



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

MidPenn Legal Services, Inc.
Compliance Review
June 9-13, 2014

Recipient No. 339040

LSC Compliance Review Team

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I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that MidPenn's 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: MidPenn's intake procedures and case management system generally support the program's compliance related requirements; however, exceptions were noted with a limited number of intake staff regarding application of over-income factors when screening an applicant for income eligibility.

Finding 3: Sampled cases evidenced that MidPenn complies with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines ("FPG"). All case files reviewed contained eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3.

Finding 4: Sampled cases evidenced that MidPenn complies with the asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. All reviewed case files contained the documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

Finding 5: Sampled cases and interviews indicated MidPenn is in compliance with the restrictions in 45 CFR Part 1626 (Restrictions on legal assistance to aliens), however, MidPenn was in non-compliance with the documentation requirements of that Part where one (1) case file reviewed did not contain a citizenship attestation. MidPenn's revised policy is also in compliance with 45 CFR Part 1626.

Finding 6: Sampled cases evidenced substantial 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). MidPenn's revised policy is compliant with 45 CFR Part 1636.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). MidPenn's revised policy on priorities is compliant with 45 CFR Part 1620.

Finding 9: Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced substantial compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011) (Case closure categories).

Finding 11: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.

Finding 13: Review of MidPenn's policies and the list of attorneys who have engaged in the outside practice of law, as well as interviews with the Executive Director, four (4) staff attorneys, and the President Elect of MidPenn's Board of Directors, revealed that MidPenn is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). MidPenn's revised outside practice of law policy is also in compliance with 45 CFR Part 1604.

Finding 14: Sampled cases, interviews, and a review of sampled written material evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 15: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). Additionally, MidPenn's revised policy on fee generating cases is in compliance with 45 CFR Part 1609.

Finding 16: Review of MidPenn's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff to determine compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities revealed compliance with 45 CFR Part 1610.

Finding 17: MidPenn substantially complies with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of PAI cases. Additionally, MidPenn is compliant with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

Finding 18: MidPenn is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

Finding 19: MidPenn is in substantial compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 21: Sampled cases reviewed and interviews evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). MidPenn's revised policy is in compliance with the requirements of 45 CFR Part 1612.

Finding 22: Sampled cases and interviews 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 23: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions). MidPenn's revised policy is in compliance with the requirements of 45 CFR Part 1617.

Finding 24: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting). MidPenn's revised policy on redistricting is in compliance with the requirements of 45 CFR Part 1632.

Finding 25: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 26: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 27: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation). MidPenn's revised policy on solicitation is compliant with 45 CFR Part 1638.

Finding 28: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 29: Sampled cases and interviews 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 30: MidPenn is in compliance with the requirements of 45 CFR § 1620.6.

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information); however, one (1) change was recommended.

Finding 32: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).

Finding 33: Review of the Segregation of Duties Worksheet, a matrix of internal controls, and interviews with the employees who perform financial functions, disclosed that adequate segregation of duties has been achieved by MidPenn.

Finding 34: A limited review of MidPenn's bank account reconciliations and related policies and procedures disclosed that MidPenn is in substantial compliance with the requirements enumerated in the LSC Accounting Guide for LSC Recipients (2010 Ed.). The review revealed that four (4) outstanding checks over six (6) months old were included in two (2) bank reconciliations.

Finding 35: A limited review of the cash receipts and cash disbursements was performed for the receipts recorded in MidPenn's operating checking account in October of 2013. The review disclosed that MidPenn has adequate policies and proper internal controls surrounding cash receipts and disbursements, which are adhered too and are in compliance with LSC's requirements.

Finding 36: Review of MidPenn's fiscal records revealed that petty cash funds consist of individual imprest funds totaling \$100.00, \$150.00, or \$50.00 at each MidPenn office. A review of the internal controls and activity for the month of September 2013 for the Harrisburg petty cash fund disclosed that there were no deficiencies in the internal controls or processing of the petty cash and MidPenn is in compliance with its own policies and LSC's requirements.

Finding 37: A review was conducted of MidPenn's policies and procedures concerning client trust accounts ("CTA"), and a limited review of receipts and disbursements from the accounts was conducted. Both reviews disclosed that MidPenn is in compliance with its own requirements and LSC's requirements concerning CTA.

Finding 38: Review of a sample of MidPenn's credit cards statements disclosed that there are adequate internal controls surrounding the use of MidPenn's credit cards with one (1) exception; the Executive Director's credit card purchases are not reviewed by MidPenn's Board of Directors.

Finding 39: A review was conducted of MidPenn's policies and procedures concerning expense reporting, travel advances, and salary advances. All reviews disclosed that MidPenn is in compliance with LSC's requirements. Additionally, a review was conducted that compared MidPenn's payroll policies and procedures to LSC's requirements, along with a review of the payroll processing for the period ending October 25, 2013. The payroll policies and procedures and the processing of the sample payroll period disclosed compliance with LSC's requirements.

Finding 40: An interview with the President Elect of MidPenn's Board of Directors, who is also the Chairperson of the Board of Director's Finance Committee, and a limited review of the Board of Director's meeting minutes disclosed that MidPenn's Board of Directors is in compliance with LSC's regulations and requirements.

Finding 41: Review of MidPenn's information technology ("IT") infrastructure revealed that the security surrounding MidPenn's IT systems is generally adequate; however, at the time of the review, MidPenn did not require its employees to change their passwords on a periodic basis.

Finding 42: A review conducted of MidPenn's Record Retention Policy and the related procedures disclosed that they are in compliance with LSC's requirements. Additionally, a review conducted of MidPenn's Property and Equipment records for 2013 disclosed compliance with the LSC Accounting Guide's requirements.

Finding 43: A review was conducted of MidPenn's purchasing policies/procedures to assess compliance with the LSC Accounting Guide and the Property Acquisition and Management Manual (2001 Ed.) ("PAMM"). Additionally, a limited review was conducted of MidPenn purchases. Both reviews disclosed that MidPenn is in compliance with LSC's requirements and has adequate internal controls over its purchasing.

Finding 44: A limited review of fiscal documents, and interviews with MidPenn staff, demonstrated that MidPenn is in compliance with the requirements of 45 CFR § 1629.1 (Bonding of recipients), as MidPenn carries adequate fidelity bond insurance coverage on employees handling cash.

II. BACKGROUND OF REVIEW

During the week of June 9-13, 2014, staff of the Office of Compliance and Enforcement (“OCE”) conducted a Compliance Review at MidPenn Legal Services, Inc. (“MidPenn”). The purpose of the visit was to assess the program’s compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team of nine (9) attorneys, two (2) fiscal analysts, and two (2) temporary employees.

The on-site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that MidPenn has correctly implemented the 2008 CSR Handbook, as amended 2011. Specifically, the review team assessed MidPenn for compliance with the 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 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1614 (Private attorney involvement)¹; 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys’ fees)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of MidPenn’s upper and middle management, staff attorneys, and support staff. MidPenn’s case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, case file review was conducted. The sample case review period was from January 1, 2012 through April 15, 2014. Case file review relied upon randomly selected files as well as targeted and pulled 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 selected 1,064 cases to review on-site, which included 164 targeted files. All of the selected cases were reviewed.

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

² 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.

The office in which some of MidPenn's administrative staff is housed is located in Harrisburg, Pennsylvania. There are 13 service offices located in Altoona, Bedford, Carlisle, Chambersburg, Clearfield, Gettysburg, Lancaster, Lebanon, Lewistown, Pottsville, Reading, State College, and York, Pennsylvania. The offices that were visited during the review were the above-referenced offices.

MidPenn has a total staff of 86, including 43 attorneys, 15 paralegals, and 28 support staff. In 2013, MidPenn's Basic Field Grant was \$2,060,141.00; and in 2012, it was \$2,071,638.00. It is projected that MidPenn's Basic Field Grant for 2014 will be \$2,261,502.00.

By letter dated March 7, 2014, OCE requested that MidPenn provide a list of all cases reported to LSC in its 2012 CSR data submission (closed 2012 cases), a list of all cases closed in 2013 (closed 2013 cases), a list of all cases opened on or after January 1, 2014 and closed on or before April 15, 2014 (closed 2013 cases), and a list of all cases which remained open as of April 15, 2014 (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 (2) sets of lists be compiled - one (1) for cases handled by MidPenn staff and the other for cases handled through MidPenn's PAI component. MidPenn 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* protocol (January 5, 2004). MidPenn was requested to notify OCE promptly, 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 that the team would review during the on-site visit. The sample was developed proportionately among 2012, 2013, 2014 closed, and open cases. 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 MidPenn agreement of May 13, 2014, MidPenn 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.³

MidPenn's management and staff cooperated fully in the course of the review process. As discussed more fully below, MidPenn was made aware of compliance issues during the on-site visit. This was accomplished by informing intermediaries, as well as staff attorneys and the Executive Director, of any compliance issues uncovered during case review.

³ 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.

At the conclusion of the visit, on June 13, 2014, OCE conducted an exit conference during which MidPenn was provided with OCE's initial findings and was made aware of the areas in which compliance issues were found. OCE noted compliance or substantial compliance in the following areas: 45 CFR Part 1611 (Financial eligibility policies); 45 CFR § 1611.9 (Retainer Agreements); CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided); 45 CFR § 1626.6 (Verification of citizenship); and CSR Handbook (2008 Ed., as amended 2011), Chapters VIII and IX (Case closure categories).

By letter dated September 8, 2014, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions. MidPenn was asked to review the DR and provide written comments. By letter dated October 7, 2014, MidPenn submitted its comments to the DR. OCE has carefully considered MidPenn's comments and has either accepted and incorporated them within the body of the report, or responded accordingly. MidPenn's comments, in their entirety, are attached to this Final Report.

III. FINDINGS

Finding 1: Sampled cases evidenced that MidPenn's 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 an 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 (2008 Ed., as amended 2011), § 3.1.

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

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 2: MidPenn's intake procedures and case management system generally support the program's compliance related requirements; however, exceptions were noted with a limited number of intake staff regarding application of over-income factors when screening an applicant for income eligibility.

The intake procedures of all MidPenn offices were assessed by interviewing the primary intake staff, MidPenn staff attorneys, and Managing Attorneys in order to ascertain MidPenn's compliance in relation to the intake process. The interviews revealed that intake procedures

performed by the intake staff generally support the program's compliance related requirements; however, exceptions were noted with a limited number of intake staff relating to consideration of all authorized exceptions and factors when screening an applicant for income eligibility.

MidPenn conducts intake in each of the above-referenced service offices. There is a Coordinated Intake Unit ("CIU"), which performs telephone intake screenings, that services the following offices: Altoona, Harrisburg, Bedford, Carlisle, Chambersburg, Clearfield, Gettysburg, Lebanon, Lewistown, Pottsville, and State College. CIU staff are located in the Gettysburg, Reading, Altoona, State College, Chambersburg, and Lebanon offices, with back-up CIU staff in the Bedford and Lewistown offices, and they handle the intake calls that come into the CIU on a rotating basis. The screening performed by the CIU generally supports MidPenn's compliance related requirements with respect to performing conflict and duplicate checks during the intake process, screening for income and assets, and citizenship screening. In the offices supported by the CIU, telephone intake is done by the CIU and the CIU refers the screened applicants to the appropriate service office based on the case type and location. However, the CIU does not conduct an intake screening in the following circumstances: victims of domestic violence who have a Protection From Abuse case may be referred, in some counties, to a domestic violence agency, or, in other counties, to the MidPenn office closest to the applicant for an intake screening; applicants who have a case that may be handled with special funding may be referred to a local AAA office or to the closest MidPenn office for an intake screening; and applicants with case types that are eligible for Pro Bono referral may be referred, in some counties, to a MidPenn service office for an intake screening. The responsible advocate in the service office to which the applicant is referred makes the determination of whether to accept or reject the applicant's case; the Managing Attorney may be involved in a case acceptance determination but does not make such determinations on a day-to-day basis.

CIU-supported offices also conduct walk-in intake on an as-needed basis; in those instances, the intake staff screens applicants in a manner consistent with the CIU screening, and obtains the necessary documentation from the applicant (e.g., signed citizenship attestation, retainer agreement, etc.). If the applicant is deemed eligible, whether through an in-person or telephone intake screening, the CIU staff member will connect the caller to an attorney to provide advice over the phone (if the case involves housing or consumer matters), schedule an appointment to meet with a MidPenn advocate in the appropriate service office, or refer the applicant to a specific staff member in the appropriate service office for follow-up contact. As stated above, the responsible advocate in the service office decides whether to accept a case or refer the applicant if case acceptance is not possible.

The York, Lancaster, and Reading offices are not part of CIU and the staff members in these offices conduct their own intake in-person or via telephone. Additionally, walk-in intake and/or telephone intake, where the caller calls the service office directly and not the CIU, is conducted in all MidPenn offices on an as-needed basis.

Financial Eligibility and Case Management

Conflict Check: For all intake screenings (e.g., screening conducted by the CIU, walk-in intake screening, etc.), conflicts are checked program-wide using the ACMS during the first step of the initial screening process.

Persons identified as a conflict, or even a potential conflict, are not screened for any other information until the potential conflict has been cleared. Conflicts are resolved by the Managing Attorney of the CIU or the Managing Attorney supervising the intake worker.

Duplicate Check: During the above-described conflict check, screeners determine whether the applicant has previously contacted MidPenn. Screeners have been properly trained as to when to re-open a case in accordance with LSC requirements.

Rejected Applicants: If an applicant for legal services is rejected due to a conflict, or for any other reason, including being over-income, over-assets, an ineligible alien, outside of priorities, etc., the intake screening is stopped at that point and the applicant is advised that his or her case cannot be accepted by MidPenn. All rejected applicants are advised of their right to contest a decision that they are not eligible for legal assistance.

If there is an open intake file in the ACMS, the intake worker closes the intake file and indicates the reason for rejection using the appropriate deselect code. The intake worker may also provide an additional explanation of the reason for rejecting the case in the case notes section of the intake file. A record of the rejected intake is then maintained in the ACMS.

Income Screening: Interviews and file review revealed that income inquiry and recordation are conducted in a manner consistent with LSC regulations. Applicants are questioned about all sources of income including, but not limited to, income from employment, tips, Social Security, child support payments, military allotments, welfare, unemployment, alimony or other support, worker's compensation/other disability, a pension, and rental income.

The majority of staff interviewed demonstrated a strong understanding of the program's financial eligibility policy and the LSC funding guidelines.

Reasonable Inquiry Regarding Income Prospects: Recipients are required to make reasonable inquiry into each applicant's income prospects, pursuant to the requirements of 45 CFR § 1611.7(a). All interviewees were aware of this requirement and stated they make appropriate inquiry as required. The ACMS contains a required field specific to this inquiry. In addition, the manual intake application contains a line asking about "improved income prospects/near future." If the applicant indicates that they may receive an increase in income in the near future, an additional form is completed and maintained in the file containing more details.

Authorized Exceptions to Income Ceiling: The LSC regulations, at 45 CFR § 1611.3(a), require a program's Board of Directors to adopt financial eligibility policies for individuals and groups and to review these policies once every three (3) years. The most recent approval of these policies was in a document titled "Financial Eligibility Guidelines 2014." These were reviewed and found to be consistent with the LSC regulations.

Among the factors which are considered if an applicant is over the 125% threshold, but under the 200% ceiling, are medical expenses; child care, transportation and other expenses necessary for employment; fixed debts and obligations, including mortgages, rent (not including utilities); and unpaid federal, state and local taxes from prior years. These are all consistent with the

regulations and the authorized exceptions are then considered by the Managing Attorney evaluating the applicant's income and case.

At the time of the review, some intake staff indicated that MidPenn requires intake staff to complete an Exception to Annual Income Ceiling/Waiver of Asset Ceiling form if an applicant's income is above 125% but below 200% of the Federal Poverty Guidelines ("FPG"). However, in its comments to the DR, MidPenn stated that it only requires that the form be completed for applicants who live in specific counties and/or have specific case types, using the criteria outlined in 45 CFR § 1611.5(a). For CIU intake of applicants residing in 15 of MidPenn's 18 counties, income waivers may be pre-approved in some counties or not considered for approval in other counties. The approval decision may also be based upon the applicant's case type. The majority of intake staff interviewed expressed an understanding that an applicant will be considered eligible if the applicant's income is under 125% of the FPG. Additionally, most intake staff indicated that, pursuant to 45 CFR § 1611.5(a)(4), if an applicant's income was between 125% and 200% of the FPG, authorized exceptions and factors could be applied that may render the applicant eligible for services. However, interviews revealed that one (1) intake staff worker does not ask the applicant specific questions when determining the appropriate exception to apply, but rather, makes a presumption based on the applicant's circumstances. This intake staff member must ask questions related to the exceptions listed on the waiver form in order to accurately document the applicable exception. In addition, some intake staff indicated that every applicant's income has to be less than 125% of the FPG in order to be eligible for services, regardless of the existence of authorized factors. Lastly, some intake staff indicated that factors can only be applied for applicants whose incomes fall between 125% and 150%, not 125% and 200% as stated in MidPenn's financial eligibility policy. As such, it is recommended that MidPenn provide intake staff with training regarding proper application of over-income factors, pursuant to 45 CFR § 1611.5 and MidPenn's financial eligibility policy.

Additionally, interviews with two (2) intake staff evidenced a misunderstanding of MidPenn's classification of individuals who should be considered members of the household when determining the applicant's household income. The staff members indicated that the income of any children over the age of 21 years-old living with the applicant should not be considered for eligibility purposes when calculating an applicant's income during intake. However, MidPenn's financial eligibility policy states,

Where an adult applicant for service resides with another person related by blood or law (parent, adult child, grandparent, brother, sister, aunt, uncle, cousin, etc.) such other person(s) should not be counted as a member of the applicant's household nor should their income be considered in determining the applicant's eligibility unless the applicant uses the tax dependent option. If financial assistance (\$) is being provided by the relative to the applicant for service, such 'income' should be included in determining the applicant's financial eligibility.

Based on MidPenn's definition of household, intake staff should not systematically exclude the income of an applicant's adult children. Additional questions should be asked by intake staff in order to comply with the requirements of the definition of household in MidPenn's financial eligibility policy (e.g., Is your adult child a tax dependent? Is financial assistance being provided

to you by your adult child?). It is recommended that MidPenn provide intake staff with training regarding proper calculation of all household members, in accordance with MidPenn's financial eligibility policy.

Asset Screening/Authorized Exceptions to Asset Ceiling: The total combined asset ceiling for MidPenn applicants applying for services in 2014 is \$12,725.00. According to MidPenn's policy, the asset test "must be administered to all applicants for services, including those applying for pro se clinics, workshops, PAI referral, etc." However, if an applicant does not fall within the asset ceiling, they may be eligible for legal assistance if the case is funded by sources other than LSC. This includes IOLTA funding, funding from the Commonwealth of Pennsylvania, Title XX, and Access to Justice Act ("AJA") funding. Staff are instructed to designate these cases as "Code M" cases, which means they are non-LSC eligible. Moreover, these cases are specifically not assigned to "the Pool," which includes LSC funding and other funding sources where LSC-eligible cases are included. In addition, the Executive Director has the authority to waive the asset ceiling for "particular applicants under unusual circumstances."

Interviews with intake staff indicated that an "Assets Test for LSC-Funded Services" form may be completed for an applicant at the time of an intake screening. This form requires the intake screener to enter the equity value of any property and vehicles owned by the applicant and to determine the total value of any bank accounts, CD's, stocks, or bonds of the applicant. If the total exceeds MidPenn's asset limits, the intake screener must consult with a Manager.

In one (1) MidPenn office, the "Assets Test for LSC-Funded Services" form is pre-completed with zeros (0s) in each category. An intake screener indicated that the zeros (0s) are crossed off and the applicant's information is written in during an intake screening. While on-site, the pre-completed forms were discussed with a Managing Attorney and it was explained that the better practice, in order to reduce human error, would be to discontinue use of the pre-completed forms and use blank forms for each applicant. In addition, a pre-completed form in an area that is critical to eligibility is analogous to a default. Pursuant to CSR Handbook (2008 Ed., as amended 2011), § 3.6, defaults in important data fields, such as assets, tend to reduce the accuracy of the data submitted because there is no way to tell whether staff actually made an inquiry and decision as to what should go in the field, or inadvertently overlooked it, allowing the default value to be recorded. This was corrected in the week following the visit by MidPenn's Director of Advocacy instructing intake staff, orally and in writing, to cease using the pre-completed form, ask each applicant for service the questions on the form, and record the answers in the spaces provided on the form. Similarly, prior to the on-site review, the category in MidPenn's ACMS entitled "total assets," in the financial eligibility screening page, defaulted to "\$0.00." This was discussed with Executive Director during the visit, as well as with MidPenn's Compliance Director. The default was removed prior to the conclusion of the visit, and the asset field is now blank until a figure is inputted by an intake staff member.

Financial Eligibility Determination of an Applicant who is a Victim of Domestic Violence: Recipients are required to specify in financial eligibility policies that during the financial eligibility determination of an applicant who is a victim of domestic violence, only the assets and income of the applicant and household members shall be considered. Further, the income and assets of the alleged perpetrator of the domestic violence and any income or assets jointly held by the applicant with the alleged perpetrator or assets jointly held with other members of the

household and the alleged perpetrator also shall not be considered. *See* 45 CFR § 1611.3(e). MidPenn has adopted such policies in its financial eligibility guidelines. Interviews with staff indicated not only familiarity with these policies, but that applicants were being appropriately questioned.

Government Benefits Exemption: In accordance with 45 CFR §§ 1611.3(f) and 1611.4(c), a recipient's governing body is permitted to determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families. MidPenn's financial eligibility policies do not contain such an exemption.

Group Clients: MidPenn's eligibility policy permits LSC-funded assistance to groups in accordance with 45 CFR § 1611.6. No group cases were identified within the review period and an interview with staff indicated no one (1) was aware of a group case.

Citizenship and Eligible Alien Status Screening: All interviewees demonstrated sufficient understanding of the citizenship and alien eligibility documentation requirements of 45 CFR Part 1626, including those for Kennedy Amendment, T-Visa, and U-Visa cases. In most cases, citizenship status is initially assessed and recorded in the ACMS by the intake staff. Citizen clients who are screened by telephone with cases which progress to in-person contact or extended representation, in-person screening, or are provided an office telephone to call the CIU, are asked to sign an attestation. Non-citizens are asked to provide documentation of eligible alien status. Attorneys are responsible for reviewing the eligible alien documentation, making a determination of eligibility, and recording this information. At the onset of the on-site review, the citizenship attestation block on the manual intake form included a check box indicating "Yes/No" regarding whether the applicant was a U.S. Citizen. As noted in the CSR Handbook (2008 Ed., as amended 2011), at § 5.5, "[n]either a yes/no checkbox as to citizenship nor a signed statement that the client attests to the truth of intake information will suffice as a citizenship attestation." When this was called to the attention of the Executive Director, an immediate change was made to remove the yes/no checkbox so that the form reads "I certify that I am a United States Citizen," with its own signature and date line. The revised form was reviewed by the review team and was found to be in compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.5. MidPenn should ensure that all closed 2014 and open cases contain CSR-compliant citizenship attestations prior to reporting those cases to LSC, and should take steps to remove all citizenship attestation forms that do not comply with the requirements of the CSR Handbook (2008 Ed., as amended 2011) from circulation.

Case Acceptance: As noted above, intake staff does not provide legal assistance or accept cases. All screened applicants are transferred to the service office that provides assistance, pursuant to MidPenn's priorities. For walk-in applicants who are screened for intake at the local office, intake staff will open a case file and schedule an appointment for the applicant to meet with an advocate who will determine case acceptance, pursuant to MidPenn's case acceptance guidelines. Case handlers are responsible for contacting the client, determining the level of assistance to be provided based upon case acceptance policies, obtaining compliance documentation, and completing opening notes in the ACMS.

Grievance Procedure: All applicants are advised of their grievance rights when they are denied legal assistance. There is a handout that discusses MidPenn's grievance process that is made available to applicants and clients.

Case Oversight and Closure: Each MidPenn advocate is responsible for reviewing their open cases periodically and for closing their own cases; the advocate's Managing Attorney conducts periodic status updates of every advocate's case on a monthly or bi-monthly basis. The case handlers close their cases upon completion of the case. When a case is ready for closure, case handlers are responsible for preparing a closing letter. The file is then given to the support staff which uses a standardized compliance checklist to ensure that critical elements of the file are all included. This checklist is a review of all major LSC compliance requirements and requires the case handler to determine if the file is complete and ensure that LSC requirements have been met.

Recommendations:

The DR recommended that MidPenn provide intake staff with training regarding proper calculation of all household members, in accordance with MidPenn's financial eligibility policy.

The DR further recommended that MidPenn provide intake staff with training regarding proper application of over-income factors, pursuant to 45 CFR § 1611.5 and MidPenn's financial eligibility policy.

The DR also instructed MidPenn to ensure proper application of the over-income eligibility factors listed in 45 CFR § 1611.5 and the procedures enumerated therein for applying authorized exceptions when an applicant is over-income.

In its response to the DR, MidPenn indicated that in September 2014, in recognition of the confusion concerning when to obtain an income waiver, it prepared and distributed to intake staff detailed instructions concerning which applicants are eligible for a waiver when over-income factors are present that warrant approval of the waiver. Additionally, MidPenn stated that it intends to revise its policy to be clearer with regard to the requirement to complete an income waiver and will seek Board approval of its revised policy. MidPenn further asserted that it intends to take steps to implement the recommendations relating to staff training.

The DR recommended that MidPenn ensure that all closed 2014 and open cases contain CSR-compliant citizenship attestations prior to reporting those cases to LSC, and take steps to remove all citizenship attestations that do not comply with the requirements of the CSR Handbook (2008 Ed., as amended 2011) from circulation. This will help to ensure that the corrective action required in Finding 5 *infra* is accomplished.

In its response to the DR, MidPenn stated that it is taking steps to undertake this review.

Finding 3: Sampled cases evidenced that MidPenn complies with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines (“FPG”). All case files reviewed contained eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3.

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.⁴ *See* 45 CFR § 1611.3(c)(1) and CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 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) and CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 4.3.

MidPenn complies with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income did not exceed 125% of the poverty guidelines. All cases reviewed contained the eligibility documentation required by 45 CFR § 1611.4 and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

⁴ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

Finding 4: Sampled cases evidenced that MidPenn complies with the asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. All reviewed case files contained the documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 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.⁵ *See* CSR Handbook (2008 Ed., as amended 2011), § 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.

All case files reviewed contained the documentation to comply with the requirements of 45 CFR § 1611.3(d)(2).

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 5: Sampled cases and interviews indicated MidPenn is in compliance with the restrictions in 45 CFR Part 1626 (Restrictions on legal assistance to aliens), however, MidPenn was in non-compliance with the documentation requirements of that Part where one (1) case file reviewed did not contain a citizenship attestation. MidPenn's revised policy is also in compliance with 45 CFR Part 1626.

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.

⁵ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

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 (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 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.⁶ 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.

All case files reviewed evidenced proper intake screening for citizenship/alien eligibility, and all cases reviewed, with a few exceptions, contained the requisite 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5 documentation. *See* Lancaster PAI Closed 2012 Case No. 020062478 (which will be discussed in further detail in Finding 17) and Pottsville Staff Open Case Nos. 080399179 and 080399137 (where the citizenship attestations in the case files were signed but not dated).

In its response to the DR, MidPenn stated that it did not believe that Pottsville Staff Open Case Nos. 080399179 and 080399137 should be deemed non-compliant because the attestations, although undated, were included in the case files. Additionally, MidPenn indicated that staff was instructed to "determine when the the client signed and see that the forms were dated" and obtained copies of the dated attestations. Although MidPenn maintains that the attestations were subsequently dated after the conclusion of the visit, they were not dated at the time of the review; as such, their timeliness could not be determined. An undated, signed attestation, though compliant with 45 CFR Part 1626, is not compliant with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.5, which calls for citizenship attestations to be signed and dated.

As noted above, the attestation utilized by MidPenn prior to the visit was not compliant with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5, in that the attestation had a yes/no check box preceding the sentence "I certify that I am a United States Citizen," followed by a separate signature and date line. This was resolved during the visit and the form was revised to remove the yes/no checkbox so that it reads "I certify that I am a United States Citizen," with its own signature and date line. The revised form was reviewed by the review

⁶ *See* Kennedy Amendment at 45 CFR § 1626.4.

team, and was found to be in compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.5.

The citizenship/alien eligibility policy that was provided by MidPenn for review in advance of the visit indicated that MidPenn could provide services to eligible aliens, but did not list all of the categories of eligibility, or the documentation required to be reviewed in order to determine eligibility. While on-site, it was recommended that the policy be revised to include the alien eligibility categories and enumerate those items that must be reviewed prior to rendering legal assistance, pursuant to 45 CFR §§ 1626.3, 1626.4, 1626.5, 1626.6, 1626.7, 1626.10, and 1626.11. Additionally, the policy provided in advance of the visit did not list and define all pertinent terms referenced in the regulation. While on-site, it was recommended that the policy be revised to reflect all of the above-referenced changes.

Pursuant to on-site discussion with the Executive Director, the policy was revised in the week following the visit to include the alien eligibility categories, enumerate those items that must be reviewed prior to rendering legal assistance, provide the most recent language of the regulation, and list and define all pertinent terms referenced in the regulation. The revised policy was reviewed and is compliant with the requirements of 45 CFR Part 1626.

Required Corrective Action:

The DR instructed MidPenn to ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, where appropriate.

In its response to the DR, MidPenn stated that it does not believe that one (1) case file missing an attestation (after exclusion of the case file where an attestation was obtained subsequent to the conclusion of the visit) warrants a required corrective action. MidPenn further stated that it does not believe that it has demonstrated a disregard for 45 CFR Part 1626 by its practices and asserted that it has a system in place that is designed to ensure compliance with LSC regulations.

LSC notes for clarification that MidPenn was found to be in compliance with the restrictions of 45 CFR Part 1626. The Required Corrective Action provided above relates only to the documentation requirement of that Part. Due to the critical nature of the documentation requirements of this regulation, one (1) deficiency results in a finding of non-compliance.

Finding 6: Sampled cases evidenced substantial 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.⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Case files reviewed indicated that MidPenn is in substantial compliance with the requirements of 45 CFR § 1611.9. With limited exceptions, all case files reviewed contained a timely executed retainer agreement with an adequate identification of scope and subject matter where required. *See* Chambersburg Staff Closed 2013 Case No. 230404242 (This case was properly closed under closing code “F,” Negotiated Settlement Without Litigation, but the case file did not contain a retainer agreement as required by 45 CFR § 1611.9.); *see also* York Staff Closed 2014 Case No. 039917860 (This case was closed under closing code “H,” Administrative Agency Decision, but the case file did not contain a retainer agreement as required by 45 CFR § 1611.9.); and State College Staff Open Case No. 110036039 and State College Closed 2013 Case No. 110034577 (where the retainer agreements lacked adequate detail of the scope of representation).

Recommendation:

The DR recommended that MidPenn review all case files required to have a retainer agreement to verify that all agreements are properly executed, adequately identify the scope and subject matter of the representation, and are included in the case file.

In its response to the DR, MidPenn stated that it plans to re-train advocates to emphasize the importance of properly executed retainer agreements. It also will instruct supervising attorneys to make specific inquiries regarding retainer agreements during review meetings to determine if a retainer agreement has been properly completed.

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). MidPenn’s revised policy is compliant with 45 CFR Part 1636.

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).

⁷ 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.

Case files reviewed indicated that MidPenn is compliant with the requirements of 45 CFR Part 1636. All case files reviewed contained a statement of fact where required.

The MidPenn policy provided for review in advance of the visit did not indicate that, pursuant to 45 CFR § 1636.2(a)(1), a separate notice may be provided to a defendant identifying the plaintiff(s), in lieu of identifying each plaintiff in a filed complaint. It also did not indicate that 45 CFR Part 1636 notices are applicable to certain private attorney involvement cases. It was recommended that the policy be revised to reflect those provisions.

Pursuant to on-site discussions with the Executive Director regarding MidPenn's statements of fact policy, the policy was revised in the week following the visit to reflect all of the above-referenced recommendations. The revised policy is compliant with the requirements of 45 CFR Part 1636.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). MidPenn's revised policy on priorities is compliant with 45 CFR Part 1620.

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

Prior to the visit, OCE was provided a list of MidPenn's priorities. MidPenn identifies the following types of cases as within their priorities: maintaining and enhancing economic stability for families and individuals, preservation of housing and related housing needs for families and groups, and protecting the safety, stability, and well-being of families and individuals.

Sampled case files reviewed evidenced that MidPenn is in compliance with 45 CFR Part 1620. All case files reviewed were within MidPenn's priorities.

The MidPenn policy provided for review in advance of the visit did not enumerate all of the requirements to be considered when establishing priorities, pursuant to 45 CFR § 1620.3(b). While on-site, it was recommended that the policy be revised to incorporate the above-referenced provisions. Pursuant to on-site discussions with the Executive Director regarding MidPenn's policy on priorities, the policy was revised in the week following the visit to reflect all of the above-referenced recommendations. The revised policy is compliant with the requirements of 45 CFR Part 1620.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 9: Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

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

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 5.6.

Case files reviewed indicated that MidPenn is in compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6. All cases reviewed contained evidence of the legal assistance provided.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 10: Sampled cases evidenced substantial compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011) (Case closure categories).

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 (2008 Ed., as amended 2011), § 6.1.

The files reviewed demonstrated that MidPenn’s application of the CSR case closing categories is substantially compliant with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). All cases reviewed, with a limited number of exceptions, utilized the correct closing code. *See* Reading Staff Closed 2012 Case No. 040414818 (This case was closed under closing code “K,” Other, when case notes indicated that closing code “A,” Advice and Counsel should have been utilized.); *see also* Reading Staff Closed 2013 Case No. 040415288 (This case

was closed under closing code “B,” Limited Action, when the case notes indicated that it should have been closed under closing code “L,” Extensive Services.); Pottsville Staff Closed 2014 Case No. 080398966 (This case was closed using closing code “B,” Limited Action, when the case notes indicated that it should have been closed under closing code “A,” Advice and Counsel, as only advice was provided.); and Harrisburg Staff Closed 2012 Case No. 050037090 (This case was closed under closing code “K,” Other, when the case notes indicated that closing code “L,” Extensive Services would have been more appropriate.).

Recommendation:

The DR recommended that MidPenn conduct periodic staff training to ensure proper application of the CSR case closure categories.

In response to the DR, MidPenn stated that it will provide staff with training on proper closing code selection and has removed closing code “K” from its ACMS and as a closing code option from the closing form provided to PAI attorneys.

Finding 11: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

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 or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a).⁸ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook, as amended 2011) should be reported as having been closed in the grant 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 (2008 Ed., as amended 2011), § 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).

Sampled cases reviewed evidenced that MidPenn is in compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3. All case files reviewed were active or timely closed.

There are no recommendations or required corrective actions.

⁸ The time limitation of the 2001 Handbook that a brief service case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed., as amended 2011), § 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).

In its response to the DR, MidPenn did not comment on this Finding.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 3.2.

When a recipient provides more than one (1) 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 (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 6.4.

Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 13: Review of MidPenn's policies and the list of attorneys who have engaged in the outside practice of law, as well as interviews with the Executive Director, four (4) staff attorneys, and the President Elect of MidPenn's Board of Directors, revealed that MidPenn is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). MidPenn's revised outside practice of law policy is also in compliance with 45 CFR Part 1604.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in *pro bono* legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

During the compliance visit, MidPenn indicated that it had nine (9) attorneys who engaged in the outside practice of law during the review period. Team members who interviewed these

attorneys indicated that each outside practice of law was compliant with the requirements of 45 CFR Part 1604. In addition, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson revealed that MidPenn is in compliance with the requirements of 45 CFR Part 1604.

The MidPenn policy provided for review in advance of the visit was created, in part, based on a prior version of the regulation. As such, there were many provisions that have since been changed or revised in the current statute. For example, the policy provided for review did not indicate that, pursuant to 45 CFR § 1604.4, in order to permit outside practice of law, the Executive Director must first determine that the representation is consistent with the attorney's responsibilities to MidPenn's clients. As such, it was recommended that the pertinent sentence should be rewritten as such: "The Executive Director may permit a full-time staff attorney to engage in the outside practice of law only if the Executive Director determines that the representation is consistent with the attorney's responsibilities to MidPenn's clients and..." Additionally, the policy did not include a section that discussed court appointments or use of MidPenn resources, pursuant to 45 CFR § 1604.7 and 1604.6.

Pursuant to on-site discussions with the Executive Director, the policy was revised in the week following the visit to incorporate all of the above-mentioned recommendations. The revised policy was reviewed and is compliant with the requirements of 45 CFR Part 1604.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 14: Sampled cases, interviews, and a review of sampled written material 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.

During the compliance visit, MidPenn's written policy concerning the requirements of 45 CFR Part 1608 was reviewed. The policy states, in pertinent part, "MidPenn employees will not use any MidPenn resources to support or oppose a candidate for public or party office, any ballot measure, or any political party or association. Employees will not use official authority or influence to affect the result of any partisan or non-partisan office or nomination, and will not be candidates for public or party office." As such, the policy was found to be compliant and conforming to the requirements contained in 45 CFR Part 1608. A limited review of the cash disbursements and receipts journals for the review period found no indication of any payments or contributions 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. Further, review of the Form 990 that was completed by the program and submitted to the Internal Revenue Service for the tax years 2011 and 2012 revealed that the program

indicated that it did not engage in direct or indirect political campaign activities on behalf of, or in opposition to, candidates for public office.

A comprehensive review of MidPenn's pamphlets, brochures, flyers, etc. was conducted during the on-site visit. Review of the above-referenced materials revealed that all collected information was found to be free of any prohibited political message, expression, symbol, image, or allusion, and in compliance with 45 CFR Part 1608.

Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 15: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). Additionally, MidPenn's revised policy on fee generating cases is in compliance with 45 CFR Part 1609.

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).

Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, and review of the recipient's policies and fiscal records, evidenced compliance with the case reporting requirements of 45 CFR Part 1609.

The MidPenn policy provided for review in advance of the visit did not state the accounting requirements for receipts of attorneys' fees, or the procedure for accepting client reimbursement, pursuant to 45 CFR §§ 1609.4 and 1609.5. Pursuant to on-site discussions with the Executive Director regarding MidPenn's policy on fee-generating cases, the policy was revised in the week following the visit reflect all of the above-referenced recommendations. The revised policy was reviewed and is compliant with the requirements of 45 CFR Part 1609.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 16: Review of MidPenn's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff to determine compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities revealed compliance with 45 CFR Part 1610.

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

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

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

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

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

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

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

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

Observations of the physical locations of program field offices, along with review of MidPenn's policies, procedures, and chart of accounts revealed that MidPenn does not appear to be engaged in any restricted activities which would present 45 CFR Part 1610 compliance issues.

A limited review of the cash receipt and disbursement journals and general ledger for the review period identified no inappropriate transfers pursuant to 45 CFR § 1610.7, or expenditures pursuant to 45 CFR § 1610.4, by MidPenn of its LSC and/or non-LSC funds. Additionally, MidPenn's Accounting Manual contains a policy on contributions that requires acknowledgement of the receipts of gifts in writing, which satisfies the requirements of 45 CFR § 1610.5.

A review was conducted of funding sources that provided MidPenn with funds equal to or exceeding \$250.00 during the review period. A limited review of the acknowledgement provided to the funding sources found the notification to be consistent with the requirements of 45 CFR § 1610.5. Review of MidPenn's Board meeting minutes found that the Executive Director submitted a written report to the Board on program integrity in October 2012 and October 2013 to certify compliance with 45 CFR § 1610.8(b). The reports were submitted to LSC following approval by the Board.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 17: MidPenn substantially complies with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of PAI cases. Additionally, MidPenn is compliant with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

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

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

Recipients are required to develop a PAI Plan and budget. See 45 CFR § 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).

Fiscal/Accounting Records

The Audited Financial Statement ("AFS") for Fiscal Year Ending ("FYE") June 30, 2012 reported in the "Schedule of Revenues and Other Support, Expenses, and Changes in Net Assets by Primary Funding Sources" expenditures dedicated to the PAI effort in the amount of \$282,191.00, which is equal to 12.9% of MidPenn's total basic field grant (\$2,189,848.00). This amount met the 12.5% PAI requirement in 2012, using LSC funds. MidPenn's AFS for FYE June 30, 2013 also indicates that the program met LSC's PAI requirement for that fiscal year.

MidPenn has developed an annual PAI plan and budget to meet its PAI requirements. They have established PAI as a time use designation in their ACMS to allocate staff attorney time dedicated to PAI activities, as required by 45 CFR § 1614.3(e)(1)(i). MidPenn is required to do a cost allocation process on a quarterly basis by its state funder, Pennsylvania Legal Aid Network, Inc. ("PLAN"). The cost allocation procedure is designed by PLAN to be utilized in the allocation of

expenses among the various revenue sources of the legal services programs in Pennsylvania. The cost allocation plan is located in MidPenn's Accounting Manual. MidPenn's PAI allocation rate for indirect personnel costs was based on a time study of all support personnel who do support work for PAI, but who do not enter their time into the ACMS. The last time that this study was conducted was in 2010. During the review, MidPenn stated that that the study would be conducted again in 2014. It is recommended that MidPenn document the PAI allocation method for indirect personnel costs in its Accounting Manual.

PAI Contracts

In 2012 and 2013, MidPenn contracted with six (6) private attorneys in the delivery of legal services to clients. A review of contracts and payments between MidPenn and these private attorneys revealed MidPenn has adequate systems in place for contractual payments to individuals and/or organizations that provide administrative, support, and/or direct client services on behalf of the recipient. MidPenn pays private attorneys' fees at a rate that is set and determined by PLAN and the Executive Director indicated that this rate is used by all Pennsylvania legal services programs.

During the on-site review, MidPenn presented for review its policy regarding selection of contract attorneys, which was located in its Financial Management Policies. The policy stated that contract attorneys will generally be selected from three (3) groups, the first group consisting of former employees who have been gone from the firm for at least one (1) year and who left the firm on good terms. However, LSC regulations require that no PAI funds shall be committed for direct payment to any attorney who, for any portion of the previous two (2) years, has been a staff attorney as defined in 45 CFR § 1600.1. *See* 45 CFR § 1614.1(e). This was discussed with a member of MidPenn's fiscal staff during the on-site review, who stated that MidPenn's policy would be changed to reflect the requirements of the regulation. On September 3, 2014, the Executive Director confirmed that MidPenn's policy had been revised to require that former employees who are selected as contract attorneys to perform services as part of the program's PAI program have not been MidPenn employees within the previous two (2) years, and provided a copy of the policy reflecting the same.

PAI Procedural Review

MidPenn's PAI plan involves private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and contract services, with each office managing the PAI program for its own county. The PAI component assists clients in the following counties: Adams, Berks, Centre (including Juniata, Huntingdon, Mifflin, Clearfield, Bedford, and Blair), Cumberland, Dauphin, Franklin, Fulton, Lancaster, Lebanon, Perry, Schuylkill, and York. In order to address the needs of the population it serves, MidPenn collaborates with bar associations, private attorneys, and two (2) law schools in order to try and meet the demand for *pro bono* legal services. As such, members of the bar association in each of the above-referenced counties assist with MidPenn's PAI efforts by accepting cases for services, for a reduced fee or *pro bono*, or by providing a financial contribution to support the PAI program.

Intake Process: The intake process for a PAI case matches the intake process for a staff case, which was discussed herein in Finding 2 *supra*. Once a case is deemed suitable for PAI referral by MidPenn’s intake unit, it is assigned to a PAI Coordinator who reviews the intake for accuracy, to ensure that all of the critical fields are complete (income, assets, citizenship screening), and to ensure that there is sufficient information concerning the applicant, the adverse party, and the nature of the case.

Referral Process: PAI cases are referred to private attorneys in a variety of ways. In the office that serves Cumberland County, the PAI Coordinator reviews the referred intake applications and identifies cases which are potentially good referrals to private attorneys. She then transmits the information to the Cumberland County Bar Association (“CCBA”) Pro Bono Referral Program (“PBRP”), which is fully funded by the CCBA. A transmittal memorandum is prepared and sent to the PBRP Coordinator. The PBRP Coordinator then attempts to place the case with a local attorney. After the PBRP Coordinator locates an attorney willing to take on the case, she notifies the applicant by letter, who has the responsibility for scheduling an appointment with the attorney. The PBRP Coordinator also notifies the PAI Coordinator once the case has been placed with a private attorney.

This office also runs a *pro se* divorce clinic for applicants in Cumberland County. The clinic is run by a volunteer private attorney who provides assistance to clients seeking a simple divorce (no property division) on a bi-monthly basis. Essentially, clients are assisted in completing the divorce paperwork and are provided instructions on how the client can handle the case on their own. If, upon referral, it appears that an applicant can be assisted by the clinic, the PAI Coordinator will present the option of participating in the clinic. If the applicant agrees, the Coordinator will accept the case, enroll the client in the next available clinic, and send a letter to the client confirming the appointment date.

In the offices that serve Centre, Juniata, Huntingdon, Mifflin, Clearfield, Bedford, and Blair Counties, the PAI Coordinator determines whether the case will be referred to a private attorney by reviewing the intake application and a description of the client’s case. Once the decision to refer the case has been made, the Coordinator sends the client an initial engagement packet consisting of a citizenship attestation, referral and retainer agreement, along with a case specific questionnaire. Once the documents have been completed and returned, the PAI Coordinator will attempt to place the case with a private attorney. When an attorney agrees to accept the case, an engagement packet is sent consisting of a copy of the packet returned by the client and a case status/closing form. Subsequently, the client is advised that their case has been accepted for representation by a private attorney and is instructed to contact the attorney to make an appointment.

In the office that serves Dauphin County, there is a list of volunteer attorneys that is generated by the Dauphin County Bar Association (“DCBA”); each attorney is contacted by the DCBA notifying them of their selection and how MidPenn’s PAI program operates. The selected attorneys are instructed to contact the Harrisburg office to indicate whether they will participate in the program and if so, what type of case they would prefer to accept for services. The PAI Coordinator uses this list to place cases with private attorneys based on their case-type preferences. When there is a case suitable for PAI referral, the PAI Coordinator provides a

selected private attorney with the applicant's and adverse party's information to perform a conflict check. If there is no conflict, the Coordinator accepts the case, schedules an initial appointment, and verbally confirms the appointment date with the client. Letters are sent to the volunteer attorney and client confirming the appointment with instructions to the client to visit MidPenn's Harrisburg office prior to the appointment in order to review and sign documents (e.g. Notice to Pro Bono Clients). This office also places applicants referred to the PAI component in clinics, whenever possible. Cases suitable for clinic placement are those that involve custody, divorce, or bankruptcy. Applicants referred to PAI are offered the option of participating in the clinic and if they agree, they are enrolled in the next available clinic and the PAI Coordinator sends a letter confirming the appointment date.

In the offices that serve Lancaster, Lebanon, York, Berks, Schuylkill, Franklin, and Adams Counties, there is a list of volunteer attorneys maintained by the PAI Coordinators; these attorneys have agreed to participate in MidPenn's PAI efforts and have identified the types of cases for which they will provide services. The PAI Coordinator uses this list to place cases with private attorneys based on their case-type preferences. When there is a case suitable for PAI referral, the PAI Coordinator contacts the attorney to ask if they will accept the case. If the attorney consents, the Coordinator meets with the applicant and explains the placement process. At this meeting, the client signs the "Notice to Pro Bono Clients," which has the attorney's contact information. A copy of the Notice is sent to the attorney, and the Coordinator schedules an appointment for the client to meet with the attorney. Letters are sent to the volunteer attorney and client confirming the appointment.

Oversight: Once a case has been placed within the PAI component, the case is routinely monitored by the Coordinator for status updates. For cases serviced by the PBRP Coordinator, a copy of the initial placement letter is sent to the PAI Coordinator to keep her apprised of the status of the referral. The PBRP Coordinator also obtains regular updates from the private attorneys; updates for cases open for an extended period of time are also provided using a MidPenn prepared case status form. For the remaining PAI cases (i.e., those not serviced by the PBRP Coordinator), the PAI Coordinators indicated that they follow-up with the private attorney within one (1) to three (3) months of placing the case to obtain a case status update. The PAI Coordinators also indicated that they contact the private attorney approximately once a month to obtain case information, and may also contact the client to determine the status of the case.

When the file is ready for closure, the private attorney prepares a closure memorandum on the aforementioned case status form, and returns the form to the Coordinator, who will use the information provided to assign the applicable closing code. The Coordinators interviewed indicated that if they are unable to determine the status of the case, the case will be closed based upon the information in the file. If there is a question about the correct closing code, the Coordinator will discuss the case with a Managing Attorney and/or the Director of Compliance. In addition, upon case closure, a closing letter is sent to the client, along with a simple client satisfaction survey. After sending out the closing letter, the PAI Coordinator may complete a Pro Bono Closed File Review Checklist. A review of this checklist indicates that it meets the basic threshold requirements for counting a file as a CSR case and also provides guidance in the event that a critical element is missing.

During the on-site review, it was noted that several Clearfield PAI cases that had staff, not PAI, assistance documented should have been coded as staff cases. *See* Clearfield PAI Closed 2014 Case Nos. 120020958, 120020952, 120021032, and 120021073; *see also* Clearfield PAI Closed 2012 120020811 and State College PAI Closed 2013 Case No. 110035963. It was determined that this situation arose because the cases were initially referred by the CIU to the PAI department (and coded as such), but the PAI Coordinator later realized that the cases didn't meet the requirements for PAI referral. The Coordinator provided the clients with legal assistance regarding how to represent him or herself *pro se* and then closed the case, but did not change the case designation from PAI to staff. Prior to the conclusion of the visit, this was remedied by the PAI Coordinator. Currently, all potential Clearfield PAI cases that are referred by the CIU are coded as staff and will later be changed to PAI if a PAI attorney provides assistance.

PAI Case Review

Documentation of Legal Assistance

There were a limited number of PAI cases that did not contain sufficient documentation of the legal advice provided, pursuant to the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6. *See* Lancaster PAI Closed 2012 Case No. 020058889 (According to the case file, intake screening occurred on August 17, 2010, the case was accepted/referred on or about August 30, 2010, closed on August 16, 2012, and assigned closing code "K," Other. According to the case notes, this was a bankruptcy/debtor relief matter and it was not clear what legal assistance, if any, had been provided to the client.); *see also* Lebanon PAI Closed 2014 Case No. 072011529 (This case was opened on November 19, 2013, closed on January 23, 2014, and assigned closing code "A," Counsel and Advice. The case review intermediary indicated that advice was provided. However, at the time of case review, there was no description in the case file of the advice provided to the client.); Lebanon PAI Closed 2014 Case No. 072011566 (This case was opened on December 4, 2013, closed on January 23, 2014, and assigned closing code "A," Counsel and Advice. At the time of case review, there was no description of the advice provided to the client.); and Pottsville PAI Closed 2012 Case Nos. 080397782 and 040413094 and Gettysburg PAI Closed 2012 Case No. 220403584 (In these cases, there was evidence of PAI referral, but no record of any legal work performed by a PAI attorney.).

Case Closure Code

There were several PAI cases that did not utilize the proper closing code, pursuant to the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011). *See* Harrisburg PAI Closed 2014 Case No. 050038568 (This case was opened on or about January 19, 2013, closed on or about March 28, 2014, and assigned closing code "H," Administrative Agency Decision. According to the case notes, this was a custody/visitation matter where the parties reached an agreement on or about June 5, 2013. The intermediary indicated that this case should have been closed under "G," Negotiated Settlement With Litigation.); *see also* Harrisburg PAI Closed 2013 Case No. 050037074 (This case was opened on or about March 8, 2012, closed on or about March 29, 2013, and assigned closing code "B," Limited Action. According to the status update in the file, the attorney indicated that the client had been provided advice regarding their bankruptcy matter. Therefore, the more accurate closing code was "A," Counsel and

Advice, as the client was provided only legal advice regarding their legal matter.); and Harrisburg PAI Closed 2013 Case No. 050035078 (This case was opened on or about May 20, 2010, closed on or about December 5, 2013, and assigned closing code “B,” Limited Action. According to the case notes, this was a divorce case where the complaint for divorce had been amended on or about August 24, 2010. In 2011, the case status update indicated that the case was still pending because the Defendant had not been served the complaint. According to the case status update, there was a conference scheduled on or about May 21, 2012, and discovery was ongoing. In 2013, the attorney lost contact with the client and it was not clear if the client wanted to proceed with the divorce. The case status update dated December 5, 2013 indicated that the attorney planned to withdraw from the case. Therefore, the more accurate closing code is closing code “L,” Extensive Service, as it appears that an order of withdrawal was entered (or would be entered) by the Court.).

A number of the cases found with incorrect closing codes involved the improper use of closing code “K,” Other. *See also* Harrisburg PAI Closed 2012 Case No. 050035490 (This case was opened on or about September 21, 2010, closed on or about March 26, 2012, and assigned closing code “K,” Other. According to the case notes, this was an adoption matter where the necessary paperwork to effectuate an adoption was drafted and sent to a biological parent for consent. However, the parent did not sign the agreement to terminate parental rights and the clients subsequently separated and no longer wanted to proceed with the adoption. Therefore, depending on the complexity of the documents drafted, the more accurate closing codes were either closing code “L,” Extensive Service or closing code “B,” Limited Action); Harrisburg PAI Closed 2012 Case No. 050037014 (This case was opened on or about February 10, 2012, closed on or about October 18, 2012, and assigned closing code “K,” Other. According to the case notes, this was an adoption matter and a petition to consent was drafted, but one of the biological parents never consented to the adoption. Therefore, depending on the complexity of the documents drafted, the more accurate closing codes were either closing code “L,” Extensive Service or closing code “B,” Limited Action); and Lancaster PAI Closed 2013 Case No. 020062065. According to the case file, intake screening occurred on or about April 4, 2012, the case was accepted/referred on or about April 18, 2012, closed on or about January 10, 2013, and assigned closing code “F,” Negotiated Settlement Without Litigation. According to the case notes, this was a collection matter, preliminary objections had been dismissed by the Court, and the volunteer attorney drafted an Answer to the complaint. Case notes further indicated that on or about December 17, 2012, the debt collector had been convinced to halt the collection process. Therefore, the more accurate closing code was “G,” Negotiated Settlement With Litigation, as it appears that the volunteer attorney negotiated a resolution on behalf of the client.).

Dormant or untimely closed cases

There were a limited number of PAI cases that were dormant or untimely closed, pursuant to the requirements of CSR Handbook (2008 Ed., as amended 2011), §§ 3.3 and 10.3. *See* Reading PAI Closed 2014 Case No. 040413094 (Case review indicated that the last legal work was done in March 2011 and the file was closed in March 2014; however, there was no indication regarding why the file was kept open from 2011 to 2014.); *see also* Reading PAI Closed 2014 Case No. 040412884 (The case notes indicated that the last legal work was done in April 2011 and the case was closed in March 2014; however, there was no indication regarding why the file

was kept open from 2011 to 2014); Reading PAI Closed 2014 Case No. 040413161 (Case review indicated that the last legal activity was performed in May 2011 and the file was closed in March 2014; however, there was no indication regarding why the case file was kept open from 2011 to 2014); and Reading PAI Open Case No. 040412252 (The case file notes indicated that the last legal work was done in October 2010 and the case was still open at the time of the visit; however, there was no indication regarding why the case has been kept open since 2010.).

Documentation of citizenship or alien eligibility

There was one (1) PAI case reviewed that did not contain the documentation required by 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5. *See* Lancaster PAI Closed 2012 Case No. 020062478 (Case file notes indicated that intake screening occurred on or about June 22, 2012, the case was referred/accepted on or about June 29, 2012, the case was closed on or about August 16, 2012, and the client was provided extended services. At the time of case review, there was no citizenship attestation or documentation of alien eligibility in the file as required by 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5.).

Recommendations:

The DR recommended that MidPenn document its PAI allocation method (time study) for indirect personnel costs in its Accounting Manual and repeat the study every few years.

In its response to the DR, MidPenn stated that it will work with staff to record time spent on PAI activities in its ACMS and that “actual time records will be more accurate than doing a time study and extrapolating the information.” MidPenn’s response also confirmed that this process will be documented in its Accounting Manual.

The DR recommended that MidPenn conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure effective PAI case oversight, sufficient documentation of legal advice and citizenship/alien eligibility, and proper selection of closing codes, in accordance with CSR Handbook (2008 Ed., as amended 2011), §§ 10.4, 10.5, and 5.5 and 45 CFR Part 1626.

In its response to the DR, MidPenn indicated that it is working with supervisors to “reemphasize the importance of following the MidPenn Policy on ‘Follow-up and Tracking of PAI cases.’”

Required Corrective Action:

Pursuant to the documentation requirements of the CSR Handbook (2008 Ed., as amended 2011), § 10.5, the DR instructed MidPenn to ensure that every case that is closed as a PAI case contains the necessary documentation to identify the provided PAI assistance and support the selected closing code.

In its response to the DR, MidPenn indicated that it is working with supervisors to “reemphasize the importance of following the MidPenn Policy on ‘Follow-up and Tracking of PAI cases.’”

Additionally, as discussed *supra*, MidPenn stated that it has removed closing code “K” as a closing code option from the closing form provided to PAI attorneys.

Finding 18: MidPenn is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient’s programmatic activities.⁹ Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000.00 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2).

All subgrants must be in writing and must be approved by LSC. In requesting approval, recipients are required to disclose the terms and conditions of the subgrant and the amount of funds to be transferred. Additionally, LSC approval is required for a substantial change in the work program of a subgrant, or an increase or decrease in funding of more than 10%. Minor changes of work program, or changes in funding less than 10% do not require LSC approval, but LSC must be notified in writing. *See* 45 CFR §§ 1627.3(a)(1) and (b)(3).

Subgrants may not be for a period longer than one year, and all funds remaining at the end of the grant period are considered part of the recipient’s fund balance. All subgrants must provide for their orderly termination or suspension, and must provide for the same oversight rights for LSC with respect to subrecipients as apply to recipients. Recipients are responsible for ensuring that subrecipients comply with LSC’s financial and audit requirements. It is also the responsibility of the recipient to ensure the proper expenditure of, accounting for, and audit of the transferred funds. *See* 45 CFR §§ 1627.3(b)(1), (b)(2), (c), and (e).

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, except that payment of membership fees or dues mandated by a governmental organization to engage in a profession is permitted. *See* 45 CFR § 1627.4. Nor may recipients may make contributions or gifts of LSC funds. *See* 45 CFR § 1627.5. Recipients must have written policies and procedures to guide staff in complying with 45 CFR Part 1627 and shall maintain records sufficient to document the recipient's compliance with 45 CFR Part 1627. *See* 45 CFR § 1627.8.

⁹ Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient’s legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient’s clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

Subgrants

Review of relevant fiscal records revealed that MidPenn did not have a subgrant approved by LSC during the review period.

Membership Fees and Dues

Review of fiscal documentation revealed that MidPenn has incorporated a Bar and Professional Dues policy into its Administrative/Management Staff Personnel Manual, in addition to a policy on subgrants, both of which are compliant with 45 CFR Part 1627. Additionally, review of accounting records and the detailed general ledger for the review period revealed that in 2013, a non-mandatory fee was paid with LSC funds. The fee, in the amount of \$100.00, was expended for a Certified Public Accountant license renewal for MidPenn's Chief Financial Officer. Upon discussions with the Executive Director during the on-site review, this payment, which was made during the current fiscal year, was re-classed to another funding source prior to the conclusion of the on-site review.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 19: MidPenn is in substantial compliance with 45 CFR Part 1635 (Timekeeping requirement).

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.

MidPenn has a written policy on timekeeping in the Collective Bargaining Agreement with the MidPenn Legal Services United, which is a union representing certain MidPenn employees. The policy requires attorneys and paralegals to keep contemporaneous time records in accordance with LSC requirements. A sampling of attorney and paralegal timekeeping records for the time periods June 15-30, 2013 and December 15-31, 2013 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter, or supporting activity is recorded in substantial compliance with 45 CFR §§ 1635.3(b) and (c).

A review was conducted of 14 actual case files against their corresponding timekeeping records to determine the accuracy of the time reported as compared to the amount of work performed as disclosed in the case file. In many instances, the description of activity time, while contemporaneously entered, was insufficient to identify the work done on the case. This is due to the fact that the vast majority of MidPenn advocates only use a timekeeping code to describe their case activities (*e.g.*, “G” is used for Doc Preparation/Review, “N” is used for Travel, etc.), which often does not describe in sufficient detail the work that was performed. In many cases, due to the vagueness of the timekeeping code, it could not be determined what documents or case notations substantiated the time entry, which resulted in many entries being deemed unverifiable.

Required Corrective Action:

The DR required MidPenn to ensure that all time entries are contemporaneously entered and supported by an accurate description of the work performed, pursuant to the requirements of 45 CFR Part 1635.

In its response to the DR, MidPenn stated that it does not believe that the above-referenced review of the 14 case files warranted a required corrective action. MidPenn further asserted that it believes that its timekeeping codes, which are used by all advocates, along with its File Maintenance Standards, which apply to all case handlers, are adequate to describe in sufficient detail the work that was performed in a case. Additionally, MidPenn proposed, during the onsite review and in its comments to the DR, the following plan to address the corrective action: provide training to all advocates regarding the requirements of 45 CFR Part 1635; provide one-on-one training with advocates; and spot-check cases moving forward to ensure compliance with 45 CFR Part 1635. This plan, once implemented, would be sufficient to close out the required corrective action.

The DR indicated a finding of substantial compliance with 45 CFR Part 1635 because MidPenn’s timekeeping system is able to aggregate time record information on both closed and pending cases by legal problem type. Additionally, as stated above, MidPenn has a written policy on timekeeping that requires attorneys and paralegals to keep contemporaneous time records in accordance with LSC requirements. However, when attempting to substantiate the majority of time records entered in the 14 cases that were the subject of the timekeeping review, the intermediary was unable to locate corresponding documentation to support that the time entry

was contemporaneously made, or that the subject of the timekeeping entry matched the work that was performed in the case. For example, on a specific day, there would be an electronic timekeeping entry of “N (Negotiation);” however, there would be no contemporaneous notation, or supporting documentation, in the case file indicating that the advocate engaged in an activity relating to negotiation. Or, if there was an indication that negotiation activity took place, the date of the activity, as detailed in the case file, did not match the date of the time entry. Additionally, there were cases reviewed that contained timekeeping entries where the activity described by the entry did not correlate to the documents contained in the case file. For example, there were many timekeeping entries of “AC (Memo to File)” or “F (Letter/correspondence),” where there was no memorandum, letter, or correspondence contained in the case file that was dated on or about the date of the time entry. This is not compliant with 45 CFR § 1635.1(a), which requires “accurate and contemporaneous” recordkeeping; it was for this reason that a corrective action was issued. These instances of the electronic time entries not agreeing with the documentation contained in the case file were discussed with the Executive Director during the review and the Executive Director indicated that advocates would be trained on how to ensure that their electronic time records were in agreement with the documentation contained in the case file. Further, as also stated above, MidPenn’s plan to address this, once implemented, should be sufficient to close out the required corrective action.

Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys’ fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys’ fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.¹⁰ However, with the enactment of LSC’s FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys’ fees was lifted. Thereafter, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys’ fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys’ fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys’ fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys’ fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).¹¹

A limited review of the PLAN allocation workbook found that the spreadsheet properly accounts for any collection of attorneys’ fees and allocation of revenue across funding sources. Further review of MidPenn’ fiscal and accounting records indicated compliance with 45 CFR Part 1642.

¹⁰ 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).

¹¹ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys’ fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

The sampled files reviewed did not contain a prayer for attorneys' fees, as such MidPenn is in compliance with the requirements of 45 CFR Part 1642. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 21: Sampled cases reviewed and interviews evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). MidPenn's revised policy is in compliance with the requirements of 45 CFR Part 1612.

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.

Based on a limited review of MidPenn's Semi-Annual Reports on Legislative and Rulemaking Activities for July 2011 through December 2013, cash receipts journals, cash disbursements journals, chart of accounts, and general ledger, MidPenn does not appear to be engaged in any restricted lobbying nor other activities which would present 45 CFR Part 1612 compliance issues. Additionally, Form 990, which was completed by MidPenn and submitted to the Internal Revenue Service for the tax years 2011 and 2012, also stated that the program did not engage in lobbying activities.

The MidPenn policy on legislative and administrative advocacy that was provided for review in advance of the on-site visit did not include definitions of the pertinent terms used throughout the regulation, or list all of the permissible activities, pursuant to 45 CFR §§ 1612.1, 1612.5, and 1612.9(b)(1) and (2). Pursuant to discussions with the Executive Director, the policy was revised in the week following the visit to incorporate all of the above-referenced recommendations. The revised policy was reviewed and is in compliance with the requirements of 45 CFR Part 1612.

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 22: Sampled cases and interviews 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 using LSC funds to provide legal assistance with respect to a criminal proceeding, or funds from any source to collaterally attack a criminal conviction. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 23: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions). MidPenn's revised policy is in compliance with the requirements of 45 CFR Part 1617.

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).¹²

The MidPenn policy that was provided for review in advance of the visit did not indicate that it is permissible to provide legal assistance to an individual who is seeking to withdraw from, or opt out of, a class in a class action matter. While on-site, it was recommended that the policy be revised to reflect the above-referenced provision. Pursuant to on-site discussions with the Executive Director, the policy was revised in the week following the visit to reflect the permissible activities, pursuant to 45 CFR § 1617.2(b)(2). The revised policy was reviewed and is compliant with the requirements of 45 CFR Part 1617.

None of the sampled files reviewed involved initiation or participation in a class action. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's

¹² 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).

President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 24: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting). MidPenn's revised policy is in compliance with the requirements of 45 CFR Part 1632.

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.

The MidPenn policy that was provided for review in advance of the visit did not provide a current definition for redistricting, pursuant to 45 CFR § 1632.2, and did not list all of the restrictions relating to redistricting actions, as identified in 45 CFR § 1632.3. This was discussed with the Executive Director and, pursuant to those discussions, the policy was revised in the week following the visit to incorporate all of the above-referenced recommendations. The revised policy was reviewed and is in compliance with 45 CFR Part 1632.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 25: Sampled cases and interviews 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. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 26: Sampled cases and interviews 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. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 27: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation). MidPenn's revised policy is in compliance with 45 CFR Part 1638.

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.¹³ This restriction has been contained in all subsequent appropriations acts.¹⁴ This 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."

The MidPenn policy that was provided for review in advance of the visit did not list all of the permissible activities that do not violate the regulation, as outlined in 45 CFR § 1638.4. While on-site, the review team advised MidPenn that the policy should be revised to reflect all permissible activities. Pursuant to on-site discussions with the Executive Director, the policy

¹³ *See* Section 504(a)(18).

¹⁴ *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).

was revised in the week following the visit to reflect the necessary change. The revised policy was reviewed and is in compliance with the requirements of 45 CFR Part 1638.

None of the sampled files, including documentation, such as community education materials and program literature, indicated program involvement in such activity. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 28: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. No LSC funds 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. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, indicated that MidPenn is not involved in such activity.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 29: Sampled cases, interviews, and policy review 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. Sampled files reviewed, interviews with the Executive Director, four (4) staff attorneys, and MidPenn's President Elect and Finance Committee Chairperson, and review of MidPenn's policies further evidenced and confirmed that MidPenn was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 30: MidPenn is in compliance with the requirements of 45 CFR § 1620.6.

During the compliance visit, the review team requested to see copies of signed written agreements wherein staff acknowledged, among other things, that they have read and are familiar with MidPenn's priorities and emergency case acceptance procedures. Pursuant to the request, the Executive Director provided copies of the statements signed by MidPenn staff, which were consistent with the requirements of 45 CFR § 1620.6. Additionally, interviews with the Executive Director evidenced that MidPenn is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information); however, one (1) change was recommended.

In accordance with 45 CFR Part 1644, recipients are directed to disclose certain information to the public and to LSC on cases filed in court by the recipient's attorneys. This Part applies in the following instances:

- a. To actions filed on behalf of plaintiffs or petitioners who are clients of the recipient;
- b. Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient is not the attorney of record in the case below and the recipient's client is the appellant;
- c. To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and
- d. To cases filed pursuant to subgrants under 45 CFR Part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under 45 CFR Part 1614. *See* 45 CFR § 1644.3.

The MidPenn policy on case disclosure that was provided for review in advance of the visit did not state how properly requested information will be made available, as detailed in 45 CFR § 1644.4(b). While on-site, it was recommended that the policy be revised to incorporate this provision. Pursuant to on-site discussions with the Executive Director, the policy was revised in the week following the visit to reflect the recommended revision. The revised policy was reviewed and is in compliance with the requirements of 45 CFR Part 1644.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 32: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).

Except as provided in 45 CFR §§ 1639.4 and 1639.5, recipients may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. Under 45 CFR § 1639.6 a recipient is required to adopt written policies and procedures to guide its staff in complying with 45 CFR Part 1639.

The MidPenn policy on welfare reform that was provided for review in advance of the visit listed permissible activities that were not found in the regulation. While on-site, MidPenn was advised that only permissible activities found in the statute should be included in its welfare reform policy. Pursuant to on-site discussions with the Executive Director, the policy was revised in the week following the visit to reflect the necessary changes. The revised policy was reviewed and is in compliance with the requirements of 45 CFR Part 1639.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 33: Review of the Segregation of Duties Worksheet, a matrix of internal controls, and interviews with the employees who perform financial functions, disclosed that adequate segregation of duties has been achieved by MidPenn.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to, LSC Audit Guide for Recipients and Auditors, the LSC Accounting Guide For LSC Recipients (2010 Ed.) (“LSC Accounting Guide”), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity’s governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* Chapter 3 of the LSC Accounting Guide.

The LSC Accounting Guide provides guidance on all aspects of fiscal operations and the 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur.

Interviews with MidPenn’s Chief Financial Officer and review of the Segregation of Duties Worksheet, which consisted of a matrix of internal controls submitted to MidPenn and completed by the Chief Financial Officer, disclosed that proper segregation of duties has been achieved by MidPenn. In its fiscal department, along with its Chief Financial Officer, MidPenn has two (2) accountants and review of their roles revealed that the segregation of duties among the accounting staff is strong.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 34: A limited review of MidPenn's bank account reconciliations and related policies and procedures disclosed that MidPenn is in substantial compliance with the requirements enumerated in the LSC Accounting Guide for LSC Recipients (2010 Ed.). The review revealed that four (4) outstanding checks over six (6) months old were included in two (2) bank reconciliations.

The LSC Accounting Guide, Appendix VII, I (1-8) requires that bank reconciliations be performed as follows; reconciliations are to be performed monthly; checks and deposits are to be examined for accuracy; proper journal entries are to be made in the general ledger and check register for voided checks; bank statements are to be reconciled with the respective general ledger cash account; bank accounts are to be monitored for wire transfers; completed bank account reconciliations are to be reviewed by a Fiscal Manager and initialed; checks outstanding over six months are to be investigated and resolved; and the bank statements are to be delivered unopened directly to the person preparing the reconciliation or management official prior to reconciliation.

Review of MidPenn's account reconciliations, policies, and procedures disclosed that MidPenn's policies and procedures mirror the LSC Accounting Guide requirements. The review further revealed that the bank account reconciliations for October and November 2013 contained four (4) outstanding checks over six (6) months old in the amounts of \$1.27 (dated September 2011), \$153.80 (dated January 2012), \$226.44 (dated September 2012), and \$126.59 (dated October 2012) that need to be researched and resolved, pursuant to the requirements of the LSC Accounting Guide, Appendix VII, I (Bank Reconciliation Procedures), § 7. The review revealed no other deficiencies concerning bank reconciliations and it was determined that MidPenn is in substantial compliance with its own policies and LSC's requirements.

Recommendation:

The DR provided that MidPenn should investigate and resolve the above-referenced four (4) outstanding checks that are more than six (6) months old, in the amounts of \$1.27 (dated September 2011), \$153.80 (dated January 2012), \$226.44 (dated September 2012), and \$126.59 (dated October 2012), pursuant to the requirements of the LSC Accounting Guide, Appendix VII, I (Bank Reconciliation Procedures), § 7.

In its response to the DR, MidPenn stated that, despite researching the checks prior to them becoming six (6) months old, it was unable to obtain the information necessary to void and/or reissue them. As such, it resolved to turn the checks over to the State of Pennsylvania, pursuant to a regulation governing unclaimed property, which has a requirement that the unclaimed property be held for five (5) years. MidPenn further reiterated that the procedures it has in place are sufficient to meet the requirements of the LSC Accounting Guide, Appendix VII, I (Bank Reconciliation Procedures), § 7.

Finding 35: A limited review of the cash receipts and cash disbursements was performed for the receipts recorded in MidPenn's operating checking account in October of 2013. The review disclosed that MidPenn has adequate policies and proper internal controls surrounding cash receipts and disbursements, which are adhered too and are in compliance with LSC's requirements.

A limited review of cash receipts, including manual checks and direct deposits, totaling \$260,954.00 for the month of October 2013 that were deposited into the operating checking account were reviewed during the visit. The review disclosed that the cash receipts are in compliance with MidPenn's Accounting Manual and LSC's requirements.

A review of a sample of cash disbursements, including manual checks and electronic transfers, totaling \$101,31275.00, deducted from the operating checking account for the month of October 2013, disclosed that the disbursements were in compliance with MidPenn's Accounting Manual and the LSC Accounting Guide. The internal controls appeared adequate and were followed in the processing of the disbursements. All checks were signed by two (2) employees, who were authorized check signers, the sequence of the check numbering system was maintained, and the invoices were vouchered and agreed to the check amounts. Additionally, it is MidPenn's policy to ensure that all voided checks are defaced and kept in a locked cabinet. The electronic transfers were approved by the Chief Financial Officer, agreed to the back-up documentation, and recorded properly in compliance with MidPenn's policy and procedures. For the reasons stated above, the review revealed that MidPenn's cash disbursements procedures are in compliance with its policies and LSC's requirements.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 36: Review of MidPenn's fiscal records revealed that petty cash funds consist of individual imprest funds totaling \$100.00, \$150.00, or \$50.00 at each MidPenn office. A review of the internal controls and activity for the month of September 2013 for the Harrisburg petty cash fund disclosed that there were no deficiencies in the internal controls or processing of the petty cash and MidPenn is in compliance with its own policies and LSC's requirements.

Review of the petty cash transaction processed during September 2013 at the Harrisburg office disclosed that the fund is maintained in a locked box stored in a locked file cabinet. The reimbursement of the fund was proper in that the check was made payable to the custodian and supported by proper receipts. All disbursements had receipts attached and an employee's signature acknowledging receipt of payment for the minor expenses reimbursed. Additionally, a review of a surprise count of the petty cash fund by management disclosed that the sum of the cash plus receipts equaled \$100.00.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn provided a chart of its current petty cash accounts indicating that in the Administration, Carlisle, Chambersburg, Harrisburg, Lancaster, Lebanon, Pottsville, Pottsville Ombudsman Staff, Reading, and York offices, the petty cash accounts total \$100.00 in each office; in the Altoona, Bedford, Clearfield, Gettysburg, and Lewistown offices, the petty cash accounts total \$50.00 in each office; and in the State College office, the petty cash account totals \$150.00.

Finding 37: A review was conducted of MidPenn’s policies and procedures concerning client trust accounts (“CTA”), and a limited review of receipts and disbursements from the accounts was conducted. Both reviews disclosed that MidPenn is in compliance with its own requirements and LSC’s requirements concerning CTA.

The LSC Accounting Guide, Appendix VII, L (1-7) requires the following: that client trust funds be deposited into a bank account used only for the client’s intended purpose; the client trust bank account be approved by the governing body; two (2) signatures on checks; the account be reconciled by an individual not involved with client deposit operations; pre-numbered receipts are given to clients for all checks and cash received; a receipt book with pre-numbered receipts, a disbursement journal and detailed activity for each client’s deposit are maintained; and unclaimed client funds are timely turned over to the state unclaimed funds pursuant to state law.

Review of MidPenn’s policies and procedures pertaining to client trust funds disclosed that they are consistent with LSC’s requirements. A review of selected receipts and disbursements related to the CTA disclosed that they are in compliance with LSC’s and MidPenn’s requirements. Additionally, a record is kept of each client account. As such, MidPenn’s CTA policies and procedures, along with its processing of CTA receipts and disbursements, are adequate and in compliance with its own and LSC’s requirements.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 38: Review of a sample of MidPenn’s credit cards statements disclosed that there are adequate internal controls surrounding the use of MidPenn’s credit cards with one (1) exception; the Executive Director’s credit card purchases are not reviewed by MidPenn’s Board of Directors.

Review of the credit card statement reimbursements for October 2013 disclosed that all expenses charged were documented by individual receipts and were tied to expense reports to ensure double payments were not made. The review further revealed that at the time of the on-site review, MidPenn’s Board of Directors did not approve the Executive Director’s credit card purchases and such purchases were approved by MidPenn’s Chief Financial Officer, suggesting a lack of segregation of duties pursuant to the LSC Accounting Guide, Chapter 3, §§ 3-4(3) and 3-4(4). In order to achieve strong segregation of duties, it was recommended that MidPenn have a member of its Board of Directors review the Executive Director’s expenses noted on the credit

card statement to ensure that they are reasonable, even the review occurs after payment of the expenses. This was discussed with the Executive Director during the on-site review and MidPenn's plan moving forward is for the Executive Director to cease using the MidPenn credit card, only use a personal credit card for all business expenses, and submit all personal credit card charges relating to business expenses for reimbursement to the Board, which will result in all of the Executive Director's expenses being reviewed by the Chair of the Finance Committee.

Review of MidPenn's procedures concerning payment for charges made to MidPenn's corporate credit card revealed that the current procedure is for an accountant to vouch the credit card statement (*i.e.*, agree to receipts and to expense reports), the Chief Financial Officer to approve the credit card statement for payment, the Executive Director to sign the check for payment and give to the second check signer for signature, and then to have the check mailed to the credit card company. MidPenn should keep its payment procedure the same in order to ensure prompt payment of the credit card statement and not incur any late charges.

Recommendation:

The DR recommended that MidPenn implement the above-referenced plan for the Executive Director to cease using the MidPenn credit card, only use a personal credit card for all business expenses, and submit all personal credit card charges relating to business expenses for reimbursement to the Board, which will result in all of the Executive Director's expenses being reviewed by MidPenn's Board of Directors.

In its response to the DR, MidPenn stated that the MidPenn credit card was used for business expenses for travel to and from conferences, as well as to pay the annual licensing fee for all MidPenn attorneys, which must be done online and generally is in excess of \$8,000.00. MidPenn further stated that the MidPenn credit card was never in the Executive Director's possession other than when she traveled to and from a conference to pay for business related expenses, and the Executive Director did not make any arrangements for business travel. MidPenn asserted that the Executive Director will use her personal credit card for business related expenses and will attach supporting documentation to any request made to the Board for reimbursement. Lastly, MidPenn stated that the MidPenn credit card that was in the Executive Director's name has been cancelled.

LSC notes, in response to MidPenn's comments to the DR, that this recommendation is not an indication of any improper use of MidPenn's credit cards, but a recommendation to further strengthen MidPenn's existing procedures.

Finding 39: A review was conducted of MidPenn's policies and procedures concerning expense reporting, travel advances, and salary advances. All reviews disclosed that MidPenn is in compliance with LSC's requirements. Additionally, a review was conducted that compared MidPenn's payroll policies and procedures to LSC's requirements, along with a review of the payroll processing for the period ending October 25, 2013. The payroll policies and procedures and the processing of the sample payroll period disclosed compliance with LSC's requirements.

Review of sampled expense reports disclosed that expense are signed by the employee and approved by the employee's supervisor, except for the Executive Director's expense reports, which are approved by MidPenn's Board of Directors. Additionally, an accountant reviews the expense reports for proper adherence to MidPenn's requirements and ensures that there is proper documentation (receipts), and that the calculations are correct, prior to sending the report to the Chief Financial Officer for payment authorization. Review of the expense reports disclosed that MidPenn is in compliance with its own policies and procedures, and is also in compliance with LSC's requirements.

MidPenn issued a limited number of travel advances during the review period. As such, three (3) travel advances were selected for review. The review disclosed that the travel advances reviewed were in compliance with MidPenn's and LSC's requirements. The travel advances were approved in advance of the travel, properly recorded as a receivable, and cleared through the expense reporting procedure. Review of the travel advances revealed that MidPenn is in compliance with its own policies and procedures, and in compliance with LSC's requirements for travel advances.

Review of fiscal records and interviews with the Chief Financial Officer revealed that MidPenn does not issue salary advances; therefore, no review was necessary to assess proper internal controls and procedures. Review of MidPenn's general ledger confirmed that there were no salary advance accounts where such advances would be recorded.

Review of MidPenn's payroll policies and procedures disclosed that they are in compliance with LSC requirements. Time cards are approved by the employee's supervisor. Vacation, holiday, sick, and personnel days are approved by the employee's supervisor and tracked by ADP, MidPenn's payroll system. The payroll is reviewed and approved by the Chief Financial Officer prior to transferring the funds to the payroll checking account. Based upon the review outlined above, MidPenn has adequate policies and procedures surrounding the processing of its payroll and adheres to LSC's requirements.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 40: An interview with the President Elect of MidPenn’s Board of Directors, who is also the Chairperson of the Board of Director’s Finance Committee, and a limited review of the Board of Director’s meeting minutes disclosed that MidPenn’s Board of Directors is in compliance with LSC’s regulations and requirements.

An interview with the President Elect and Chairperson of MidPenn’s Board of Director’s Finance Committee concerning the responsibilities of the financial oversight committees (as outlined in the LSC Accounting Guide) and review of minutes from a sample of Board of Directors’ meetings, disclosed that the Board of Directors adheres to LSC’s regulations and requirements.

With regard to accounting and reporting practices, MidPenn’s Board of Directors fulfills its fiduciary responsibilities and duties in accordance with LSC’s regulations and requirements by:

- Guiding the process of selecting MidPenn’s auditor and recommending the selection of a particular auditor;
- Meeting with the auditor for an exit conference at the completion of each audit;
- Reviewing the expenditure budget in detail and recommending approval to the full Board;
- Maintaining communications with the auditor and meeting with the auditor to discuss and/or inquire about audit reports, financial statements, and the effectiveness of MidPenn’s management of accounting and financial functions;
- Hiring the auditor and setting the auditors compensation;
- Overseeing the auditor’s activities;
- Setting rules and processes for complaints concerning:
 - a) Accounting practices;
 - b) Internal control practices;
- Instituting any changes necessary to ensure proper oversight and control of funds;
- Reviewing the IRS 990 for completeness, accuracy and on time filing;¹⁵
- Reviewing and approving MidPenn’s annual budget;
- Reviewing monthly management reports (including budget and actual income and expenses variances, and statement of cash on hand) with the Executive Director;
- Coordinating Board training on financial matters; and
- Ensuring that MidPenn’s operations are conducted and managed in a manner that emphasizes ethical and honest behavior, compliance with applicable laws, regulations and policies, effective management of MidPenn’s resources and risks, and accountability of persons within the organization.

The Board of Directors has one (1) member who is considered a financial expert by MidPenn due to his experience with trusts and non-profits’ accounting. Additionally, the governing body resolutions for the committees adequately define their duties and responsibilities.

There are no recommendations or required corrective actions.

¹⁵ The President Elect expressed some confusion regarding whether the Board of Directors reviews the 990. The 990 itself has the question (11a) answered in the affirmative that the Board reviews the 990, and Schedule O of the 990 also states that the Board reviews the 990.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 41: Review of MidPenn’s information technology (“IT”) infrastructure revealed that the security surrounding MidPenn’s IT systems is generally adequate; however, at the time of the review, MidPenn did not require its employees to change their passwords on a periodic basis.

Section 3-6 of the LSC Accounting Guide recommends that there be adequate security over a recipient’s computer system. With regard to computer passwords, specific recommendations are identified; namely, passwords are not to be shared, passwords and codes are to be changed periodically, and old passwords and users are to be deleted immediately. Additionally, the LSC Accounting Guide, § 3-5.14 recommends that the system have a disaster recovery plan and that there be appropriate firewalls and antivirus and antispyware installed.

Review of MidPenn’s computer system consisted of interviewing the Director of Technology regarding the ways in which data is backed up and how data is secured through the use of passwords. Specifically, the Director of Technology was asked to provide information on whether the accounting system was backed up on a regular basis to ensure that information stored on MidPenn’s computers could be recovered in the event of a disaster or natural emergency. The Director of Technology stated that the system is backed up in real time through a server located in a MidPenn service office. Additionally, the Director of Technology stated that there are security controls such as firewalls and antivirus and spyware programs installed at MidPenn for additional data security.

The Director of Technology was also asked to discuss MidPenn’s use of passwords; namely, whether passwords are required to access the software systems, whether the passwords are changed on a regular basis, and when, if ever, old passwords and users are deleted. The Director of Technology stated that passwords are required to access MidPenn’s system, but they are not required to be changed on a periodic basis. This was discussed with the Executive Director during the on-site review and she stated that MidPenn’s computer system will be upgraded effective July 1, 2014, which will require all employees accessing the system to change their passwords periodically. Based upon the statements of the Director of Technology and the Executive Director’s confirmation on July 22, 2014, MidPenn’s computer system upgrade, which occurred on July 1, 2014, has resulted in the requirement for users to change their passwords every six (6) months. As such, MidPenn’s IT system appears to have adequate security and to be in compliance with LSC requirements.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 42: A review conducted of MidPenn's Record Retention Policy and the related procedures disclosed that they are in compliance with LSC's requirements. Additionally, a review conducted of MidPenn's Property and Equipment records for 2013 disclosed compliance with the LSC Accounting Guide's requirements.

Through discussions with the staff of MidPenn, it was determined that MidPenn retains all of its records forever. The records are stored on-site, in the basement of MidPenn's Harrisburg office. Additionally, MidPenn has a written policy regarding records retention, which was reviewed during the visit and found to be in compliance with LSC's requirements.

The LSC Accounting Guide, Appendix VII, § C (1-5) requires that proper records be maintained for fixed assets purchased in excess of \$5,000.00 and provides that the following information should be included in the recordation of the asset: date of purchase; description of item, including model and serial number; cost and salvage value, if any, of item and check number of disbursement; identification of funds used to purchase assets; depreciation lives assigned to the assets; and identification number and asset location of the asset. Additionally, the capitalized items are to be balanced to the general ledger control accounts periodically; the fixed assets are to be tagged with identification numbers to match the fixed asset records; physical inventories are to be conducted every two years and compared to the fixed asset records; and adjustments for sale, theft, etc. are to be approved by an employee independent of the maintain the fixed asset records. *See id.*

Review of MidPenn's Fixed Asset Ledger for December 2013, along with related policies and procedures, disclosed that MidPenn's property, plant, and equipment records are in compliance with the LSC Accounting Guide's requirements

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 43: A review was conducted of MidPenn's purchasing policies/procedures to assess compliance with the LSC Accounting Guide and the Property Acquisition and Management Manual (2001 Ed.) ("PAMM"). Additionally, a limited review was conducted of MidPenn purchases. Both reviews disclosed that MidPenn is in compliance with LSC's requirements and has adequate internal controls over its purchasing.

The LSC Accounting Guide, Appendix VII, § D (1-12) requires specific controls to be in place over procurement including, but not limited to, the following: procedures that provide for the solicitation of prices for purchase, rent, and/or lease of fixed assets; a systematic method for determining what supplies are needed and in what quantities; purchase orders outstanding for long periods of time are investigated; prior approval from LSC for purchases with LSC funds of real property or leases of personal property, or purchase of capital expenditures of more than \$10,000.00 to improve real property as required by PAMM; procedures that provide for the solicitation of proposals or bids prior to entering into a contract that exceeds a specific dollar amount when LSC funds are used; and purchases above a reasonable level are fully documented

by maintaining the bids and in the event of a sole source purchase above a specific dollar amount, a written justification is available.

Review of MidPenn's purchasing policies and procedures disclosed that they are in compliance with LSC's requirements as noted above. Additionally, the internal controls surrounding procurements by MidPenn are adequate and in compliance with the LSC Accounting Guide, PAMM, and MidPenn's own policies and procedures.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

Finding 44: A limited review of fiscal documents, and interviews with MidPenn staff, demonstrated that MidPenn is in compliance with the requirements of 45 CFR § 1629.1 (Bonding of recipients), as MidPenn carries adequate fidelity bond insurance coverage on employees handling cash.

Pursuant to 45 CFR Part 1629, recipients are required to carry fidelity bond coverage at a minimum level of at least 10 percent (10%) of the program's annualized LSC funding level from the previous fiscal year, or of the initial grant or contract, if the program is a new grantee or contractor. No coverage carried pursuant to this regulation shall be at a level less than \$50,000.00. *See* 45 CFR § 1629.1.

Review of the insurance declaration for MidPenn's fidelity bond indicated compliance with 45 CFR § 1629.1.

There are no recommendations or required corrective actions.

In its response to the DR, MidPenn did not comment on this Finding.

IV. RECOMMENDATIONS¹⁶

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

1. MidPenn provide intake staff with training regarding: proper calculation of all household members; proper application of over-income factors, pursuant to 45 CFR § 1611.5; and MidPenn's financial eligibility policy. It was also recommended that MidPenn ensure proper application of the over-income eligibility factors listed in 45 CFR § 1611.5, and the procedures enumerated therein for applying authorized exceptions when an applicant is over-income. (Finding 2)

In its response to the DR, MidPenn indicated that in September 2014, in recognition of the confusion concerning when to obtain an income waiver, it prepared and distributed to intake staff detailed instructions concerning which applicants are eligible for a waiver when over-income factors are present that warrant approval for the waiver. Additionally, MidPenn stated that it intends to revise its policy to be clearer with regard to the requirement to complete an income waiver, and will seek Board approval of its revised policy. MidPenn further asserted that it intends to take steps to implement the recommendations relating to staff training.

2. MidPenn ensure that all closed 2014 and open cases contain CSR-compliant citizenship attestations prior to reporting those cases to LSC, and take steps to remove all citizenship attestations that do not comply with the requirements of the CSR Handbook (2008 Ed., as amended 2011) from circulation. This will help to ensure that the corrective action required in Finding 5 *supra* is accomplished. (Finding 2)

In its response to the DR, MidPenn stated that it is taking steps to undertake this review.

3. MidPenn review all case files required to have a retainer agreement to verify that all agreements are properly executed, adequately identify the scope and subject matter of the representation, and are included in the case file. (Finding 6)

In its response to the DR, MidPenn stated that it plans to re-train advocates to emphasize the importance of properly executed retainer agreements, and will instruct supervising attorneys to make specific inquiries regarding retainer agreements during review meetings to determine if a retainer agreement has been properly completed.

4. MidPenn conduct periodic staff training to ensure proper application of the CSR case closure categories. (Finding 10)

¹⁶ 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.

In response to the DR, MidPenn stated that it will provide staff with training on proper closing code selection and has removed closing code “K” from its ACMS and as a closing code option from the closing form provided to PAI attorneys.

5. MidPenn document its PAI allocation method (time study) for indirect personnel costs in its Accounting Manual and repeat the study every few years. (Finding 17)

In its response to the DR, MidPenn stated that it will work with staff to record time spent on PAI activities in its ACMS and that “actual time records will be more accurate than doing a time study and extrapolating the information.” MidPenn’s response also confirmed that this process will be documented in its Accounting Manual.

6. MidPenn conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure effective PAI case oversight, sufficient documentation of legal advice and citizenship/alien eligibility, and proper selection of closing codes, in accordance with CSR Handbook (2008 Ed., as amended 2011), §§ 10.4, 10.5, and 5.5 and 45 CFR Part 1626. (Finding 17)

In its response to the DR, MidPenn indicated that it is working with supervisors to “reemphasize the importance of following the MidPenn Policy on ‘Follow-up and Tracking of PAI cases.’”

7. MidPenn investigate and resolve the above-referenced four (4) outstanding checks that are more than six (6) months old, in the amounts of \$1.27 (dated September 2011), \$153.80 (dated January 2012), \$226.44 (dated September 2012), and \$126.59 (dated October 2012), pursuant to the requirements of the LSC Accounting Guide, Appendix VII, I (Bank Reconciliation Procedures), § 7. (Finding 34)

In its response to the DR, MidPenn stated that, despite researching the checks prior to them becoming six (6) months old, it was unable to obtain the information necessary to void and/or reissue them. As such, it resolved to turn the checks over to the State of Pennsylvania, pursuant to a regulation governing unclaimed property, which has a requirement that the unclaimed property be held for five (5) years. MidPenn further reiterated that the procedures it has in place are sufficient to meet the requirements of the LSC Accounting Guide, Appendix VII, I (Bank Reconciliation Procedures), § 7.

8. MidPenn implement the plan referenced in Finding 38 for the Executive Director to cease using the MidPenn credit card, only use a personal credit card for all business expenses, and submit all personal credit card charges relating to business expenses for reimbursement to the Board, which will result in all of the Executive Director’s expenses being reviewed by the Chair of the Finance Committee. (Finding 38)

In its response to the DR, MidPenn stated that the MidPenn credit card was used for business expenses for travel to and from conferences, as well as to pay the annual licensing fee for all MidPenn attorneys, which must be done online and generally is in excess of \$8,000.00. MidPenn further stated that the MidPenn credit card was never in

the Executive Director's possession other than when she traveled to and from a conference to pay for business related expenses, and the Executive Director did not make any arrangements for business travel. MidPenn asserted that the Executive Director will use her personal credit card for business related expenses and will attach supporting documentation to any request made to the Board for reimbursement. Lastly, MidPenn stated that the MidPenn credit card that was in the Executive Director's name has been cancelled.

LSC notes, in response to MidPenn's comments to the DR, that this recommendation is not an indication of improper use of MidPenn's credit cards, but only a recommendation to further strengthen MidPenn's existing procedures.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, where appropriate. (Finding 5)

In its response to the DR, MidPenn stated that it does not believe that one (1) case file missing an attestation (after exclusion of the case file where an attestation was obtained subsequent to the conclusion of the visit) warrants a required corrective action. MidPenn further stated that it does not believe that it has demonstrated a disregard for 45 CFR Part 1626 by its practices and asserted that it has a system in place that is designed to ensure compliance with LSC regulations.

LSC notes for clarification that MidPenn was found to be in compliance with the restrictions of 45 CFR Part 1626. The Required Corrective Action provided above relates only to the documentation requirement of that Part. Due to the critical nature of the documentation requirements of this regulation, one (1) deficiency results in a finding of non-compliance.

In order to close out this Required Corrective Action, please provide any steps to be taken by MidPenn to ensure that all case files contain the requisite 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5 documentation within 45 days from the release of this Final Report. If training is/was conducted, or instructional materials are/were provided to staff, please provide copies of the training agenda and/or instructional materials.

2. Pursuant to the documentation requirements of the CSR Handbook (2008 Ed., as amended 2011), § 10.5, ensure that every case that is closed as a PAI case contains the necessary documentation to identify the provided PAI assistance and support the selected closing code. (Finding 17)

In its response to the DR, MidPenn indicated that it is working with supervisors to “reemphasize the importance of following the MidPenn Policy on ‘Follow-up and Tracking of PAI cases.’” Additionally, as discussed *supra*, MidPenn stated that it has removed closing code “K” as a closing code option from the closing form provided to PAI attorneys.

In order to close out this Required Corrective Action, please provide the steps to be taken by MidPenn in order to highlight the importance of following MidPenn’s policy concerning oversight of PAI cases within 45 days from the release of this Final Report. If training is/was conducted, or instructional materials are/were provided to staff, please provide copies of the training agenda and/or instructional materials.

3. Ensure that all time entries are contemporaneously entered and supported by an accurate description of the work performed, pursuant to the requirements of 45 CFR Part 1635. (Finding 19)

In its response to the DR, MidPenn stated that it does not believe that the above-referenced review of the 14 case files warranted a required corrective action. MidPenn further asserted that it believes that its timekeeping codes, which are used by all advocates, along with its File Maintenance Standards, which apply to all case handlers, are adequate to describe in sufficient detail the work that was performed in a case. Additionally, MidPenn proposed, during the onsite review and in its comments to the DR, the following plan to address the corrective action: provide training to all advocates regarding the requirements of 45 CFR Part 1635; provide one-on-one training with advocates; and spot-check cases moving forward to ensure compliance with 45 CFR Part 1635. This plan, once implemented, would be sufficient to close out the required corrective action.

The DR indicated a finding of substantial compliance with 45 CFR Part 1635 because MidPenn's timekeeping system is able to aggregate time record information on both closed and pending cases by legal problem type. Additionally, as stated above, MidPenn has a written policy on timekeeping that requires attorneys and paralegals to keep contemporaneous time records in accordance with LSC requirements. However, when attempting to substantiate the majority of time records entered in the 14 cases that were the subject of the timekeeping review, the intermediary was unable to locate corresponding documentation to support that the time entry was contemporaneously made, or that the subject of the timekeeping entry matched the work that was performed in the case. For example, on a specific day, there would be an electronic timekeeping entry of "N (Negotiation);" however, there would be no contemporaneous notation, or supporting documentation, in the case file indicating that the advocate engaged in an activity relating to negotiation. Or, if there was an indication that negotiation activity took place, the date of the activity, as detailed in the case file, did not match the date of the time entry. Additionally, there were cases reviewed that contained timekeeping entries where the activity described by the entry did not correlate to the documents contained in the case file. For example, there were many timekeeping entries of "AC (Memo to File)" or "F (Letter/correspondence)," where there was no memorandum, letter, or correspondence contained in the case file that was dated on or about the date of the time entry. This is not compliant with 45 CFR § 1635.1(a), which requires "accurate and contemporaneous" recordkeeping; it was for this reason that a corrective action was issued. These instances of the electronic time entries not agreeing with the documentation contained in the case file were discussed with the Executive Director during the review and the Executive Director indicated that advocates would be trained on how to ensure that their electronic time records were in agreement with the documentation contained in the case file. Further, as also stated above, MidPenn's plan to address this, once implemented, should be sufficient to close out the required corrective action.

In order to close out this Required Corrective Action, please provide an update on MidPenn's timekeeping spot check efforts, and the date of the above-referenced all-

advocate training concerning the need for contemporaneous time entries and compliance with 45 CFR Part 1635, along with the training agenda and/or instructional materials, within 45 days from the release of this Final Report.



MidPenn Legal Services

Administration
213-A North Front Street, Harrisburg, PA 17101
Phone 717-234-0492 FAX 717-234-0496
www.midpenn.org

Via Email-First Class Mail to Follow

October 7, 2014

Lora M. Rath, Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW 3rd Floor
Washington, DC 20007-3532

Re: MidPenn Legal Services
Recipient Number: 339040

Dear Ms. Rath:

This is written in response to the Draft report dated September 8, 2014 with the findings and recommendations of the LSC/OCE onsite visit to MidPenn Legal Services during the week of June 9, 2014. After reading the Report, we have determined to respond only to those comments which we feel need to be clarified or corrected.

We would like to begin with some general comments about the organization of the Program in the effort to make it clear how MidPenn is organized and operates. The Report refers to the "main" MidPenn office as being located in Harrisburg and further states that there are "13 branch offices." We would like the Report to be changed to reflect the following: We would prefer if the Harrisburg office where some of the Administrative staff is housed was not referred to as the "main" office. Rather it is one of 14 offices. This is important as not all of our administrative staff is housed in Harrisburg, as our Director of Development is housed in Lancaster, our Director of Advocacy is housed in Lebanon, our Director of Compliance is housed in Reading and our Grant Writer is housed in State College. Moreover, we don't refer to our offices as branch offices but rather they are service offices. While this may seem like a minor distinction, it is not as we have worked hard to achieve the vision that MidPenn is one law firm with 14 offices that serves low-income individuals in 18 counties in Central Pennsylvania.

Other issues that need to be corrected are as follow:

Page 7 Staffing: This sections lists our total staff as 90 at the time of the visit, however it was 86. The specific break-down is as follows: 43 attorneys, 15 paralegals (including 2 ombudsman) and 28 support staff for a total of 86 employees. The number of attorneys included: the Director of Advocacy, Director of Development, Director of Compliance and Executive Director who are all attorneys.

Page 13 Case Acceptance: The statement that "Walk-in cases screened for intake at the local offices are referred to a Managing Attorney for case acceptance determinations" is incorrect. As mentioned on page 3 of this response under the section describing how CIU handles walk-in applicants and for walk-in applicants in the 3 service offices not currently in CIU, support staff opens case files and schedules appointments for clients to meet with advocates pursuant to case acceptance guidelines. While Managing Attorneys may be involved in

case acceptance determinations from time to time when questions or problems arise, they do not make such determinations on a day to day basis.

Page 13 Case Oversight and Closure: We would like to point out that under our policy legal supervisors are to review open caseload reports (OCR's) of their supervisees on a monthly or bi-monthly basis, (the frequency is based on a number of factors, including the experience of the advocate, the nature of the caseload and the results of reviewing previous OCR Reports) with newer, less experienced advocates having more frequent case reviews. We point this out because the Report reads that these reviews occur every 3 months. Also in the same section, the Report states that the closed file checklist "is a review of all major LSC compliance requirements and requires the case handler to determine if the file is complete and whether the case is LSC-eligible." The process is for the supervisor or managing attorney to complete the Checklist during file review and note problems (if any). The Checklist has been developed around assuring that the LSC requirements are met, it is not however used to determine if the case is LSC-eligible.

Page 26 Fiscal/Accounting Records: The last sentence of this section reads, "The 2013 AFS was not available at the time the on-site review was conducted." We assume that this is a typographical error as our 2013 Audited Financial Statements were submitted as required in October 2013. Copies were also made available to the Team while they were on-site. Of course, our 2014 AFS would not have been available as our fiscal year did not end until June 30, 2014. Our audit for 2014 was completed in August and after approval by our Board on October 16th, it too will be submitted as required.

Page 44 Finding 36: "Review of MidPenn's fiscal records revealed that petty cash funds consist of individual imprest funds totaling \$100.00 at each MidPenn office." This is incorrect and attached to this response is the section from our Accounting Manual which shows the allocation of petty cash funds per office. This also needs to be corrected on page 4. (See Attached)

Turning to the substantive comments, we begin on page 8 with **Finding 2** which reads, "MidPenn's intake procedures and case management system generally support the program's compliance related requirements; however, exceptions were noted with a limited number of intake staff regarding application of over-income factors when screening an applicant for income eligibility." See also **Corrective Action 1**.

First, we would like to clarify that we don't have a Centralized Intake Unit, but rather we have a **Coordinated Intake Unit** as the staff who work in CIU are housed in various MidPenn offices across the Region; not in one location. At the time of the visit, CIU staff were housed in Adams County (Gettysburg), Berks County (Reading), Blair County (Altoona), Centre County, (State College), Franklin County (Chambersburg), Lebanon (Lebanon County) and back-up CIU staff were housed in Bedford County (Bedford) and Lewistown (Mifflin County).

Next, there appears to be a fundamental misunderstanding of how MidPenn's Coordinated Intake Unit is structured and operates in performing intake functions for applicants who call in from any of the 15 Counties or walk into any of the 11 Service Offices that are part of the CIU. During the visit, only Berks (Reading), Lancaster and York were not in CIU. Also, as noted above there is not a CIU staff member located in each of the Service Offices that are served by CIU. Rather, CIU staff is housed in some of the

service offices (described above) and most are full time in CIU but some are part-time in CIU (back-ups) and part-time performing other duties in the service office in which they are housed.

For callers or walk-ins from counties served by the CIU, the intake functions from screening for eligibility to opening a file for an eligible applicant, is handled by CIU staff, except that (a) victims of domestic violence who have a Protection From Abuse case are, in some counties, referred first to the DV agency and in other counties are referred to the local MidPenn service office to perform intake functions, (b) applicants who have a case which would be handled with special funding from the local county (i.e. Area Agency on Aging in some counties contract with MidPenn to do wills or POA's for certain elderly clients) such that referrals may first be made to the local AAA or the service office to perform intake functions, or (c) applicants with case types that may be referred to a Pro Bono attorney, in some counties, may be referred to the service office to perform intake functions.

For callers or walk-ins that are handled by CIU staff, if the applicant is deemed eligible (financially, not a conflict and case type handled) they open an intake in the ACMS and follow the protocol in effect for (a) connecting the client to a Telephone Advice Attorney (TAP) if the case involves housing or consumer matters, (b) schedule the client for an appointment with an advocate in the service office, or (c) refer the client to a specific staff member in the service office for follow-up contact, usually to get more information needed to place the case with a pro bono attorney or to schedule for a pro se custody or divorce clinic in some counties. For walk-in applicants who are determined eligible and for whom a case is opened in the ACMS, the service office support staff person will obtain the client's signature on the intake papers that are printed before the client leaves the office, specifically, the signed citizenship attestation or documentation of alien eligibility.

With that being explained, we would like to clarify what is written in the Report about "Authorized Exceptions to Annual Income Ceiling," as there appears to be a misunderstanding as to whether MidPenn requires intake staff to complete an Exception to Annual Income Ceiling/Waiver of Asset Ceiling Form for every applicant whose income is above 125% but below 200% of the FPG. **MidPenn has no such requirement.** While unartfully worded, MidPenn's Financial Eligibility Policies for LSC-Funded Legal Assistance (a copy of which is attached) provides that "*MPLS currently has not designated any specific governmental programs that would entitle the applicant to be determined automatically eligible for LSC-funded legal assistance without an independent determination of the applicant's income and assets.*" Thus, the language of such Policy under Authorized Exceptions to the Annual Income Ceiling related to automatic eligibility is:

- The applicant is seeking legal assistance to maintain benefits provided by a **government program** for low income individuals and families; or
- The applicant is seeking legal assistance to obtain **governmental benefits** for low income individuals and families; or
- The applicant is seeking legal assistance to obtain or maintain **governmental benefits** for persons with disabilities.

does not require intake staff to complete an Exception to Annual Income Ceiling/Waiver of Asset Ceiling Form for every applicant whose income is above 125% but below 200% of the FPG.

With regard to the other provision in the Policy under Authorized Exceptions to the Annual Income Ceiling which provides for automatic eligibility if: “the MPLS Executive Director or designee has determined that the applicant’s income is primarily committed to medical or nursing home expenses and that excluding the income used to pay such expenses, the applicant would be otherwise financially eligible for legal assistance,” MidPenn’s Executive Director has not and will not make such a determination, such that we do not require intake staff to complete an Exception to Annual Income Ceiling/Waiver of Asset Ceiling Form for every applicant whose income is primarily committed to medical or nursing home expenses.

The only basis that MidPenn uses to consider in approving a Waiver of the Income Guidelines **in some counties and with regard to some case types** is by considering the factors set forth in 1611.5 (a) (4) which are the same factors set forth on pages 3 and 4 of MidPenn’s Financial Eligibility Policies for LSC-Funded Legal Assistance. For CIU intake of applicants residing in 15 of MidPenn’s 18 counties, income waivers are pre-approved in some counties (depending on the staffing in the office) and are not considered for approval in some counties. This also depends on the case type and % of the FPG (subject to the proper completion of the Income Waiver Form, which is later signed by the Managing Attorney of CIU/TAP). A copy of the current CIU WAIVER POLICY which provides guidance to CIU staff is attached.

In recognition of the confusion by some intake staff regarding the need to **ask specific questions related to the factors** listed on the Income Waiver Form, in September we prepared and distributed to all intake staff a document entitled, “*Explanation of How to Complete the Income Waiver Form*” for those applicants for whom a waiver may be approved if there are factors identified which warrant approval. A copy of the Document is attached.

Recognizing that the current language in MidPenn’s Financial Eligibility Policies for LSC-Funded Legal Assistance could be clearer in expressing our determination **not** to provide for automatic waivers of the 125% of the FPG in situations permitted by 1611.3 (f) and 1611.4 (c) , it is our intent to seek Board approval of revision to such Policy.

Finally, while MidPenn intends to take steps to implement the recommendations under **Finding 2** specific to staff training, we do not believe that the **Required Corrective Action** is warranted in light of what we believe was a misunderstanding as to whether MidPenn requires intake staff to complete an Exception to Annual Income Ceiling/Waiver of Asset Ceiling Form for every applicant whose income is above 125% but below 200% of the FPG.

Finding 5: “MidPenn is not in compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens.) There were a limited number of case files reviewed that did not contain a citizenship attestation. MidPenn’s revised policy is in compliance with 45 CFR Part 1626.”

Page 16 of the Report lists two files, one in Reading and one in Lancaster, where there were no signed citizenship attestations. The other two files which were from the Pottsville office had signed citizenship attestations but were not dated. While we acknowledge that the files in Reading and Lancaster were not compliant, we do not believe that the two files from Pottsville (080399179 and 080399137) should be

included because although they were at the time undated, they had been signed by the client attesting to the fact that they were citizens.

Moreover, when this issue was brought to the attention of management, we instructed staff to determine when the client signed and see that the forms were dated. Subsequently, management obtained copies of the intake forms to verify that this had been accomplished. With that being said, we are questioning why these two files were listed as being in violation of 45 CFR 1626.

Turning to the two files one from Lancaster and one from Reading (020062478 and 040416895), which were the only files of the 1064 files that the Team reviewed found to be without a signed citizenship attestation, it should be noted that at the time of the visit, only file number 020062478 was closed. When it was brought to the attention of management that file number 040416895, which came in as a telephone intake, and which remains open and active, did not have a signed citizenship attestation, staff was immediately instructed to obtain the client's signature of the citizenship attestation which has been done and which we have verified.

We are in no way minimizing the importance of following regulations and your overall Findings in the Report clearly show that we are in compliance with the various Regulations required by LSC. Moreover, we do have a system in place for the review of closed files that is designed to ensure compliance with various funders including LSC (See Page 10 of the Report). However, even with the best systems, mistakes will be made, but we maintain that one mistake made in two different offices doesn't show a practice of disregard for LSC Regulations in general or 45 CFR 1626 in particular. With that being said, we certainly understand the Recommendation that was made in Section IV number 3 for us to "ensure that all closed 2014 closed and open cases contain CSR-compliant citizenship attestations prior to reporting to LSC", and are taking steps to undertake this review; however making this issue a Corrective Action seems unduly harsh, given that only two oversights were found out of 1064 files.

Finding 19: MidPenn is in substantial compliance with 45 CFR Part 1635 (Timekeeping Requirement)

We are unclear about this section as the Report states that "MidPenn is in substantial compliance with the Timekeeping Requirement," yet, we are being required to take corrective action. In other areas in the Report where we were found to be in "substantial compliance" but needed to make changes or conduct training it was made a Recommendation, rather than a corrective action. (See Report Findings 6, 10, 17, and 34).

With that being said, we do not dispute the difficulty described on pages 34 and 35 that the reviewer had in some instances while attempting to reconcile the work done on some cases as demonstrated by reviewing the physical case file, with the dates and amount of time of activity in the corresponding case time records. However, we do not believe that these examples (14 case files were reviewed from one office) demonstrates a significant departure from the requirements of 1630 or 1635 which would warrant the Required Corrective Action that is proposed. Moreover, we proposed a solution to the team leader during the Exit Conference which is outlined below, and which we understood would be an acceptable solution to this concern.

There does not appear to be an indication in the Draft Report that the time reported as compared to the amount of work performed as disclosed in the case file, is **inaccurate**. Rather, the concern after reviewing 14 case files is that the timekeeping codes used by MidPenn advocates, and which is mandated statewide by PLAN, is inadequate to describe in sufficient detail the work that was performed. We respectfully disagree.

MidPenn has adopted File Maintenance Standards that apply to all attorneys and paralegals who are case handlers. Included in such policy, are the following provisions:

- All files should contain legible contemporaneous notes of conversations with clients, witnesses, opposing parties / attorneys or others connected with the case. If notes of such conversations are recorded in Kemps, they are to be printed and placed in the physical file before closing.
- All documents including file notes, letters, court pleadings and orders should be kept in reverse chronological order, with the most recent item nearest the top of the file. Variations on this theme which segregate certain documents to one side of the file is acceptable, provided they are also kept in reverse chronological order.

These provisions of MidPenn's File Maintenance Standards are reinforced by Managing and supervising attorneys during Case Review meetings and when reviewing closed files for compliance with MidPenn and LSC policies. Many MidPenn advocates enter case notes into the ACMS (Kemps Prime) rather than in the physical file. Others enter notes in the physical file.

We are not financially able to purchase a new timekeeping system and we maintain that our current system which is being used across the state of Pennsylvania is in compliance with 1635.

Finally, we propose (as was discussed with the team leader during the exit interview) that we do the following:

- Provide training to all advocates regarding the specific requirements for compliance with 1635 and in particular, the need for contemporaneous time entries by date on cases which correspond to work performed on such cases that are documented in the case file;
- Provide one on one training for individual advocates where there appear to be problems in this area; and
- Spot check going forward by comparing time records to case file notes for a sampling of MidPenn advocates to assess compliance with 1635.

IV. Recommendations:

1. Please refer to the comments on Page 2 above under the Section Finding 2.
2. Please refer to the comments starting on page 2 under Finding 2.
3. Please refer to the comments starting on Page 4 in Finding 5.
4. Regarding the recommendations that all case files that are required to have client retainers that are properly executed, we plan to do a retraining of advocates to emphasize the importance of client retainers that are completed and that contain the scope of representation. To that end,

supervising and managing attorneys will be instructed to make specific inquiries as to the execution of Retainer Agreements in extended service cases during their monthly / bi-monthly open case reviews with advocates whom they supervise. At that time they will either inquire about the scope of representation in the Retainer or they will review it to determine that it is completed properly.

5. Training on case closure codes will be provided, however, it should also be noted that closing code K was removed as an option from our Case Management system. To insure that no cases closed from January 1, 2014 to the present were closed with a "K," a report of closed cases was run and it confirmed that no cases closed in 2014 have closing code K. Finally, the option for closing code K was also removed from the closing forms that are given to PAI attorneys, so that code is no longer an option for them to use when reporting back on case status.
6. We have determined that we will not undertake a time study at this time given the required January 1, 2015 implementation date of Office of Management and Budget's 2 CFR, Part 200 that requires those receiving federal funding to account for direct costs using actual time, not a time study or other allocation method. Under this requirement we will be working with staff to keep time allocated to PAI activities in our KEMPS case management system. This includes non-advocate staff. Having actual time records will be more accurate than doing a time study and extrapolating the information. Per the recommendation, the process we determine to use will be documented in the Accounting Manual.
7. We are working with managers and supervisors to reemphasize the importance of following the MidPenn Policy on "Follow-up and Tracking of PAI cases."
8. Recommendation 8 is that we investigate and resolve the four (4) outstanding checks that are referenced on Page 43 under Finding 34. The sixth line of the second paragraph states "...that need to be researched and resolved, pursuant to the requirements of the LSC Accounting Guide..." The four checks in question had been researched by MidPenn fiscal staff prior to becoming 6 months old. We were not able to obtain definitive information in order to void and/or reissue payments. We resolved to turn the uncashed checks over to the State of Pennsylvania following State law (Disposition of Abandoned and Unclaimed Property §1301) which calls for holders of unclaimed property to turn such property over to the State after 5 years from the date of issuance.

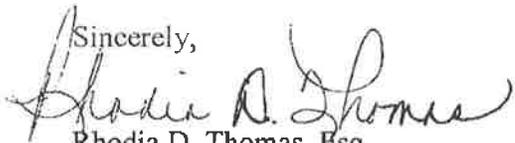
As part of our consideration of LSC's recommendation, we obtained input from fiscal staff at another of our major funders and from our independent auditors. We concluded that the procedures we currently have in place are sufficient to meet the requirements of the LSC Accounting Guide, Appendix VII, I (Bank Reconciliation Procedures), §7. To paraphrase our auditor, the system is working and it would be an administrative burden to change it.

9. Recommendation 9 references that the ED ceases using the MidPenn credit card and only use a personal credit card for all business expenses. The credit card that is referenced was not only used for business expenses for travel to and from conferences which is supported by all documentation, but it was also used to pay the annual licensing fee for all MidPenn attorneys which we must do online and generally is in excess of \$8,000.00.

Next, any arrangements made for business travel were never made by the ED, nor was the card ever in the ED's possession other than when she traveled to and from a conference to pay for business related expenses. We feel strongly that this clarification is needed because these Reports are published on the LSC website and this is being written with an eye toward making it clear that nothing that was being done was improper. With that being said, as was made clear during the visit and at the Exit Conference, the ED would begin using her personal credit card for business related expenses and this practice started before the visit ended. Requests for reimbursement for business expenses are then provided on the appropriate form with all documentation. This form is sent with all documentation to a Board member who reviews and approves the form and returns it to the fiscal department before payment is authorized. Finally, as was also made clear in the Exit Conference the corporate card that was in the ED's name has been cancelled.

At this time, we would like to thank Kia Ashley and the team for a thorough visit as well as to extend our appreciation for the professionalism of the Team. If you have any questions, or would like to discuss this response with me, please feel free to contact me. Thank you.

Sincerely,



Rhodia D. Thomas, Esq.
Executive Director

Attachments-10

CC: MidPenn Board of Directors
Kia Ashley, LSC Program Counsel
Team Leader

Attachments

f) **Petty Cash**

Petty cash accounts have been established in each office to allow staff to pay for minor non-routine expenses that cannot be processed efficiently through regular purchasing procedures. The operation of petty cash involves (1) establishing the fund, (2) making payments from the fund, and (3) replenishing the fund. This is also known as an imprest system. In an imprest system, at any time the total of cash and receipts in the fund should equal the established amount of the fund. For instance, if a petty cash account has been established in the amount of \$100 and there is currently \$45 in cash, there should be \$55 in receipts for purchases made.

➤ **Procedures**

- Requests for the establishment of a new petty cash account must be approved by the CFO who will establish the amount of the account and appoint a custodian.
- The Petty Cash Custodian shall be responsible for maintenance of the account. The Custodian shall keep the account, both cash and receipts, in a secure location, preferably with a lock.
- Disbursements from the account to reimburse staff for business related expenses should be made only by the Custodian. Documentation of the expense, e.g., store receipt, should be attached to the petty cash receipt. ***No fines of any kind shall be paid or reimbursed from petty cash funds.***
- On an as-needed basis, preferably quarterly, the Custodian shall prepare a reconciliation of the account and send the reconciliation as a request for replenishment of the account to the fiscal department.
 - To ensure that expenses are recorded in the correct accounting period, each Custodian shall submit a replenishment request for the period ending June 30 to the Accountant I by the 5th working day of July.
 - The Accountant I shall review the reconciliations for accuracy and proper documentation and process the request to issue a check for replenishment of the account. Every effort shall be made to have replenishment checks mailed to the Custodian within 10 working days of receipt.
 - Replenishment checks shall not be made payable to "Cash", "Petty Cash" or in the name of the Custodian. "Petty Cash – [Custodian's name]" or some form thereof shall be used as the Vendor Name.
- Staff from the accounting department or as designated by the CFO may make spot checks of the petty cash accounts in each office to ensure they are being properly maintained.

- The CFO may adjust the balances of the petty cash accounts as determined necessary. She/he may also close any account if there is evidence of improper use within the account.

➤ **Current Petty Cash Accounts**

• Administration	\$100
• Altoona	\$ 50
• Bedford	\$ 50
• Carlisle	\$100
• Chambersburg	\$100
• Clearfield	\$ 50
• Gettysburg	\$ 50
• Harrisburg	\$100
• Lancaster	\$100
• Lebanon	\$100
• Lewistown	\$ 50
• Pottsville	\$100
• Pottsville Ombudsman Staff	\$100
• Reading	\$100
• State College	\$150
• York	\$100

MIDPENN LEGAL SERVICES

PROGRAM POLICY – FINANCIAL ELIGIBILITY 45 C.F.R. 1611

FINANCIAL ELIGIBILITY POLICIES FOR LSC-FUNDED LEGAL ASSISTANCE

MidPenn Legal Services (MPLS) hereby adopts the following Financial Eligibility Policies for individuals and groups who are provided legal assistance supported in whole or in part with funds received from the Legal Services Corporation (LSC).

Only individuals and groups determined to be financially eligible under these policies and 45 C.F.R. 1611 of the LSC Regulations may receive legal assistance supported in whole or in part with LSC funds. These policies apply unless services are specifically supported by funds other than LSC, in which case the requirements and policies of those funding sources will apply.

Eligibility under these policies does not create an entitlement to legal assistance. MPLS will determine whether or not to provide service to an eligible individual or group based on the merits of the particular case and the application of MPLS priorities and case acceptance criteria.

MPLS shall make reasonable inquiry regarding the sources of an applicant's income, the applicant's income prospects and the applicant's assets, and shall record information to document the applicant's income and assets.

Financial eligibility for legal assistance shall be determined in a manner conducive to the development of an effective attorney-client relationship, and information from applicants and groups shall be obtained in a manner that promotes the development of trust between attorney and client.

If there is substantial reason to doubt the accuracy of financial eligibility information provided to MPLS by an applicant or group, MPLS staff shall make reasonable inquiry to verify the information in a manner consistent with the attorney-client relationship.

If, after making a determination of financial eligibility and accepting a client for LSC-funded service, MPLS staff become aware that the client has become financially ineligible for LSC-funded services through a change in circumstances, MPLS shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance and discontinuation is not inconsistent with the rules of professional responsibility.

These policies shall be reviewed at least once every three years and revised as necessary.

INDIVIDUAL ELIGIBILITY FOR REPRESENTATION

INCOME: Income is the actual current annual total cash receipts before taxes of all persons who are resident members of the applicant's household, and contribute to the support of the applicant's household.¹

Total cash receipts include, but are not limited to, wages and salary before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rent, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant.

Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one time insurance payment for injuries sustained; non-cash benefits, including Food Stamps or Medicaid; and up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

Annual Income Ceiling: The annual income ceiling for individuals and households served by MPLS using LSC funds is 125% of the Federal Poverty Guidelines, as published annually in the Federal Register by the Legal Services Corporation in Appendix A to 45 C.F.R. 1611.

If the applicant meets the asset ceiling (or the ceiling is waived), and the applicant's income is at or below 125% of the Federal Poverty Guidelines for the appropriate household size, the applicant is financially eligible for LSC-funded legal assistance.

Victims of Domestic Violence: If an applicant has identified herself/himself as a victim of domestic violence, in determining financial eligibility for LSC-funded services, MPLS shall consider only the income of the applicant and those members of the applicant's household other than the alleged perpetrator of domestic violence.²

¹Household: MPLS defines household as follows:

- (a) A household is one or more adults (18 years of age or older) and unemancipated minor children (less than 18 years of age), if any, who are related by blood or law, and who reside together and includes two persons who are residing together with a child or children in common. Where an adult applicant for service resides with another person related by blood or law (parent, adult child, grandparent, brother, sister, aunt, uncle, cousin, etc.) such other person(s) should not be counted as a member of the applicant's household nor should their income be considered in determining the applicant's eligibility unless the applicant uses the tax dependent option. (See PLAN Eligibility Manual) If financial assistance (\$) is being provided by the relative to the applicant for service, such "income" should be included in determining the applicant's financial eligibility. In-kind contributions from relatives (i.e. free room and board in the relative's home) should not be considered in determining the applicant's eligibility. PLAN funders include young adults (18-20) as part of the "family". Such young adults and their income should be noted on the Family tab of the intake in Kemps.
- (b) A pregnant woman shall be counted as one person in the determination of family or household size.

² Notwithstanding the above, services may be provided with Title XX/PA State funds without regard to income when the applicant is in need of protective services under the Protection from Abuse Act (3-1-66). Also, *Section*

Authorized Exceptions to the Annual Income Ceiling: If the applicant meets the asset ceiling (or the ceiling is waived) and the applicant's income is above 125% of the Federal Poverty Guidelines, the applicant is financially eligible for LSC funded legal assistance if:

- (1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or
- (2) The MPLS Executive Director or designee has determined that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding the income used to pay such expenses, the applicant would be otherwise financially eligible for legal assistance.

If the applicant meets the asset ceiling (or the ceiling is waived), and the applicant's income is above 125% of the Federal Poverty Guidelines, but does not exceed 200% of the Federal Poverty Guidelines, the applicant is financially eligible for LSC-funded legal assistance if:

- (1) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families;
- (2) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or
- (3) MPLS has determined that the applicant should be considered financially eligible because of one or more of the following factors³:
 - (a) The applicant's income prospects are limited or the applicant experiences seasonal variations in income;
 - (b) The applicant has unreimbursed medical expenses, including medical insurance premiums;
 - (c) The applicant has fixed debts or obligations;
 - (d) The applicant has expenses such as for dependent care; transportation or equipment necessary for employment, job training, or educational activities in preparation for employment;
 - (e) The applicant has non-medical expenses associated with age or disability;

104 of the Violence Against Women Act of 2005 (the "Durbin Amendment") became law and went into effect on January 5, 2006. This new law permits LSC recipients to use both LSC and non-LSC funds to provide legal assistance to otherwise ineligible aliens who are victims of domestic violence as well as those who are victims of sexual assault, trafficking and other criminal activity covered by VAWA, without regard to their immigration or marital status. Otherwise ineligible aliens can also receive legal services when their children have been victimized. Under the new statute, recipients may provide victims any legal assistance that is related to overcoming the victimization. (CLASP Regulatory Policy Memorandum 2006-1)

³ In addition to the Executive Director, MPLS has designated Local Office Managers to authorize exceptions to the income ceiling.

(f) The applicant is responsible for paying current taxes; or

(g) There are other significant factors that affect the applicant's ability to afford legal assistance.

MPLS shall record the basis of its decision to provide LSC-funded legal assistance to any applicant whose income exceeds 125% of the Federal Poverty Guidelines and a copy shall be kept in the client file and a copy shall also be forwarded to the Executive Director. The record shall contain the specific facts and factors relied on to make the determination for review by LSC.

Applicants Whose Income Is Solely Derived from Governmental Programs for Low-Income Individuals & Families: MPLS currently has not designated any specific governmental programs that would entitle the applicant to be determined automatically eligible for LSC-funded legal assistance without an independent determination of the applicant's income and assets.

Income eligibility for PLAN funders: The PLAN funders use two income exclusions not recognized by LSC – medical expenses in excess of 10% of income and child and spousal support paid. If an applicant is over-income for LSC and no waiver is possible, then check whether income is brought to 125% or below by using one or both PLAN exclusions.

ASSETS: Assets are cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash and currently and actually available to the applicant.

The following items are excluded from consideration as assets: (1) the applicant's or household's principal residence (2) vehicles used by the applicant or household members for transportation and (3) assets used in producing income.

Victims of Domestic Violence: If an applicant has identified herself/himself as a victim of domestic violence, in determining financial eligibility for LSC-funded services, MPLS shall consider only the asset of the applicant and those members of the applicant's household other than the alleged perpetrator of domestic violence. MPLS shall not include in that consideration any assets held by the alleged perpetrator of domestic violence, jointly held by the applicant with the alleged perpetrator, or jointly held by any member of the applicant's household with the alleged perpetrator.

Asset Ceiling: In order to be determined to be financially eligible for legal assistance supported in whole or in part by LSC funds, an applicant's assets must be at or below the MPLS asset ceiling, or the asset ceiling must be waived. The MPLS asset ceiling is the amount of the exemption under Section 522 (d) (5) of Title 11 of the U.S. Bankruptcy Code. (Please refer to the CMS for the current asset ceiling amount.)

Waiver of Asset Ceiling: Only the MPLS Executive Director may waive the asset ceiling for particular applicants under unusual circumstances. MPLS will record the reason(s) for such waiver(s) and make such records available for review by LSC.

No asset test for PLAN funders: An applicant who does not meet the LSC asset test may be served by a state funder. Such file should be coded non-LSC eligible.

GROUP ELIGIBILITY FOR REPRESENTATION

These group eligibility policies apply only to LSC-funded legal assistance. MPLS may use non-LSC funds to support representation of groups that do not meet these group eligibility standards.

In order for a group, corporation, association or other entity to be eligible for LSC-funded legal assistance, it must provide MPLS with information regarding the resources available to the group, showing that it lacks, and has no practical means of obtaining, funds to retain private legal counsel. Such information should include the group's income and income prospects, assets and obligations.

A group that provides information showing that it lacks the resources to hire private counsel is eligible for LSC-funded legal assistance, if:

- (1) the group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, as determined by the financial or other socioeconomic characteristics of the persons comprising the group or its operating body; or
- (2) one of the group's principal activities is the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, as determined by the financial or socioeconomic characteristics of the persons served by the group, and the legal assistance sought by the group is related to such activity.

MPLS shall collect information that reasonably demonstrates that the group meets the eligibility criteria set forth in these policies and 45 CFR 1611.6.

RETAINER AGREEMENTS

MPLS shall execute written retainer agreements, signed by the client, in all extended service cases handled by MPLS staff. Retainers shall be in a form consistent with the rules of professional responsibility and prevailing practices of the jurisdiction(s) served by MPLS and shall be executed when representation commences or as soon thereafter as practicable. Retainers shall include, at a minimum, a statement identifying the legal problem for which representation is sought and the nature of the legal services to be provided.

Written retainers are not required in advice and counsel or brief service cases, but may be obtained when appropriate.

Written retainer agreements are not required in cases handled by private attorneys under the MPLS PAI program, but may be obtained under appropriate circumstances.

Copies of all executed retainers must be retained for review by LSC.

*Effective September 19, 2005
Revised 1/26/06 per Durbin Amendment changes
Revised 7/18/07-footnote 1(a) on page 2-Household-clarified
Revised 9/12/07-removed outdated reference to Asset Ceiling amount
Revised 4/16/2014- Board approved April 17, 2014*

CIU WAIVER POLICY

- ♦ ~~Waivers for clients who will be assigned to TA can be approved up to 150% and foreclosures up to 187.5%.~~
- ♦ Files opened with waivers still always require a waiver form. Please complete waiver forms and email to Brenda Zimmerman.
- ♦ This waiver policy is subject to change if there are changes in resources. Please always refer to the most current electronic version of the waiver policy when screening applicants who may need a waiver.

CIU STAFF:

	Custody	Public Assistance	UC / Employment	Foreclosure
Adams	None	150	150	187.50%
Bedford	None	150	150	187.50%
Blair	None	150	150	187.50%
Centre	None	150	150	187.50%
Clearfield	None	150	150	187.50%
Cumberland	None	None	None	187.50%
Dauphin	None	None	None	187.50%
Franklin	None	150	150	187.50%
Fulton	None	150	150	187.50%
Huntingdon	None	150	150	187.50%
Juniata	None	150	150	187.50%
Lebanon	None	None	150	187.50%
Mifflin	None	150	150	187.50%
Perry	None	150	150	187.50%
Schuylkill	None	150	None	187.50%

CIU WAIVER POLICY

TA STAFF:

	Housing Public & Private	Foreclosure	Utilities	Consumer
Adams	None	187.50%	None	None
Bedford	150	187.50%	150	150
Blair	150	187.50%	150	150
Centre	150	187.50%	150	150
Clearfield	150	187.50%	150	150
Cumberland	None	187.50%	None	None
Dauphin	None	187.50%	None	None
Franklin	None	187.50%	None	None
Fulton	None	187.50%	None	None
Huntingdon	150	187.50%	150	150
Juniata	150	187.50%	150	150
Lebanon	None	187.50%	None	None
Mifflin	150	187.50%	150	150
Perry	None	187.50%	None	150
Schuylkill	None	187.50%	None	None

Income Waiver Policy
Explanation of How to Complete Income Waiver Form - September 9, 2014

If an applicant with a household income over 125% of the poverty guidelines is being considered for an income waiver (which must be approved by a Manager)¹, it is necessary that the Income Waiver Form be properly completed with all the necessary information filled in; all appropriate boxes checked; and an explanation in the Comments section of the form as to what specific facts of the applicant are the basis for the waiver. An entry that the applicant's income is a certain percentage of the poverty guidelines should continue to be included, but is not by itself, a sufficient basis for waiving the income guidelines.

The following provides examples of what is needed in the comments section of the Income Waiver Form based upon the boxes designated on the form:

A (1) – statement of the type of government benefit, i.e. TANF, Medical Assistance, SNAP.

A (2) – no comment

B (1) – statement of the type of government benefit, i.e. TANF, Medical Assistance, SNAP.

B (2) – statement of type of government benefit and an indication of the person with disability, i.e. husband, child, etc.

B(3)(a) – explanation as to why prospects limited, i.e. has disability or list type of work, i.e. construction worker, fruit picker, etc.

B(3)(b) – List the medical expense to be paid or amount of medical premium:

Ex. Applicant pays co-pay on prescriptions/medical/health insurance premiums of \$ ___/mo.

B(3)(c) – explanation of the fixed debts and obligations:

Ex. Applicant pays child support of \$ ___/mo.

B(3)(d) - explain the expenses:

Ex. Applicant pays for child care \$ ___/mo. in order to work/attend school.

Ex. Applicant pays \$ ___/mo. in transportation costs to work/attend school.

B(3)(e) – Explain the expenses: i.e. pays someone \$ ___/mo. for transportation to medical appointments or to clean home.

B(3)(f) – list amount of current taxes

B(3)(g) – must be explanation and an amount if possible:

Ex. Applicant is a minor with no income. Applicant's mother/father/guardian (who is part of the household) has fixed debts of rent, electric, etc to support the household

Ex. Applicant just began work and is behind on necessities, i.e. rent, electric, car, etc.

¹ For CIU purposes, waivers for some case types in some counties are "pre-approved" so long as the income is below 150% (with the exception of foreclosure) and the applicant meets the criteria on the form.