that the client was provided more advice concerning a bankruptcy filing and potential garnishment in May 2009. There was no legal activity in the file from January 11, 2007 to May of 2009. There was no notation as to why the file was kept open after January 11, 2007. This case should have been closed on or before December 31, 2007.

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<sup>8</sup> The time limitation of the 2001 Handbook that a limited action 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).

LAS must conduct efficient oversight of cases by conducting periodic reviews to prevent cases from becoming dormant or being untimely closed.

In response to the DR, LAS indicated it is committed to ensuring that cases are closed timely upon completion of the service to the client in accordance with LSC's CSR Handbook. According to LAS, it has conducted training, attended by all case handlers, on the requirements of timely closing cases. LAS indicated it has taken the additional steps of providing case supervisors with case management reports to review and examine any cases in which there have been no time records in the past 90 days. According to LAS it will continue through 2011 this practice of providing case management reports and requiring case handlers to identify what reasons exist for a case to remain open if no activity has occurred with the past 90 days.

Furthermore, according to LAS, it requires that a case supervisor review a case handler's open cases at each quarterly case review meeting. LAS indicated it has also implemented a process whereby case supervisors are provided a listing of "aged cases" where the ACMS has not recorded any time activity related to that open case. According to LAS, these two (2) processes will address OCE's concerns regarding cases that have no evidence of activity and appear dormant.

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

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

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

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.4 and CSR Handbook (2008 Ed.), § 6.4.

LAS is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases as there were no duplicate case file noted in the review sample.

In response to the DR, LAS agreed with the finding that it is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

**Finding 13: The limited review of the detailed general ledger and other accounting documents for January 2009 through August 2010 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.

The limited review of accounting records and documentation for the period of January 2009 through August 2010 and interviews with staff disclosed that LAS 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, LAS agreed with the finding that it is in compliance with 45 CFR Part 1608.

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

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

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

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

None of the sampled files reviewed involved legal assistance with respect to fee-generating cases.

In response to the DR, LAS agreed with the finding that it is in compliance with 45 CFR Part 1609.

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

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

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

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

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

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

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

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may

be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

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

Based on a limited review of the chart of accounts and detailed general ledger (G/L) for specific G/L accounts for 2009 and for January through August 2010; observations of the physical locations of the offices; and from interviews with staff, LAS does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

The letter sent to donors complies with the requirements of 45 CFR § 1610.5 which requires that recipients provide the source of the funds with written notification of the prohibitions and conditions which apply to the funds.

Furthermore, LAS subleases 19,350 square feet of space to the University of Louisville's Louis D. Brandeis School of Law. The physical observation of the space disclosed its complete physical separation from LAS space. The review of the rent payments for 2008, 2009, and through August of 2010 indicated payments have been paid monthly and timely.

In response to the DR, LAS agreed with the finding that it is in compliance with 45 CFR Part 1610.

**Finding 16: LAS is in non-compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; LAS is in compliance with 45 CFR § 1614.4(3)(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data; LAS is in compliance with 45 CFR § 1614.4(3)(e)(ii) which is designed to ensure that programs shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees.**

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

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

Recipients are required to develop a PAI Plan and budget. *See* 45 CFR Part 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet legal needs, and the results of consultation with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. *See* 45 CFR §§ 1614.4(a) and (b).

Based on interviews, the procedures for PAI case oversight are as follows: Intake is conducted through the same procedures as staff cases. The cases are sent to a PAI attorney if it is within certain priorities set forth by the program. Subsequently, the case is referred to either a clinic or directly to a PAI attorney. Once confirmation is received that the PAI attorney has established contact with the client the case is entered into a PAI spread sheet. LAS sends status updates to the PAI attorneys every four months. According to the PAI managing attorney, she regularly reviews the status reports. The oversight and follow-up, as described by the managing attorney, are in compliance with LSC's requirements, however case file review revealed that several cases were dormant. According to the PAI coordinator, in many instances the PAI attorneys fail to respond to the status request repeatedly and there is no follow-up method that has been implemented to address this issue.

As such LAS is in non-compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. Cases did not evidence appropriate oversight.

LAS must conduct proper oversight of PAI cases in accordance with the requirements of 45 CFR § 1614.3(d)(3).

In response to the DR, LAS indicated that it has taken additional steps to ensure that all open PAI cases are monitored and, should a PAI client or participating attorney fail to timely respond as to the status of the case, the PAI staff will take steps to close the file. According to LAS it has since implemented a process whereby PAI staff run a quarterly report of all open cases with PAI attorneys and to follow-up on all open cases for a status update. In the event, more than 90 days

pass since the inquiry is made of the PAI attorney or the PAI client regarding the status of the case, the case will be closed.

The Audited Financial Statement (AFS) for Fiscal Year Ending December 31, 2009, reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). The AFS reported a total PAI expenditure of \$213,301 which translates to 16.9% of the total basic field grant (\$1,256,680), complying with the 12.5% requirement. The review of the spread sheet on the General Ledger Report which documents the allocation of PAI staff salaries for the calendar year ending December 31, 2009, disclosed that LAS correctly allocates the salaries of attorneys and paralegals on total workable hours supported by time records, and non-personnel costs are being allocated on the basis of reasonable operating data in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i).

Several costs allocated to PAI, including payments to private contract attorneys, were reviewed and found to be related to PAI activities. The review of contracts for the private contract attorneys indicated compliance with the requirements of 45 CFR § 1614.3(e)(1)(ii), which requires that programs maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. However, LSC recommends that LAS revise their contracts by stating that the attorneys or law firm will engage in a sub-grant agreement (LSC approval is necessary) if payments exceed \$25,000 in a year.

A review of 20 payments to private contract attorneys disclosed that they were well documented with the corresponding approvals. A review of five (5) payments to actual case files disclosed that work performed corresponded with the amount paid.

In response to the DR, LAS agreed with the finding that it is in compliance with 45 CFR Part 1614.4(3)(e)(1)(i) and 1614.4(3)(e)(ii).

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

LSC regulations, at 45 CFR § 1627.4, require 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 the years 2008, 2009, and January through June 2010, disclosed that LAS is in non-compliance with 45 CFR § 1627.4(a), and that all non-mandatory dues and fees are being paid with LSC funds. LAS paid,



with LSC funds, NLADA dues in the amount of \$7,750.00 for the years 2008, 2009, and 2010, respectively. LSC requests reimbursement to the LSC account in the amount of \$15,500.00 for the unauthorized payments of non-mandatory dues for the NLADA for the years 2008 and 2009. LAS should take corrective action for the \$7,750.00 payment in 2010 to be adjusted so that it is paid with non-LSC funds.

In response to the DR, LAS indicated it has paid \$7,750 per year in 2008, 2009, and 2010 for NLADA dues and CLASP subscription services. Of this \$7,750, LAS paid NLADA dues of \$6,750 and \$1,000 for CLASP subscription services. LAS agreed that dues paid to NLADA cannot, consistent with 45 CFR 1627.4(a), be paid with LSC funds. However, the portion relating to the CLASP subscription services in each of these years is properly characterized as a subscription service and LSC funds may be used. Thus, in 2008 and 2009, LAS paid a total of \$13,500 in NLADA dues. LAS requested, at a minimum, that OCE reconsider its finding that the payment of CLASP subscription services in these years was not a prohibited payment and reduce the amount of requested reimbursement to \$13,500.

After careful consideration of LAS' comments, LSC agrees to reduce the amount of requested reimbursement to \$13,500.

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

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

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity

during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

The information entered into the payroll system which is based on information from the time and attendance records are not being reviewed and approved by the corresponding manager or supervisor, and furthermore, the time and attendance records are not compared to the timekeeping records. LAS should implement the necessary controls and procedures to verify that the time reported on time and attendance records correspond to the timekeeping records reported by advocates, which then should be approved by the corresponding manager or supervisor.

The interviews with the Controller disclosed that there are no part-time case handlers working for an organization that engages in restricted activities in compliance with 45 CFR §1635.3(d).

Review of the timekeeping records of 15 cases selected from the Louisville office disclosed that the records in five of the cases are not accurately and contemporaneously kept. *See* Case Nos. 09E-41056886, 10E-41063749, 09E-41060456, 09E-41059780, and 09E-41060299. Many of these cases either had information documented in the timekeeping records that was not documented in the case file, or that was documented in the case file but not in the timekeeping records. LAS must ensure that the information in the timekeeping and case records are accurate and contemporaneous in order to comply with 45 CFR § 1635.1(a).

Furthermore, in many instances, LAS' timekeeping records do not specifically state the work being done by the advocate; rather they use case action codes, e.g., "H" for document preparation. It is recommended that LAS case advocates complete the "reason" column on the timekeeping records, rather than only using an action code, in order to have a more accurate reflection of the work done in the case.

LAS indicated it is in a transition period in which it is replacing its paper method of capturing time and attendance by implementing an electronic timekeeping system for time and attendance. This transition should be complete by June 2011. According to LAS it has relied upon the ACMS to properly reflect the time spent by an attorney or paralegal on cases, matters, or supporting activities. According to LAS, once both time systems are fully operational, the supervisor of the case handler should be able to review the reports in the ACMS and compare it to the submitted reports for time and attendance.

In response to the DR, LAS indicated it will continue to train staff on the necessity to enter timekeeping records for cases, matters and supporting activities contemporaneously. In response to the recommendation in the DR that LAS require activity notes in each time record rather than the use of common codes for certain activities a case handler routinely performs (e.g., telephone call to client; open mail; document preparation; letter to client), LAS indicated that these codes were developed as part of a collaborative statewide work with other Kentucky programs and are used to allow a case handler to easily select a code that describes the action taken without the necessity of typing a more detailed description. According to LAS, it follows this practice in recognition that a case handler is faced with a high volume of clients and in order to meet this demand for service, certain codes in the ACMS could expedite the recording and documentation

process. LAS indicated that as long as the code selected accurately captures the activity, it seems to be of little significance whether the case handler uses the code or actually types “prepared document” in the “reason” column. LAS indicated that many of its case handlers do use this “reason” column to provide more detailed descriptions of the time spent and the ACMS allows for that time entry to be entered directly into the case notes section of the case. LAS recognizes this could be a tool in which to capture and record in more detail all the information relating to the case handler’s activity. LAS will examine whether mandating such practices will affect the staff time available to otherwise assist other clients.

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

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

Limited review of the LAS fiscal records, specifically the 2009 Audited Financial Statements, and interviews with the Comptroller/Administrator evidenced that there were no attorneys’ fees awarded, collected, or retained for cases serviced directly by LAS that would violate this Part.

LAS agreed with the finding that it is in compliance with 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).**

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.

LAS agreed with the finding that it is in 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).**

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.

LAS agreed with the finding that it is in 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).**

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 define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).<sup>9</sup>

None of the sampled files reviewed involved initiation or participation in a class action.

LAS agreed with the finding that it is in 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).**

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

None of the sampled files reviewed revealed participation in litigation related to redistricting.

LAS agreed with the finding that it is in compliance with 45 CFR Part 1632.

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<sup>9</sup> It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

**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 of other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files reviewed involved defense of any such eviction proceeding.

LAS agreed with the finding that it is in compliance with 45 CFR Part 1633.

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

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

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person.

LAS agreed with the finding that it is in compliance with 45 CFR Part 1637.

**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.<sup>10</sup> This restriction has been contained in all subsequent appropriations acts.<sup>11</sup> This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

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<sup>10</sup> *See* Section 504(a)(18).

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

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity.

LAS agreed with the finding that it is in compliance with 45 CFR Part 1638.

**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.

None of the sampled files reviewed involved such activity.

LAS agreed with the finding that it is in compliance with 45 CFR Part 1643.

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

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

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

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

he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

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

LAS agreed with the finding that it is in compliance with other LSC statutory prohibition.

**Finding 29: A review of LAS' internal control policies and procedures found the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System. (Chapter 3 - Accounting Guide for LSC Recipients).**

LSC requires its recipients, under the direction of its board of directors, to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as the process put in place by the recipient's board of directors, management, and other personnel which is designed to provide reasonable assurance of achieving objectives of safeguarding of assets against unauthorized use or disposition, reliability of financial information and reporting; and compliance with regulations and laws that have a direct and material effect on the program. *See* Chapter 3 of the Accounting Guide for LSC Recipients (August 1997).

A review of LAS' internal control worksheet revealed that LAS' Controller has several functions, e.g., originates, reviews, approves, and posts the general ledger's journal entries; responsibilities with procurement; calculates and prepares payroll; maintains the payroll journal; prepares and reviews the payroll bank reconciliations; prepares bank deposit ticket; makes the deposit to the bank; and posts receipts to the ledger.

LAS should establish an adequate internal control structure as established in the Accounting Guide for LSC Recipients 2010 edition in chapter 3 – Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System.

In response to the DR, LAS has reviewed its internal controls worksheet which lists the other individuals involved in the duties identified in this Finding and finds that it meets the requirements of LSC's Accounting and Financial Reporting System. LAS requests OCE reconsider this finding. According to LAS, there is a segregation of duties within the established independent checks and proofs established in the Accounting Manual. LAS indicated that Internal controls and procedures are specified in cash receipts, cash disbursements, petty cash, payroll, bank reconciliations, client trust records, general journal, and general ledger. Furthermore, according to LAS, the Executive Director works with the Controller to project the budgets, and the Executive Director reviews the financial statements monthly.

During the compliance visit, it was noted that the Controller was initiating and recording the journal entries without the approval of another knowledgeable staff member. The majority of the

monthly journal entries are recurring. LAS indicated that the Executive Director now approves and initials all the journal entries.

In the DR, OCE's finding listed several duties which fall within the overall responsibility of the Controller: originates, reviews, approves, and posts the general ledger's journal entries (addressed above); calculates and prepares payroll; maintains the payroll journal; prepares and reviews the payroll bank reconciliations; prepares bank deposit tickets; makes the deposit to the bank; and posts receipts to the general ledger (addressed above). According to LAS, in all of these listed areas, the controller is not acting without the approval and check of another person on LAS staff. LAS indicated its procedures meet the requirements of its Accounting Manual which satisfies the 2010 Accounting Guide for LSC recipients.

After careful consideration of LAS' comments and a review of LAS' Segregation of Duties Summary, LSC finds that LAS' internal control policies and procedures satisfy the requirements of LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System. (Chapter 3 - Accounting Guide for LSC Recipients).

**Finding 30:** Bank Reconciliations for July and August 2010 were reviewed for all bank accounts and were found to be performed timely, accurately, and with the corresponding approvals.

The bank reconciliations for the July and August 2010 operating client trust and investment accounts were reviewed and found to be reconciled in a timely manner with the bank statement balances of the General Ledger and with the corresponding approvals.

LAS agreed with the finding that it timely, accurately and properly records and reconciles its bank accounts.

**Finding 31: LAS' Accounting Manual meets the requirements of the 2010 Accounting Guide for LSC Recipients.**

A review of LAS' Accounting Manual disclosed that it meets the requirements of the 2010 Accounting Guide for LSC Recipients.

LAS agreed with the finding that its Accounting Manual meets the requirements of the 2010 Accounting Guide for LSC Recipients.

**Finding 32: The review of payables disclosed that payments had sufficient supporting documents; however, the majority of the supporting documents have no indication of payment**

A limited review of payables, including usage for two credit cards and payments for 2009 and January through August 2010, disclosed adequate supporting documentation and corresponding



approvals; however, there is no indication of payment on these documents. LAS should take corrective action and indicate “as paid” on all supporting documents to avoid duplicate payments.

In response to the DR LAS stated that every invoice has been marked paid with at least the date so as to avoid duplicate payment.

**Finding 33: LAS gives salary advances for emergencies to be repaid within the following pay period.**

A review of salary advances for 2008, 2009, and 2010 disclosed that the salary advances are minimal and are being deducted within the following pay period. The review did not disclose any outstanding advances beyond the authorized period.

According to LAS’ policies and procedures, an employee can request a salary advance for emergencies to be repaid at the following pay period contingent on an employee having sufficient accrued leave and/or sufficient credited hours worked to cover the amount of the salary advance. The advance to the employee is less than their normal pay for the period and this advance is deducted from their next regular paycheck. According to LAS, it has sufficient controls over salary advances to guard against abuses or financial risk to the organization.

#### IV. RECOMMENDATIONS<sup>12</sup>

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

1. Be consistent in clearly documenting the authorized exceptions if the client's income exceeds 125% of the FPG, regardless of the nature of the case.

In response to the DR, LAS indicated it has taken steps to ensure rigorous compliance with the requirements of 45 CFR Part 1611. LAS indicated it has modified its ACMS to create a specific inquiry and field in which to record those factors which may allow LAS to determine an applicant eligible when the household income exceeds 125% but is no more than 200% of the Federal Poverty Guidelines. According to LAS this modification allows the screener to record in a specific field any or all factors which allow for eligibility for when the household income exceeds 125% but is also more than 200% of the FPG.

2. Revise their contracts by stating that the attorneys or law firm will engage in a sub-grant agreement (LSC prior approval is necessary) if payments exceed \$25,000 in a year.

LAS did not provide a response to this recommendation.

3. Complete the "reason" column on the timekeeping records, rather than only using an action code, in order to have a more accurate reflection of the work done in the case.

LAS indicated that these codes were developed as part of a collaborative statewide work with other Kentucky programs and are used to allow a case handler to easily select a code that describes the action taken without the necessity of typing a more detailed description. According to LAS, it follows this practice in recognition that a case handler is faced with a high volume of clients and in order to meet this demand for service, certain codes in the ACMS could expedite the recording and documentation process. LAS indicated that as long as the code selected accurately captures the activity, it seems to be of little significance whether the case handler uses the code or actually types "prepared document" in the "reason" column.

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<sup>12</sup> Items appearing in the "Recommendations" section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

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

## V. REQUIRED CORRECTIVE ACTIONS

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

1. LAS must ensure that the correct case file information is entered and recorded in the automated case management system;

In response to the DR, LAS provided training to staff in October 2010, following the visit from OCE, to properly and timely use the ACMS so to ensure that reports and data exported from the ACMS accurately reflects the services provided, client eligibility information, and other related documentation. According to LAS, it's ACMS and the reports produced depend greatly upon the accuracy of the data inputted by the user. To guard against the production of reports that may contain inaccurate entries in the underlying data, LAS management indicated it has defined methods in which to sort and filter data in running reports. According to LAS, the three identified LAS managers, who produce reports, are sufficiently familiar with the filtering and sorting processes to ensure any inadvertent data errors are excluded and do not compromise the integrity of final reports.

2. LAS should provide training to intake staff on the program's policies regarding 45 CFR § 1626.6(a) (citizenship verification); 45 CFR § 1611.7(a) (reasonable income prospects screening); 45 CFR § 1611.5 (exceptions to annual income ceiling); and 45 CFR § 1611.3(c)(2) (waivers of annual income ceiling); and revise its Intake/Problem Assessment form so that they are consistent with LSC regulations and LAS' financial policies. Intake staff should also be trained on the applicability of 45 CFR § 1626.4, Program Letter 06-02, and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance. Additionally, intake staff should incorporate duplicate and conflict checks into the intake screening process to ensure that all applicants are properly screened prior to case acceptance;

In response to the DR, LAS has undertaken training of all staff charged with intake functions to ensure that they are educated as to the relevant rules, factors, and processes to properly screen for eligibility and document these decisions in the ACMS. Furthermore LAS indicated it will conduct a monthly review of a random sampling of applicant files for the first six months of 2011 to ensure these trainings have produced compliance with LAS' identified processes.

3. LAS must ensure when the client's income exceeds 125% of the FPG that authorized exceptions are noted in the case file for every case that is funded with LSC funds and is intended to be included in the CSR data submission reporting.

In response to the DR, LAS indicated it has taken steps to ensure rigorous compliance with the requirements of 45 CFR Part 1611. LAS indicated it has modified its ACMS to create a specific inquiry and field in which to record those factors which may allow LAS to determine an applicant eligible when the household income exceeds 125% but is no more than 200% of the Federal Poverty Guidelines. According to LAS this modification allows the screener to record in a specific field any or all factors which allow for eligibility for when the household income exceeds 125% but is also more than 200% of the FPG.

4. LAS should revise its income and asset policy by specifying and determining that the income standards of the governmental programs are at or below 125% of the FPG and that the governmental program has eligibility standards which include an assets test;

In response to the DR, The LAS Board of Directors approved an amended policy regarding eligibility for those clients whose income is derived from a governmental program. The amended policy now specifies those governmental programs which have an asset test which allows for a determination of an applicant's eligibility without LAS conducting an independent determination of assets or income. Furthermore, according to LAS it's Intake Manual and ACMS has now been modified to require specific actions to document which governmental program is the basis of the eligibility determination. LAS indicated that intake screeners have been trained on the use of this new policy and the process involved in correctly documenting this in the ACMS.

5. LAS must ensure that all case files contain citizenship attestations, where appropriate, and that all attestations comply with the requirements of CSR Handbook (2008 Ed.), § 5.5;

In response to the DR, LAS indicated it has reviewed all cases closed in 2010 and all currently open cases to ensure that this regulatory requirement is met. According to LAS it is satisfied that it has sufficiently reviewed its cases to be reported to LSC as part of its 2010 CSRs so as to ensure compliance with this requirement. Additionally, according to LAS, it undertook training of all case handlers at its mandatory trainings in October 2010 following the OCE visit to emphasize the importance of obtaining signed citizenship attestation statements.

6. LAS must ensure that the retainer agreements contain a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided in order to comply with 45 CFR § 1611.9(a);

According to its response to the DR, LAS will commit to further training of staff on the necessity of executing retainer agreements which must include descriptions of the scope of the work involved. LAS indicated it will monitor closed cases for compliance with this requirement and will institute, as necessary, random inspection to ensure continued compliance. In response to the DR, LAS indicated it conducted training on this specific

issue at its mandatory training of all case handlers in October 2010 following the visit from OCE.

7. LAS must ensure that, prior to closing a case, any legal assistance provided is properly documented in all case files where applicable, and that case files lacking documented legal assistance are not reported to LSC during the CSR data submission;

According to LAS, of the 13 cases referenced in the DR, 11 of these cases would not have been reported to LSC because the client either, withdrew, failed to connect with the volunteer attorney, or for some other reason, preventing the delivery of services to the client. As such, LAS indicated that these 11 cases were properly coded within its ACMS as “not CSR reportable.” Thus, they would not have been included in LAS’ 2010 CSRs;

8. LAS must ensure staff is trained on the CSR Closure Categories;

In response to the DR, LAS indicated it has conducted a mandatory training on closing codes. According to LAS it will monitor case handlers’ compliance and adherence to these closing codes during periodic reviews of closed cases in 2011 and will determine if further training is necessary.

9. LAS must choose a method for identifying deselected cases other than using case Closing Category “K” or any other LSC closing category;

LAS indicated it has implemented a new process which adds new steps and provides further safeguards to assure LSC that LAS has an appropriate “deselection” process. According to LAS it has added a new “Reason Closed” closing code – “X” for no service. It has also created a new “Case Type” –“X”. These two codes are now used for reflecting a case where there has been no service or there is no evidence of service in the file. A case handler must still use the “CSR eligible” box to indicate whether the case is CSR reportable. However, according to LAS case handlers are not to use closing code “K”, unless they speak with a supervisor and discuss why the underlying facts of the case would require the use of closing code “K”.

10. LAS must ensure cases are closed in a timely manner. LAS must conduct efficient oversight of cases to prevent cases from becoming dormant or being untimely closed;

In response to the DR, LAS indicated it is committed to ensuring that cases are closed timely upon completion of the service to the client in accordance with LSC’s CSR Handbook. According to LAS it has conducted training of all case handlers on the requirements of timely closing cases. LAS indicated it has taken additional steps of providing case supervisors with case management reports to review and examine any cases in which there have been no time records in the past 90 days. According to LAS it will continue through 2011 this practice of providing case management reports and requiring case handlers to identify what reasons exist for a case to remain open if no activity has occurred with the past 90 days;

Furthermore, according to LAS it requires that a case supervisor review a case handler's open cases at each quarterly case review meeting. LAS indicated it has also implemented a process whereby case supervisors are provided a listing of "aged cases" where the ACMS has not recorded any time activity related to that open case. According to LAS these two processes will address OCE's concerns where cases have no evidence of activity and appear dormant.

11. LAS must conduct proper oversight of PAI cases in accordance with the requirements of 45 CFR § 1614.3(d)(3);

In response to the DR, LAS indicated it has taken additional steps to ensure that all open PAI cases are monitored and, should a PAI client or participating attorney fail to timely respond as to the status of the case, the PAI staff will take steps to close the file.

12. LSC requests reimbursement to the LSC account in the amount of \$15,500.00 for the unauthorized payments of non-mandatory dues for the NLADA for the years 2008 and 2009 and LAS should take corrective action for the \$7,750.00 payment in 2010 to be adjusted so that it is paid with non-LSC funds;

In response to the DR, LAS indicated it has paid \$7,750 in 2008, 2009 and 2010 for NLADA dues and CLASP subscription services. Of this \$7,750, LAS paid NLADA dues of \$6,750 and \$1,000 for CLASP subscription services. LAS agrees that dues paid to NLADA cannot, consistent with 45 CFR § 1627.4(a), be paid with LSC funds. However, the portion relating to the CLASP subscription services in each of these years is properly characterized as a subscription service and LSC funds may be used. Thus, in 2008 and 2009, LAS paid a total of \$13,500 in NLADA dues.

13. LAS should implement the necessary controls, and procedures to verify that the time reported on time and attendance records correspond to the timekeeping records reported by advocates, which then should be approved by corresponding manager or supervisor;

LAS indicated it is in a transition period in which it is replacing its paper method of capturing time and attendance by implementing an electronic timekeeping system for time and attendance. This transition should be complete by June 2011. According to LAS it has relied upon the ACMS to properly reflect the time spent by an attorney or paralegal on cases, matters, or supporting activities. According to LAS, once both time systems are fully operational, the supervisor of the case handler should be able to review the reports in the ACMS and compare it to the submitted reports for time and attendance.

14. LAS must ensure that the information in the timekeeping and case records are accurate and contemporaneous in order to comply with 45 CFR § 1635.1(a); and

In response to the DR, LAS indicated it will continue to train staff on the necessity to enter timekeeping records for cases, matters and supporting activities contemporaneously.

15. LAS should establish an adequate internal control structure as established in the Accounting Guide for LSC Recipients 2010 edition in chapter 3 – Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System.

In response to the DR, LAS indicated that it has reviewed its internal controls worksheet which lists the other individuals involved in the duties identified in Finding 29 and finds that it meets the requirements of LSC's Accounting and Financial Reporting System. After careful consideration of LAS' comments and a review of LAS' Segregation of Duties Summary, LSC finds that LAS' internal control policies and procedures satisfy the requirements of LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System. (Chapter 3 - Accounting Guide for LSC Recipients).

**Legal Aid Society Response and Comment**  
**CSR/CMS Visit, Recipient No. 618010**

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**Draft OCE Report, November 23, 2010**

**Finding 1: Sampled cases evidenced that LAS' automated case management system (ACMS) is insufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.**

**LAS Response and Comment:**

**LAS Response:** LAS's review determined that at least four cases cited by OCE reflected the ACMS was recording client data information in a proper manner sufficient to produce timely and accurate reports. In view of the other twelve instance cited by OCE, LAS provided training to staff in October 2010, following the visit from OCE, to properly and timely use the ACMS so to ensure that reports and data exported from the ACMS accurately reflects the services provided, client eligibility information, and other related documentation.

**LAS Comment:** LAS implemented its first ACMS, Kemps Caseworks, in 2001. LAS has upgraded to the most recent version of this case management system software, Kemps Clients Prime, in 2006. The selection of this ACMS and the implementation was done in conjunction with the other Kentucky LSC-funded programs. Jointly, as part of statewide planning and coordination, the Kentucky programs agreed to purchase and use Kemps software as a common ACMS. The four programs have collaborated on the modifications to this software program and have established a Kemps Users Group with representatives from the four programs to identify issues and assist in making modifications, as necessary.

LAS staff was trained on Clients Prime when this newest upgrade was implemented at LAS in 2006. At each new employee's orientation, the employee is given instructions on how to use the ACMS to record client or applicant information, activity, time spent, and other information related to the client service. In addition, tutorials on specific topics of the ACMS are stored on the computer network and are available at any time for staff to review as a refresher.

Reports are generated from the ACMS generally by the Advocacy Director and, on occasion, the Executive Director or IT Manager. These reports are used by case handlers for case reviews or are used to review department workload. Client service statistics are also produced to report to funders and to ensure compliance with any regulatory requirements.

As in any process in which human error in data entry is possible, LAS's ACMS and the reports it produces depends greatly upon accuracy of data input by the user. To guard against the production of reports that may contain inaccurate entries in the underlying data, LAS management has defined methods in which to sort and filter data in running



reports. The three identified LAS managers who produce reports are sufficiently familiar with the filtering and sorting processes to ensure any inadvertent data errors are excluded and do not compromise the integrity of final reports.

LAS's current ACMS is capable and sufficiently detailed in operations to provide LAS with the ability to respond timely to funders with accurate data and reports. To the extent that OCE has identified instances in which information in the ACMS appears to be in variance from information in the client file, LAS recognizes a need, on an ongoing basis, to ensure staff are properly trained on the ACMS and provided with refresher training, as necessary.

OCE's draft report indicates there were nineteen instances found where the ACMS was insufficient to ensure accurate information. However, only twelve examples were documented in the report. Of these twelve cited, LAS has determined that in four instances the ACMS reflects the correct information in both the client data sheets and in the reports that were printed and provided to OCE. LAS requests these four cases not be included in the finding. Of the remaining eight instances cited by OCE, five of these instances involve the use of proper CSR closing codes (See Finding 10) and are addressed later. Thus, in only three instances cited was there a variance between the underlying data and the information recorded in the ACMS.

LAS's review of the twelve instances cited by OCE details the following:

Cases and problems cited by OCE:

09E-44058689 (closing date on list appears in variance with client file)

08E-44054810 (closing date on list appears in variance with client file)

08E-41054798 (funding code in ACMS suggests erroneous funding code)

09E-41060430 (funding code in ACMS suggests erroneous funding code)

The individual client data sheets for each of these cases are attached in **Appendix A** with certain information that is not relevant to this review redacted. For the following reasons, LAS believes the ACMS properly has recorded the client data information contrary to OCE's findings.

09E-44058689 – ACMS record shows a closing date of 12/10/2009. The case notes reflect that the casehandler made an entry on 12/11/2009 "review file and close". At this office, the casehandler gives the file to a secretary to make the entries into the ACMS as he directs, then the casehandler reviews the final printout for accuracy. This entry indicates this process and LAS views this as a timely and proper entry and record in the ACMS. Most importantly, the list provided to OCE shows date closed as 12/10/2009 which is consistent with the closing date on the client data sheet. LAS reports are generated based on this entry in this field in the client data sheet, not by a time entry in case notes indicating an administrative task was completed. There is no variance between the client data sheet and the report produced.

08E-44054810 – ACMS record shows a closing date of 6/30/2009. The list provided to OCE shows a date closed of 6/30/2009. There is no variance between the client data sheet and the report produced.

08E-41054798 – ACMS lists the funding code for this file as LSC. This is proper and correct. The case notes attached to this client file indicate an initial assessment that this client may have an issue that could be resolved by LAS's Low-Income Tax Clinic; after a quick review by the tax attorney it was determined that the issue should be handled by the staff attorney for the county where the client resided. This service was funded through LSC funds as the client data sheet in the ACMS correctly notes.

09E-41060430 – The case list provided to OCE lists this case as funded with non-LSC funds. ACMS lists the funding code for this file as PAI, which represents a blend of revenue sources not necessarily LSC. This case started as a pro-bono case and was coded as Case Type "P" and placement with a volunteer attorney was attempted; however, because of the client's vision impairments, LAS determined that the service was better performed by staff. The case was then assigned to a staff attorney, the Case Type was changed to "S" for "staff" and the service completed. The staff attorney provided the service was funded with non-LSC funded The ACMS correctly lists this service as a S case-type and it correctly appears on the case list provided to OCE as a non-LSC staff case.

LAS requests that these four cases discussed in OCE's draft report not be included in the finding.

Of the remaining eight instances cited by OCE, five of these instances involve the use of proper CSR closing codes and whether the proper closing code was either an A/B or an L. See Case No. 09E-41063073; Case No. 09E-41061771; Case No. 07E-41039102; Case No. 10E-41064343; and, Case No. 10E-41067146. The variance between the client file showing a A/B closing code and the ACMS reflecting a closing code "L" is a result of a management policy decision that CSR closing codes were tied to complexity of case service and hours of case activity. As a result, LAS believed many of the CSR case entries by individual case handlers at time of case closure underestimated the complexity of the service based on hours of service; these were changed to a higher level of service "L" in the ACMS in an attempt to ensure that the services were properly reflected in the reports. The distinction and the trigger between the differing levels of services and CSR closing codes, particularly B and L, was extensively discussed with the OCE team during the site visit at LAS. This forms the basis for OCE's Finding 10 and closing code errors and is discussed later in this response.

These five instances cited here may support OCE's determination in Finding 10, but it seems inappropriate to use them for a finding that the ACMS has failed to properly document and record the underlying data. The failure in these five instances cited is the good faith attempt by LAS to correct what it believed to be a systemic problem – staff closing cases with an A or B when LAS believed the case should have a closing code L based on the number of service hours involved. The error is a policy error arising from

LAS's misinterpretation of CSR closing codes, but not evidence of a flawed ACMS and how it is used to collect and record data.

Of the remaining three instances cited by OCE, LAS acknowledges in these three cases the entries in the ACMS do not properly reflect the underlying data – e.g., problem code or number of individuals in household. LAS trained staff in October 2010 at mandatory sessions on how to ensure entries in the ACMS are made timely and accurately. LAS will continue to monitor staff's adherence to these procedures.

LAS believes number of actual errors in the ACMS in the representative sample OCE cites is much reduced from those listed in Finding 1 and would request OCE reconsider this finding and, at a minimum, determine that LAS's ACMS substantially gathers and reports the information necessary for effective management of cases and reporting, but that LAS could reduce errors with training.

**Finding 2: LAS' intake procedures do not support the program's compliance related requirements.**

**LAS Response and Comment:**

**LAS Response:** LAS recognizes the importance that its front-line staff be knowledgeable of the regulations, eligibility factors, and processes to make eligibility decisions. LAS has undertaken training of all staff charged with intake functions to ensure that they are educated as to the relevant rules, factors, and processes to properly screen for eligibility and document these decisions in the ACMS. LAS commits to ongoing training of staff to ensure continued compliance.

**LAS Comment:** LAS conducts eligibility screening for approximately 10,000 applicants for services annually. Ninety-eight percent of these applicants are screened by the staff of the Intake Brief Services Unit at its main office. The other two percent (approximately 150-200 applicants) seek help from the HIV/AIDS Legal Project.

Of those who apply to the HIV/AIDS Legal Project, a majority of these individuals have been prior clients of the Legal Project in past two years on other legal issues. The Legal Project serves a targeted client population that consists of no more than approximately 2,000 individuals in LAS's service area. Most of the individuals seeking assistance from the Legal Project require assistance on matters involving government benefits decisions, life-planning documents, consumer defense issues, or other matters which rarely, if ever, raise any potential conflict of interest in the course of representation. Most of these applicants for services are referred to the Legal Project from social workers who have these clients in case-management and have gathered citizenship, financial, and related information from these clients preparatory to providing social work services. Clients in case management sign a release for the Legal Project to obtain this information from the social worker.

Most intake screening of applicants at LAS is conducted by the main office by five trained intake staff of the Intake Brief Services Unit. These intake screeners are trained and supervised by a Managing Attorney. They meet weekly to review unit issues, implement new processes, and discuss concerns. The managing attorney provides training to intake screeners on each of the compliance related requirements. An IBS Manual has been developed which details the processes the intake screener is to follow and the factors which may be considered in the screening process. This manual is provided to each intake screener and guides the intake process. LAS recognizes that each applicant is an individual in crisis and that the eligibility screen must be sensitive and dynamic to that individual. Nonetheless, each intake screener is to ensure that the relevant eligibility factors have been considered and documents, as needed.

OCE team members spoke with selected individuals performing intake screening functions at both the HIV/AIDS Legal Project and the main office. Based on the responses provided by staff at the HIV/AIDS Legal Project to the OCE team member, LAS agrees that the staff members were not uniformly following the processes required by LAS in conducting intake screening. LAS has met with staff and provided them with training on:

- Citizenship verification requirements (e.g., written attestation signed if in-person contact with applicant);
- Reasonable income prospects (e.g., making an inquiry into reasonable income prospects; this is addressed also by LAS's response in Finding 3);
- Exceptions to annual income ceiling (e.g., economic factors to consider for applicants whose incomes exceed 125%);
- Waivers of annual income ceiling (e.g., as approved by Executive Director);
- Revision of the Problem Assessment Form used by the HIV/AIDS Legal Project so it inquires into those areas required by LSC regulations (e.g., reasonable income prospects, etc.);
- The guidance offered by 45 CFR 1626.4, Program Letter 06-02, and the 2006 VAWA Amendments involving non-citizen applicants; and,
- Conflict checks and duplicate record checks.

This training of staff at the HIV/AIDS Legal Project occurred in December 2010 and LAS is monitoring monthly staff member's adherence to these processes.

LAS also provided this same training to the intake screeners at the Intake Brief Services Unit of LAS's main office. LAS will conduct a monthly review of a random sampling of applicant files for the first six months of 2011 to ensure these trainings have produced compliance with LAS's identified processes.

Lastly, OCE identified that LAS was using food stamps in calculating an applicant's income. Intake screeners did previously document on the eligibility screen of the ACMS that an applicant received food stamps; for recording purposes this was entered into one of the available drop down boxes in the income chart and the amount of food stamps received was also entered. OCE identified this as a practice in which LAS was including this value in calculating income. LAS's practice was not and is not to include the value

of food stamps in calculating income. This notation was made in the income chart because the ACMS did not otherwise provide any field for this entry. This entry in the income chart was not used by intake screeners to deny an otherwise eligible applicant and in OCE's review of the sampled cases, there was no instance identified in which LAS erroneously denied service to an otherwise financially eligible applicant.

LAS has since modified its ACMS to allow for intake screeners to inquire and document whether an applicant is receiving food stamps. This screening inquiry is now documented by a check box as part of the asset test which LAS conducts. See LAS response to Finding 4. This modification of the ACMS and the subsequent training of intake staff eliminates the prior processes and the risk of any error in including food stamps as income.

**Finding 3:** Sampled cases evidenced that LAS substantially maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG).

**LAS Response and Comment:**

**LAS Response:** LAS agrees that it complies with LSC's requirement that income eligibility be documented and that, in instances where the applicant's income exceeds 125% of the Federal Poverty Guidelines, it has substantially documented in the client file and/or in the ACMS those factors evidencing eligibility. LAS has taken additional steps at the recommendation of OCE to refine its processes so that these eligibility decisions and factors may be recorded in the ACMS by means of a standardized check list.

**LAS Comment:** In 2005, LSC amended 45 CFR 1611 to allow grant recipient programs to consider specified factors in determining financial eligibility when the household income exceeds 125% but is no more than 200% of the Federal Poverty Guidelines. LAS amended its income and asset policy that same year. LAS's policy, as specified in its Client Income and Asset Eligibility Policy and as implemented in its Intake Manual, requires intake screeners to document in the client file and ACMS those applicant factors which allow LAS to determine an applicant eligible when the household income exceeds 125% but is no more than 200% of the Federal Poverty Guidelines.

LAS policy and practice has been to document those factors in the ACMS in the case notes field. In some instances, the client file case note section may not contain specific reference to factors but because of the nature of the case, it is evident in the file that the client has a fixed debt or obligation establishing financial eligibility. LAS believes these practices have allowed it to demonstrate it is in substantial compliance with the requirements of 45 CFR 1611.

Nonetheless, LAS has taken steps to ensure rigorous compliance with the requirements of 45 CFR 1611. LAS modified its ACMS to create a specific inquiry and field in which to record those factors which may allow LAS to determine an applicant eligible when the household income exceeds 125% but is no more than 200% of the Federal Poverty Guidelines. This modification allows the screener to record in a specific field any or all factors which allow for eligibility for when the household income exceeds 125% but is no more than 200% of the Federal Poverty Guidelines.

**Finding 4:** Sampled cases evidenced that LAS 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.

#### **LAS Response and Comment:**

**LAS Response:** Following the OCE team visit in September 2010, the LAS Board of Directors approved an amended policy regarding eligibility for those clients whose income is derived from a governmental program. The amended policy complies with the requirements of 45 CFR 1611 in that the LAS Board of Directors has specified those governmental programs which have an asset test which allows for a determination of an applicant's eligibility without LAS conducting an independent determination of assets or income.

**LAS Comment:** LAS Board of Directors amended its Client Eligibility and Income Policy in September 2005, following LSC's amendment of 45 CFR 1611. This amendment was made based upon a review of the policy by an OCE team visit to LAS in June 2005. During the OCE visit in September 2010, LAS was advised that the regulatory language required the LAS Board of Directors to specifically list any government program which it determined had a sufficient asset test so as to render the LAS asset inquiry unnecessary. The language of the 2005 board policy listed programs in a descriptive manner, but it did not specifically state such list was exclusive.

During the OCE team visit in September LAS made revisions to this policy and provided a draft of these revision to the OCE team for review and approval by LSC's Office of Legal Affairs. In the absence of any response by Office of Legal Affairs, the LAS Board of Directors amended the policy by adopting these changes at its next regularly scheduled board meeting in October. The policy adopted is attached to this response. See **Appendix B**. This policy now specifically lists those programs which the LAS Board of Directors has determined has an asset test which allows for a determination of an applicant's eligibility without LAS conducting an independent determination of assets or income.

If an intake screener relies upon this governmental program asset test in determining an applicant's eligibility for LAS services, the Intake Manual and ACMS has now been modified to require specific actions to document which governmental program is the basis of this decision.

Intake screeners have been trained on the use of this new policy and the process involved in correctly documenting this in the ACMS. A random sampling of cases in which eligibility has been determined according to this provision indicates intake screeners are appropriately making such determinations and recording the eligibility decision.

**Finding 5: Sampled cases evidenced non-compliance with 45 CFR § 1626.6 (Verification of Citizenship).**

**LAS Response and Comment:**

**LAS Response:** LAS takes seriously the regulatory requirement that as a grant recipient it must document properly it is providing services to citizens or eligible aliens and in the absence of proper documentation must not report assistance rendered to applicants to LSC. LAS has reviewed all cases closed in 2010 and all currently open cases to ensure that this regulatory requirement is met. LAS is satisfied that it has sufficiently reviewed its cases to be reported to LSC as part of its 2010 CSRs so as to ensure compliance with this requirement.

**LAS Comment:** LAS modified its citizenship attestation process in 2008 after LSC changed its rules so as to disallow any yes/no or checkbox to satisfy the citizenship attestation requirements. This modification to its retainer form occurred in August 2008 and was distributed to staff.

Unfortunately, some staff failed to destroy prior versions of the retainer form and it was still in limited use after January 1, 2009. Some staff members failed to contact clients with open cases in January 2008 and these clients failed to execute the new form containing the required written citizenship attestation. These oversights by staff resulted in some of the instances cited by OCE in the sampled cases.

During the OCE team visit, LAS ran a ACMS report that detailed the number of cases which were open on January 1, 2009 (the date at which programs were required to change from a yes/no checkbox and adopt a signed citizenship attestation in a specified written form). This report indicated that as of that date:

Of those cases which remained open on January 1, 2009:

**Staff Cases:**

63 cases had been closed in 2010 - These cases were pulled to ensure that properly signed attestation agreements were in the file. If any files failed to contain these, the files were closed and these cases will not be reported in LAS 2010 CSRs.

135 cases remained open in 2010 – These cases were pulled to ensure that properly signed attestation agreements were in the file. If any files failed to contain these, the client was asked to sign an attestation agreement. In the absence of a signed attestation agreement, the case file was closed and will not be reported in LAS 2010 CSRs.

PAI Cases:

18 cases had been closed in 2010 -- These cases were pulled to ensure that properly signed attestation agreements were in the file. If any files failed to contain these, the files were closed and these cases will not be reported in LAS 2010 CSRs.

66 remain opened in 2010 -- These cases were pulled to ensure that properly signed attestation agreements were in the file. If any files failed to contain these, the client was asked to sign an attestation agreement. In the absence of a signed attestation agreement, the case file was closed and will not be reported in LAS 2010 CSRs.

These steps taken by LAS will ensure that a file opened prior to 2008 and which remains open or is closed in 2010 will contain a proper citizenship attestation agreement.

LAS additionally undertook training of all case handlers at its mandatory trainings in October 2010 following the OCE visit to emphasize the importance of obtaining signed citizenship attestation statements. See **Appendix C** for training materials.

**Finding 6:** Sampled cases evidenced non-compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

**LAS Response and Comment:**

**LAS Response:** LAS recognizes the importance of having a signed, written document with the client that provides sufficient detail as to the scope of the representation and defining expectations. LAS has a form retainer agreement which it uses for such purposes. Case handlers are trained to execute this retainer agreement with the client when service extends beyond advice and counsel and involves in-person contact with the client. LAS will commit to further training of staff on the necessity of executing retainer agreements which must include descriptions of the scope of the work involved. LAS will monitor closed cases for compliance with this requirement and will institute, as necessary, random inspection to ensure continued compliance.

**LAS Comment:** LAS has long used retainer agreements with clients to detail LAS's obligations, the client's responsibilities, reasonable expectations, and the scope of work involved. This requirement is stated in LAS's Policy and Procedures Manual. By signing this retainer agreement, both LAS and the client agree to the terms specified and provide a foundation for the work ahead. Case handlers are trained in LAS's processes and the requirements for properly and timely executing a retainer agreement.

OCE identified 15 files in which retainer agreements were not signed or the scope of work not sufficiently detailed to inform the client of the legal work anticipated. While these oversights do not make these cases ineligible for reporting to LSC, LAS agrees they do not reflect best practices in ensuring every case, other than advice or counsel, in which there is in-person contact, however simple or complex, contain a signed retainer agreement detailing the scope of legal assistance to be provided.



LAS conducted training on this specific issue at its mandatory training of all case handlers in October 2010 following the visit from OCE. See **Appendix C** for training materials. Cases closed subsequent to this training are all reviewed to ensure a signed retainer agreement is executed with the client.

LAS will continue this oversight and monitoring during the first two quarters of 2011 to ensure continued adherence to this LAS policy.

**Finding 7: Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).**

**LAS Response and Comment:**

**LAS Response:** LAS provides staff written instructions as directed by 45 CFR Part 1636 to ensure that LAS obtains written and dated Client Identity and Statement of Facts sheets, where applicable. Of the sample reviewed (338 cases), only one file lacked evidence of supporting documentation. LAS has since obtained a copy of the underlying petition which is now included in the file. LAS is in compliance with 45 CFR 1636.

**LAS Comment:** LAS's Policy and Procedures Manual provides written instruction to staff on the requirements of 45 CFR Part 1636 (Client Identity and Statement of Facts). Case handlers are trained at orientation on these requirements and their supervisors review closed files to ensure these requirements are met.

Of the 333 cases reviewed by OCE only one file (Case No. 08E-41046466) lacked the underlying supporting documentation in the file which would have satisfied the requirements of 45 CFR 1636. This case involved a domestic violence victim who contacted our office after the victim filed her petition on her own for the protective order. A LAS staff attorney appeared in court for the court hearing and obtained the protective order. At the time of the OCE team visit, the file did not contain the underlying petition which was filed at the time by the victim. This petition is signed and dated and complies with the requirements of 45 CFR 1636. This file is, therefore, properly included in the 2008 CSR which were submitted at the time and evidences LAS's compliance with the regulation.

The failure to have such documentation in the file at the time of the OCE team visit, at a minimum, evidences a failure in one instance out of a sampling of 338 cases – a .2% failure rate. LAS requests that OCE reconsider this finding and, at a minimum, determine that LAS is in substantial compliance with 45 CFR 1636.

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

**LAS Response and Comment:**

**LAS Response:** LAS agrees with this finding that it is in compliance with 45 CFR Part 1620.4 and 1620.6(c).

**Finding 9:** Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). Thirteen cases reviewed did not contain a description of the legal assistance provided.

**LAS Response and Comment:**

**LAS Response:** LAS's review of the cases cited reveals that in only two instances is there insufficient documentation or description of the legal assistance provided. LAS maintains sufficient case closing procedures to comply with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

**LAS Comment:** Section 5.6 of the CSR Handbook requires "for each case reported to LSC, the client's case file or the CMS must contain a description of the legal assistance provided to the client." (Emphasis added). OCE cites thirteen cases in which it determined LAS failed to properly or sufficiently document what legal assistance was provided. However, of these thirteen cases, LAS has determined upon review that eleven of these cases would never have been reported to LSC because the client withdrew, failed to connect with the volunteer attorney or for some other reason preventing the delivery of services to the client. As such, these eleven cases were properly coded within LAS's ACMS as "not CSR reportable." Thus, they would not have been included in LAS's 2010 CSRs. The following listing documents LAS's research regarding this finding:

Case No. 09E-44060797

Opened 9/15/09. Closed 9/9/10. Client did not continue contact. Will not be in 2010 CSR report.

Case No. 08E-41054164

Opened 11/4/2008. Closed 12/31/10. Client assigned to PAI attorney, but failed to provide requested information for service to occur. PAI attorney reports in 2010 no further client contact. Will not be in 2010 CSR report.

Case No. 08E-41054511

Opened 11/20/2008. Closed 12/31/10. Client assigned to PAI attorney, but failed to remain in contact for services to be delivered. Will not be in 2010 CSR report.

Case No. 08E-41054513

Opened 11/20/2008. Closed 12/31/10. Same client as in Case No. 08E-41054511 and file opened same day. Same outcome as in prior case – client failed to remain in contact. Will not be in 2010 CSR report.

Case No. 07E-4104065  
No such case listed in LAS system.

Case No. 08E-41049956  
Opened 5/29/2008. Closed 12/31/10. Client assigned to PAI attorney, but failed to remain in contact for services to be delivered. Will not be in 2010 CSR report.

Case No. 10E-41067826  
Opened 6/19/10. Closed 6/19/10. Walk-in client was provided a questionnaire so she could attend an upcoming divorce clinic. Not closed as a legal service (see Case Type "X"). Closed in the ACMS same day it was opened. Will not be in 2010 CSR report.

Case No. 10E-41065347  
Opened 3/22/10. Closed 3/22/10. Client was given referral for self-help services. Not closed as a legal service (see Case Type "X"). Closed in the ACMS same day it was opened. Will not be in 2010 CSR report.

Case No. 10E-41066553  
Opened 5/5/10. Closed 5/12/10. Service provided to client by staff attorney and level of assistance properly documented in file. Subsequently determined that facts and issues connected to related open case for client. Thus, case was deselected so there would be no reporting of duplicate cases. Will not be in 2010 CSR report.

Case No. 10E-41067655  
Opened 6/14/10. Closed 6/14/10. Client was provided legal information, not legal assistance. Not closed in ACMS as legal assistance (see Case Type "X"). Will not be in 2010 CSR report.

**Appendix D** contains the face sheets from the ACMS for these cited cases and these detail that the box "CSR eligible" is not checked and, therefore, are not being reported to LSC as a "case". LAS requests OCE reconsider its finding with regard to these cited cases.<sup>1</sup>

OCE lists two cases which were opened and closed on the same day in 2009 by the same intake worker for the same client. (Case Nos. 09E-41061977 and 09E41061978.) LAS agrees the intake worker coded these in the ACMS as service cases and the documentation does not fully reveal the service provided. However, since these errors occur on the same day and by the same worker who is no longer employed at LAS, LAS considers this an isolated instance.

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<sup>1</sup> To the extent these cited cases involve or reflect PAI cases in which oversight of volunteer attorney cases needs to more timely, LAS agrees and this issue is addressed in Finding 16, but these cases do not support a finding that LAS has reported cases to LSC in which there is insufficient documentation of the level of assistance.

LAS believes the number of cases in which no description of legal assistance rendered in the representative sample OCE cites is much reduced from those listed in Finding 9 and would request OCE reconsider this finding.

**Finding 10:** Sampled cases evidenced that LAS' application of the CSR case closure categories are inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

**LAS Response and Comment:**

**LAS Response:** Since the adoption of LSC's new CSR Handbook and new closing codes in 2008, LAS provided training to all case handlers on the use of these closing codes and the underlying actions and documentation required in which to satisfy each closing code. LAS staff also has participated in statewide trainings conducted by OCE staff between the years 2008 - 2010. LAS takes seriously the requirement to use a CSR closing code that best reflects the level of service provided to the client in submitting its CSR reports to LSC. OCE's finding notes some lack of uniformity among staff in applying these codes (18 cases), but the finding also cites to 54 other cases which involves only two issues: 1) LAS's CSR deselection method; and 2) the proper closing code for assisted pro-se clinics. Both issues are policy issues which LAS made and which affect the 54 cases noted in the sample reviewed by OCE. Those policy decisions were made in good faith and represent its best interpretation and application of the CSR handbook to LAS's practice. Nonetheless, based on discussion with the OCE team members during the visit, LAS has taken actions to modify these two practices at the request of LSC. LAS has since conducted training of case handlers to implement these new practices and to ensure more uniform compliance with CSR closing codes.

**LAS Comment:** LAS is committed to training staff and proper use of LSC closing codes consistent with LSC's interpretation and definition of these codes. LAS's commitment to this practice dates from the revision of the 2008 CSR handbook and extends to every new orientation for a case handler. Subsequent refresher trainings have occurred for staff when OCE has appeared at Kentucky's statewide conference and offered training on LSC's CSR Handbook. Despite these trainings, LAS acknowledges that not all staff members have uniformly or consistently interpreted and applied these closing codes. In most cases, any inappropriate use of a closing code is discovered and properly corrected by a supervising attorney at the time of review of closed cases.

OCE determined out of the 338 cases sampled, 18 cases failed to apply proper CSR closing codes. Since the OCE visit, LAS has conducted a mandatory training on closing codes. See **Appendix C** for training materials provided staff. LAS will monitor case handlers' compliance and adherence to these closing codes during periodic reviews of closed cases in 2011 and will determine if further training is necessary.

Of the 72 cases cited by OCE as LAS's non-compliance on this issue, 54 of these cases involved only two common issues: 1) LAS's CSR deselection method; and 2) the proper

closing code for assisted pro-se clinics. Both issues are policy issues which LAS made and which affect the 54 cases noted in the sample reviewed by OCE. LAS acted in good faith at the time in making these policy decisions.

First, OCE cites to 24 cases that had been deselected from the CSRs reported to LSC. In these cases, LAS uses a method of “checking” or “unchecking” the “CSR eligible” box in the ACMS. This is LAS’s method of deselection of cases from reporting those cases which should not be reported to LSC in its CSRs. These cases also may have used a “K” closing code for the “Reason Closed”; however, that is not the method LAS uses to deselect a case. LAS relies upon the CSR checkbox for this determination. This method has reliably served LAS in ensuring the integrity of its CSR reports to LSC in recent years. In LAS’s 2009 CSR reports, out of 3,448 case services, LAS reported 24, or only .7%, cases were closed with closing code “K”. Similar results are reflected for previous years.

Since 2008, LAS devised a method to properly deselect those cases which would not be reported as part of its CSRs and this has been the use of the CSR eligible checkbox. LAS does use the closing codes A-L for other case services that are deselected and not reported to LSC (e.g., Title III cases). LAS’s use of closing codes for these deselected cases would appear immaterial since these cases are not part of the CSR report and cannot affect the integrity of the information provided to LSC.

Nonetheless, following OCE’s visit, LAS has implemented a new process which adds new steps and provides further safeguards to assure LSC that LAS has an appropriate “deselection” process. LAS has added a new “Reason Closed” closing code – “x” for no service. It has also created a new “Case Type” – “X”. These two codes are now used for reflecting a case where there has been no service or there is no evidence of service in the file. A case handler must still use the “CSR eligible” box to indicate whether the case is CSR reportable. However, case handlers are not to use closing code “K”, unless they speak with a supervisor and discuss why the underlying facts of the case would require the use of closing code “K”.

The second issue raised by OCE relates to whether cases closed at a pro se divorce clinic ought to be closed as an “A” or “B”. 30 cases cited by OCE involved this issue. LAS had determined based on its review of the CSR Handbook and the FAQ that the appropriate level of service and closing code was “B”. LAS’s decision was based, in part, on a FAQ 5, page 51 of its Handbook.

**Question 5** – At a PAI meeting among staff, we were discussing closing codes for pro se divorce cases and the following scenario was raised:

At our pro se divorce clinics pro bono attorney instructs a group of clients on filling out uncontested divorce packet; he also provides individual advice to each client. After clinic, clients often require further assistance with their paperwork, and a legal aid staff attorney or paralegal may assist them over a period of several weeks or months, answering questions and reviewing their paperwork.

When the client receives their divorce decree and the case is ready to be closed, what are the appropriate funding and closing codes.

Should they be closed as PAI-extended service  
LSC-extended service  
PAI-advice & counsel

**Answer** – The decision between PAI and staff is fact-specific, depending on which is deemed to have provided the highest level of legal assistance in the case (see §10.1(b)(iv) of the 2008 CSR Handbook). If both provided the same level of assistance (i.e. B, Limited Service), then it should be whichever provided the majority of the legal assistance (and this is a judgment call that would not be questioned if the assignment is within reason).

Whether the cases should be closed as A, Counsel and Advice, B, Limited Service, or L, Extensive Service, is also fact-specific, depending on the type and amount of legal assistance rendered to the client in each case.

LAS determined, given the level of assistance, tailored to each individual client at the pro se clinic, to ensure that the forms reflected each client's particular circumstances, that the appropriate level of assistance was "B" – Brief Service. This conclusion appeared consistent with LSC's guidance in its handbook and its acknowledgement that it is fact-specific.

OCE adopts the position in its Finding that such service does not rise to the level of "B" and should only be closed as an "A". LAS accepts OCE's interpretation and how it wants its closing codes applied in these circumstances and LAS will adopt this practice relating to its assisted pro se clinics. However, LAS requests that OCE consider the ambiguity of the guidance in this area and reconsider whether these 30 instances cited warrant inclusion in this Finding.

**Finding 11:** Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.) § 3.3 as there were 17 staff case files reviewed that were not closed in a timely manner.

**LAS Response and Comment:**

**LAS Response:** LAS is committed to ensuring that cases are closed timely upon completion of the service to the client in accordance with LSC's CSR Handbook. LAS has conducted training of all case handlers on the requirements of timely closing cases. LAS has taken additional steps of providing case supervisors with case management reports to review and examine any cases in which there have been no time records in the past 90 days. LAS will continue through 2011 this practice of providing case management reports and requiring case handlers to identify what reasons exist for a case to remain open if no activity has occurred with the past 90 days.

**LAS Comment:** LAS requires that a case supervisor review at each quarterly case review a case handler's open cases. This review should include the reasons why the file remains open and any anticipated action. LAS has also implemented a process whereby case supervisors are provided a listing of "aged cases" where the ACMS has not recorded

any time activity related to that open case. These two processes will address OCE's Finding that a certain number of cases in the sample evidenced no activity and appeared dormant.

Of the cases cited by OCE, LAS notes two of the cases are PAI cases are used to support its Finding 16 (Case Nos. 08E-41054164 and 08E-41054511). In another of the cases cited (05E-41029705), LAS was defending a client sued on a collection issue and LAS had intentionally pursued a strategic defense of waiting for the court to dismiss the action for lack of the plaintiff's prosecution. In all the cases cited, LAS will not be reporting the cases in its 2010 CSRs.

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

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), §3.2 regarding duplicate cases.

**Finding 13: The limited review of the detailed general ledger and other accounting documents for January 2009 through August 2010 evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).**

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 45 CFR Part 1608.

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

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 45 CFR Part 1609.

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

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 45 CFR Part 1610.

**Finding 16: LAS is in non-compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; LAS is in compliance with 45 CFR § 1614.4(3)(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly**



allocate administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data; LAS is in compliance with 45 CFR § 1614.4(3)(e)(ii) which is designed to ensure that programs shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees.

**LAS Response and Comment:**

**LAS Response:** LAS agrees with this finding that it is in compliance with 45 CFR Part 1614.4(3)(e)(1)(i) and 1614.4(3)(e)(ii). LAS acknowledges that it has procedures in place that, if followed, would have assured OCE of its compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. In response to OCE's finding that LAS staff were not following these procedures, LAS has taken additional steps to ensure that all open PAI cases are monitored and, should a PAI client or participating attorney fail to timely respond as to the status of the case, the PAI staff will take steps to close the file.

**LAS Comment:** OCE's Finding accurately describes LAS's procedures for oversight of PAI cases in accordance with 45 CFR § 1614.3(d)(3). OCE notes that the described procedures, if followed, would comply with the oversight requirements. However, the review of the PAI files in the sample indicated that the PAI staff were not taking action to close a dormant file if the PAI attorney failed to respond or the PAI client failed to indicate the status of the case. LAS has since implemented a process whereby PAI staff run a quarterly report of all open cases with PAI attorneys and to follow-up on all open cases for a status update. In the event, more than 90 days pass since the inquiry is made of the PAI attorney or the PAI client regarding the status of the case, the case will be closed.

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

**LAS Response and Comment:**

**LAS Response:** LAS agrees 45 CFR § 1627.4(a) prohibits programs from using LSC funds to pay for non-mandatory membership fees and assures LSC it will monitor current and future expenditures regarding payment of membership fees or dues. LAS's review of the audits for 2008, 2009, and the general ledger for 2010 indicates that LAS has obligated sufficient non-LSC funds toward these items and that LAS should not be considered in non-compliance.

**LAS Comment:** In 2008, 2009, and 2010, LAS's Controller paid for three items which were reviewed as part of the OCE visit: the professional dues which are mandatory for Kentucky attorneys; the dues paid to National Legal Aid and Defenders Association (NLADA) for membership dues; and, the subscription charge to Center for Law And



Social Policy (CLASP) which was erroneously listed on LAS's books as a "dues" but should have properly been listed as a library subscription service.

LAS paid \$7,750 in 2008, 2009 and 2010 for NLADA dues and CLASP subscription services. Of this \$7,750, LAS paid NLADA dues of \$6,750 and \$1,000 for CLASP subscription services. See Appendix E. OCE classifies the entire payment as non-mandatory membership fees. LAS agrees that dues paid to NLADA cannot, consistent with 45 CFR 1627.4(a), be paid with LSC funds. However, the portion relating to the CLASP subscription services in each of these years is properly characterized as a subscription service and LSC funds may be used. Thus, in 2008 and 2009, LAS paid a total of \$13,500 in NLADA dues.

OCE's finding states that LAS obligated LSC funds for the payment of these dues. LAS acknowledges that in the controller's worksheet she has listed NLADA dues, mandatory professional bar dues, and CLASP subscription services as items included in the 2008 and 2009 audit page relating to LSC fund expenditures. However, in those years, LAS's audits also reflect LAS's non-LSC funds allocated to these line item expenditures. In 2008, LAS allocated more than \$101,902 in non-LSC funds toward these overall expenses; in 2009, LAS allocated more than \$25,735 in non-LSC funds toward these overall expenses. LAS has clearly allocated more funds than just LSC-funds towards these expenditures and to the extent that any expenditure is prohibited from being paid with LSC funds, LAS has allocated sufficient non-LSC funds to cover that expenditure. See Appendix E. LAS requests OCE reconsider this finding relating to expenditures in 2008 and 2009. LAS has taken steps to eliminate any future confusion on this issue by not listing NLADA or CLASP subscription services on any schedule which reflects LSC funds and LAS assures LSC that no LSC funds will be used in 2010 or thereafter for this expenditure.

At a minimum, LAS requests that OCE reconsider its finding that the payment of CLASP subscription services in these years was a prohibited payment and reduce the amount of requested reimbursement to \$13,500.

**Finding 18:** Sampled cases evidenced non-compliance with 45 CFR Part 1635 (Timekeeping requirements).

**LAS Response and Comment:**

**LAS Response:** LAS is committed to ensuring its two existing timekeeping systems properly reflect what is required by any oversight agency and, when necessary, ensure the systems correlate. LAS has provided training to staff on timekeeping requirements related to accounting for an attorney or paralegal's time spent on a case, matter, or supporting activity. Following OCE's visit in September 2010, LAS provided staff with additional training on these timekeeping requirements. In 2011, once LAS transitions into a fully electronic timekeeping system, LAS will be able to have case supervisors review and approve case handler time records.

**LAS Comment:** LAS maintains two timekeeping systems: one is for the employee's time and attendance (e.g., recording sick leave, vacation leave and work hours) for the purposes of documenting payroll and satisfying the legal documentation requirements for Department of Labor; the other timekeeping system is part of LAS's ACMS. These are not integrated timekeeping systems and not all employees (e.g., secretaries or administrative staff) are required to keep time in the ACMS since they may not be an attorney or paralegal who must record time spent on cases, matters, or supporting activities.

LAS is in a transition period in which it is replacing its paper method of capturing time and attendance by implementing an electronic timekeeping system for time and attendance. This transition should be complete by June 2011. LAS has relied upon the ACMS to properly reflect the time spent by an attorney or paralegal on cases, matters, or supporting activities. Once both time systems are fully operational, the supervisor of the case handler should be able to review the reports in the ACMS and compare it to the submitted reports for time and attendance.

Training on both systems is essential to ensure compliance. LAS will continue to train staff on the necessity to enter timekeeping records for cases, matters and supporting activities contemporaneously. OCE's Finding also includes a recommendation that LAS require activity notes in each time record rather than the use of common codes for certain activities a case handler routinely performs (e.g., telephone call to client; open mail; document preparation; letter to client). These codes were developed as part of our collaborative statewide work with other Kentucky programs and are used to allow a case handler to easily select a code that describes the action taken without the necessity of typing a more detailed description. LAS, and its sister programs, follow this practice in recognition that a case handler is faced with a high volume of clients and in order to meet this demand for service, certain codes in the ACMS could expedite the recording and documentation process. As long as the code selected and used by the case handler accurately captures the activity and records it, it seems to be of little significance whether the case handler uses the code or actually types "prepared document" in the "reason" column. Many of LAS's case handlers do use this "reason" column to provide more detailed descriptions of the time spent and the ACMS allows for that time entry to be entered directly into the case notes section of the case. LAS recognizes this could be a tool in which to capture and record in more detail all the information relating to the case handler's activity. LAS will examine whether mandating such practices will affect the staff time available to otherwise assist other clients.

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

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 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).

**LAS Response and Comment:**

LAS agrees with this finding that it is in 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).

**LAS Response and Comment:**

LAS agrees with this finding that it is in 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).

**LAS Response and Comment:**

LAS agrees with this finding that it is in 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).

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 45 CFR Part 1632.

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

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 45 CFR Part 1633.

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

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 45 CFR Part 1637.

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

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 45 CFR Part 1638.

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

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with 45 CFR Part 1643.

**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)).

**LAS Response and Comment:**

LAS agrees with this finding that it is in compliance with other LSC statutory prohibition.

**Finding 29:** A review of LAS' internal control policies and procedures found the program's policies and procedures do not compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System. (Chapter 3 – Accounting Guide for LSC Recipients).

**LAS Response and Comment:**

**LAS Response:** LAS has reviewed OCE's Finding 29 and Finding 31 and seeks to reconcile these findings. OCE reviewed LAS's accounting manual which describes its processes and policies. In Finding 31, OCE determined that LAS's accounting manual was in compliance. In Finding 29, however, OCE suggests that it finds the segregation of duties inadequate. LAS has reviewed its internal controls worksheet which lists the other individuals involved in the duties identified in Finding 29 and finds that it meets the requirements of LSC's Accounting and Financial Reporting System. LAS requests OCE reconsider this finding.

**LAS Comment:**

OCE has characterized the controller's duties as if the Controller were the single person involved in these activities. LAS's internal control worksheet details the segregation of

duties and the other individuals who have a role in performing or checking those actions. **See Appendix F.**

There is a segregation of duties within the established independent checks and proofs established in the Accounting Manual. Internal controls and procedures are specified in cash receipts, cash disbursements, petty cash, payroll, bank reconciliations, client trust records, general journal, and general ledger. The Executive Director works with the Controller to project the budgets, and the Executive Director reviews the financial statements monthly.

During the compliance visit, it was noted that the Controller was initiating and recording the journal entries without the approval of another knowledgeable staff. The majority of the monthly journal entries are recurring. The Executive Director now approves and initials all the journal entries.

OCE's finding lists several duties which fall within the overall responsibility of the Controller: originates, reviews, approves, and posts the general ledger's journal entries (addressed above); calculates and prepares payroll; maintains the payroll journal; prepares and reviews the payroll bank reconciliations; prepares bank deposit tickets; makes the deposit to the bank; and posts receipts to the general ledger (addressed above). In all of these listed areas, the controller is not acting without the approval and check of another person on LAS staff. See LAS's internal control worksheet in Appendix F. LAS procedures meet the requirements of its Accounting Manual which satisfies the 2010 Accounting Guide for LSC recipients.

**Finding 30: Bank reconciliations for July and August 2010 were reviewed for all bank accounts and were found to be performed timely, accurately, and with the corresponding approvals.**

**LAS Response and Comment:**

LAS agrees with this finding that it timely, accurately and properly records and reconciles its bank accounts.

**Finding 31: LAS' Accounting Manual meets the requirements of the 2010 Accounting Guide for LSC Recipients.**

**LAS Response and Comment:**

LAS agrees with this finding that its Accounting Manual meets the requirements of the 2010 Accounting Guide for LSC Recipients.

**Finding 32:** The review of payables disclosed that payments had sufficient supporting documents; however, the majority of the supporting documents have no indication of payment.

**LAS Response and Comment:**

**LAS Response:** In reviewing the paid files, Legal Aid Society did mark the statement paid and/or the internal request for payment sheet as paid; however, the original invoice was not always marked paid.

**LAS Comment:** Since the compliance visit, every invoice has been marked paid with at least the date so as to avoid duplicate payment.

**Finding 33:** LAS gives salary advances for emergencies to be repaid within the following pay period.

**LAS Response and Comment:**

**LAS Response:** According to our policies and procedures, an employee can request a salary advance for emergencies to be repaid at the following pay period contingent on an employee having sufficient accrued leave and/or sufficient credited hours worked to cover the amount of the salary advance. The advance to the employee is less than their normal pay for the period and this advance is deducted from their next regular paycheck.

**LAS Comment:** LAS has sufficient controls over salary advances to guard against abuses or financial risk to the organization.