



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Aid Society of Northeastern New York
July 23-26, 2012
Case Service Report/Case Management System Review

Recipient No. 233010

I. EXECUTIVE SUMMARY

Finding 1: LASNNY'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: LASNNY's intake procedures and case management system support the program's compliance related requirements.

Finding 3: LASNNY is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Finding 4: LASNNY is in compliance with the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

Finding 5: All files reviewed evidenced that clients were eligible under 45 CFR Part 1626. However, LASNNY did not fully comply with the documentation requirements of 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5 as a few files lacked the citizenship documentation required by LSC regulations and CSR Handbook (2008 Ed., as amended 2011), § 5.5.

Finding 6: Most sampled files complied with the retainer requirements of 45 CFR § 1611.9, however, some files were identified as deficient. The review revealed retainer agreements where either the scope of the services to be provided was not adequately documented, or retainer agreements that were not updated to accurately reflect the actual services provided.

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

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

Finding 9: Sampled staff cases evidenced substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). However, a number of sampled PAI files did not contain a description of the legal assistance provided.

Finding 10: The sampled files reviewed demonstrate that LASNNY's application of the CSR case closing categories is in substantial compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011).

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 regarding the timely closing of cases. Case review revealed numerous sampled cases that were untimely closed.

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

Finding 13: Review of LASNNY's policies and the list of attorneys who have engaged in the outside practice of law revealed that LASNNY is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities). OCE's review of LASNNY's accounting and financial records for the review period and discussions with program management did not uncover any indicators of non-compliance with the requirements of 45 CFR Part 1608.

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 16: A limited review of LASNNY's accounting and financial records indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). However, improvements should be made to its notification process under 45 CFR § 1610.5.

Finding 17: LASNNY is in substantial compliance with 45 CFR § 1614.4(3)(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities, and that non-personnel costs are allocated on the basis of reasonable operating data.

Finding 18: A limited review of documents and interviews with staff revealed LASNNY is not in compliance with 45 CFR §1627.4(a) (Membership fees or dues), because LSC funds were used to pay for non-mandatory fees or dues. However, the program is in compliance with 45 CFR § 1627.3 (Subgrants) as prior approval was received for the issuance of a subgrant awarded in 2012 using funds from a LSC Technology Initiative Grant ("TIG").

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

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

Finding 21: From a limited review of documents and interviews with staff, it was determined that LASNNY was not in compliance with 45 CFR § 1612.10 (Recording and accounting for activities funded with non-LSC funds), because mandatory recordkeeping requirements for non-LSC funded legislative and rule making activities are not in place.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

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

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

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

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

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 30: From a limited review of the documents and interviews with staff, it was determined that LASNNY does not follow best practices regarding contracting , where, LASNNY, failed to have executed contractual agreements for at least two (2) consultants who rendered personal services for accounting and graphics work.

Finding 31: From a limited review of LASNNY's internal controls over cash disbursements it was determined that: (1) multiple check numbers were not listed in numerical sequence; (2) checks were missing and unaccounted for; (3) voided checks appeared multiple times, and (4) blank checks were stored in an unlocked drawer.

Finding 32: From a limited review of LASNNY's internal controls over cash receipts, it was determined that the program, in addition to posting to its cash receipt log, posted cash receipts intended not only for its general operations but also its Client Trust Fund accounts.

Finding 33: From a limited review of LASNNY's internal controls over bank reconciliations, it was determined the program: (1) does not resolve its outstanding checks that exceed 60 days or more in a timely manner; (2) the accounting assistant and Fiscal Director do not date the monthly bank reconciliations; and (3) the Executive Director does not conduct spot checks on the bank reconciliation process.

Finding 34: From a limited review of documents and interviews with staff, LASNNY's cash balance for December 31, 2011, appeared to exceed the \$250,000 limit covered by the

Federal Deposit Insurance Corporation (“FDIC”). However, LASNNY has provided OCE with additional information indicating that the cash balance was under the \$250,000 FDIC limit.

Finding 35: From a limited review of documents, and interviews with staff, it was determined that LASNNY has a retention policy that is consistent with the Accounting Guide for LSC Recipients (“AGLSCR”) (2010 Ed.), Appendix II.

Finding 36: From a limited review of the documents and interviews with staff, LASNNY did not incur any finance charges or late fees for the period of January 1, 2010 through May 31, 2012.

Finding 37: A review of LASNNY’s Internal Control Worksheet, as well as observations and interviews with the Executive Director and Fiscal Director, did not reveal any major weaknesses in its segregation of duties.

Finding 38: LASNNY’s salary advance policy allows salary advances only in cases of emergencies and a limited review evidenced no exceptions. From January 1, 2010 through June 30, 2012, only one (1) salary advance was given.

Finding 39: LASNNY has adequate security controls over the computers and the data they contain. However, improvement could be made to better safeguard the server and data.

Finding 40: LASNNY is in substantial compliance with the AGLSCR (2010 Ed.) as it maintains adequate supporting documentation of payments and approvals for travel related expenses.

II. BACKGROUND OF REVIEW

On July 23 through 26, 2012, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at the Legal Aid Society of Northeastern New York ("LASNNY"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws 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 four (4) attorneys, one (1) management analyst, and two (2) fiscal analysts. Three (3) of the attorneys were OCE staff members and one (1) was a temporary employee. Both fiscal analysts were OCE staff members and the management analyst was an OCE temporary employee.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that LASNNY has correctly implemented the CSR Handbook (2008 Ed., as amended 2011). Specifically, the review team assessed LASNNY for compliance with regulatory requirements: 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside Practice of Law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)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 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 LASNNY's upper and middle management, staff attorneys, and support staff. LASNNY's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2010 through May 30, 2012. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed a total of 485 case files.

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.

LASNNY is an LSC recipient that operates five (5) offices in New York. LASNNY's executive staff consists of an Executive Director, Deputy Director, PAI Director, Fiscal Director, and Human Resources Manager. LASNNY received a grant award from LSC in the amount of \$1,265,773 for 2012, \$1,483,208 for 2011, and \$1,547,165 for 2010.

For 2011, LASNNY reported 7,202 closed cases in its CSR data. LASNNY's 2011 self-inspection report indicated a 3.0% error rate with exceptions noted in five (5) files out of 164 reviewed. The problem areas identified were: counsel and advice or limited action cases opened prior to 10/1/10 and not falling under the exception in § 3.3(a)(ii) of the 2008 CSR Handbook, as amended; PAI cases and the exception in §10.3 of the 2008 CSR Handbook, as amended; cases in which assets information was not recorded and non-telephone cases without a citizenship attestation or documentation of alien eligibility (and client not eligible under VAWA 2006 or TVPA - *see* Program Letters 05-2 and 06-2).

For 2010, LASNNY reported 6,962 cases closed in its CSR data. LASNNY's 2010 self-inspection report indicated a 3.8% error rate with exceptions noted in six (6) files out of the 159 cases reviewed. The problem areas identified were: telephone cases which lacked a citizenship attestation or documentation of alien eligibility, cases in which there was no written evidence of advice or representation, and cases in which household income exceeded 200% of the poverty guidelines.

By letter dated May 7, 2012, OCE requested that LASNNY provide a list of all cases reported to LSC in its 2010 CSR data submission ("closed 2010 cases"), a list of all cases reported in its 2011 CSR data submission ("closed 2011 cases"), a list of all cases closed between January 1, 2012 and May 30, 2012 ("closed 2012 cases"), and a list of all cases which remained open as of May 30, 2012 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LASNNY staff and the other for cases handled through LASNNY's PAI component. LASNNY 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, the LSC *Access to Records* protocol (January 5, 2004). LASNNY was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure. LASNNY elected to utilize unique client identifiers rather than clients' names for its immigration and HIV/AIDS cases.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2010, 2011, and 2012 closed cases and 2012 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 LASNNY agreement of June 6, 2012, LASNNY 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 LASNNY's management and staff cooperated fully in the course of the review process. As discussed more fully below, LASNNY was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review.

At the conclusion of the visit on July 26, 2012, OCE conducted an exit conference during which LASNNY's senior management was made aware of the team's preliminary findings. OCE cited instances of non-compliance in the areas of execution of citizenship attestations, documentation of legal advice, application of closing codes, allocation of PAI time, and PAI oversight. No distinction between 2012, 2011, and 2010 cases was found.

LASNNY was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments.

By letter dated October 15, 2012, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions regarding the July 23-26, 2012 CSR/CMS visit. LASNNY was asked to review the DR and provide written comments. By letter dated November 14, 2012, LASNNY's comments were received. The comments have been incorporated into this Final Report, and are affixed as an exhibit.

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.

III. FINDINGS

Finding 1: LASNNY’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 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.

LASNNY utilizes TIME Case Management Software version 4.00. Interviews revealed that staff has been well-trained on data entry, data management and case oversight features.

Based on interviews and a comparison of the information yielded by the ACMS to information contained in the case files sampled, LASNNY's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Three (3) minor discrepancies between the case file and the ACMS were identified; all three (3) were problem code errors. *See* 2011 Closed Case No. 11-AM-00000176, a case with problem code “14” in the ACMS, but “73” is the accurate problem code. *See* also 2010 Closed Case Nos. 10-AM-000542 and 10-AM-000670, two (2) cases coded with problem code “99” in the ACMS. File review revealed that the appropriate problem codes for these cases were “69” and “09” respectively.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 2: LASNNY’s intake procedures and case management system support the program’s compliance related requirements.

Currently LASNNY’s intake is decentralized to each of its five (5) offices. Following recommendations from a 2011 review by the LSC Office of Program Performance, LASNNY has assembled an intake review committee to assess its intake system and consider alternate models, including greater centralization. In addition, LASNNY is in the process of a reorganization of its staffing structure. These changes may result in changes to the LASNNY model, particularly with regard to supervisory functions, in the near future. The model used in Albany, Amsterdam, and Saratoga at the time of the review is described below followed by a summary of LASNNY procedures to satisfy intake compliance requirements.⁴ All (3) offices follow the same model with minor variations attributable to staff size and requirements of non-LSC funding sources.

The intake procedures of the Albany, Amsterdam, and Saratoga Offices were assessed by interviewing the primary and back-up eligibility screeners, intake case handlers and managerial staff, and reviewing policies and forms. The review revealed that intake procedures performed

⁴ Certain Private Attorney Involvement (“PAI”) components conduct independent intake.

by the intake staff support the program's compliance related requirements with respect to performing conflict and duplicate checks during the intake process, inquiring as to the applicant's income, assets, and reasonable income prospects, considering authorized exceptions and factors when screening an applicant for financial eligibility, and obtaining written citizenship attestations or eligible alien documentation.

LASNNY receives non-LSC funding for numerous specialty projects within program priorities, many of which involve community partners. Each of these projects has varying financial eligibility guidelines, at least one (1) of which is lower than LSC's guidelines.⁵ In addition, each project has service areas ranging from all 16 counties served by LASNNY, to one or more counties or cities. Accordingly, project staff may be based out of one or more offices depending upon the service area of the project. As part of the eligibility screening process, LASNNY staff must determine whether the applicant's circumstances meet the requirements of any of its programs, only one of which is LSC. LASNNY's intake system is designed to direct eligible extended service cases to a project, based upon project case acceptance protocols. Other eligible cases are routed to general intake for limited assistance, restricted to a certain number of slots per day in each office.

LASNNY has developed a detailed Intake Manual which includes grant requirements for each project according to office.⁶ In addition, the manual includes detailed screening instructions, including scripted eligibility questions, and a section on "What if" questions describing actions to be taken in various scenarios.

Albany

The Albany Office is open for most intake Monday, Tuesday, Wednesday, and Friday beginning at 9:00 am. No new intake is conducted on Thursdays as it is reserved for office-wide meetings and intake back-log. Initial eligibility screening is conducted by two (2) support staff. An experienced receptionist is the primary eligibility screener.⁷ Each intake day, one (1) of three (3) legal secretaries is assigned to assist with intake on a rotating basis.

Following a pre-screen of the county of residence, legal problem, financial eligibility, conflict, and whether domestic violence is involved, the eligibility screeners make a preliminary

⁵ The relatively new Emergency Solutions Grant has an income guideline of 130% of area median income, the majority of applicants are below 125% of the Federal Poverty Guidelines.

⁶ Some of the projects listed in the Intake Manual have been eliminated or changed as grant funds expire and new grants are obtained or revised due to the needs of the community. For example, the Homelessness and Supplemental Intervention Program ("HIP"/"SHIP") program ended and was replaced with the Solutions to Ending Homelessness Program ("STEHP") which is funded by a federal Emergency Solutions Grant for Albany beginning May 2012 and a rural grant in April 2012. In addition, until May 2012, all qualifying persons for the Foreclosure Prevention Project (i.e., applicants served with a foreclosure summons and complaint) were initially scheduled for a staff run clinic and some cases were subsequently accepted for extended representation. Following an internal review of the project, the process was changed so that qualifying persons are initially interviewed by a case handler. The casehandler assesses whether or not to provide extended representation. Written protocols, including a new intake description, have been developed for the changes to the project and will include in a revision to the intake manual which is planned for the near future.

⁷ The receptionist has been employed at LASNNY for 13 years.

determination whether the applicant qualifies for a specialty project.⁸ If so, a full eligibility screening is conducted, guided by the ACMS screens and, if the applicant is confirmed to be eligible, a case is created. Applicants who do not qualify for a project but are otherwise eligible are fully screened until a predetermined number of general intake slots are filled.⁹ Once the slots are filled, general intake is closed for the day. On a typical day, 14 general intakes are scheduled for callbacks; seven (7) are assigned to each of the two (2) experienced intake case handlers, a paralegal and an attorney. Callers are scheduled for morning or afternoon callbacks, depending upon the applicant's preference. If an applicant does not answer the call back, case handlers do not leave messages but will try to call the applicant three (3) times during the scheduled callback hours before sending a letter and closing the application as a matter. Otherwise, upon reaching the applicant, the intake case handlers interview the applicant to assess the legal issue. They are authorized to make acceptance decisions for the purpose of providing limited assistance provided during the same call or closely thereafter. Though not required in every case, the intake case handlers send letters and documents supporting the advice or limited assistance provided as appropriate. Cases are closed in the ACMS on the same day or within a couple of days.¹⁰ An applicant contacting the program for assistance after general intake is closed is asked to call back the next intake day unless they are eligible for a project or have a legal emergency.¹¹ Emergencies are accommodated by one of the two general intake case handlers and may result in the reduction of the number of general intake slots available the next intake day.

Intake for specialty projects is open throughout the day and eligible applications are assigned to the staff attorney for the project, based upon project protocol, who is electronically notified when a new case is assigned to them in the ACMS. Designated project staff is responsible for contacting the applicant for a lengthier interview, either in-person at the office or a community partner site, or by telephone. If in-person, compliance documents are executed. Individual project attorneys have rules as to what type of cases they may accept without authorization and what type of cases must have management approval.¹² Applications for persons seeking

⁸ The following projects operated out of the Albany Office at the time of the review: the Children's Law Project ("CLP"), the Disability Advocacy Project ("DAP"), the Disability Advocacy Project-TANF ("DAP-TANF"), the Domestic Violence Legal Assistance Project ("DVLAP"), the Foreclosure Prevention Project ("FPP"), the HIV/AIDS Law Consortium ("HALC"), the Legal Aid Society Homelessness Project ("LASH"), the Domestic Violence Legal Aid Society Homelessness Project ("DVLASH"), the Nutrition Outreach and Education Program ("NOEP"), Senior Legal Services ("SLS"), Solutions to End Homelessness Program ("STEHP"), the STOP grant ("STOP"), and Upstate New York Immigration Intake Project ("UNYILP").

⁹ Applicants ineligible for any type of assistance are referred to alternate sources in the community and logged in the hotline module of the ACMS.

¹⁰ Though the intake model is designed to identify cases appropriate for extended representation at the time of eligibility screening, on occasion, a case handler will identify a case which in their judgment is appropriate for extended representation. Such cases are reviewed by the Deputy Director who determines whether the case meets the requirements of a specialty project. If so, the case is kept open and forwarded to the project for additional assistance. Otherwise it is closed based upon the limited assistance provided by a general intake case handler.

¹¹ The Intake Manual defines an emergency as, "An immediate court or administrative hearing date or other legal deadline (such as legal documents or summons which need to be responded to) within the next five (5) days, no food, no shelter, a victim of domestic violence with a safety issue, no utilities or a child has been taken by an unauthorized person, including Child Protective Services." See Intake Manual, Section IIB3.

¹² These rules are generally based upon experience level. For example, the more senior attorneys have full acceptance discretion. Newer attorneys must get case approval for each case. Such authorization occurs individually and generally not in a formal case acceptance meeting atmosphere.

bankruptcies, most divorce matters, or assistance with unemployment compensation are routed to the PAI Director.¹³

LASNNY accepts walk-in applicants for projects, emergencies, and special circumstances. In the past, the program readily accepted all walk-ins but restricted its availability as it allowed Albany residents to dominate the limited number of general intake slots leaving fewer intake opportunities for telephone applicants living outside of the city.

The exceptions to the above model are cases involving foreclosures, Social Security/ Supplemental Security Income denials, and immigration. Cases potentially eligible for the Disability Advocacy Project (“DAP”), to assist claimants in appealing the denial of Social Security and Supplemental Security Income benefits, are routed through general intake. If the intake case handlers determine there is potential merit, they forward the intakes to the DAP Supervising Attorney, otherwise they provide limited assistance. Applicants from the 16 counties served by LASNNY seeking assistance with immigration may contact LASNNY through normal intake or through the Upstate New York Immigration Law Project (“UNYILP”) hotline. The UNYILP is a joint project of the Legal Aid Society of Rochester, Hiscock Legal Aid Society (Syracuse), and LASNNY. The project operates a single hotline for the 47 counties it serves in upstate New York. Through a menu, callers are transferred to the LASNNY UNYILP attorney who conducts a full intake and provides legal assistance to eligible callers. Ineligible applicants are referred to the Legal Aid Society of Rochester, a non-LSC funded program.

Some specialty projects conduct off-site intake. The attorney from Senior Legal Services conducts regularly scheduled intake at senior centers throughout Albany. The centers set a quota of appointments for the attorneys. The attorney obtains the names of the applicants in advance and conducts conflict checks. A paralegal from the Nutrition Outreach and Education Program (“NOEP”), a project which assists households in applying for Food Stamp benefits, conducts outreach at senior centers and food pantries. In addition, the various housing projects conduct regularly scheduled intake at the Albany County Department of Social Services, homeless shelters, and temporary housing motels. Staff conducting off-site intake call back to the Albany office to check conflicts if necessary, conduct eligibility screening using a written form, obtain citizenship attestations or copies of eligible alien documentation, and provide advice or limited assistance. Staff conducting off-site intake are authorized to accept cases based upon specific project guidelines. The three (3) projects utilize different written intake forms tailored to each project. Cases are entered into the ACMS when the staff person returns to the office.

¹³ Eligible applicants seeking a divorce are sent a letter and divorce questionnaire by the eligibility screeners. Applicants in Schenectady, Columbia, and Greene Counties who complete the questionnaires are directed to the PAI Coordinator for consideration for the Pro Se Divorce Clinic. Applicants from Albany and Rensselaer who complete the questionnaire are assisted through the Assigned Counsel Program. Similarly, applicants who have been served with a foreclosure summons and complaint are sent a letter and questionnaire by the eligibility screeners. Applicants are asked to return the questionnaire and copy of the summons and complaint to the Foreclosure Prevention Project (“FPP”) secretary. Applicants are then interviewed by a case handler who determines the appropriate level of assistance. Finally, two attorneys specializing in employment volunteer in the office a couple of times per month.

Saratoga

Intake in the Saratoga Office follows the same model as Albany except that it is a smaller office and does not have representatives from all specialty projects.¹⁴ Depending upon staffing structures, some projects serve the Saratoga service area from Albany.

Initial eligibility screening is conducted telephonically by the receptionist following the same procedures as described for Albany, except that the NOEP paralegal conducts eligibility screening for food stamp applicants. The legal secretary, employed at the program for 20 years, provides back-up. Walk-in applicants are given a card and asked to call the program as there is no private space for the receptionist to conduct eligibility screening. Intake for special projects is conducted every day without limits. Applicants who do not qualify are scheduled for one (1) of six (6) daily general intake slots for a callback from an experienced intake attorney who provides advice and limited assistance as described for the Albany office. Applications for persons eligible for a special project are assigned to the project's attorney either in Saratoga or Albany, depending upon the structure of the project. The attorney is also notified by email that a new case was screened.

The only off-site intake conducted by the Saratoga Office is for NOEP. It is conducted as described above except that a different written form is utilized.

Amsterdam

Intake in the Amsterdam Office generally follows the same model as Albany and Saratoga. It is a small office without staff from all specialty projects.¹⁵

Following the same procedures as the other offices, the receptionist, who has been employed at LASNNY and the predecessor program for 26 years, conducts initial eligibility screening.¹⁶ The majority of intake is by telephone, although the office does conduct walk-in intake. The receptionist has no immediate back-up in the Amsterdam Office. When back-up is necessary, the phone line is transferred to an Albany legal secretary who has been trained on the Amsterdam Office's projects and funding requirements. Intake for special projects is conducted every day without limits. Applicants who have a legal problem that does not fit a special project are scheduled for one (1) of three (3) to four (4) daily general intake slots for a callback from an experienced intake paralegal. The paralegal is physically located in the Canton Office and provides advice and limited assistance.¹⁷ Due to the physical separation, the receptionist scans any documents provided by the applicant and electronically transfers them to the intake

¹⁴ At the time of the review, the Saratoga Office included staff from the following projects: DAP, DVLAP, STEHP-Rural, NOEP, the Saratoga Homelessness Prevention Project ("the CDBG Project"), SLS, STOP, and the Warren County Conflict Program.

¹⁵ At the time of the review, the Amsterdam Office included staff from the DAP, DVLAP, FPP, STEHP-Rural, and NOEP projects.

¹⁶ In 2004, as a result of state planning reorganization, LASNNY acquired the Amsterdam Office service area from a former LSC-funded program.

¹⁷ This information was obtained during interviews with the receptionist and management. The intake paralegal was on vacation the week of the on-site review and was telephonically interviewed by the Team Leader the week before the review.

paralegal. If possible, emergencies are accommodated in addition to the set number of slots. Applications for persons eligible for a special project are assigned to the project's attorney either in the Amsterdam or Albany office, depending upon the structure of the project. The new case appears on the attorney's ACMS case list and the attorney is also notified of the new case by e-mail. Divorce cases are screened for the PAI clinic.¹⁸ If the case meets the criteria for the clinic, the receptionist sends the divorce questionnaire with a return envelope addressed to the PAI Director in Albany who schedules and runs the clinic in Amsterdam.¹⁹ If a divorce applicant does not qualify for the clinic, they may qualify for assistance from a special project or general intake.

The only off-site intake conducted by the Amsterdam Office is by NOEP, in Montgomery County, though it was on hold at the time of the review because the NOEP paralegal had recently left the program. A replacement had been selected and scheduled to start in the near future. The NOEP paralegal reported to the NOEP Supervising Attorney in Albany who was interviewed and advised that off-site intake from Amsterdam was conducted as described for Albany. It is noted that LASNNY recently received funding to expand NOEP to Fulton County and the office was advertising to hire a second NOEP paralegal. It is expected that NOEP off-site intake in both counties will resume after the new hires are trained.

Canton

The majority of intake is conducted by telephone although walk-in applicants are accepted. Intake hours of operation are Monday through Friday, 9:00 am- 5:00 pm. Emergency intake is conducted on an as needed basis. LASNNY utilizes TIME as its ACMS. The Canton office's service area covers St. Lawrence County and the St. Regis Indian Reservation.

The intake specialist, who is a paralegal, is responsible for conducting intake. When a person telephones the office seeking assistance, a receptionist does an initial screening. The receptionist asks about the nature of the caller's legal problem. If the problem is within program priorities, the receptionist asks for the caller's name, address, financial eligibility (income and assets information) and verification of citizenship status. She also gets information to determine if there may be a potential conflict of interest. The receptionist enters the applicant's information directly into the TIME ACMS during the initial screening, using prompts on the screen. If the applicant is a walk-in, the receptionist asks the same questions and the applicant is provided a citizenship attestation form to complete. Non-US citizens seeking assistance are required to provide documentation verifying their eligibility.

After a determination of eligibility is made, the case is forwarded to the intake specialist who is the primary person responsible for intake. The intake specialist meets with the applicant and reviews/discusses the information previously provided. If the initial screening was done by telephone, the intake specialist calls the applicant back. The intake specialist conducts a factual

¹⁸ The pro se divorce clinic does not assist persons with domestic violence or real property issues, and if there are custody issues, an existing support order must be in place.

¹⁹ According to the Amsterdam receptionist, the PAI Director, who is not an attorney, sets up the clinic, schedules applicants and volunteer attorneys, and attends the clinics. The receptionist also stated that to her knowledge, four (4) Amsterdam pro se divorce clinics were held in 2011 and none to date, at the time of the on-site review, in 2012.

intake of the applicant's legal issue (s) and if merited, a case is opened and the intake specialist will either immediately provide legal assistance, or if extended service is required, forward the case to the appropriate staff attorney.

When a case is completed, the casehandler sends a closing letter to the client, and enters the appropriate case closing code in the ACMS. The casehandlers ensure that all required documents are in the file and that a compliance checklist and close-out memos are completed.

Plattsburg

The intake procedures in LASNNY's Plattsburgh office were assessed by interviewing the primary intake staff and the Deputy Director in order to ascertain LASNNY'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.

Interviews revealed that the Plattsburg office conducts both telephone and in-person intake screening.

The Plattsburgh office conducts intake Monday through Friday. The receptionist at the front desk is assigned primary intake responsibilities. The receptionist screens applicants for residency requirements for the office, whether the legal problem is within program priorities, and whether a conflict exists. The receptionist then asks questions to capture the applicant's basic information, such as, citizenship status, adverse party information, and financial eligibility information.

In-person applicants who are United States citizens must complete a United States Citizenship Statement. Eligible applicants, who are not US citizens, are required to sign a non-citizen status form, in addition to providing appropriate documentation demonstrating status, unless they are a victim of domestic violence and are seeking a related remedy. If a non-citizen does not have the appropriate document(s) with them, the application is placed on hold until the documentation is produced. Additionally, telephone applicants who are non-citizens are also required to produce appropriate documentation, by facsimile or in-person, before representation will commence. After a reasonable period, the case is closed if the documents are not produced.

Once a determination of eligibility is made, the case is then forwarded to the office paralegal who conducts a factual intake of the client's case and a *Checklist of Steps to Opening Files* form is completed. The paralegal will either immediately provide legal advice to the client or, if extended service is required, forward the case to the appropriate staff or judicare attorney. If a client's case is referred to a judicare attorney, the client is required to sign an Application for Referral.

Case oversight is conducted by the Deputy Director. At least once per year, the Deputy Director conducts a case review of all casehandlers' open and closed cases. When a case is closed, the casehandler sends a closing letter to the client, and enters the appropriate closing code in the ACMS. The casehandler ensures that all required documents are included in the file and a compliance checklist form is completed.

LASNNY has developed an intake system that supports LSC compliance requirements. Senior management has implemented several methods to ensure staff understand and implement the compliance requirements. These methods include the development of a detailed intake manual, step-by-step data entry instructions, scripts for use in screening, frequent communication regarding changes to requirements, and a strong case closing compliance checklist. Interviews reveal that staff of all levels have been well-trained and are expected by senior management to be responsible for meeting the compliance requirements.

Conflicts and Duplicate Checks: Program-wide conflicts and prior cases for the applicant and the adverse party are checked during prescreening prior to creating a record in the ACMS. Potential conflicts must be reviewed by a Deputy Director, Supervising Attorney, or other attorney before a screening may proceed. This procedure will also reveal if the applicant is a prior or current client. All screeners have been properly trained on reopening procedures.

Income Screening: Eligibility screeners ask income questions guided by the ACMS Income/Assets tab. If an applicant states they have no income, screeners have a script of other questions that they ask to confirm the answer. No issues were noted.

Reasonable Inquiry Regarding Income Prospects: Pursuant to the requirements of 45 CFR § 1611.7(a), staff make reasonable inquiry into each applicant's income prospects. The applicant's response is recorded in the ACMS on the Income/General screen. In addition, the LASNNY financial eligibility policy and Intake Manual includes this requirement. Of the four (4) written intake forms identified during the review, two (2) intake forms used during off-site project intake lacked this question. During an interview, management agreed to revise the forms and require staff to obtain approval for any future changes to compliance forms.

The DR directed LASNNY to include a revised income prospect form(s) with its comments to the DR.

Asset Screening: Eligibility screeners ask asset questions guided by the ACMS Income/Assets tab. Assets are screened based upon a script of questions set forth in the Intake Manual and are entered as either a countable or non-countable asset. No issues were noted.

Government Benefits Exemption: LASNNY's financial eligibility policy contains a provision qualifying individuals whose income is solely derived from government programs for low-income individuals and families. The policy identifies these programs as TANF, Safety Net, and SSI. Interviewees stated, however, that in practice all such applicants are asked income and asset questions as the information is often relevant to the legal issue.

Authorized Exceptions to the Income and Asset Ceilings: In accordance with 45 CFR § 1611.3(c) (2) LASNNY has adopted authorized exceptions to its annual income ceilings, consistent with 45 CFR § 1611.5. Although certain of LASNNY's non-LSC projects have higher eligibility guidelines than LSC, screeners attempt to qualify applicants as LSC eligible if income is 125-200% of the Federal Poverty Guidelines ("FPG"). LASNNY's financial eligibility policy mirrors the factors authorized by 45 CFR § 1611.5. The intake manual has detailed

implementing procedures which instruct staff to screen for expenses in an effort to spend-down the applicant's income to 125% or below. Expenses are entered into the ACMS in the Income/Deductions Screen and automatically subtracted from gross annual income to produce a net annual income and adjusted poverty percentage. Both the gross and net incomes are reflected in the ACMS. Further, screening staff is required to complete a written Eligibility Special Action ("ESA") form which lists the authorized and asset exceptions allowed by the regulation. Staff must select the applicable authorization and the type of expense must be documented. The Executive Director, Deputy Director, Supervising Attorneys, intake paralegals, attorneys, and other staff conducting off-site intake are authorized to sign the form approving the exception. The ESAs are maintained in the file. For Amsterdam cases, the ESA is scanned and sent to the intake paralegal located in Canton for review and approval. No screening issues were noted.

Group Eligibility Screening: According to senior management, LASNNY did not provide any legal assistance to a group client during the review period. Program policy requires that any such applicants be routed to the Deputy Director for intake. The program is aware of LSC screening requirements and includes in its financial eligibility policy the examples of group screening from the preamble to 45 CFR Part 1611.

Citizenship and Eligible Alien Status Screening: All interviewees demonstrated familiarity with the citizenship/alien eligibility and documentation requirements of 45 CFR Part 1626. Citizenship status is reviewed during the initial eligibility screening. If the initial screening is conducted by telephone, staff enters the initial information into the ACMS by selecting U.S. Citizen, Qualified Alien, or Unqualified Alien from the "Citizenship Status" drop-down box. In-person applicants sign LASNNY's standard citizenship attestation form.²⁰ Telephonic applicants accepted for extended representation sign an attestation on LASNNY's standard retainer agreement which contains a citizenship attestation tied to a separate signature line. Non-citizen in-person applicants or telephonic applicants accepted for extended representation must produce documentation of eligible alien status which the staff copies and maintains in the file. No screening issues were noted.

Case Acceptance: The intake specialist case handlers are authorized to accept cases for limited assistance. Project case handlers are authorized to accept cases within certain parameters set by their supervisor. When a case handler is required to obtain supervisory approval, the casehandler contacts the supervisor and requests guidance on what to do. The program does not generally hold formal case acceptance meetings.

Case Closure: Program policies require case handlers to close cases as soon as possible but not later than the end of the quarter following the quarter in which they are ready to be closed.

²⁰ The program's citizenship attestation form includes a separate attestation used by the Children's Law Project when the client is a minor child. The attestation of the minor's citizenship is signed by a parent or legal guardian. The project provides specialized legal assistance to children under the age of 18 with disabilities. Problem types include education rights, emancipation, Social Security benefits, housing, temporary assistance, Medicaid/Child Health Plus, child support, and other legal problems related to the client's health or family stability. *See* Intake Manual. While a parent's interests could be adverse to those of the minor client in these types of cases, the Supervising Attorney stated that the project generally does not handle cases in which there is a dispute. LASNNY's practice in this regard is compliant as LSC has held that parents may sign attestations for their children. *See* LSC's Office of Legal Affairs External Opinion #EX-2008-1003, September 8, 2008.

Depending upon when legal assistance ceases, this rule could allow cases to be untimely closed pursuant to the CSR Handbook. However, staff is aware of the LSC rules and the program emphasizes attention to closure at the end of each calendar year. Case handlers are required to send closing letters in all cases except for limited assistance cases in which the client has been verbally advised, such as general intake cases. Case handlers are responsible for completing a Close-Out Memo & LSC/IOLA Closed Case Data Collection form for every case except general intake limited assistance cases. This document is a detailed form requiring the case handler to select an “A-L” or “X” closure code.²¹ This document will determine if all compliance requirements are met and whether the case is LSC eligible. This LSC eligible determination, and cross-checking that the ACMS accurately reflects the determination, is reviewed by several levels of staff. The case handler’s Supervising Attorney must review and sign off on the Close-Out Memo. The final step to close a case takes place when a support staff person closes the case in the case management system. Some case handlers may close their own cases on the ACMS based upon the staffing structure of the project.

Defaults: In compliance with Program Letter 02-6, LASNNY's ACMS does not have any defaults in fields related to client eligibility.

Compliance Forms: LASNNY uses standardized retainer agreements, citizenship attestations, Eligibility Special Action forms to document screening and approval of persons whose income exceeds income or asset guidelines, and Close-Out Memos.²² The program does not utilize a standard written form for off-site intake. Four (4) different versions of written intake forms used for project specific off-site intake were identified. Interviews with senior management revealed that project staff is permitted to use forms tailored to the requirements of their individual projects. The forms meet compliance requirements except, as noted previously, that two (2) lacked a question regarding potential income changes. One (1) of the two (2), used by a NOEP paralegal also lacks asset fields though that information is collected on food stamp worksheets that must be completed for the application or recertification. The NOEP Supervising Attorney in Albany provided a form that is compliant and, accordingly, this issue could be resolved if all NOEP staff used the compliant form. The other form missing the potential income change question is the off-site intake form used by Senior Legal Services. Senior management stated they would immediately review the written intake forms and make appropriate changes. Management also accepted a recommendation that any changes to written forms be approved by senior management to ensure that changes do not affect compliance.

Case Oversight: Each case handler is required to submit a monthly caseload report of open cases to their supervisor before the 15th day of the following month.²³ LASNNY’s Checklist for Quality Representation, a case management policy manual, requires the report to organize the case according to status.²⁴ In addition, all project cases must be reviewed by Supervising Attorneys and a sample of limited assistance general intake cases are periodically reviewed by the Deputy Director. Many extended representation cases also receive an additional review. At

²¹ The X code is used for rejected or other non-cases.

²² Two versions of the ESA form were identified, dated September 2006 and March 2011. The forms are substantively the same; the only differences are in format.

²³ The Assigned Counsel Program, PAI, and intake specialists are exempted from this requirement.

²⁴ The statuses are: Needing urgent attention, needing attention within the next month, Needing attention sometime after the next month, Dormant, and Ready to be closed.

each step staff is required to review whether the case is LSC Eligible and if it is correctly coded in the ACMS. Lastly, the Deputy Director and the Executive Assistant run periodic reports from the ACMS to check for duplicates, inconsistencies, and errors.

Training: Due to the complex array of grants received by LASNNY, screening staff must understand the eligibility requirements of a multitude of funding sources, with respect to service area, case type, and financial eligibility, so that they may properly route eligible applications to the correct staff member. Eligibility staff, as the initial data entry source, makes a determination if the case is LSC eligible, though this may be changed by the case handler if the case becomes non-compliant. Interviewees at all staff levels demonstrated a strong understanding of the LSC requirements and receive updates by e-mail when requirements change. LSC compliance training is provided by the Executive Director and the Deputy Directors to all staff twice per year at program-wide meetings, as well as at weekly or monthly office meetings. In addition, staff has electronic access to current program policies and forms on the compliance section of SharePoint, a software program that allows the staff to share information on its intranet.

In response to the DR, LASNNY offered several comments. First, LASNNY commented that they generally agree with this Finding. Second, LASNNY commented they have revised offsite intake forms, to include questions regarding potential income changes. Third, LASNNY commented that a new policy has been instituted on income prospects requiring senior management's approval for the creation of any new offsite intake forms. LASNNY attached exhibits to document this new income prospect policy and the revised offsite intake forms.

In its comments to the DR, LASNNY also stated that their case closing policy has been revised and the revised policy includes extensive language concerning timely closing rules and timeliness review of cases prior to inclusion in the CSR.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 3: LASNNY is in substantial compliance with the income eligibility documentation required by 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.

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.²⁵ *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* 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.2.

²⁵ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

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

Although LASNNY's financial eligibility policy was provided in advance of the review, a more recent version was identified, and reviewed, on-site.

LASNNY's current financial eligibility policy includes income and asset screening requirements for individuals and groups whose assistance is funded by LSC. The eligibility policies for LSC-funded group cases generally follows the language at 45 CFR § 1611.6. The financial eligibility policy for income and assets for individuals and the eligibility policy for groups are both in compliance with the requirements of 45 CFR §§ 1611.3 and 1611.6.

No group cases were identified during the review.

Sampled cases evidenced that LASNNY is in substantial compliance with CSR Handbook (2008 Ed., as amended), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. The review demonstrated that one (1) over-income case, supported with non-LSC funds, was properly deselected by LASNNY from the CSRs. *See* Closed 2012 Case No. 12-AM-000029. However, one (1) case file reviewed revealed the applicant's income and household size changed during the course of the representation, but the client's financial eligibility was not reassessed to determine if the client was still income eligible. *See* Closed 2011 Case No. 09-AL-00004245.

The DR directed that LASNNY must ensure that financially ineligible cases are not included in the CSR reports. And that, LASNNY must be sure to reassess clients' financial eligibility when, during the course of representation, it becomes aware that clients' income or household size has changed.

In response to the DR, LASNNY commented that it will ensure that financially ineligible cases are not included in the CSR reports. In addition, LASNNY stated that staff was trained at their October 22, 2012 project-wide meeting regarding when they need to reassess a client's financial eligibility during the course of representation, as well as how to respond consistent with their ethical obligation. Additionally, the LSC regulation regarding change of circumstances was

addressed during that training. LASNNY attached an exhibit to document the staff training that had been conducted at the October 22, 2012 project-wide meeting.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 4: LASNNY is in compliance with the asset eligibility documentation requirements of 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.²⁶ *See* CSR Handbook (2008 Ed., as amended), § 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.

Sampled case files reviewed revealed that LASNNY maintains asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

In response to the DR, LASNNY stated they agree with this Finding.

²⁶ 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.

Finding 5: All files reviewed evidenced that clients were eligible under 45 CFR Part 1626. However, LASNNY did not fully comply with the documentation requirements of 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5 as a few files lacked the citizenship documentation required by LSC regulations and CSR Handbook (2008 Ed., as amended 2011), § 5.5.

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (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.²⁷ 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 files reviewed indicated that the client was either a US citizen or otherwise eligible alien. However, LASNNY is in non-compliance with 45 CFR § 1626.6 as two (2) cases sampled did not contain a citizenship attestation as required by the regulation. *See* Open Case Nos. 11-AM-000482 and 05 AL-00003441.

Additionally, two (2) sampled cases reviewed were not in compliance with the documentation requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.5, as these cases did not contain a proper citizenship attestation form. *See* Open Case Nos. 07-AL-002214 and 06-AL-000338.²⁸ These attestation forms are not in compliance with the documentation requirements of § 5.5 of the CSR Handbook (2008 Ed., as amended 2011), which states "a citizenship attestation may be contained on a document provided there is a separate signature line tied only to the citizenship attestation."

²⁷ *See* Kennedy Amendment at 45 CFR § 1626.4.

²⁸ The attestation form contained the following language "I certify that I am a citizen/legal resident of the United States. If at any time my status changes, I will inform LASNNY..."

LASNNY should take corrective action to ensure that all case files, where necessary, contain required citizenship attestations in the proper format, to include the open cases cited above. As part of this effort, LASNNY should take targeted corrective action to identify all older open cases which used the defective citizenship form discussed above, and should obtain updated citizenship attestations in the proper format in such cases.

As a part of this corrective action, the DR directed LASNNY to adopt additional ongoing case management oversight protocols to ensure that citizenship attestations, when required, are obtained during initial screening or when a case is opened.

In response to the DR, LASNNY offered the following:

LASNNY notes that of the 485 files reviewed by LSC, in only four (less than 1%) citizenship attestation errors were noted. Nevertheless, the Deputy Director has created a procedure to review all cases opened prior to 2009 and make certain the proper citizenship form is used. If needed, we will obtain updated citizenship attestations in the proper form.

LASNNY's ACMS allows us to check off when the citizenship attestation is present in the file or is not necessary. Our Deputy Director provided training on this issue at the October 22, 2012 project-wide meeting. (Exhibit J)

In addition, LASNNY will adapt [sic.] new case management oversight and protocols to ensure that attestations are obtained. LASNNY has revised its Client Contacts Policy, (Exhibit F) and its off-site intake forms (Exhibit B). Additionally, securing citizenship attestations, a separate line at the bottom of LASNNY retainers, is part of LASNNY's revised retainer policy and heightened review per our response to Finding 6. The Deputy Director for Strategic Operations will run reports semiannually in TIME to identify cases without citizenship attestations and will follow up with supervisors and case handlers to ensure corrections.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 6: Most sampled files complied with the retainer requirements of 45 CFR § 1611.9, however, some files were identified as deficient. The review revealed retainer agreements where either the scope of the services to be provided was not adequately documented, or retainer agreements that were not updated to accurately reflect the actual services provided.

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.²⁹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Case review demonstrated that LASNNY substantially complies with the requirements of 45 CFR § 1611.9. However, the review revealed case files where the scope of the services to be provided was not adequately documented. *See* Closed 2011 Case No. AL-00003482 (retainer stated “Landlord and Tenant” without indicating the specific services to be provided) and Closed 2010 Case No. 09-PL-000022 (retainer did not contain scope or description of services to be provided).

Also, a number of case files reviewed contained retainer agreements that were not updated to accurately reflect the actual services provided. *See* Closed 2011 Case Nos. 09-PL-00419, 09-PL-000978, 05-CA-000037, 10-CA-000055, and 09-CA-000490, Open Case Nos. 09-SA-00000224, 10-SA-00001296, and 07-AL-00002697. *See* also Closed 2010 Case No. 09-SA-00001463, (retainer states only initial review to determine merit, agreement not updated to reflect that actual services provided).

The DR directed LASNNY to take corrective action to adopt a policy and practice that retainer agreements are updated when services change or expand. LASNNY was also advised to remind staff of the need for adequate descriptions to ensure retainer agreements (when required) include scope and subject matter to comply with 45 CFR § 1611.9.

In response to the DR, LASNNY offered several comments. First, LASNNY commented that their retainer policy has been revised to instruct staff to describe the scope of assistance in specific detail. Second, they commented that the retainer policy has always provided that, when a case is accepted for full representation or is appealed, an additional retainer agreement should be executed. Third, LASNNY commented that staff was trained by the Deputy Director at their October 22, 2012 project-wide meeting on how and when to get retainers executed. Fourth, LASNNY’s response stated that LASNNY’s Checklist for High Quality Representation Concerning the Attorney-Client Relationship has been revised to state LASNNY’s retainer requirements and the supervision process concerning retainers. LASNNY attached exhibits to document its revised retainer policy and its revised Checklist for High Quality Representation Concerning the Attorney-Client Relationship.

LSC finds LASNNY’s comments to be responsive to LSC’s concerns.

²⁹ 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.

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

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

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

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

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

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

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

Prior to the visit, LASNNY provided LSC with a list of its priorities. The priorities were stated as “shelter preservation, family stability and economic security.”

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

There are no recommendations or corrective actions required.

In response to the DR, LASNNY commented that they agree with this Finding but stated that LASNNY’s priorities are Support for Families; Preserving the Home; Maintaining Economic Stability; Maintaining Safety, Stability and Health; Serving Populations with Special Vulnerabilities; Children’s Advocacy; and Delivery of Legal Services.

Finding 9: Sampled staff cases evidenced substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). However, a number of sampled PAI files did not contain a description of the legal assistance provided.

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

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

Sampled staff cases contained adequate descriptions of the legal advice provided to each client, however sampled PAI files reviewed indicated that LASNNY is not in compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 for PAI cases as there were several cases reviewed from the Pro Se Divorce Clinic in Canton that lacked sufficient documentation of legal advice. *See* Closed 2011 Case Nos. 10-CA-000191, 09-CA-000695, 10-CA-000265, 10-CA-000268, 10-CA-000148, and 2010 Case Nos. 10-CA-000205, CA-000551, 08-CA-000748, and 09-CA-000702.

Based on interviews and review of the documentation in the case files, the assistance provided in the Canton Pro Se Divorce Clinic cases cited above does not rise to the level of legal advice and is strictly legal information pursuant to CSR Handbook (2008 Ed., as amended 2011), § 2.2. There was no direct legal assistance documented in the case files that indicate that the PAI attorney applied law to the specific facts of the individual client’s case and therefore, these cases should not have been included the CSRs. In order to include the Canton Pro Se Divorce Clinic cases in the CSRs, LASNNY must ensure that PAI attorneys provide legal assistance that is specific to the client’s case and document the legal advice or assistance provided to the client in the file as required by CSR Handbook (2008 Ed., as amended 2011), §§ 2.2 and 5.6.

The DR directed LASNNY to ensure that if a client has not received legal advice or assistance by a PAI attorney, the case is not included in the CSR report. However, if there is evidence in the file that indicates advice was provided by LASNNY staff, the case can be reported as a staff case. The files listed above, and others like them, should not have been included the CSRs. It is recommended that LASNNY periodically review PAI cases to ensure they contain legal advice as defined in CSR Handbook (2008 Ed., as amended 2011), § 5.6.

In response to the DR, LASNNY reported that two (2) cases, Case Nos. 08-CA-000548 and 08-CA-000678, indicated to be pro se divorce clinic cases in the DR were actually referrals to private attorneys and not pro se divorce clinic cases. OCE has considered LASNNY's comments regarding Case Nos. 08-CA-000548 and 08-CA-000678 and revised this Final Report accordingly by removing these cases from discussion in this section.

As to the remaining cases cited in this Finding, in response to the DR, LASNNY offered the following: "Except for these two cases (08-CA-000678 and 08-CA-000548), the other nine cases were all pro se divorce cases. LASNNY agrees that in 08-CA-000748, no advice was provided by the PAI attorney. As LASNNY staff did provide legal advice, this should have been closed as a staff case. In the other eight cases, we believe the clients received legal assistance tailored to their specific facts during the pro se clinic instructed by a PAI volunteer. LASNNY will do a better job of documenting the same in the future. Specifically, pro se clinic cases from the Canton office will document the legal assistance provided through a Pro Bono Case Update (PBCU) signed by the PAI attorney (just as has been done for all Albany clinics). In the future the Deputy Director of Regional Offices and Advocacy or Managing Attorney for the Canton office will review all Canton PAI files, including PAI pro se divorce clinic files, and take care to ensure that the PAI attorney's work is adequately documented and that the case is closed appropriately to PAI, at the proper level of service. All other PAI cases are reviewed by the PAI Director to ensure that they document the legal assistance provided and are otherwise compliant."

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 10: The sampled files reviewed demonstrate that LASNNY's application of the CSR case closing categories is in substantial compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011).

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 case files reviewed demonstrate that LASNNY's application of the CSR case closing categories is generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011). However, the OCE review team found two (2) case files with closing code errors. *See* 2010-SA-00001532 (Case closed as "A"; notes in file indicate case ended with a discharge in bankruptcy, case should have been closed as "IA"), and 09-AL-00004245 (Case closed as "L," notes in the file indicate foreclosure case ending with a court decision, case should have been closed as "Ib").

The DR recommended that LASNNY review the application of its case closure categories to ensure the correct assignment of these categories and provide training to staff consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011).

In response to the DR, LASNNY stated staff received training on Chapters VIII and IX of the CSR Handbook at the recent project-wide meeting on October 22, 2012. LASNNY further stated it has revised its Closing Out Cases policy, to include a new section devoted to training, selection and supervision of the use of the Legal Problem and Case Closure Categories and Codes. LASNNY attached exhibits to document its revised case closing policy and the training outline used at the project-wide meeting.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 regarding the timely closing of cases. However, case review revealed several sampled cases that were dormant.

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).³⁰ 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) 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).

Case review revealed numerous sampled cases that were untimely closed or dormant. *See* Open Case Nos. 07-CA-000350 (Case opened in 2007. Notes in file indicate no response to status updates sent to PAI attorney, case is dormant) 10-CA-000155 (Case opened in 2010. Judgment entered in 2010, case should have been closed in 2010, case is dormant) 09-CA-000144 (Case opened in 2009. Notes in file indicate last activity in file was in 2009, case is dormant) and 06-SA-00001125 (Case opened 12/19/06. Notes in file indicate last activity in file is from 2010, no subsequent update in file, case is dormant).

As a required corrective action, LASNNY was directed to develop and implement methods to prevent case dormancy. LASNNY was also advised to provide training to staff consistent with the CSR Handbook (2008 Ed., as amended 2011), § 3.3.

³⁰ 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 response to the DR, LASNNY commented that they agreed that there were a few sampled cases that were untimely closed but also argued that two (2) cases, Case Nos. 08-SA-000957 and 06-SA-000428 should not be considered dormant. In its comments to the DR, LASNNY provided Exhibit L as proof that Case No. 08-SA-000957, a Chapter 13 bankruptcy, was not dormant. Exhibit L is the TIME ACMS records showing there was follow-up/contact with the client twice in 2011 and once in 2012. LASNNY also disputed OCE's determination that 06-SA-000428 was dormant. According to LASNNY's comments, case notes in the TIME ACMS show there were three (3) follow-ups with the Court and/or PAI attorney in 2010 and two (2) such follow-ups in 2011.

OCE has considered LASNNY's comments regarding Case Nos. 08-SA-000957 and 06-SA-000428 and revised the Final Report accordingly by removing these cases from discussion in this section.

In response to the DR, LASNNY also offered the following:

LASNNY agrees that there were a few sampled cases that were untimely closed and dormant...While the CSR Handbook does not define "dormancy," going forward they will continue to follow up on PAI referrals regularly. When there have been at least three attempts to follow up without success and the case status cannot otherwise be ascertained, the case will be closed as a staff case, an unsuccessful referral or, in the cases in which staff and the PAI attorney have documented legal assistance, as a staff or PAI case based on who provided the highest level of documented assistance. *See* also Exhibit K, Closing Out Cases policy.

LASNNY has recently provided training to staff consistent with the CSR Handbook on Timely Case Closure (See Exhibit J). In particular, LASNNY staff was reminded of the need to contact every client at least every six months. The Deputy Director of Strategic Operations has developed and will implement new case oversight methods to prevent case dormancy and untimely case closing. The Closing Out Cases policy has been revised to define timely closure rules and provide guidance concerning "dormancy" (see Exhibit K). LASNNY's Caseload Control Policy has been revised to add supervisory responsibilities and methods of ensuring timely case movement and preparation for case closure (Exhibit M). The Checklist for High Quality Representation sections concerning Prosecution of the Case (Timely Prosecution and Deadlines and Review and Movement of Cases) Disposition of the Case (Close Out Process) and Supervision has also been revised to reflect changes in these policies (Exhibit H). LASNNY is also working with some individual case handlers on this issue.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 12: Sample 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 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, regarding duplicate cases.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 13: Review of LASNNY's policies and the list of attorneys who have engaged in the outside practice of law revealed that LASNNY is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

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.

Based on an interview with the Executive Director, as well as the review of the recipient's policies and the list of attorneys who have engaged in the outside practice of law, LASNNY appears to be in compliance with the requirements of 45 CFR Part 1604.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities). OCE's review of LASNNY's accounting and financial records for the review period and discussions with program management did not uncover any indicators of non-compliance with the requirements of 45 CFR Part 1608.

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

The purpose of Part 1608 is to insure that the Corporation's resources will be used to provide high quality legal assistance and not to support or promote political activities or interests. This Part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

From a limited review of the vendor's list, chart of accounts, cash receipts and cash disbursement journals, general ledger, staff listing, payroll register, and LASNNY personnel manual, it was determined that from January 1, 2010 through May 30, 2012, LASNNY appears to have not expended LSC grant funds, personnel, or equipment in prohibited political activities and was in compliance with 45 CFR § 1608.3(b) of the regulation.

During the course of the review, no indications were found where, while engaged in legal assistance activities supported under the Act, LASNNY attorneys engaged in any political activity, any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or voter registration activity. Moreover, there was no indication that LASNNY received funds from any political parties or campaigns.

Interviews with the Fiscal Director disclosed that LASNNY employees have not intentionally identified the Corporation with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office. LASNNY communicates its policies to employees by providing their staff a copy of the employee's personnel handbook that addresses the programs policy relating to Part 1608 of LSC's regulations. Additionally, the policy is communicated to staff through training, and it is internally posted on their website through shared point under the compliance heading.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably

might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

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

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

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

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 16: A review of LASNNY's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). However, improvements should be made to its notification process under 45 CFR § 1610.5.

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

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

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

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

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

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

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

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

From a limited review of LASNNY policies and procedures, cash receipts journals, cash disbursements journals, chart of accounts, vendor's list, grants, contracts, web page, observations of the physical location of the Albany office, and from interviews with management, LASNNY does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

Review of LASNNY's policies, procedures, and fiscal activities identified no instance where the recipient had used non-LSC funds for any purpose prohibited by the LSC Act. LASNNY communicates its policies and procedures by providing staff training, having staff meetings, and continual reinforcement of the policies and procedures.

A review of the cash receipt and disbursement journals for the review period identified no inappropriate transfers (45 CFR § 1610.7) or expenditures (45 CFR § 1610.4) by LASNNY of its LSC and non-LSC funds. LASNNY's cost allocation methodology for direct costs is based on costs allocated to a particular grant to the degree that costs were incurred to achieve the objectives of the grant. LASNNY uses LSC Basic Field funds to support all funding sources. The costs associated with these funds are allocated based on various allocations methods.

LASNNY uses a Fund EZ accounting system, and the general ledger, accounts payable and fundraising modules are used in its operations. The general ledger module is a multi-fund, multi-fiscal period, double-entry fund accounting system which has the capability of providing fund based accounting and/or cost accounting. LASNNY uses the double-entry method for recording all transactions and the chart of accounts has been developed so that funds received and used by the recipient, from sources other than the Corporation, are accounted for as separate and distinct receipts and disbursements in a manner directed by 45 CFR § 1610.9. However, expenses related to the Basic Field funds are not separately identified in the general ledger. All expenses that are not assigned to a particular grant are captured and recorded in the "ALL" expense account in the general ledger, and then are calculated and allocated at year ended in the annual audited financial statements to the various funding sources. Therefore, from a financial management overview, LASNNY is not able to compare on a monthly basis actual results from operations (relating to LSC Basic Field expenditures) to budget, which could result in over or under spending of LSC funds, or the use of LSC funds being used to support non-allowable expenditures.

LASNNY has a contractual agreement with Pro Bono Net ("PBN") to provide technical services related to a Technology Initiative Grant ("TIG"). The contract is for one (1) year of service and as of July 27, 2012, LASNNY had made an advance payment to PBN in the amount of \$20,000.

45 CFR § 1610.5 states that no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds. From a limited review of the cash receipts journal, grants, contracts, and donor notification letters, it was determined that from January 1, 2010 through May 31, 2012, LASNNY received funding from foundations, law firms, individuals, bar associations, and federal and state agencies. From that determination, it was revealed that LASNNY failed to provide written notification to all funders and/or funding sources who contributed \$250 or more of the prohibitions and conditions which apply to the funds. Some of the funding sources which did not receive a written notification letter included the AIDS Institute, Albany Law School, and Wait House. Since the on-site review, LASNNY has notified all sources of \$250 or more in 2012 of the prohibitions and conditions which apply to those funds. If there is any confusion about whether or not a notification letter should be sent, a notification letter should be sent.

The DR recommended that LASNNY consider allocating direct and indirect costs associated with the LSC Basic Field grant through the general ledger so funds received from LSC can be accounted for as separate and distinct receipts and disbursements.

In its comments to the DR, LASNNY offered several comments. First, they noted that they agree with this Finding and reported that they have already given notice to all funders as required

under 45 CFR § 1610.5. They also reported that LASNNY's Executive Director will be responsible for ensuring that the notice is given to every funder/donor, as required, in the future.

Second, with respect to the recommendation that LASNNY consider allocating direct and indirect costs associated with the LSC Basic Field Grant through the General Ledger, LASNNY stated it has discussed switching to cost centered accounting with its Independent Public Auditor.

Third, the comments indicated that LASNNY's Board of Directors may be considering a change to cost centered accounting over the next year. As this would be a substantial change and must be commenced at the start of the calendar year, LASNNY reported that making the change for 2013 was simply not feasible. However, LASNNY reported that this will be a high priority project for exploration with the Board, Chief Fiscal Director, and Executive Director.

Fourth, LASNNY commented that quarterly Statements of Financial Position are provided to the Board of Directors so that they are fully apprised of the allocation of actual revenues and expenses, and can review variances from the approved budget as the year progresses.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 17: LASNNY is in substantial compliance with 45 CFR § 1614.3(d)(3) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities, and that non-personnel costs are allocated on the basis of reasonable operating data.

45 CFR Part 1614 requires 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.

Additionally, 45 CFR Part 1614 requires that recipients utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct

and indirect costs related to its PAI effort, and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

The Audited Financial Statement (“AFS”) for fiscal year ending December 31, 2011 reported, as separate, expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). The AFS reported a total of \$217,120 for PAI expenditures, which translates to 14.6% of the total basic field grant (\$1,483,208), complying with the 12.5% requirement. A review of the spread sheet, PAI cost allocation, PAI cost of all funders, 2011 AFS and the allocation of PAI staff salary for the calendar year ending December 31, 2011, disclosed LASNNY, supported by time records, correctly allocates the salaries of attorneys and paralegals on total workable hours. However, the review found LASNNY allocates the salaries of attorneys and paralegals on a percentage basis which is contrary to 45 CFR § 1614.3(e)(1)(i). This section of the regulation requires that “any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI; such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities.”

Ten (10) personnel time records with time charged to PAI were reviewed. This review evidenced compliance with 45 CFR Part 1614 as that the time reported was PAI related. Non-personnel costs are being allocated on the basis of reasonable operating data in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i). Several direct costs allocated to PAI were reviewed and were determined to be related to PAI activities, and fully documented and approved.

To meet LSC’s PAI requirement, LASNNY utilizes a pro bono PAI model. PAI costs consist of LASNNY’s staff PAI time and allocated non-personnel costs based on allocation percentages derived from casehandlers' PAI time to total casehandlers time. LASNNY requires its casehandlers to document PAI time in the program's case management system. While on-site LASNNY provided copies of its PAI cost allocation worksheets for 2010 and 2009 and sample PAI time records.

OCE’s review of LASNNY’s PAI cost allocation worksheets, its written cost allocation methodology statement, and LASNNY’s financial statement reporting of its PAI activity found that it utilizes a financial management system that fully complies with LSC’s PAI accounting and financial reporting requirement. *See* 45 CFR Part 1614. Further, the cost allocation methodology is based on PAI time records. The PAI time records are supported by staff PAI personnel charges and approved by program management.

The review noted no exceptions or inconsistencies in this area except that a PAI paralegal does not record and capture actual PAI hours worked. To comply with 45 CFR Part 1614, the paralegal must capture and record PAI hours worked.

PAI Case Review (Overview)

LASNNY has developed a plan and budget to meet the requirements of Part 1614. The activities undertaken by LASNNY’s offices to involve private attorneys in the delivery of legal assistance to eligible clients consist mainly of pro bono referrals. The pro bono programs are joint efforts between LASNNY, private attorneys and the local bar associations. LASNNY’s PAI program is

directed by the Executive Director with support provided by the PAI program staff—a full-time PAI Director, PAI Coordinator and PAI Paralegal. The PAI program staff is responsible for referring clients to participating private attorneys throughout LASNNY’s 16 county service area. Among the types of cases handled by PAI attorneys are bankruptcy, unemployment insurance benefits, divorce, veterans’ programs and social security.

LASNNY’s intake staff identifies cases they believe are suitable for PAI. After a general referral is made, oversight is conducted every 4 months through letters and telephone calls to the PAI attorney. The status of bankruptcy cases are checked online through the PACER case locator. The PAI Director is responsible for recruiting private attorneys for the program. The PAI Director closes PAI cases with the appropriate CSR closing code.

LASNNY’s PAI program also utilizes private attorneys to assist clients through the Assigned Counsel Program, an Attorney For the Day (“AFTD”) program and pro se divorce clinics.

The AFTD program is operated by the Albany County Bar Association where volunteer lawyers represent clients in Albany City Housing Court. The program is conducted the first and third Friday of every month. The cases involve evictions, nonpayment of rent and hold overs. Cases are closed as negotiated settlement with litigation “G.”

LASNNY PAI staff assists clients in the Assigned Counsel Program (“ACP”). The ACP is a court mandated pro bono divorce clinic operated in Rensselaer and Albany Counties. Clients are assisted in a clinic setting to prepare court documents for their divorce. ACP attorneys conduct the clinics and LASNNY PAI staff attends.

LASNNY program offices conduct pro se divorce clinics. The clinics are conducted by volunteer lawyers. LASNNY staff attends the clinics. The volunteer attorneys assist clients on how to complete the necessary documentation to obtain a divorce.

The pro se divorce clinic in the Canton office occurs approximately once a month with five (5) to 10 clients in attendance. The clients are provided with a pro se divorce packet to complete during the clinic. The clinic is run by a PAI attorney, using a power point display, leading the participants of the clinic, line by line, through the packet. Participants are encouraged to ask questions during the clinic. All questions are asked and answered in the company of the other participants of the clinic. At the completion of the clinic, the participants are informed of the remaining steps of the divorce process. The client files their divorce documents themselves. There is no review of the documents by the PAI attorney and no direct assistance to individual clients during the clinic. The LASNNY paralegal in the Canton office follows-up with the court to ascertain whether a final determination has been made in the client’s case.

As noted in Finding 9, LASNNY must ensure that PAI attorneys conducting pro se divorce clinics provide legal assistance that meets the requirements of the CSR Handbook (2008 Ed., as amended 2011), §§ 2.2 and 5.6, if those cases are to be reported in CSR data.

In its comments to the DR, LASNNY offered the following:

LASNNY agrees that they are in substantial compliance with 45 CFR §1614.3(d) (3). LASNNY disagrees with the portion of the last full paragraph on Page 31 of the Draft Report that finds that allocating undesignated time (matter, activities and leave time) in proportion to the employee's PAI time is incorrect. As was fully discussed during the OCE visit, LASNNY's PAI billing and allocation system was expressly approved by OCE on pps.14-16 of its report dated August 4, 2003 and this is exactly the same system which the current team took issue with.

First, your team notes that "LASNNY, supported by time records, correctly allocates the salaries of attorneys and paralegals on total workable hours." Next, the report states: "however, the review found LASNNY allocates the salary of attorneys and paralegals on a percentage basis." It appears that OCE found fault with the fact that for any employee who expends time on PAI, LASNNY allocates a proportionate share of that employee's undesignated time (matters, activities and leave time) to PAI. Direct time spent on PAI as well as time spent on undesignated matters and activities (i.e. matters and activities that benefit all clients including PAI clients) as well as leave time, are all documented on time sheets. LASNNY believes that this time allocation system complies with 1614.3(e)(I)(i) which states "If any direct or indirect time of staff attorneys is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities." Indeed, on p. 32 of the Draft Report, LSC states "OCE's review of LASNNY's PAI cost allocation worksheets, its written cost allocation methodology statement, and LASNNY's financial statement reporting of its PAI activity found that it utilizes a financial management system that fully complies with LSC's PAI accounting and financial reporting requirement. See 45 CFR Part 1614. Further, the cost allocation methodology is based on PAI time records. The PAI time records are supported by staff PAI personnel changes and approved by program management." Certainly PAI should pay for its share of an employee's leave time when that employee works part time on PAI. LASNNY respectfully requests that OCE reconsider this finding and once again approve our system for allocating time as it did in 2003.

As noted in response to Finding No. 9, LASNNY will ensure all pro se divorce volunteers provide legal assistance that meets the requirements of the CSR Handbook and that such assistance is documented so that the cases may be properly reported in the CSR data. LASNNY will also ensure that all PAI paralegals record and capture actual PAI hours worked.

After careful consideration of LASNNY's comments to the DR, OCE finds LASNNY's methodology of allocating undesignated time to PAI (i.e., by a proportionate share of actual time spent on PAI) to meet LSC requirements. As such, LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 18: A limited review of documents and interviews with staff revealed LASNNY is not in compliance with 45 CFR § 1627.4(a) (Membership fees or dues), because LSC funds were used to pay for non-mandatory fees or dues. However, the program is in compliance with 45 CFR § 1627.3 (Subgrants) as prior approval was received for the issuance of a subgrant awarded in 2012 using funds from a LSC Technology Initiative Grant ("TIG").

Membership fees or dues

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

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

From a limited review of LSC's chart of accounts, invoices, cash disbursement journals, journal entries, and general ledger, it appears that LSC funds were used to pay for non-mandatory membership fees or dues, and non-LSC funds were used to pay for mandatory fees or dues. An analysis of the 2010 and 2011 annual audits, showed expenses of \$1,126 and \$1,718 respectively being charged, using LSC funds to pay non-mandatory membership fees or dues.

Interviews with the Fiscal Director revealed LASNNY allocates cost at year end to the LSC Basic Field grant funds, because of this, a determination as to how much of LSC funds were used in 2012 to pay for non-mandatory membership fees or dues cannot be determined at this time. LASNNY is in non-compliance with the regulation, because LSC funds cannot be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual, unless mandated by a government organization.

The DR directed LASNNY to ensure that LSC funds are not used to pay for non-mandatory fees or dues.

In its comments to the DR, LASNNY offered the following:

LASNNY disagrees that LSC funds were used to pay for non-mandatory membership dues or fees. Total expenditures for dues and fees were \$22,200 in 2010 and \$26,732 in 2011. Of that, \$3,900 for 2010 and \$7,500 for 2011 covered mandated attorney registration fees to the

Office of Court Administration, a payment permissible under 45 CFR §1627.4(a). Given that, the minor amounts allocated to LSC of \$1,126 for 2010 and \$1,718 are well within the permissible charges for each year. No LSC funds were used in violation of 45 CFR §1627.4(s) (sic.).

In 2012, LASNNY will charge all attorney registration fees solely to LSC. All other fees and dues will be charged to non-LSC funds.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Technology Initiative Grant ("TIG")

45 CFR §§ 1627.3(a)(1), (2), and (3) require that:

All subgrants must be submitted in writing to the Corporation for prior, written approval. The submission shall include the terms and conditions of the subgrant and the amount of funds intended to be transferred.

The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are suggested may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation of this failure and, unless the Corporation responds within seven (7) days of the receipt of such notification, the subgrant shall be deemed to have been approved.

From a limited review of LSC's approved sub-grant lists, chart of accounts, invoices, cash disbursement journals, journal entries, general ledger and 1099s, it appears that LASNNY was granted LSC approval to enter into a subgrant in the amount of \$12,000 in April 2012. The subgrant will use TIG funds to develop 10 nationally-relevant online guides on key legal education and language access topics. At the time of the review, the subgrantee had completed drafting eight (8) of the ten (10) online guides and the last two (2) were scheduled to be delivered in draft form by July 27, 2012.

There are no recommendations or corrective actions required.

Finding 19: LASNNY is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

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

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

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

The review of the timekeeping records for 11 advocates selected from four (4) LASNNY offices for the pay periods of June 4, 2011 – June 10, 2011, December 10, 2011 – December 16, 2011, and June 30, 2012 – July 6, 2012 disclosed 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).

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 20: Sampled cases evidenced compliance evidenced compliance with the requirements of former 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 § 1642.3.³¹ 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.

³¹ 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* former 45 CFR § 1642.2(a).

Accordingly, effective March 15, 2010, recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.³²

A limited review of the LASNNY fiscal records, the 2011 AFS, and interviews with the Fiscal Director evidenced, that there were no attorney fees awarded, collected, and retained for cases serviced directly by LASNNY that would violate this Part.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 21: From a limited review of documents and interviews with staff, it was determined that LASNNY was not in compliance with 45 CFR § 1612.10 (Recording and accounting for activities funded with non-LSC funds), because mandatory recordkeeping requirements for non-LSC funded legislative and rule making activities are not in place.

The purpose of 45 CFR Part 1612 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.

45 CFR § 1612.10, regarding recordkeeping and accounting for activities funded with non-LSC funds, states that:

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

Document review and interviews with the Fiscal Director revealed that LASNNY engaged in legislative and rulemaking activities. During the on-site review, LASNNY provided OCE with copies of their semi-annual reports. The semi-annual reports described their legislative and

³² LSC further determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. As well, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).

rulemaking activities pursuant to 45 CFR § 1612.6. A review of these reports indicated several attorneys participated in legislative and rulemaking activities during the review period of January 1, 2010 through June 30, 2012. LASNNY was asked to provide time records for those attorneys who participated in legislative and rulemaking activities by activity date, time spent working on these activities, funding source, and notes. Time records from the case management system independently track time spent on legislative and rulemaking activities by employee. A review of the payroll allocation schedule revealed that direct charges have been allocated to non-LSC funds (under the fundraising funding code) for those attorneys that participated in rulemaking and legislative activities.

Pursuant to 45 CFR § 1612.10, LASNNY must maintain separate recordkeeping and accounting for activities funded with non-LSC funds for legislative and rulemaking activities.

The DR directed LASNNY to demonstrate that they maintain recordkeeping by providing documentation, in its comments to the Draft Report, showing all expenditures of non-LSC funds relating to legislative and rulemaking activities.

In its comments to the DR, LASNNY offered the following:

LASNNY disagrees that 45 CFR 1612.10 requires a contemporaneous accounting for legislative and administrative advocacy or rule-making activities. While on-site, OCE agreed that LASNNY's time keeping records were good and that our policy governing 45 CFR 1612 was compliant. OCE agreed that our annual accounting for legislative and administrative advocacy was also correct. LASNNY does not see any language in 1612.10 that requires record keeping and accounting be done contemporaneously or even throughout the year for legislative and rule making activities. Indeed, LSC has never required this level of detail in our Semi-annual Report. (Exhibit N) In any case, each employee's contemporaneous time records, and payroll and attendance records charge such activities to a fund code (80) that is never charged to LSC. OCE confirms this on p. 37 of the Draft Report which found that "a review of the payroll allocation schedule revealed that direct charges have been allocated to non-LSC funds (under the fundraising fund code) for those attorneys that participated in rulemaking and legislative activities." See Exhibit N. LASNNY respectfully requests that the requirement of additional contemporaneous record keeping and accounting for such activities be reconsidered.

Nevertheless, as requested, LASNNY attaches Exhibit O, which contains our 2012 recordkeeping and accounting for legislative and rule making activities to date.

LSC has considered LASNNY's comments regarding the requirement of additional contemporaneous record keeping and accounting for legislative and rule making activities. The Supplementary Information dated April 21, 1997 attached to 45 CFR § 1612.10(a) states that no LSC funds may be used to pay for administrative overhead or related costs associated with

any activity permitted to be undertaken with non-LSC funds by 45 CFR § 1612.6. The Supplemental Information also states that 45 CFR § 1612.10(b) requires recipients to maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by 45 CFR § 1612.6.

Contrary to LASNNY's interpretation, LSC does not find that 45 CFR Part 1612 requires any additional contemporaneous record keeping and accounting for rulemaking and legislative activities. LSC reiterates that 45 CFR § 1612.6 requires recipients to document the expenditure of non-LSC funds for legislative and rulemaking activities.

LSC's review of the documents included in Exhibit O demonstrates that LASNNY is now in compliance with 45 CFR § 1612.10.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 22: Sampled cases, as well as 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 legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also confirmed that LASNNY is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 23: Sampled cases, as well as interviews, evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define "initiating or participating in any class action" as any involvement, including acting as co-

counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b) (1).³³

None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director also confirmed that LASNNY is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 24: Sampled cases, as well as interviews, evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

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

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

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 25: Sampled cases, as well as 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. Discussions with the Executive Director also confirmed that LASNNY is not involved in this prohibited activity.

³³ 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).

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 26: Sampled cases, as well as 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. Discussions with the Executive Director also confirmed that LASNNY is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 27: Sampled cases, as well as interviews, evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.³⁴ This restriction has been contained in all subsequent appropriations acts.³⁵ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

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

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

³⁴ *See* Section 504(a)(18).

³⁵ *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).

Finding 28: Sampled cases, as well as 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. Discussions with the Executive Director also confirmed that LASNNY is not involved in these prohibited activities.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 29: Sampled cases, as well as 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)).

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

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

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

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that LASNNY was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 30: From a limited review of the documents and interviews with staff, it was determined that LASNNY does not follow best practices, in that, they failed to have an executed contractual agreement for at least two (2) consultants who rendered personal services for accounting and graphics work.

Pursuant to the Accounting Guide for LSC Recipients (2010 Ed.) (“AGLSCR”), Chapter 3-5.16, (Contracting), LSC recipients should have good financial management concepts and ethics/conflict of interest policies. Contracts that should receive additional oversight include consulting, personal services, and sole-source.

From the examination and sampling of contracts and 1099 statements, it was determined that two (2) consultants received over \$25,000 in 2011, without a contractual agreement. Additionally, one consultant listed on the 1099 statement, has a different name than the one listed on their cash disbursement, and vendor file. A good internal control measure would be to ensure that the vendor and/or consultant names are one and the same and on the 1099, check, and vendor file. This would assist in preventing and/or eliminating incorrect amounts on 1099 statements, duplicate payments to consultants, and misfiling of supporting documentation. Also, other consultants were paid without contractual agreements. Even though payments to consultants were documented by invoices and other supporting documentation, best practices require LASNNY to have the executed contracts on file.

The DR directed LASNNY to ensure they secure executed contracts for consultants (who perform personal services) that enumerate the terms and conditions of the agreements.

In response to the DR, LASNNY stated they will execute contractual agreements for the two (2) consultants who render personal services for database accounting and graphics work. These contracts will contain per hour rates and will require approval of the Chief Fiscal Director prior to payment for the accounting/database consultant and of the Director of Development prior to payment to the graphics consultant.

LASNNY further stated in its comments that with respect to the graphics consultant, although one name was listed on the 1099 and a different name was shown on the cash disbursement vendor file, only one tax ID or social security number was carried consistent throughout and they have now updated and merged the graphics consultant vendor file based on the information on the W-9 provided by the vendor. LASNNY stated all 1099s issued had the tax ID provided on the W-9.

LSC finds LASNNY's comments to be responsive to LSC's concerns. However, within 30 days of execution, LASNNY is required to submit copies of the contracts with the consultants identified by LSC, but no later than May 30, 2013.

Finding 31: From a limited review of LASNNY internal controls over cash disbursements it was determined that; (1) multiple check numbers were not listed in numerical sequence, (2) checks were missing and unaccounted for; and (3) voided checks appeared multiple times, and (4) blank checks were stored in an unlocked drawer.

Pursuant to the AGLSCR (2010 Ed.), Chapter 3-5.4(C), (Cash Disbursements), LSC recipients should have an effective method established to record and categorize disbursements and then summarize them for recording in the general ledger. Checks should be listed in numerical sequence, including voided checks.

An examination of LASNNY's cash disbursements summary report covering the time period from January 1, 2010 thru December 31, 2011, revealed the following: (1) multiple check numbers were not listed in sequential order, (2) 37 checks were missing and unaccounted for, and (3) one (1) voided check (#28021) appeared multiple times on the summary report. Also, as of May 31, 2012, the year to date cash disbursement summary report revealed that although check numbers are now listed in numerical sequence, one (1) missing check (#1251) was unaccounted for.

The DR advised that LASNNY must implement the following required corrective actions: (1) list all checks in numerical sequence, and (2) account for the 38 missing checks. LASNNY's Fiscal Director was notified of these issues and OCE provided documentation to the program to support the issues identified in this Finding.

Finally, during the exit conference, the Executive Director was made aware that as a general observation, blank checks were being stored in an unlocked drawer.³⁶ LASNNY was advised that it must ensure that blank checks are stored in a secured location, such as a locked cabinet or drawer.

In its response, LASNNY stated the initial Fund EZ report was run across all LASNNY bank accounts and that this is why the checks were not in sequential order – they were not from the same bank account.

LASNNY attached an exhibit to help answer the DR's question about missing checks. LASNNY stated the exhibit shows that the list of missing checks included check numbers that were actually voided and that the Fiscal Director has now physically verified that LASNNY was in possession of those voided check copies in year/date order as noted in his detailed response.

³⁶ The Executive Director stated the Fiscal Director and Accounting Assistant lock their office doors when they are out of the office.

With respect to the voided check inquired about (Check # 28021), LASNNY's comments indicated that the Fiscal Director reported that after the original check was printed, the Accounting Assistant had to go back and change the posting date. LASNNY further stated the only way their system allows them to do this is by voiding the check which populates the original A/P entry back into the system to be processed for payment and the Accounting Assistant then made her correction and the check was printed on a plain paper using the original check number. LASNNY stated that since the original check printed earlier was okay as far as the payee, date, and amount, the Accounting Assistant used this check. LASNNY stated that is why there is both a voided entry of the check as well as the same check processed as paid. LASNNY stated that, in this way, the Accounting Assistant avoided wasting the original checks. LASNNY stated that, in the future they will void those checks, enter them in the General Ledger in sequential order, and start a new batch.

LASNNY stated that with respect to the one missing check (No. 1251), on the year to date cash disbursement summary report, that this was a check that had been voided. LASNNY attached an exhibit to document the voided check.

As to the blank checks, LASNNY stated in its comments that checks are now stored in a locked cabinet in the Accounting Assistant's office and that that the Accounting Assistant's office is always locked when she is not there.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 32: From a limited review of LASNNY's internal controls over cash receipts, it was determined that the program, in addition to posting to its cash receipt log, posted cash receipts intended not only for its general operations but also its Client Trust Fund accounts.

Pursuant to the AGLSCR, Appendix VII, §§§ H8, H12 and H14, (Accounting Procedures and Internal Controls), LSC recipients must have procedures to ensure that cash received in the office is properly handled, to ensure cash receipts are not commingled, and cash receipts are reconciled to the cash receipts log on a timely basis.

From a limited review of LASNNY cash receipts logs, monthly deposits, cash receipts journal, bank statements and general ledger, as well as interviews with staff, it was determined that LASNNY properly records its cash receipts to the cash receipts log (that includes regular deposits, donor contributions, and client trust deposits). Sampling revealed that cash receipts are deposited in a timely manner to the programs bank accounts, and cash receipts are reconciled to the cash receipts log and cash receipts journal on a monthly basis.

However, it is recommended that the handling of cash receipts, intended for the client trust fund accounts, be maintained separately from of all other cash receipts (cash, checks and electronic deposits) that are posted/recorded to its cash receipts log. This would help ensure that cash

receipts intended for client trust fund accounts are not accidentally deposited in the regular operating account.

In its response to the DR, LASNNY offered the following:

The Draft Report acknowledges that LASNNY has in place an effective and sound cash receipts procedure with good internal control. The current system has multiple layers and multiple staff involved in maintaining effective internal control. When any payments are received in the mail, they are logged in the cash receipt log by the front desk staff. When payments are received in the form of cash delivered in person, a chronological numeric pre-printed receipt is issued with the original given to the client. The duplicate is attached to the payment and put in a sealed envelope and hand delivered to the Fiscal Director for immediate deposit. In the case of Client Trust Funds, for all payments received, whether by check or cash, a receipt is issued and the transaction is recorded in the cash receipts log. The receipt acknowledges the payer's name, the amount of the payment, date, the purpose of the payment, form of payment (cash or check) and finally the attorney's name. All steps outlined in AGLSCR 3-5.7 are followed. The receipt accompanies the payment and goes to the Fiscal Director. The Fiscal Director writes up the deposit and the Accounting Assistant takes the deposit to the bank. The duplicate deposit slip, along with the receipt from the bank, is put in the cash receipt log. The deposit slip is then reconciled with the cash receipts log by another staff other than the person logging the cash receipts log. Once verified and initialed, it is given to the Fiscal Director to attach to the AIR entry register. All bank statements are opened by the Executive Assistant and tallied against the cash receipts log and cross verified with the AIR entry register. With the current system, the possibility of Client Trust Fund payments or any other payment being improperly deposited into the wrong account is non-existent. We understand your concern; however, LASNNY respectfully submits that our current system is proficient.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 33: From a limited review of LASNNY's internal controls over bank reconciliations, it was determined: the program does not resolve its outstanding checks that exceed 60 days or more in a timely manner; (2) the accounting assistant and Fiscal Director do not date the monthly bank reconciliations; and (3) the Executive Director does not conduct spot checks on the bank reconciliation process.

Pursuant to the Accounting Guide for LSC Recipients (2010 Ed.), § 3-5.2, (Annual Financial Statements and Audit Reports), LSC recipients should require bank reconciliations be reviewed and approved by a responsible individual. Such review shall be appropriately documented by signature and date.

Review of five (5) bank statements and bank reconciliations as of June 30, 2012 revealed that, in the operating account, numerous outstanding checks exceeded the 60 days void policy stated on the check and in some cases they were close to being 120 days old. Discussions with the accounting assistant disclosed that some outstanding checks remain on the bank reconciliation because the accounting department makes every effort to contact payees (to cash these outstanding checks or to determine if the checks have been lost). Also, as of June 30, 2012, seven (7) checks totaling \$274.84 were close to being 120 days old; five (5) checks totaling \$815.14 and 71 checks totaling \$165,793.83 were close being 60 days old. LASNNY must ensure that outstanding checks exceeding 60 days are investigated and resolved in a timely manner.

Additionally, bank reconciliations are not dated by the accounting assistant or Fiscal Director making it impossible to determine if the bank reconciliations were completed in a timely manner. The DR directed LASNNY to ensure that bank reconciliations are dated by the preparer and reviewer. Discussions with the Executive Director revealed that she does not perform spot check reviews of the bank reconciliation process. However, according to the Executive Director, every month her executive assistant reviews and reconciles the cash receipts from the cash receipts log to the (general operating account) bank statement.

As such, the DR provided that the Executive Director must periodically conduct spot check reviews of the bank reconciliation process.

In its response to the DR, LASNNY offered the following:

LASNNY respectfully disputes this finding. Every effort is made to follow-up on checks that remain outstanding beyond the 60 day period by contacting the payee to ascertain if they are in possession of the check and reminding them to cash them. However, it is our experience that it can take as long as 180 days for checks to clear our bank account if the payee has forgotten to deposit the check. If we were to practice voiding checks and putting stop payments on "older" checks, it would place an extreme financial burden on the program. It might also create uneasy relationships with vendors and payees and create extra work load in reissuing the checks again. As to the checks that were mentioned in the Draft Report as outstanding as of June 30, 2012, most of them have now cleared. In the batch of seven (7) checks totaling \$274.84, only four checks totaling \$177.74 remain outstanding (Check #1195 for \$23.86, Check #1405 for \$45.00, Check #1598 for \$25.00, Check #1656 for \$83.88); of the five checks totaling \$815.14 only two checks totaling \$175.00 remain outstanding (Check #1933 for \$50.00 and Check #1950 for \$125.00). In the biggest batch mentioned, of 71 checks totaling \$165,792.99 only three checks totaling \$5,321.91 (Check #881 for 94.91, Check #2085 for 227.00, Check #2198 for \$5,000.00) remain outstanding as of the bank statement of July 31, 2012. The 71 checks were all dated beginning 06/01/12 through as late as 06/29/12 and therefore technically are not yet stale. However, we are contacting the outstanding payees to encourage them to cash these checks as soon as possible.

As to the bank reconciliations, the Accounting Assistant and the Fiscal Director will now date the monthly bank reconciliations. The Executive Director will conduct spot checks of the bank reconciliations, twice per year.

LSC finds LASNNY's comments to be responsive to LSC's concerns.

Finding 34: From a limited review of documents and interviews with staff, LASNNY's cash balance for December 31, 2011, appeared to exceed the \$250,000 limit covered by the Federal Deposit Insurance Corporation ("FDIC"). However, LASNNY has provided OCE with additional information indicating that the cash balance was under the \$250,000 FDIC limit.

Pursuant to the Accounting Guide for LSC Recipients (2010 Ed.), § 2-2.2, (Cash and Investments), LSC recipients must hold LSC funds to be used for immediate operating expenses in federally-insured bank accounts. LSC funds in excess of the FDIC limits and not needed for immediate operating expenses, should be invested with another financial institution in federally-insured accounts or certificates, or invested in U.S. Treasury notes or bills or investment instruments.

The FDIC insurance limit is \$250,000 per depositor, per insured bank, for each account ownership category. All cash accounts held in financial institutions which are federally insured are limited to the maximum insured limits.

From the review of several bank statements and general ledger cash accounts, it was determined that for the periods December 31, 2010, December 31, 2011, and June 30, 2012, LASNNY's monthly cash balance in its general operating account totaled \$167,939.85, \$726,456.55, and -\$60,653.96 respectively. LASNNY responded to OCE's inquiry about their negative cash balance with the following, "Balance as of 6/30/12 was (\$60,653.96). Keep in mind that we cut checks on June 28 or 29 but they were not signed and mailed until the following week after the LSC deposit was made into our account and we knew we had enough cash to cover the checks. Because of July 4th holiday, we had to post payroll check early to get signatures in time to transfer funds for July 4th payroll. Everything was completely under control and in no way were in danger of bouncing checks. It was just the timing of the holiday." Based on LASNNY's response, the negative cash balance is not attributed to having cash flow problems but just the timing of events during the July 4th holiday.

LASNNY's management and finance committee should monitor their cash balances and should take any appropriate action necessary to minimize the risk of exceeding the \$250,000 FDIC limit.

In its response to the DR, LASNNY offered the following: "LASNNY disputes the finding that at any time the cash balance in its operating account exceeded the relevant FDIC limits. Attached as Exhibits R and S are confirmations that from December 31, 2010 through December 31, 2012, all non-interest bearing accounts are fully insured, regardless of the

account balance and the ownership capacity that funds. Exhibit R is information from www.FDIC.gov/deposits and Exhibit S is a letter confirming same from our bank, M&T Bank. LASNNY respectfully requests that this Finding be withdrawn and the related Recommendation (No. 2) be withdrawn.”

After careful consideration of LASNNY’s comments and review of exhibits submitted to OCE, LSC has determined that the cash balance was under the \$250,000 FDIC limit.

Finding 35: From a limited review of documents, and interviews with staff, it was determined that LASNNY has a retention policy that is consistent with the Accounting Guide for LSC Recipients (“AGLSCR”) (2010 Ed), Appendix II.

Pursuant to the AGLSCR (2010 Ed.), Appendix II, (Accounting Procedures and Internal Controls), LSC recipients should have a written mandatory document retention and periodic destruction policy.

A review of LASNNY’s document retention policy revealed that its accounting records are maintained in accordance with the guidelines set forth in the AGLSCR (2010 Ed.), Appendix II. From discussions with the Fiscal Director, it was disclosed that LASNNY maintains vouchers, invoices, and billings that are grant specific with the grant agreements for a period of seven (7) years.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 36: From a limited review of the documents and interviews with staff, LASNNY did not incur any finance charges or late fees for the period of January 1, 2010 through May 31, 2012.

Pursuant to the AGLSCR (2010 Ed.), Appendix VII, § G3, (Accounting Procedures and Internal Controls), LSC recipients should make timely review and payment of credit/debit/vendor charge account transactions and supporting documentation, to validate disbursements and to avoid finance charges and late fees.

From sampling and reviewing monthly credit card statements, mortgage statements and agreements, vendor invoices, and supporting documentation, along with interviews with the Fiscal Director and accounting assistant, it was determined that LASNNY did not incur any finance charges or late fees, and that, during the review period, payments of invoices were made on a timely basis.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 37: A review of LASNNY's Internal Control Worksheet, observations and interviews with the Executive Director and Fiscal Director did not reveal any major weaknesses in its segregation of duties.

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, AGLSCR (2010 Ed.), 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 AGLSCR (2010 Ed.).

The AGLSCR 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.

The review disclosed that the Fiscal Director prepares the general journal without it being reviewed and approved by the Executive Director or an authorized person.

The DR directed LASNNY to take corrective action to ensure that the general journal is reviewed by the Executive Director or an authorized person.

In its response to the DR, LASNNY offered the following:

LASNNY disputes at least part of this finding, in that LASNNY's Accounting Assistant, not the Fiscal Director, makes entries in the General Journal and the Fiscal Director then reviews them. Such review is proper under AGLSCR §3.5-6.

It should be noted that all journal entries are reviewed as part of our annual audit for any unusual activities -- none have ever been found by our Independent Public Auditor. Review by the Executive Director prior to entry would impede the work flow. The Executive Director, who is responsible for overseeing the organization's five offices spread across 16 counties, has to travel constantly and attend various funding and collaboration meetings. In

view of this, prior review of all entries would bring daily work to a standstill. LASNNY is not a high risk entity as we do not do electronic banking and have substantial internal controls including two signatures on every check of any amount. Payroll twice a month is entered by the Director of Human Resources. When it is received at the office, the Chief Fiscal Director opens the sealed envelope and reviews it for supporting documentation for overtime. It is then given to the Accounting Assistant who posts it to the General Ledger. The Accounting Assistant also enters prepaid expenses and allocates them to relevant funders by a journal entry when necessary to move these expenses out of prepaid expenses. Again, these entries are reviewed by the Fiscal Director as the Executive Director's designee.

AGLSCR Chapter 3-5.6 states: "There should be no direct entries to the general ledger. Every entry to the general ledger not originating from the cash receipts journal, payroll register/labor distributions, cash disbursements journal or client trust subsidiary records or any other subsidiary record of original entry should initially be posted to the general journal.

Each entry to the general journal should be:

- o fully described;
- o adequately documented;
- o sequentially numbered; and
- o approved by an authorized individual."

In its response to the DR, LASNNY's also stated that for entries made by the Accounting Assistant, the Fiscal Director is the "authorized individual."

LASNNY included in its response an excerpt from its Financial Policy and Procedures Manual (Accounting Records sub-section General Journal):

A general journal is used to make transactions which are not recorded originally in any other book of original entry. Each journal entry will be supported by a complete explanation, accounts affected, and date made, and will be numbered consecutively. These entries, except for those made in the process of the normal monthly accounting cycle, will be reviewed by the ED who shall raise any questions with the Fiscal Director, initial the pages to denote his/her approval, and return the pages to the Fiscal Director.

LASNNY stated in its response to the DR that language in their Financial Policy and Procedures Manual "infers that the Executive Director's review is post entry, not prior." It further provided that "[t]he entries made by the Accounting Assistant are made in the course of normal monthly accounting and may therefore be reviewed by the Fiscal Director."

LASNNY further stated that:

The only journal entries made by the Fiscal Director are end of the year entries for accruals and depreciation. LASNNY proposes that the limited journal entries made by the Chief Fiscal Director will be reviewed at the end of that quarter by the Executive Director. Further, the Executive Director will quarterly review the general journal and believes that this review, coupled with prior reviews by the Chief Fiscal Director or her designee, is sufficient to meet the requirements of the AGLSCR (2010).

LASNNY's comments requested that LSC reconsider its directive that such entries be reviewed and approved by the Executive Director prior to being posted to the general journal/general ledger.

After careful consideration, LSC is persuaded that entries made to the general journal by the Accounting Assistant *and* the Fiscal Director (as the authorized individual) complies with the AGLSCR. Further, LSC is persuaded that the Executive Director's post entry review of the general journal also complies with the AGLSCR. Therefore, OCE finds that LASNNY's Internal Control Worksheet, observations and interviews with the Executive Director and Fiscal Director did not reveal any major weaknesses in its segregation of duties.

Finding 38: LASNNY's salary advance policy allows salary advances in cases of emergencies and a limited review evidenced no exceptions. From January 1, 2011 through June 30, 2012, only one (1) salary advance was given.

LASNNY's salary advances policy contained in their Financial Policy and Procedures Manual states that "salary advances as a general rule are not permitted because LAS should not be in the business, in effect, of loaning money. Only under narrow circumstances will we advance salary to a member of the staff. Any salary advance must have been earned at the time of the advance and will be repaid by payroll deduction with the employee's next payroll check."

A review of salary advances for the years 2010 through July 2012 in the General Ledger Detail Report disclosed that salary advances are minimal, and the review did not disclose any outstanding advances for the period in review. Only one (1) advance was given on January 23, 2012 and collected on February 1, 2012.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

Finding 39: LASNNY has adequate security controls over the computers and the data they contain. However, improvement could be made to better safeguard the server and data.

The AGLSCR § 3-5.14 (EDP Controls) requires that “controls must provide assurances that computers and the data they contain are properly protected against theft, loss, unauthorized access, and natural disaster.

LASNNY has Records Management Guidelines that adequately address, in general, LSC’s requirements related to EDP controls. As follows are the topics:

- Data files associated with software
- Email
- Scanner
- Personal folders
- Video and audio files
- Magnetic media
- Intranet: sharepoint
- Transcribed or recorded telephone messages and conversations
- Access rights to electronics files – View, edit, move, rename
- Electronic and digital signatures

LASNNY contracts with ABS Solutions to oversee and monitor all EDP operations. Although the policy in place is adequate to safeguard computers and data, the review of the physical location of the server evidenced the following:

- The server is located in a space of multiple uses (storage, housekeeping supplies, paint, etc.)
- The server cabinet is unlocked
- The door to the space is unlocked
- The space appeared not well ventilated

LASNNY was directed to take corrective action to maintain its server in a better and more secure environment, as required by the AGLSCR, § 3-5.14 (EDP Controls). These controls must provide assurances that computers and the data they contain are properly protected against theft, loss, unauthorized access, and natural disaster.

In its response to the DR, LASNNY offered the following: “LASNNY has ensured that the server room is always locked, with an air conditioner running as needed. Our consultant, ABS Solutions, confirms that security and environmental concerns have been addressed (see Exhibit T). In addition, the server cabinet is now locked. All janitorial supplies have also been removed.”

LSC finds LASNNY’s comments to be responsive to LSC’s concerns.

Finding 40: LASNNY is in substantial compliance with the AGLSCR (2010 Ed.) as it maintains adequate supporting documentation of payments and approvals for travel related expenses.

45 CFR Part 1630 (Cost standards and procedures) is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely and flexible process for the resolution of questionable costs, under Corporation grants and contracts.

A limited review of invoices related to travel for the years 2011 and 2012, whose payments were charged to LSC funds, evidenced no exceptions. The invoices reviewed were adequately documented, in compliance with the requirements of the AGLSCR and LASNNY's travel policies.

There are no recommendations or corrective actions required.

In response to the DR, LASNNY stated they agree with this Finding.

IV. RECOMMENDATIONS³⁷

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

1. Maintain cash receipts (intended for the client trust fund accounts) separately from all other cash receipts (cash, checks and electronic deposits) that are posted/recorded to its cash receipts log;

In its response to the DR, LASNNY offered the following: “LASNNY believes that cash receipts for the client trust fund account do not need to be maintained separately from other cash receipts on the cash receipts log, since client trust accounts are already maintained in a separate and independent bank account and are recorded separately in the general ledger and reconciled on a spreadsheet. This is especially so given our proficient internal control system.”

2. Consider allocating direct and indirect costs associated with the LSC Basic Field grant through the general ledger so funds received from LSC can be accounted for as separate and distinct receipts and disbursements;

In its response to the DR, LASNNY offered the following: “This recommendation will be considered by the Chief Fiscal Director, Executive Director and Board of Directors in 2013.”

3. Provide a written notification letter if there is any confusion about whether or not a donor notification letter should be sent to a funding source;

In its response to the DR, LASNNY offered the following; “The Executive Director will ensure that written notifications will be given to all donors and funders who provided \$250 or more in support.”

4. Train staff to ensure retainer agreements (when required) include scope and subject matter to comply with 45 CFR § 1611.9. LASNNY should take corrective action to adopt a policy and practice that retainer agreements are updated when services change or expand;

In its response to the DR, LASNNY offered the following: “On October 22, 2012, LASNNY staff was trained on drafting more detailed scope of representation on retainers, and the need to execute a new retainer at each level of representation. The

³⁷ 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.

retainer agreement policy has been revised. (See Exhibit J.) The Checklist for High Quality Representation (Attorney Client Relationship) has also been revised (See Exhibit H).”

5. Provide training to staff consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011);

In its response to the DR, LASNNY offered the following: “Training was provided for staff on Chapters VIII and IX on the CSR Handbook on October 22, 2012. (See Exhibit J).”

6. Provide training to staff consistent with the CSR Handbook (2008 Ed., as amended 2011) § 3.3. Develop and implement methods to prevent case dormancy and untimely closed cases; and

In its response to the DR, LASNNY offered the following: “Training was provided for staff on §3.3 of the CSR Handbook on October 22, 2012. (Exhibit J) The Deputy Director for Strategic Operations has developed and will implement methods to prevent case dormancy. The Closing Out Cases policy has been revised to define timely closure rules and provide guidance concerning "dormancy" (Exhibit K). LASNNY's Caseload Control Policy has been revised to add supervisory responsibilities and methods of ensuring timely case movement and preparation for case closure. (Exhibit M). The Checklist for High Quality Representation sections concerning Prosecution of the Case (Timely Prosecution and Deadlines and Review and Movement of Cases) Disposition of the Case (Close Out Process) and Supervision have also been revised to reflect changes in these policies (Exhibit H).”

V. REQUIRED CORRECTIVE ACTIONS

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

1. Develop procedures to review the staff/PAI designations prior to closure for all PAI designated cases. A more formalized review of PAI designations may be all that is required to prevent errors;

In its response to the DR, LASNNY offered the following: “Training on staff PAI designations has been given to all PAI staff.”

Accordingly, based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 1.

2. Ensure compliance with 45 CFR § 1626.6 regarding the inclusion (when required) of a signed citizenship attestation in all cases files. As a part of this corrective action, LASNNY should adopt additional ongoing case management oversight protocols to ensure that citizenship attestations, when required, are obtained during initial screening or when a case is opened;

In its response to the DR, LASNNY offered the following: “LASNNY will ensure compliance with 45 CFR §1626.6 through review of all older cases and appropriate action to obtain the citizenship attestation, if needed (and/or deselect from the CSR). LASNNY will review all LSC eligible cases opened prior to 2009 and determine if a compliant citizenship attestation is in the file or can be secured. Cases without a compliant attestation will be deselected before the next CSR. LASNNY has also adopted additional ongoing case management protocols to ensure that citizenship attestations, where required, are obtained in proper form. LASNNY has revised its Client Contacts Policy, Exhibit F, and its offsite intake forms. (Exhibit B) Additionally, securing citizenship attestations, a separate line at the bottom of LASNNY retainers, will be a part of LASNNY's revised retainer review. The Deputy Director of Strategic Operations will semiannually run reports in TIME to identify cases without citizenship attestations and will follow up with supervisors and case handlers to ensure corrections.”

Accordingly, based on comments to the DR and a review of exhibits submitted to OCE, LASNNY has taken sufficient action to implement Required Corrective Action item 2.

3. Ensure that PAI attorneys conducting pro se divorce clinics provide/document legal assistance that meets the requirements of the CSR Handbook § 5.6 (2008 Ed., as amended 2011) when such cases are included in CSR data;

In its response to the DR, LASNNY offered the following: “LASNNY will ensure that PAI attorneys provide and document legal assistance during pro se divorce clinics.

A signed PBCU will be obtained for all PAI cases, including pro se divorce clinic cases.”

Accordingly, based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 3.

4. To prevent cases with financially ineligible clients from being included in the CSRs report, ensure a client’s financial eligibility is re-assessed when it becomes apparent during the course of assistance that the client’s income or size of household has changed;

In its response to the DR, LASNNY offered the following: “LASNNY staff was trained on when to review financial eligibility and what to do if the client is no longer eligible. LASNNY has adopted a new policy concerning financial eligibility determinations (Changes in Financial Circumstances-Exhibit E). The Deputy Director of Strategic Operations will semiannually run reports in TIME to identify over income clients and follow up with supervisors and case handlers to ensure corrections. At the time of case closure supervisors will review TIME entries, required by the policy, to determine if changes in income have been documented, financial eligibility redeterminations have been properly done.”

Accordingly, based on comments to the DR and a review of exhibits submitted to OCE, LASNNY has taken sufficient action to implement Required Corrective Action item 4.

5. Ensure that attorneys and paralegals who work on PAI activities record and capture actual PAI time on their time sheets to comply with 45 CFR § 1614.3(e)(1)(i);

In its response to the DR, LASNNY offered the following: “LASNNY disputes the portion of this Finding that would prohibit allocating undesignated matters and activities and leave time recorded on time cards to PAI and respectfully requests that OCE reconsider this corrective action (see response to Finding 17). LASNNY will ensure that staff who were not keeping time properly will do so.”

Accordingly, based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 5.

6. Ensure that LSC funds are not used to pay non-mandatory fees or dues;

In its response to the DR, LASNNY offered the following: “LASNNY will ensure that LSC funds are used only for the mandatory attorney registration fee and not to pay for non-mandatory membership fees or dues.”

Accordingly, based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 6.

7. Secure executed contracts for consultants (who perform personal services) that enumerate the terms and conditions of the agreements;

In its response to the DR, LASNNY offered the following: "LASNNY will obtain contracts with the consultants identified by the LSC."

Accordingly, based on the comments to the DR, within 30 days of execution, LASNNY submit copies of the contracts with the consultants identified by LSC, but no later than May 30, 2013.

Required Corrective Action item 7 will remain open until OCE's receives copies of the referenced contracts.

8. List all checks in numerical sequence and account for the 38 missing checks;

In its response to the DR, LASNNY offered the following: "The Fiscal Director's email response on August 14, 2012 to the team addresses the concerns raised and is submitted as Exhibit P. Furthermore, the Fiscal Director has had detailed discussions with the Accounting Assistant relating to recording of all "Void" checks in the general ledger. In the future, when checks are voided for any reason, they will be sequentially entered into the general ledger and marked "Void". Also in the future, checks will be maintained in sequential order in the general ledger."

Accordingly, based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 8.

9. Ensure that outstanding checks exceeding 60 days are investigated and resolved in a timely manner;

In its response to the DR, LASNNY offered the following: "With respect to the voided checks inquired about particularly (Check #s 28021, 29820, 30305, and 30733), the Fiscal Director reported that after the original checks were printed, the Accounting Assistant had to go back and change the posting date. The only way their system allows them to do this is by voiding the check which populates the original A/P entry back into the system to be processed for payment and the Accounting Assistant then made her correction and the check was printed on a plain paper using the original check number. Since the original check printed earlier was okay as far as the payee, date and amount, the Accounting Assistant used those checks. That is why there is both a voided entry of the check as well as the same check processed as paid. In this way, the Accounting Assistant avoided wasting the original checks. In the future they will void those checks, enter them in the General Ledger in sequential order, and start a new batch."

LASNNY stated that with respect to the one missing check (No. 1251), on the year to date cash disbursement summary report, that this was a check that had been voided. LASNNY attached an exhibit to document the voided check.

Accordingly, and based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 9.

10. Ensure that bank reconciliations are dated by the preparer and reviewer;

In its response to the DR, LASNNY offered the following: “Both preparer and reviewer will date the bank reconciliations.”

Accordingly, and based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 10.

11. Ensure that the Executive Director periodically conducts spot check reviews of the bank reconciliation process;

In its response to the DR, LASNNY offered the following: “The Executive Director will conduct periodic spot checks of the bank reconciliations, twice a year.”

Accordingly, based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 11.

12. Assign the Executive Director or an authorized person the responsibility to review and approve the journal entries before being posted to the general journal/general ledger, as required by the AGLSCR Chapter 3-5.6 (General Journal) and LASNNY’s Financial Policy and Procedures Manual;

In its response to the DR, LASNNY offered the following: “LASNNY respectfully requests that OCE reconsider this corrective action, as requiring prior approval will impede the work flow. We propose that the Executive Director review journal entries quarterly, after they have been posted to the general journal and reviewed by the Fiscal Director as appropriate.”

After careful consideration, LSC is persuaded that entries made to the general journal by the Accounting Assistant *and* the Fiscal Director (as the authorized individual) complies with the AGLSCR. As such, no further action is required and OCE has revised Finding No. 37 to state that “LASNNY’s Internal Control Worksheet, observations and interviews with the Executive Director and Fiscal Director did not reveal any major weaknesses in its segregation of duties.”

Accordingly, and based on comments to the DR, LASNNY has taken sufficient action to implement Required Corrective Action item 12.

13. Maintain its server in a better and more secure environment as required by the AGLSCR Chapter 3-5.14 (EDP Controls). These controls must provide assurances that computers and the data they contain are properly protected against theft, loss, unauthorized access and natural disaster;

In response to the DR, LASNNY offered the following: “The server is in a locked room and locked cabinet. LASNNY’s computer consultant, ABS Solutions, has confirmed that we have addressed the security and environmental concerns have been addressed. (See Exhibit T). Additionally, household items have been moved.”

Accordingly, based on comments to the DR and a review of the exhibits submitted to OCE, LASNNY has taken sufficient action to implement Required Corrective Action item 13.

14. Demonstrate that it maintains appropriate recordkeeping as required by 45 CFR § 1612.10 (recording and accounting for activities funded with non-LSC funds). LASNNY must provide documentation in its comments to the Draft Report showing all expenditures of non-LSC funds relating to legislative and rulemaking activities (Identify and track all costs associated with staff who engage in legislative and rulemaking activities);

In response to the DR, LASNNY offered the following : “LASNNY disputes that contemporaneous accounting is required by 45 CFR §1612, but provides recordkeeping and accounting for its 2012 Legislative and Rulemaking expenditures to date as requested in Exhibit O.”

Accordingly, based on comments to the DR and a review of the exhibits submitted to OCE, LASNNY has taken sufficient action to implement Required Corrective Action item 14.

15. Ensure the correct assignment of case closing categories;

In response to the DR, LASNNY offered the following: “Training has been provided on selection of case closure codes. The Deputy Director of Strategic Operations has developed and will implement new methods to prevent dormant and untimely closure cases. The Closing Out Cases policy has been revised to define timely closure rules and provide guidance concerning "dormancy" (Exhibit K). LASNNY's Caseload Control Policy has been revised to add supervisory responsibilities and methods of ensuring timely case movement and preparation for case closure. (Exhibit M). The Checklist for High Quality Representation sections concerning Prosecution of the Case (Timely Prosecution and Deadlines and Review and Movement of Cases) Disposition of the Case (Close Out Process) and Supervision has also been revised to reflect changes in these policies (Exhibit H).”

Accordingly, based on comments to the DR and a review of the exhibits submitted to OCE, LASNNY has taken sufficient action to implement Required Corrective Action item 15 and

16. Develop and implement methods to prevent dormant and untimely closed files.

In response to the DR, LASNNY offered the following: “The Deputy Director of Strategic Operations has developed and will implement new methods to prevent dormant and untimely closure cases. Closing Out Cases policy has been revised to define timely closure rules and provide guidance concerning "dormancy". (Exhibit K).”

Accordingly, based on comments to the DR and a review of the exhibits submitted to OCE, LASNNY has taken sufficient action to implement Required Corrective Action item 16.



Legal Aid
Society
of Northeastern
New York, Inc.

*Serving Northeastern New York with offices in
Albany, Amsterdam, Canton, Plattsburgh and Saratoga Springs*

Amelia M. Klein
President

Lillian M. Moy
Executive Director

Peter D. Racette
Deputy Director

Wendy Wahlberg
Deputy Director

November 14, 2012

Ms. Lora Rath, Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW 3rd Floor
Washington DC 20007-3522

Dear Ms. Rath:

I am writing to respond to LCS's Draft CMS/CSR Report transmitted on October 15, 2012.
I want to thank Curtis Goffe and his entire team for their courtesies and professionalism.

Our response to the Draft Report is enclosed. Please let me know if you have any questions or concerns.

Sincerely yours,

Lillian M. Moy
Executive Director

The Legal Aid Society of Northeastern New York hereby replies to the Draft Report (DR) as follows:

Finding No. 1: LASNNY agrees with Finding No. 1.

Finding No. 2: LASNNY generally agrees with Finding No. 2. The OCE team learned a great deal about LASNNY's intake and case management systems. In Exhibit A we offer some factual and typographical corrections for your consideration. LASNNY also attaches revised Off Site Intake Forms, which include questions regarding potential income changes as Exhibit B. As agreed, a new policy has been instituted on Income Prospects requiring senior management's approval for any offsite intake forms. The new policy is attached as Exhibit C.

On page 17 of the Draft Report, OCE indicates that LASNNY's case closing policy could "allow cases to be untimely closed." The case closing policy in effect during the OCE visit, attached as Exhibit D, required that "...cases must be closed at the earliest possible moment when they are ready to be closed, and not later than the close of the quarter following the quarter in which they are ready to be closed, and in the year the legal assistance is completed. Cases that must be closed pursuant to the CSR Handbook in the fourth quarter must be closed prior to the date set for that year's ending case closure." (Exhibit D) The policy has been tightened up even further and the revised policy states: "In any event, all cases shall be closed pursuant to the timely case closure rules of LSC CSR Handbook." (Exhibit K) The revised policy includes extensive additional language concerning timely closing rules and timeliness review prior to inclusion in the CSR.

Finding No. 3: LASNNY will ensure that financially ineligible cases are not included in the CSR reports. TIME allows us to run error reports and double check on any case where income exceeds the LSC guidelines. In addition, staff was trained at our October 22nd project-wide meeting on when they need to reassess the client's financial eligibility during the course of representation and how to respond consistent with our ethical obligations and the LSC regulation on change in circumstances (45 CFR 1611.8) (Exhibit J). We note that the comments to that regulation state: "LSC notes that the new language, like the current regulation, is not intended to require a recipient to make affirmative inquiry after accepting an applicant or group as a client for information that would indicate a change in circumstances or the presence of additional information regarding the client's financial eligibility," and "LSC wishes to note that to the extent that discontinuance of representation is not possible because of professional responsibility reasons, a recipient may continue to provide representation support by LSC funds." See 45560 Federal Register/Vol.70, No. 1511, Monday, August 8, 2005. In such circumstances, the case would also be reportable in the CSR's. LASNNY has developed a new policy to guide staff in reviewing and documenting changes in financial eligibility status, Income Eligibility – Changes in Financial Circumstances attached as Exhibit E.

Finding No. 4: LASNNY agrees with Finding No. 4.

Finding No. 5: LASNNY notes that of the 485 files reviewed by LSC, in only four (less than 1%) citizenship attestation errors were noted. Nevertheless, the Deputy Director has created a procedure to review all cases opened prior to 2009 and make certain the proper citizenship form is used. If needed, we will obtain updated citizenship attestations in the proper form. LASNNY's ACSM allows us to check off when the citizenship attestation is present in the file or is not necessary. Our Deputy Director provided training on this issue at the October 22, 2012 project-wide meeting. (See Exhibit J)

In addition, LASNNY will adapt new case management oversight and protocols to ensure that attestations are obtained. LASNNY has revised its Client Contacts Policy, (Exhibit F) and its off-site intake forms (Exhibit B). Additionally, securing citizenship attestations, a separate line at the bottom of LASNNY retainers, is part of LASNNY's revised retainer policy and heightened review per our response to Finding 6. The Deputy Director for Strategic Operations will run reports semiannually in TIME to identify cases without citizenship attestations and will follow up with supervisors and case handlers to ensure corrections.

Finding No. 6: With respect to Finding No. 6, LASNNY's Retainer Policy has been revised to instruct staff to describe the scope of assistance in specific detail (See Exhibit G). In addition, the retainer policy has always provided that when a case is accepted for full representation or is appealed, an additional retainer agreement should be executed. Staff was trained by the Deputy Director at our October 22nd project-wide meeting on how and when to get retainers executed. (Exhibit J). LASNNY's Checklist for High Quality Representation Concerning the Attorney – Client Relationship has been revised to state LASNNY's retainer requirements and the supervision process concerning retainers (Exhibit H).

Findings No. 7: LASNNY agrees with this finding

Finding No. 8: LASNNY agrees with this finding but notes that LASNNY's priorities are Support for Families; Preserving the Home; Maintaining Economic Stability; Maintaining Safety, Stability and Health; Serving Populations with Special Vulnerabilities; Children's Advocacy; and Delivery of Legal Services.

Finding No. 9 cites 11 PAI files in the Canton office. Of the 11 cases, nine are pro se divorce cases. The other two are referrals to PAI attorneys (Case 08-CA-000678 and Case 08-CA-000840).

Regarding Case 08-CA-000678: This is not a pro se divorce clinic case. The client was step-father of a minor child, whom he wished to adopt. The case was referred to a private attorney, who completed a Case Disposition form on September 19, 2011 which stated that the attorney accepted the case, certified that she spent 20 hours working on the case and provided counsel and advice to the client. The pro se attorney had the case from January 26, 2009 until September 19, 2011, when she advised program staff that she advised the client and closed the case at the client's request.

Regarding Case 08-CA-000548: This is not pro se divorce clinic case. The client contacted us after being served with a divorce complaint seeking custody of children and equitable distribution of marital property. The private attorney filed a form with program staff on September 15, 2008 stating that she accepted the case; an interim reporting form on September 16, 2010 stating that the custody issues had been resolved but that equitable distribution issues would not be resolved until after the sale of the marital home; and a case disposition form on March 25, 2011 stating that the case was settled, ten hours were expended in the case and that the legal services provided to the client included preparation of the Notice of Appearance; Affidavit; Affidavit of Regularity; Attorney Certification; Findings of Fact and Conclusions of Law; Judgment of Divorce; Closing Statement; and Certificate of Dissolution as well as sending all documents to the Judge, the Court Clerk, and all parties.

Except for these two cases (08-CA-000678 and 08-CA-000548), the other nine cases were all pro se divorce cases. LASNNY agrees that in 08-CA-000748, no advice was provided by the PAI attorney. As LASNNY staff did provide legal advice, this should have been closed as a staff case. In the other eight cases, we believe the clients received legal assistance tailored to their specific facts during the pro se clinic instructed by a PAI volunteer. LASNNY will do a better job of documenting the same in the future. Specifically, pro se clinic cases from the Canton office will document the legal assistance provided through a Pro Bono Case Update (PBCU) signed by the PAI attorney (just as has been done for all Albany clinics). See Exhibit I. In the future the Deputy Director of Regional Offices and Advocacy or Managing Attorney for the Canton office will review all Canton PAI files, including PAI pro se divorce clinic files, and take care to ensure that the PAI attorney's work is adequately documented and that the case is closed appropriately to PAI, at the proper level of service. All other PAI cases are reviewed by the PAI Director to ensure that they document the legal assistance provided and are otherwise compliant.

Finding No. 10 LASNNY notes that only three files (less than 1% of the 485 files reviewed) were cited as having case closing code errors.

Case 08-CA-000458 was contested but then settled. In New York, settled divorces are concluded by one party withdrawing their claim and the PAI attorney then submitting additional material, including a Motion for Default Judgment, to the Court. The attorney must move for default judgment, not simply present the Court with a stipulation of settlement. Thus 1A (uncontested decision) was a reasonable choice, rather than G (negotiated settlement with integration).

LASNNY staff received training on Chapters VIII and IX of the CSR Handbook at the recent October 22nd project-wide meeting (See Exhibit J). LASNNY has revised its Closing Out Cases policy, Exhibit K, to include a new section devoted to training, selection and supervision of the use of the Legal Problem and Case Closure Categories and Codes.

Finding No. 11: LASNNY agrees that there were a few sampled cases that were untimely closed and dormant. However, the Draft Report cites 08-SA-000957 as being dormant. TIME records show that there was follow-up/contact with the client twice in 2011 and once in April

2012 – see detailed notes in Exhibit L. As this is a Chapter 13, long pendency is normal. This file was not dormant. The report also cites 06 SA000428 - again, not dormant. Case notes in TIME show that there were three follow-ups with the Court and/or PAI attorney in 2010 and two in 2011. Thus, of the five cases cited, only three (less than 1% of all files sampled) can be characterized as dormant.

While the CSR Handbook does not define “dormancy,” going forward we will continue to follow up on PAI referrals regularly. When there have been at least three attempts to follow up without success and the case status cannot otherwise be ascertained, the case will be closed as a staff case, an unsuccessful referral or, in cases in which staff and the PAI attorney have documented legal assistance as a staff or PAI case based on who provided the highest level of documented assistance. See also Exhibit K, Closing Out Cases policy.

LASNYY has recently provided training to staff consistent with the CSR Handbook on Timely Case Closure (See Exhibit J). In particular, LASNNY staff was reminded of the need to contact every client at least every six months. The Deputy Director of Strategic Operations has developed and will implement new case oversight methods to prevent case dormancy and untimely case closing. The Closing Out Cases policy has been revised to define timely closure rules and provide guidance concerning “dormancy” (see Exhibit K). LASNNY’s Caseload Control Policy has been revised to add supervisory responsibilities and methods of ensuring timely case movement and preparation for case closure (Exhibit M). The Checklist for High Quality Representation sections concerning Prosecution of the Case (Timely Prosecution and Deadlines and Review and Movement of Cases) Disposition of the Case (Close Out Process) and Supervision has also been revised to reflect changes in these policies (Exhibit H). LASNNY is also working with some individual case handlers on this issue.

Finding No. 12 through No. 15: LASNNY agrees with these findings.

Finding No. 16: LASNNY agrees with Finding 16 and has already given notice to all funders as required under 45 CFR Section 1610.5. LASNNY’s Executive Director will be responsible for ensuring that the notice is given to every funder/donor, as required, in the future.

With respect to the recommendation that LASNNY consider allocating direct and indirect costs associated with the LSC Basic Field Grant through the General Ledger, LASNNY has discussed switching to cost centered accounting with our Independent Public Auditor. We have identified this possible change as one to consider with our Board of Directors over the next year. As this would be a substantial change and must be commenced at the start of the calendar year, 2013 is simply not feasible. However, this will be a high priority project for exploration with our Board, Chief Fiscal Director and Executive Director.

In the meantime, it is noted that quarterly Statements of Financial Position are provided to the Board of Directors so that they are fully apprised of the allocation of actual revenues and expenses, and can review variances from the approved budget as the year progresses.

Finding No. 17: LASNNY agrees that we are in substantial compliance with 45 CPR §1614.3(d)(3). LASNNY disagrees with the portion of the last full paragraph on Page 31 of the Draft Report that finds that allocating undesignated time (matter, activities and leave time) in proportion to the employee's PAI time is incorrect. As was fully discussed during the OCE visit, LASNNY's PAI billing and allocation system was expressly approved by OCE on pps. 14-16 of its report dated August 4, 2003. This is exactly the same system which the current team took issue with.

First, your team notes that "LASNNY, supported by time records, correctly allocates the salaries of attorneys and paralegals on total workable hours." Next, the report states: "however, the review found LASNNY allocates the salary of attorneys and paralegals on a percentage basis." It appears that OCE found fault with the fact that for any employee who expends time on PAI, LASNNY allocates a proportionate share of that employee's undesignated time (matters, activities and leave time) to PAI. Direct time spent on PAI as well as time spent on undesignated matters and activities (i.e. matters and activities that benefit all clients including PAI clients) as well as leave time, are all documented on time sheets. LASNNY believes that this time allocation system complies with 1614.3(e)(1)(i) which states "If any direct or indirect time of staff attorneys is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities." Indeed, on p. 32 of the Draft Report, LSC states "OCE's review of LASNNY's PAI cost allocation worksheets, its written cost allocation methodology statement, and LASNNY's financial statement reporting of its PAI activity found that it utilizes a financial management system that fully complies with LSC's PAI accounting and financial reporting requirement. See 45 CFR Part 1614. Further, the cost allocation methodology is based on PAI time records. The PAI time records are supported by staff PAI personnel changes and approved by program management." Certainly PAI should pay for its share of an employee's leave time when that employee works part time on PAI. LASNNY respectfully requests that OCE reconsider this finding and once again approve our system for allocating time as it did in 2003.

As noted in response to Finding No. 9, LASNNY will ensure all pro se divorce volunteers provide legal assistance that meets the requirements of the CSR Handbook and that such assistance is documented so that the cases may be properly reported in the CSR data. LASNNY will also ensure that all PAI paralegals record and capture actual PAI hours worked.

Finding No. 18: LASNNY disagrees that LSC funds were used to pay for non-mandatory membership dues or fees. Total expenditures for dues and fees was \$22,200 in 2010 and \$26,732 in 2011. Of that, \$3,900 for 2010 and \$7,500 for 2011 covered mandated attorney registration fees to the Office of Court Administration, a payment permissible under 45 CFR §1627.4(a). Given that, the minor amounts allocated to LSC of \$1,126 for 2010 and \$1,718 are well within the permissible charges for each year. No LSC funds were used in violation of 45 CFR §1627.4(s)

In 2012, LASNNY will charge all attorney registration fees solely to LSC. All other fees and dues will be charged to non-LSC funds.

Findings No. 19 and No. 20: LASNNY agrees with these findings.

Finding No. 21: LASNNY disagrees that 45 CFR 1612.10 requires a contemporaneous accounting for legislative and administrative advocacy or rule-making activities. While on-site, OCE agreed that LASNNY's time keeping records were good and that our policy governing 45 CFR 1612 was compliant. OCE agreed that our annual accounting for legislative and administrative advocacy was also correct. LASNNY does not see any language in 1612.10 that requires record keeping and accounting be done contemporaneously or even throughout the year for legislative and rule making activities. Indeed, LSC has never required this level of detail in our Semi-annual Report. (Exhibit N) In any case, each employee's contemporaneous time records, and payroll and attendance records charge such activities to a fund code (80) that is never charged to LSC. OCE confirms this on p. 37 of the Draft Report which found that "a review of the payroll allocation schedule revealed that direct charges have been allocated to non-LSC funds (under the fundraising fund code) for those attorneys that participated in rulemaking and legislative activities." See Exhibit N. LASNNY respectfully requests that the requirement of additional contemporaneous record keeping and accounting for such activities be reconsidered.

Nevertheless, as requested, LASNNY attaches Exhibit O, which contains our 2012 recordkeeping and accounting for legislative and rule making activities to date.

Findings No. 22 through No. 29: LASNNY agrees with these findings.

Finding No. 30: LASNNY will execute contractual agreements for the two consultants who render personal services for database accounting and graphics work. These contracts will contain per hour rates and will require approval of the Chief Fiscal Director prior to payment for the accounting/database consultant and of the Director of Development prior to payment to the graphics consultant. One is signed and the other is being reviewed by the independent contractor.

In addition, as was discussed with respect to the graphics consultant, although one name was listed on the 1099 and a different name was shown on the cash disbursement vendor file, only one tax ID or social security number was carried consistent throughout. Furthermore, we have now updated and merged the graphics consultant vendor file based on the information on the W-9 provided by the vendor. All 1099s issued had the tax ID provided on the W-9.

Finding No. 31: LASNNY sent a detailed response to Mark Watts, one of the fiscal analysts on this OCE team on August 14, 2012. Although Mr. Watts noted that our explanations are reasonable, they are not reflected in the Draft Report. Attached as Exhibit P is a complete copy of our email exchange.

In summary, the initial Fund EZ report ran across all LASNNY bank accounts. This is why the checks were not in sequential order – they were not from the same bank account.

With respect to your question about the missing checks, Exhibit P shows that the list of missing checks included check numbers that were actually voided. Our Fiscal Director has now physically verified that we were in possession of those voided check copies in year/date order as noted in his detailed response.

With respect to the voided checks inquired about particularly (Check #s 28021, 29820, 30305, and 30733), the Fiscal Director reported that after the original checks were printed, the Accounting Assistant had to go back and change the posting date. The only way our system allows you to do this is by voiding the check which populates the original A/P entry back into the system to be processed for payment. The Accounting Assistant then made her correction and we printed the check on a plain paper using the original check number. Since the original check printed earlier was okay as far as the payee, date and amount, the Accounting Assistant used those checks. That is why you see a both a voided entry of the check as well as the same check processed as paid. In this way, the Accounting Assistant avoided wasting the original checks. In the future we will void those checks, enter them in the General Ledger in sequential order, and start a new batch.

With respect to the one missing check (No. 1251), on the year to date cash disbursement summary report, this was again a check that had been voided. (See Exhibit Q)

As to the blank checks, they are now stored in a locked cabinet in the Accounting Assistant's office. It should also be noted that the Accounting Assistant's office is always locked when she is not there.

Finding No. 32: The Draft Report acknowledges that LASNNY has in place an effective and sound cash receipts procedure with good internal control. The current system has multiple layers and multiple staff involved in maintaining effective internal control. When any payments are received in the mail, they are logged in the cash receipt log by the front desk staff. When payments are received in the form of cash delivered in person, a chronological numeric pre-printed receipt is issued with the original given to the client. The duplicate is attached to the payment and put in a sealed envelope and hand delivered to the Fiscal Director for immediate deposit. In the case of Client Trust Funds, for all payments received, whether by check or cash, a receipt is issued and the transaction is recorded in the cash receipts log. The receipt acknowledges the payer's name, the amount of the payment, date, the purpose of the payment, form of payment (cash or check) and finally the attorney's name. All steps outlined in AGLSCR 3-5.7 are followed. The receipt accompanies the payment and goes to the Fiscal Director. The Fiscal Director writes up the deposit and the Accounting Assistant takes the deposit to the bank. The duplicate deposit slip, along with the receipt from the bank, is put in the cash receipt log. The deposit slip is then reconciled with the cash receipts log by another staff other than the person logging the cash receipts log. Once verified and initialed, it is given to the Fiscal Director to attach to the A/R entry register. All bank statements are opened by the Executive Assistant and tallied against the cash receipts log and cross verified with the A/R entry register. With the current system, the possibility of Client Trust Fund payments or any other payment being improperly deposited into the wrong account is non-existent. We understand your concern; however, LASNNY respectfully submits that our current system is proficient.

Finding No. 33: LASNNY respectfully disputes this finding. Every effort is made to follow-up on checks that remain outstanding beyond the 60 day period by contacting the payee to ascertain if they are in possession of the check and reminding them to cash them. However, it is our experience that it can take as long as 180 days for checks to clear our bank account if the payee has forgotten to deposit the check. If we were to practice voiding checks and putting stop payments on "older" checks, it would place an extreme financial burden on the program. It might also create uneasy relationships with vendors and payees and create extra work load in reissuing the checks again. As to the checks that were mentioned in the Draft Report as outstanding as of June 30, 2012, most of them have now cleared. In the batch of seven (7) checks totaling \$274.84, only four checks totaling \$177.74 remain outstanding (Check #1195 for \$23.86, Check #1405 for \$45.00, Check #1598 for \$25.00, Check #1656 for \$83.88); of the five checks totaling \$815.14 only two checks totaling \$175.00 remain outstanding (Check #1933 for \$50.00 and Check #1950 for \$125.00). In the biggest batch mentioned, of 71 checks totaling \$165,792.99 only three checks totaling \$5,321.91 (Check #881 for 94.91, Check #2085 for 227.00, Check #2198 for \$5,000.00) remain outstanding as of the bank statement of July 31, 2012. The 71 checks were all dated beginning 06/01/12 through as late as 06/29/12 and therefore technically are not yet stale. However, we are contacting the outstanding payees to encourage them to cash these checks as soon as possible.

As to the bank reconciliations, the Accounting Assistant and the Fiscal Director will now date the monthly bank reconciliations. The Executive Director will conduct spot checks of the bank reconciliations, twice per year.

Finding No. 34: LASNNY disputes the finding that at any time the cash balance in its operating account exceeded the relevant FDIC limits. Attached as Exhibits R and S are confirmations that from December 31, 2010 through December 31, 2012, all non-interest bearing accounts are fully insured, regardless of the account balance and the ownership capacity that funds. Exhibit R is information from www.FDIC.gov/deposits and Exhibit S is a letter confirming same from our bank, M&T Bank. LASNNY respectfully requests that this Finding be withdrawn and the related Recommendation (No. 2) be withdrawn.

Finding No. 35 and No. 36: LASNNY agrees with these findings.

Finding No. 37: LASNNY disputes at least part of this finding, in that LASNNY's Accounting Assistant, not the Fiscal Director, makes entries in the General Journal and the Fiscal Director then reviews them. Such review is proper under AGLSCR §3.5-6.

It should be noted that all journal entries are reviewed as part of our annual audit for any unusual activities -- none have ever been found by our Independent Public Auditor. Review by the Executive Director prior to entry would impede the work flow. The Executive Director, who is responsible for overseeing the organization's five offices spread across 16 counties, has to travel constantly and attend various funding and collaboration meetings. In view of this, prior review of all entries would bring daily work to a standstill. LASNNY is not a high risk entity as we do not do electronic banking and have substantial internal controls including two signatures on

every check of any amount. Payroll twice a month is entered by the Director of Human Resources. When it is received at the office, the Chief Fiscal Director opens the sealed envelope and reviews it for supporting documentation for overtime. It is then given to the Accounting Assistant who posts it to the General Ledger. The Accounting Assistant also enters prepaid expenses and allocates them to relevant funders by a journal entry when necessary to move these expenses out of prepaid expenses. Again, these entries are reviewed by the Fiscal Director as the Executive Director's designee.

ASLSCR Chapter 3-5.6 states: "There should be no direct entries to the general ledger. Every entry to the general ledger not originating from the cash receipts journal, payroll register/labor distributions, cash disbursements journal or client trust subsidiary records or any other subsidiary record of original entry should initially be posted to the general journal.

Each entry to the general journal should be:

- fully described
- adequately documented;
- sequentially numbered; and
- approved by an authorized individual."

For entries made by the Accounting Assistant, the Fiscal Director is the "authorized individual."

LASNNY's Financial Policy and Procedures Manual states under "Accounting Records subsection General Journal":

"A general journal is used to make transactions which are not recorded originally in any other book of original entry. Each journal entry will be supported by a complete explanation, accounts affected, and date made, and will be numbered consecutively. These entries, except for those made in the process of the normal monthly accounting cycle, will be reviewed by the ED who shall raise any questions with the Fiscal Director, initial the pages to denote his/her approval, and return the pages to the Fiscal Director."

This language infers that the Executive Director's review is post entry, not prior. The entries made by the Accounting Assistant are made in the course of normal monthly accounting and may therefore be reviewed by the Fiscal Director.

The only journal entries made by the Fiscal Director are end of the year entries for accruals and depreciation. LASNNY proposes that the limited journal entries made by the Chief Fiscal Director will be reviewed at the end of that quarter by the Executive Director. Further, the Executive Director will quarterly review the general journal and believes that this review, coupled with prior reviews by the Chief Fiscal Director or her designee, is sufficient to meet the requirements of the AGLSCR (2010). We hope you will reconsider your directive that such entries be reviewed and approved by the Executive Director prior to being posted to the general journal/general ledger.

Finding No. 38: LASNNY agrees with this finding.

Finding No. 39: LASNNY has ensured that the server room is always locked, with an air conditioner running as needed. Our consultant, ABS Solutions, confirms that security and environmental concerns have been addressed (see Exhibit T). In addition, the server cabinet is now locked. All janitorial supplies have also been removed.

Finding No. 40: LASNNY agrees with this Finding.

LASNNY's Response to OCE's Recommendations

1. LASNNY believes that cash receipts for the client trust fund account do not need to be maintained separately from other cash receipts on the cash receipts log, since client trust accounts are already maintained in a separate and independent bank account and are recorded separately in the general ledger and reconciled on a spreadsheet. This is especially so given our proficient internal control system.
2. LASNNY's Chief Fiscal Director will continue to monitor cash balances and take any action necessary. He will report on them quarterly to the Executive/Finance Committee.
3. This recommendation will be considered by the Chief Fiscal Director, Executive Director and Board of Directors in 2013.
4. The Executive Director will ensure that written notifications will be given to all donors and funders who provided \$250 or more in support.
5. On October 22, 2012, LASNNY staff was trained on drafting more detailed scope of representation on retainers, and the need to execute a new retainer at each level of representation. The retainer agreement policy has been revised. (See Exhibit J.) The Checklist for High Quality Representation (Attorney Client Relationship) has also been revised (See Exhibit H).
6. Training was provided for staff on Chapters VIII and IX on the CSR Handbook on October 22, 2012. (See Exhibit J)
7. Training was provided for staff on §3.3 of the CSR Handbook on October 22, 2012. (Exhibit J) The Deputy Director for Strategic Operations has developed and will implement methods to prevent case dormancy. The Closing Out Cases policy has been revised to define timely closure rules and provide guidance concerning "dormancy" (Exhibit K). LASNNY's Caseload Control Policy has been revised to add supervisory responsibilities and methods of ensuring timely case movement and preparation for case closure. (Exhibit M) . The Checklist for High Quality Representation sections concerning Prosecution of the Case (Timely Prosecution and Deadlines and Review and Movement of Cases) Disposition of the Case (Close Out Process) and Supervision have also been revised to reflect changes in these policies (Exhibit H).
8. Duplicate/withdrawn

LASNNY'S Response to Required Corrective Actions

1. Training on staff PAI designations has been given to all PAI staff.
2. LASNNY will ensure compliance with 45 CFR §1626.6 through review of all older cases and appropriate action to obtain the citizenship attestation, if needed (and/or deselect from the CSR). LASNNY will review all LSC eligible cases opened prior to 2009 and determine if a compliant citizenship attestation is in the file or can be secured. Cases without a compliant attestation will be deselected before the next CSR. LASNNY has also adopted additional ongoing case management protocols to ensure that citizenship attestations, where required, are obtained in proper form. LASNNY has revised its Client Contacts Policy, Exhibit F, and its off site intake forms. (Exhibit B) Additionally, securing citizenship attestations, a separate line at the bottom of LASNNY retainers, will be a part of LASNNY's revised retainer review. The Deputy Director of Strategic Operations will semiannually run reports in TIME to identify cases without citizenship attestations and will follow up with supervisors and case handlers to ensure corrections.
3. LASNNY will ensure that PAI attorneys provide and document legal assistance during pro se divorce clinics. A signed PBCU will be obtained for all PAI cases, including pro se divorce clinic cases.
4. LASNNY staff was trained on when to review financial eligibility and what to do if the client is no longer eligible. LASNNY has adopted a new policy concerning financial eligibility determinations (Changes in Financial Circumstances – Exhibit E). The Deputy Director of Strategic Operations will semiannually run reports in TIME to identify over income clients and follow up with supervisors and case handlers to ensure corrections. At the time of case closure supervisors will review TIME entries, required by the policy, to determine if changes in income have been documented, financial eligibility redeterminations have been properly done.
5. LASNNY disputes the portion of this Finding that would prohibit allocating undesignated matters and activities and leave time recorded on time cards to PAI and respectfully requests that OCE reconsider this corrective action (see response to Finding 17). LASNNY will ensure that staff who were not keeping time properly will do so.
6. LASNNY will ensure that LSC funds are used only for the mandatory attorney registration fee and not to pay for non-mandatory membership fees or dues.
7. LASNNY will obtain contracts with the consultants identified by the LSC.
8. The Fiscal Director's email response on August 14, 2012 to the team addresses the concerns raised and is submitted as Exhibit P. Furthermore, the Fiscal Director has had detailed discussions with the Accounting Assistant relating to recording of all "Void" checks in the general ledger. In the future, when checks are voided for any reason, they

will be sequentially entered into the general ledger and marked "Void". Also in the future, checks will be maintained in sequential order in the general ledger.

9. Based on the information provided to LSC in response to Finding 31, LASNNY respectfully requests that this corrective action be withdrawn.
10. Both preparer and reviewer will date the bank reconciliations.
11. The Executive Director will conduct periodic spot checks of the bank reconciliations, twice a year.
12. LASNNY respectfully requests that OCE reconsider this corrective action, as requiring prior approval will impede the work flow. We propose that the Executive Director review journal entries quarterly, after they have been posted to the general journal and reviewed by the Fiscal Director as appropriate..
13. The server is in a locked room and locked cabinet. LASNNY's computer consultant, ABS Solutions, has confirmed that we have addressed the security and environmental concerns have been addressed. (See Exhibit T). Additionally, household items have been moved.
14. LASNNY disputes that contemporaneous accounting is required by 45 CPR §1612, but provides recordkeeping and accounting for its 2012 Legislative and Rulemaking expenditures to date as requested in Exhibit O.
15. Duplicate/withdrawn
16. Training has been provided on selection of case closure codes. The Deputy Director of Strategic Operations has developed and will implement new methods to prevent dormant and untimely closure cases. The Closing Out Cases policy has been revised to define timely closure rules and provide guidance concerning "dormancy" (Exhibit K). LASNNY's Caseload Control Policy has been revised to add supervisory responsibilities and methods of ensuring timely case movement and preparation for case closure. (Exhibit M) The Checklist for High Quality Representation sections concerning Prosecution of the Case (Timely Prosecution and Deadlines and Review and Movement of Cases) Disposition of the Case (Close Out Process) and Supervision has also been revised to reflect changes in these policies (Exhibit H).
17. The Deputy Director of Strategic Operations has developed and will implement new methods to prevent dormant and untimely closure cases. Closing Out Cases policy has been revised to define timely closure rules and provide guidance concerning "dormancy". (Exhibit K)

LIST OF EXHIBITS

- A Factual and Typographical Corrections – Finding 2
- B Revised Offsite Intake Forms
- C Income Prospects Policy
- D Closing Out Cases Policy in July 2012
- E. Income Eligibility/Changes in Financial Circumstances Policy
- F Client Contacts Policy
- G Retainer Agreement Policy
- H Checklist for High Quality Representation
- I PBCU Form
- J Training Outline on CSR Handbook, October 22, 2012
- K. Closing Out Cases Policy
- L PAI File Detail
- M Caseload Control Policy
- N Legislative and Rulemaking Report Form
- O 2012 Legislative and Rulemaking Records and Accounting
- P. Shamim Huq Email Sequence
- Q. Voided Check 1251
- R. Information from www.FDIC.gov/deposits
- S M&T Bank Letter dated October 22, 2012
- T. Letter from ABS Solutions dated November 10, 2012