



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

**Ohio State Legal Services Association**  
Case Service Report/Case Management System Review  
June 20-24, 2011

Recipient No. 436070

## **I. EXECUTIVE SUMMARY**

**Finding 1:** OSLSA's automated case management system ("ACMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were instances of inconsistent information between the ACMS and the case files and improvement is required.

**Finding 2:** OSLSA's intake procedures and case management system support the program's compliance related requirements, and Required Corrective Actions items 2, 3, and 7 from the 2006 FR were implemented. However, there were a few exceptions noted and Required Corrective Action items 4 and 6 from the FR issued in 2008 were not fully implemented.

**Finding 3:** OSLSA is in non-compliance with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. OSLSA's income eligibility policy must be revised as it is in non-compliance with 45 CFR Part 1611. OSLSA has taken sufficient action designed to implement Required Corrective Action item 3 from the FR issued in 2008.

**Finding 4:** With one (1) exception, OSLSA is in compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4.

**Finding 5:** OSLSA is in non-compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens), and with the documentation requirements of CSR Handbook (2008 Ed.), § 5.5. OSLSA has not taken sufficient action to implement Required Corrective Action item 5 from the FR issued in 2008.

**Finding 6:** OSLSA has not fully implemented Required Corrective Action items 9 and 10 from the FR issued in 2008 to bring it into compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements).

**Finding 7:** OSLSA is in non-compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). There were two (2) exceptions noted in the sampled cases.

**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:** OSLSA is in non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). OSLSA has not taken sufficient action to fully implement Required Corrective Actions items 6 and 8 from the FR issued in 2008.

**Finding 10: OSLSA's application of the CSR case closure categories is generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). OSLSA has fully implemented Required Corrective Action item 7 from the FR issued in 2008.**

**Finding 11: OSLSA is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3 regarding the timely closing of cases. However, there were a few dormant and untimely closed cases in the sampled files.**

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

**Finding 13: OSLSA is in substantial compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).**

**Finding 14: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).**

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

**Finding 16: Additional information is needed to assess OSLSA's compliance with 45 CFR § 1610.8 regarding program integrity from entities engaging in LSC restricted activities. OSLSA has implemented Required Corrective Action item 12 (donor notification) from the FR issued in 2008.**

**Finding 17: OSLSA has implemented the Required Corrective Action items 13, 14, and 16 from the FR issued in 2008. However, OSLSA has not fully implemented Required Corrective Action items 1, 4, 5, 6, 8, and 15 from the FR issued in 2008 were not fully implemented and is in non-compliance with 45 CFR § 1614.4(3)(e)(1)(i).**

**Finding 18: OSLSA is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and is in compliance with 45 CFR § 1627.2(b)(1) which requires LSC prior approval of payments made to attorneys which total in excess of \$25,000 per year. OSLSA has implemented Required Corrective Action 17 from the FR issued in 2008.**

**Finding 19: OSLSA is in compliance with 45 CFR Part 1635 (Timekeeping requirements). OSLSA has implemented Required Corrective Action item 6 (recording 'Screening Manual' activity time) from the FR issued in 2008.**

**Finding 20: Sampled cases, interviews and limited fiscal review evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

**Finding 21: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

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

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

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

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

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

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

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

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

**Finding 30: The fiscal review of OLSA's internal control policies and procedures compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed).**

## II. BACKGROUND OF REVIEW

The Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") review at Ohio State Legal Services Association ("OSLSA") from July 24-28, 2006. As a result of that review, OCE identified 17 required corrective actions designed to assist OSLSA in complying with the LSC Act, regulations, and applicable instructions. A discussion of OCE's findings was contained in its Final Report ("FR") of the review.<sup>1</sup>

On June 20-24, 2011, OCE conducted a CSR/CMS Follow-Up Review ("FUR") at OSLSA to determine implementation of the corrective action items contained in the FR and general compliance. The visit was conducted by a team of six (6) attorneys, one (1) fiscal analyst, and one (1) management specialist. Five (5) attorneys and one (1) fiscal analyst were OCE staff members; the remaining attorney and management specialist were temporary employees.

### Background of Program

OSLSA is a non-profit legal services organization providing free legal services to low-income and disadvantaged residents in the LSC service area known as OH-17. For 2010, OSLSA reported 129 staff members, 71 attorneys, 14 paralegals, and 49 other staff members. The three (3) main areas of OSLSA practice are family, consumer, and housing law. OSLSA involves private attorneys in the delivery of legal services through small *pro bono* components in its offices; however, the bulk of the *pro bono* appears to be conducted through the efforts of the Pro Bono Coordinator and through the various clinics administered by the local offices in partnership with local courts and bar associations. OSLSA's reported PAI effort is below the national median.

OSLSA is headquartered in Columbus, Ohio and maintains offices in Athens, Chillicothe, Lancaster, Marietta, Newark, New Philadelphia, Portsmouth, Steubenville, and Zanesville. Since the 2006 CSR/CMS Review, which is the subject of the 2008 FR, OSLSA has undergone a corporate restructuring. During the 2006 Review, OSLSA was comprised of South Eastern Ohio Legal Services ("SEOLS") and the State Support Center ("SSC"). SEOLS provided legal services to the OH-17 service area and SSC provided training, task force, and other support for legal service providers within the State of Ohio. SSC was in 2006, and remains today, funded by non-LSC sources. During 2006, SSC did not engage in restricted activities. As part of the corporate restructuring, the SSC changed its name to the Ohio Poverty Law Center ("OPLC") and began engaging in restricted activities, such as lobbying and non-client activities concerning potential class actions.

After the issuance of the FR issued in 2008, and with the encouragement of the state Interest on Lawyers Trust Accounts ("IOLTA") funder, Ohio Legal Assistance Foundation ("OLAF"), and LSC's Office of Program Performance ("OPP"), OSLSA affiliated with another LSC funded legal service provider, the Legal Aid Society of Columbus ("LASC"). Presently, OSLSA is the umbrella corporation, managing the subsidiary corporations of SEOLS (dba), LASC (501(3)(c)),

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<sup>1</sup> See Final Report Legal Services Corporation Office of Compliance and Enforcement Ohio State Legal Services Association, July 24-28, 2006, Case Service Report/Case Management System Review, issued February 8, 2008.

and the OPLC (LLC). OPLC is housed in the administrative offices of OSLSA and shares some financial and senior management staff and board members.

For 2010, OSLSA received LSC basic field grants in the amount of \$3,434,458 and \$281,300 in other LSC funding. OSLSA also received grant and contract support from various federal, state, local, and private sources. According to LSC's Recipient Information Network, the total non-LSC revenue received in 2010 was \$10,510,621. OSLSA received total funding of \$14,226,379. See [www.rin.lsc.gov](http://www.rin.lsc.gov).

During 2010, OSLSA closed 12,968 cases, 239 which were PAI. During 2009, OSLSA closed 8,877 cases, of which 109 were PAI. During 2010, the number of non-LSC cases not reported to LSC was 2,387 and 347 during 2009.

In 2010, the adjusted self-inspection rate was 2.3% and 3.1% in 2009. During 2010 and 2009, OSLSA reported errors relating to failure to obtain citizenship/eligible alien documentation, cases in which household income exceeded 200% of FPG, and during 2009 duplicate reporting of cases was also noted as an issue.

### Overview of the FUR Visit

As stated earlier, the purpose of the 2011 FUR visit was to assess OSLSA's<sup>2</sup> implementation of the corrective action items identified in the FR issued in 2008 and the program's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Ed.), and the Property Acquisition and Management Manual. The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, and case management, regulatory and statutory requirements and to ensure that OSLSA has correctly implemented the 2008 CSR Handbook.<sup>3</sup> Specifically, the review team assessed OSLSA for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 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);<sup>4</sup> 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)<sup>5</sup>; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612

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<sup>2</sup> Herein, the term "OSLSA" refers to legal services provided by SEOLS and the management provided by the OSLSA umbrella organization.

<sup>3</sup> It should be noted that in the time between conducting the on-site review and issuing this report the CSR Handbook was amended. However, as this review looked at compliance with the 2008 edition all citations will be made to that version.

<sup>4</sup> In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

<sup>5</sup> On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant visit, LSC's review and enforcement of this regulation was therefore only for the period prior to December 16, 2009.

(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).

In preparation for the visit, on April 20, 2011, OCE requested that OSLSA provide certain case lists. Case lists requested included all cases closed during 2009 (“closed 2009 cases”), cases closed during 2010 (“closed 2010 cases”), all cases closed between January 1, 2010 and April 30, 2011 (“closed 2011 cases”), and all cases which remained open as of April 30, 2011 (“open cases”). OCE requested that two (2) sets of lists be compiled - one (1) for cases handled by OSLSA staff and the other for cases handled through OSLSA’s PAI components. OCE requested that each list contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closure category assigned to the case, the funding code assigned to the case, and an indication of whether the case was handled by staff or by a private attorney pursuant to 45 CFR Part 1614. OSLSA was advised that OCE would seek access to case information consistent with Section 509(h), Pub. L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). OCE instructed OSLSA to notify OCE promptly, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, OSLSA provided the materials. OCE then selected a sample of 660 case files to review during the visit, 515 were randomly selected, 145 were targeted, and one (1) file was pulled onsite. OCE made an effort to create a representative sample of cases that the team would review during the visit. OCE distributed the sample proportionately among open and closed cases and among OSLSA’s various office and locations. The sample consisted largely of randomly selected cases, but also included cases selected to test for compliance with those CSR instructions relative to timely closings, application of the CSR case closing categories, and duplicate reporting.<sup>6</sup>

During the visit, OSLSA cooperated fully and provided the requested materials. OSLSA afforded access to information in the case files through staff intermediaries. OSLSA maintained possession of the files and disclosed financial eligibility information, problem code information, and information concerning the general nature of the legal assistance provided to the client pursuant to the OCE and OSLSA agreement of June 6, 2011. Additionally, OSLSA displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and Part 1636 statements. OCE also interviewed members of OSLSA’s upper and middle management, fiscal personnel, staff attorneys, and support staff. The Director of OPLC was interviewed and OCE toured the OPLC facility. OCE assessed OSLSA’s case intake, case acceptance, case management, and case closure practices and policies in all offices. OCE team members observed a staff clinic at the Pickaway County Court and interviewed staff members who coordinated and conducted clinics throughout OSLSA’s service areas. OCE fiscal staff

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<sup>6</sup> These are the 145 cases referred to above as “targeted.”

reviewed OSLSA's compliance with the LSC grant, including prohibited political activities, fee-generating cases, the use of non-LSC funds, the PAI component, the payment of membership dues and fees, timekeeping, attorney fees, cost standards and procedures, and other fiscal activities. OCE did not review the Legal Aid Society of Columbus' ("LASC") CSR compliance as it was beyond the scope of the FUR.<sup>7</sup> However, OCE conducted limited fiscal review, document review, and interviews at the fiscal offices of LASC and OSLSA as needed to conduct the FUR.<sup>8</sup> Additionally, OCE conducted limited fiscal review, document review, and interviews at OPLC to identify whether there were sufficient 45 CFR Part 1610 issues requiring further LSC review.

### Overview of 2011 FUR Findings

During the course of the visit, OCE attempted to advise OSLSA of any compliance issues as they arose. OCE notified intermediaries, the Fiscal Manager, IT personnel, Director of SEOLS, and the Executive Director of compliance issues identified during the review. At the conclusion of the visit, OCE held a brief exit conference during which OCE advised OSLSA of its preliminary findings. During the exit conference, OCE instructed OSLSA that the findings were merely preliminary, that OCE might well make further and more detailed findings in the Draft Report, and then OSLSA would have 30 days to submit comments. Afterwards, a Final Report would be issued that would include OSLSA's comments.

OCE advised that the staff was familiar with the LSC regulations, the CSR Handbook, and the Frequently Asked Questions ("FAQ") disseminated by LSC. OCE further advised OSLSA that while OCE detected limited patterns of non-compliance, there were instances of non-compliance with certain regulatory and reporting requirements. These included the failure to obtain attestations of citizenship/alien eligibility status, the reporting of LSC and non-LSC funded cases in the CSRs that exceeded financial eligibility guidelines, ACMS inconsistencies, the failure to obtain client identity and statements of facts when required, and lack of documentation of legal advice. Additionally, the sampled cases reflected a few instances of untimely closed or dormant files, closing code category errors, and retainer agreements that were not properly executed. These errors appear to be the result of human error and OSLSA advised it would take action to reduce the incidences of human error. Fiscally, there appeared to be some inconsistent timekeeping recording practices between LASC and OSLSA.

The FUR identified two (2) significant patterns of compliance error that require improvement and further follow-up. First, interviews, observation, and case review revealed an overall lack of clarity within the program concerning the "levels of service" required for a case to be designated as a PAI or a staff case and what differentiates legal assistance from legal information. This misunderstanding, which was found throughout the program, clinics, and the PAI component, resulted in the majority of the errors found within the review sample, whether they be the errors

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<sup>7</sup> This is because the OSLSA's affiliation with LASC occurred after the issuance of corrective actions which are the subject of this FUR.

<sup>8</sup> A limited review of LASC's fiscal records was conducted because LSC, since 2010, funds a single basic field grant to OSLSA and OSLSA allocates PAI costs and reports CSR cases and other services as OSLSA (SEOLS and LASC). As OSLSA does not distinguish between both corporate entities in its PAI cost allocation, the FUR fiscal review had to review the financial compliance of both corporate entities to conduct the FUR financial review.

found in the sampled areas of documentation of legal advice/legal information, closing codes, or PAI designation. Training and the development of policies and educational materials may be all that is needed to resolve these compliance findings.

Second, and the most significant concern from a compliance standpoint, was in the area of the delivery of legal services by clinic systems, both PAI and staff components. The FUR found that OSLSA had not implemented many of the corrective actions relating to the clinics that were outlined in the FR. OSLSA did not stop allocating staff time spent at clinics to its PAI allocation. OSLSA did not ensure that all clinic forms and procedures screen the participants in compliance with 45 CFR Part 1611 and 45 CFR Part 1626 (income, assets and citizenship screening) or that participants served at the clinics be “eligible clients.” OSLSA failed to enter screening, conflict information and document the provision of legal assistance into its database or accept these individuals as clients of OSLSA when providing legal assistance. This is concerning because, on March 19, 2008, LSC advised OSLSA that 45 CFR Part 1614 did not permit these activities to be counted towards its PAI requirement. *See* Office of Legal Affairs Opinion EX-2008-1001, March 19, 2008. However, the FUR found that OSLSA continued to allocate the time spent by staff at these clinics toward its PAI requirement. OSLSA is now advised that this may negatively impact whether OSLSA will meet its 12½% PAI requirement for 2012. OSLSA is required to review its PAI allocations and back-out any time allocated for activities in which legal assistance was provided to unscreened clinic participants and for staff time which was incorrectly allocated to the PAI requirement for 2011 and 2010.

As noted above, OSLSA was advised that it would receive a Draft Report (“DR”) which would include all of OCE’s findings and that they would have 30 days to submit comments.

By letter dated April 11, 2012, OCE issued a DR detailing its findings, recommendations, and required corrective actions regarding the June 20-24, 2011, FUR visit. OSLSA was asked to review the DR and provide written comments. By emails dated May 10 and July 20, 2012, OSLSA requested that the deadline to submit comments be extended. OCE granted the requests and by emails on May 10, July 2, August 13, and August 16, 2012, OSLSA’s comments were received. The comments have been incorporated into this Final Report, and are affixed as exhibits.

### **III. FINDINGS**

**Finding 1: OSLSA’s automated case management system (“ACMS”) is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were instances of inconsistent information between the ACMS and the case files and improvement is required.**

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.), § 3.1.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, OSLSA's ACMS is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were instances in which the information in the ACMS was inconsistent with the information found within the case file.<sup>9</sup> As noted below, it appears that these were instances of data entry errors caused by human error.

The sampled files contained instances in which there were inconsistencies in problem or closure codes, open or closing dates, and missing or incorrect data entry. These appear to be the result of human error not discovered during compliance reviews. Some examples include open Case Nos. 18-08-08509 (incorrect recordation of household size), 11-10-14514 (inconsistent opening date), 19-10-22525 (inconsistent funding code), closed 2011 Case Nos. 18-10-15931 (inconsistent closing date), 16-11-02546 (inconsistent closing date), 14-11-00868 (inconsistent closing code), 11-10-23344 (inconsistent closing code), 11-11-00228 (open date field in ACMS blank), and 17-11-01321 (inconsistent closing date), closed 2010 Case Nos. 11-07-07964 (inconsistent problem code), 19-08-07352 (advocate field blank in ACMS), 11-10-2579 (incorrect recordation of client income), and closed 2009 Case Nos. 05E-16001012 (case closed in 2005 but reported in 2009 closed list), 16-09-00916 (client name blank in ACMS), 11-09-07037 (open date field blank in ACMS), and 12-08-04733 (inconsistent closing code). As almost every ACMS inconsistency found during case review seems to be as a result of human error, it is recommended that OSLSA develop additional case opening procedures and compliance check lists to ensure the consistent maintenance of information in both the ACMS and the case file, such as having case handlers reconcile the information contained in the file with that yielded by ACMS at case acceptance, annual case reviews, and at case closing. As a recommendation, periodic effective and comprehensive management oversight review of cases at the time of case opening and case closing may be all that is necessary to identify the patterns of error or persons in need of targeted assistance. As a FUR corrective action, the DR directed OSLSA to undertake procedures to ensure the proper coding of LSC eligible cases so they are properly recorded in the CSR data submission.

In its comments to the DR, OSLSA noted that it had reviewed all open PAI cases for proper PAI or staff designations. Also, on August 16, 2012, OSLSA submitted a copy of its PAI instruction titled "Private Attorney Involvement-What Counts as PAI?" which was distributed to staff to guide them in selecting appropriate designations. Finally, OSLSA submitted, with its comments to the DR, additional case closing protocols which are designed to ensure the comprehensive management oversight review of cases at the time of case closing. These actions are designed to ensure the proper coding of PAI cases so they are properly recorded in the CSR data submission.

Accordingly, and based upon the review of open cases and the guidance provided to staff, OCE has determined that OSLSA has taken sufficient action designed to implement Required Corrective Action item 11.

**Finding 2: OSLSA's intake procedures and case management system support the program's compliance related requirements, and Required Corrective Actions items 2, 3,**

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<sup>9</sup> Errors found within sampled files relating to PAI errors are discussed *infra*, in Finding 17.

**and 7 from the 2006 FR were implemented. However, there were a few exceptions noted, and Required Corrective Action items 4 and 6 from the FR issued in 2008 were not fully implemented.**

### Intake Process

OSLSA's intake procedures were assessed by interviewing the intake and management staff responsible for conducting and supervising intake in the Athens, Chilicothe, Lancaster, Marietta, Newark, New Philadelphia, Portsmouth, Steubenville, and Zanesville offices and staff responsible for the clinic programs, as well as interviews with the Director of SEOLS and the Executive Director. The interviews revealed that intake procedures performed by intake staff support the program's compliance related requirements with respect to obtaining written citizenship attestations for walk-in clients, performing conflict and duplicate checks during the intake process, and inquiring as to the applicant's income prospects when screening an applicant for income eligibility. The interviews revealed that clinic intake procedures do not support the program's compliance-related requirements as discussed in Finding 17.

Intake is conducted by both telephone screening and also by in-person interviews when an applicant walks into the office. Office hours and walk-in intake hours are from 8:30 am until 5:00 pm Monday through Friday. Telephone intake is also conducted during the same time period.

The intake staff verifies that the applicant has a legal problem that is within the broad program priorities (i.e., this is just a quick verification that it is the type of case which OSLSA can handle, ensuring it is not a criminal case or a medical malpractice matter, etc.) and then a quick income check. After ensuring minimal qualification, the interviewer checks for conflicts and duplicates. Then, intake staff obtains all of the information necessary to complete the screening. Most offices record the information straight into the Pika™ (OSLSA's "ACMS"), but a few offices provide the applicant with a written questionnaire to complete and then the intake staff records the information into ACMS, using the prompts on the screen. It is at this time that the applicant's income/asset eligibility, citizenship status and legal issue(s) are verified and entered into the ACMS. This entry creates a case file with the corresponding ACMS case number. The intake information goes into a program-wide database, based in Columbus, and is updated instantaneously through secure on-line data entry.

Generally, applicants are screened at the time of walk-in or telephone call, but if a call comes in and no one is available to take it, the applicant leaves a call-back message and the intake staff makes every effort to call back by the end of the day. Intake staff indicated that if they cannot reach the applicant, they follow up the first thing the next day. Emergency intake is conducted on an as needed basis.

### Defaults

There were no defaults in the ACMS.

## Income Eligibility

1. OSLSA reviewed 2006 cases for eligibility and took action designed to implement Required Corrective Action item 2.

The FR issued in 2008 noted that some files were reviewed in which the applicant was over-income but due to an error made computing the 125% threshold, the applicants were screened as eligible. During the 2006 CSR/CMS, OSLSA was advised that case files opened since the implementation of the 2006 guidelines in which the client had household income should be reviewed to ensure that the household income was actually within the correct OSLSA eligibility guidelines.

During the FUR, the Director of SEOLS advised OCE that OSLSA took the following corrective actions: OSLSA immediately ceased using the defective guidelines and each office was required to ensure that the corrected 2006 financial eligibility guidelines were in use and the affected cases were identified by an ACMS search and corrected. During the FUR, cases open in 2006 were sampled. Some of the sampled cases contained the OSLSA prepared Eligibility Worksheet when required, however, none contained notations in the file explaining the mistake as required by the correction action item.

As OSLSA has reviewed the files, OSLSA's actions sufficiently implemented Required Corrective Action item 2.

2. OSLSA revised its over-income acceptance case procedures and took action designed to implement Required Corrective Action item 3.

The FR issued in 2008 noted that OSLSA's financial eligibility policy was out-of-date and that OSLSA was not in compliance, at the time of the visit, regarding screening and documenting of income as required because OSLSA did not document in the file the applicant's total income before subtracting expenses to determine whether the over-income applicant would be financially eligible. Required Corrective Action item 3 required OSLSA to revise its current over-income client acceptance procedures to document over-income clients as required by 45 CFR § 1611.5(b)(1).

The FUR found that OSLSA changed how it documents income and expenses during eligibility determinations.<sup>10</sup> First, OSLSA's Board approved a policy which allows assistance to individuals with incomes between 125%-187½ % FPG if, after subtracting allowable expenses, the income is no more than 125% FPG. Secondly, OSLSA developed procedures whereby the over-income determination is recorded on a written Eligibility Worksheet. Lastly, OSLSA added two (2) new fields to the ACMS to provide further information concerning the expenses considered. The first field is a drop-down list indicating the primary expense subtracted from gross income, and the second is a notes field for the screener to add additional detail (expense justification screens). As a result, current procedures preserve the applicant's original income. It was explained that the expense justification screens in ACMS were for informational purposes only. However, interviews revealed that some intake staff members are entering over-income

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<sup>10</sup> The determination of eligibility for clinic participants will be discussed *infra* in Finding 17.

information directly in the expense justification fields of ACMS, rather than recording the information on the written Eligibility Worksheet pursuant to OSLSA policy and procedure. As some Managing Attorneys fail to review eligibility information in the ACMS prior to acceptance, over-income information may fail to be reviewed. This does not appear to result in compliance errors as sampled cases contained written Eligibility Worksheets for those clients with income between 125%-187½ % FPG and staff report following both policy and procedure. However, it is recommended that the program remove the expense categories from its drop-down list to prevent staff from using the drop down menu expenses categories in lieu of the Eligibility Worksheet form to eliminate the possibility of compliance errors.

Accordingly, OSLSA has taken sufficient corrective action to implement Required Corrective Action item 3, that it revise its current over-income applicant acceptance procedures to document over-income applicants as required by 45 CFR § 1611.5(b)(1).

3. Further action is required to ensure consistency of understanding concerning maximum annual income ceilings and use of expense factors.

Although OSLSA has changed its procedures, one (1) screener did not appear to understand OSLSA's maximum annual income ceiling for the consideration of authorized expenses. This staff member reported trying to spend down any applicant no matter the income limits--even if the household's income was over 300% FPG. Additionally, case review revealed that some intake staff members do not consider expenses; but rather assign over-income cases to alternate funding sources, such as FLAG, Title III and LITC, which do not have income limitations. While this, in of itself, is not a compliance issue, the failure to consider expenses in all cases, where appropriate, has resulted in over-income cases being designated as LSC eligible cases and reported to LSC in the CSRs. For example, in open Case No. 11-10-1983, which is supported with LITC funds, the intermediary reported that the client's monthly income of \$1,700 for a household of two (2) was 140% FPG. The file did not contain any record that the program considered any expenses prior to accepting this over-income client. Other examples include closed 2010 Case Nos. 12-10-15870 (Title III funding) and 12-09-00786 (FLAG grant) and may be found in Finding 3. The incidence of over-income cases being mistakenly identified as "LSC eligible" in OSLSA's case lists and CSR data submissions may be reduced if OSLSA requires intake staff to document the expenses authorized by 45 CFR Part 1611, for all LSC eligible cases, regardless of funding source, as contained its financial eligibility policies. Additionally, all staff should be familiar with the maximum annual income ceiling limits. As there may be some lack of consistency concerning staff understanding of income ceilings and application of expenses for over-income clients whose cases are assigned to alternate funding sources, OSLSA should provide training on the program's maximum annual income ceiling policies and 45 CFR § 1611.5 (exceptions to annual income ceiling).

4. OSLSA has taken action designed to implement Required Corrective Action item 4, but does not always screen assets consistent with its Board-approved policy; therefore, further corrective action is required

The FR issued in 2008 noted that OSLSA staff was not screening for the reasonable value of equity in equipment which is essential to the employment or self-employment of a potential client or family member if the worker is attempting to produce income. Required Corrective

Action item 4 required OSLSA to ensure that all intake conducted documented the applicant's assets in accordance with OSLSA Board policy and CSR Handbook requirements.

In advance of the review, OSLSA provided LSC a copy of its current Financial Eligibility Guidelines, the majority of which was most recently reviewed by the Board of Directors on January 14, 2010.<sup>11</sup> The policy provides an asset ceiling of "\$5,000, of which no more than \$1,500 (or \$3,000 for families on fixed incomes), exclusive of prepaid funeral accounts shall be liquid assets."<sup>12</sup> See OSLSA Financial Eligibility Guidelines. OSLSA exempts the equity value in the principal residence, one (1) operable vehicle, and "the reasonable value of equity in work equipment which is essential to the employment or the self-employment of a potential client or family member if the worker is attempting to produce income." See OSLSA Financial Eligibility Guidelines, Section II, Precondition to Financial Eligibility.<sup>13</sup>

The FUR team reviewed sampled files, as well as OSLSA's policies and forms, to assess general compliance with the requirements of 45 CFR Part 1611, and to determine whether OSLSA implemented Required Corrective Action item 4.

Interviews revealed that intake staff screens applicants for assets and documents the assets in the ACMS. Intake staff members articulated the asset ceiling of \$5,000 and most were certain as to when to use the \$1,500 limit on liquid assets and when to use \$3,000. However, a few were uncertain as to when to use the \$1,500 limit on liquid assets and when to use \$3,000. One (1) screener stated that the \$3,000 limit is used if the household did not receive any employment income. Another stated that there has always been uncertainty amongst screening staff about that requirement and that she consistently uses the \$1,500 limit.

Interviews with Managing Attorneys revealed that they are less certain of the program's asset rules. While others were aware of the \$5,000 limit, some were unable to answer questions regarding the liquid asset limits. This is of concern as they are responsible for supervising support staff and reviewing cases for compliance upon closure. As discussed above, some Managing Attorneys acknowledged that they do not review eligibility information during Group Acceptance Meetings.

Interviews with intake staff during the FUR evidenced that applicants are now screened for the reasonable value of equity in equipment essential to the employment of the applicant or family member attempting to produce income consistent with the equipment's fair market value, one (1) operable car, and the equity value in a principal residence.

However, none of the staff interviewed screen for prepaid funeral accounts. It did not appear that screening for this asset was over-sighted by the Managing Attorneys during their compliance reviews.

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<sup>11</sup> Each page of the policy reflects the date revisions were last made to the page. The first two (2) pages of the policy were dated 12/13/08 and the rest of the policy was dated 1/14/10. Attachments contained a range of dates from 2003-2011.

<sup>12</sup> Prepaid funeral expenses are assets exempt under Ohio state law. ORC 4717.38 notes that preneed funeral expenses are assets exempt from levy, attachment or sale to satisfy a judgment or order.

<sup>13</sup> See Finding 4, *infra*, for a discussion of OSLSA's asset eligibility policy.

Similarly, OSLSA's financial eligibility policy requires that before OSLSA accepts, as financially eligible, any potential client whose income falls below the maximum income level, the local office must determine that "affordable private legal representation is not available for the particular case in which the applicant seeks assistance" and the "local office priorities allow acceptance of the case." See OSLSA Financial Eligibility Guidelines, Section II, Precondition to Financial Eligibility. Interviews evidenced that the determination of whether affordable private representation is available is not being made in every case as required by OSLSA's policy.<sup>14</sup>

The failure to screen for prepaid funeral accounts and the availability of private counsel are compliance issues. While 45 CFR Part 1611 does not require Recipients to adopt policies to exempt assets from consideration during asset eligibility determinations or to consider the availability of private affordable counsel during financial eligibility determinations, the OSLSA Board has chosen to require staff to consider these items. Accordingly, staff members are bound by such policy. As a FUR corrective action, OSLSA was advised to address this issue either by requiring intake staff to adhere to the current asset policy as it pertains to considering prepaid funeral accounts and the availability of private affordable attorneys or by adopting new policies consistent with OSLSA's current screening practices. Additionally, OSLSA should provide training so that all staff members are familiar with the maximum annual asset ceilings established by OSLSA policy.

OSLSA has partially implemented Required Corrective Action item 4, and once the few improvements noted herein are implemented, OSLSA will have completed the necessary steps.

#### Screening for Citizenship and Eligible Alien Status

Intake staff demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. However, there are limited occasions to determine eligible alien status because of the demographics of the area. Intake staff verify citizenship status during the intake screening and, and when necessary, require documentation of eligible alien status before completing an intake. Once the applicant provides this information, the intake staff person determines if the applicant is an eligible alien pursuant to 45 CFR Part 1626.

The intake staff understand the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien for particular case types.

Intake staff members obtain written citizenship attestations for those applicants who walk into the office. The applicant signs and dates the written attestation contained on the completed printed eligibility Pika™. In the event, the applicant was screened by telephone; the case

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<sup>14</sup>This may be happening because availability of private counsel is more an element of case acceptance than financial eligibility. OSLSA should consider removing this consideration from the financial eligibility policy and instead add it to its case acceptance criteria.

handlers are responsible for obtaining citizenship and eligible alien status documentation during the first appointment. The Managing Attorney reviews intake forms at case closing to determine whether citizenship documentation requirements were met. This procedure is in compliance with 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5, which requires Recipients to obtain written citizenship attestations or documentation of eligible alien status whenever program staff has in-person contact with the applicant. However, in practice, and as discussed in Finding 5, there were several sampled files reviewed in which citizenship attestations were not obtained by intake staff or the case handlers. Specific recommendations and the requirement for future corrective action are discussed in Finding 5.

### Group Eligibility

OSLSA may provide representation to group clients if the program documents that the group lacks and has no practical means of obtaining funds to retain private counsel and the majority of members are financially eligible clients. OSLSA's group eligibility policy is more stringent than LSC's as LSC regulations permit the representation of groups if the majority of the members are "eligible for LSC assistance" and permits the representation of a group if the group's principal activity is the delivery of services to those persons in the community who would be financially eligible for LSC-funded assistance. *See* 45 CFR § 1611.6. The intake staff was not familiar with group eligibility screening as there had never been an occasion to conduct group eligibility, and indicated they would determine eligibility for each individual member of the group, which is not required by LSC regulations.

### Outreach

Some offices conduct outreach intake. For example, the Portsmouth office conducts intake off-site every other month for Title III cases using a paper intake form, the Newark office conducts intake off-site at two (2) different locations once a month using a paper intake form and a laptop to enter the applicants' information into the ACMS. OSLSA holds a variety of legal information and advice clinics and some limited screening is conducted. These clinics are discussed in Finding 17.

### With exceptions, OSLSA has in place practices to support the supervision of legal work

Required Corrective Action item 6, of the FR issued in 2008, required OSLSA to ensure that intake staff was properly supervised when engaging in "Screening Manual" work. The FUR found that OSLSA instituted procedural changes to its case closing protocols to ensure that all "Screening Manual" cases would be reviewed by an attorney within 72 hours of the applicant/client being provided with the information. The Managing Attorneys reported reviewing these cases within the required time frame. However, only one (1) Managing Attorney reviewed the information/advice before it was provided to the applicant/client. These practices are sufficient to support the supervision of intake staff when they provide legal information in "Screening Manual" cases.

Additionally, the FUR assessed OSLSA's supervision of staff for general compliance. The FUR reflected that the Managing Attorneys supervise compliance-related activities by reviewing open

case lists (usually quarterly for dormancy and timely closing), by on-going case discussion and case reviews, and by reviewing cases upon closure. Case lists and queries are run quarterly to ensure against duplicate reporting. Cases are randomly reviewed for financial eligibility accuracy. While OSLSA has in place protocols and procedures to assist in compliance-related activities, there is room for improvement. OSLSA does not review eligibility information during the time of acceptance (during its weekly case acceptance meetings) and the program's Case Closing Protocol does not require Managing Attorneys to review each closed case for income or asset eligibility or retainer agreement compliance. The Case Closure Protocol only requires managers to review for timeliness, appropriate problem code, citizenship, and documentation of legal assistance. Therefore, it is recommended that OSLSA implement procedures requiring Managing Attorneys and/or staff attorneys to review eligibility information prior to acceptance and at case closure. It is also recommended that OSLSA modify its Case Closing Protocols to require Managing Attorneys to review financial eligibility at the completion of the case. While it may seem duplicative to review financial eligibility at both the case acceptance meetings and upon closure, it is a best practice as it provides a double-check of the entered information, and provides an opportunity to review and update information, as a client's income, assets, and the scope of representation may change during the course of representation.

Intake staff was familiar with the CSR Handbook and staff interviewed was knowledgeable concerning OSLSA's priorities.

All cases are closed and assigned a closing code by the case handler. Managing Attorneys review the selection for accuracy during the review of the file at closing and during review of the Closing Summary Form. OSLSA has taken corrective action to implement Required Corrective Action item 7, that it revise its Case Closing Protocols to ensure that the definitions provided coincide with the CSR Handbook closing code definitions. However, file review evidenced that there appears to be a misunderstanding of certain closing codes. OSLSA should consider amending the Closing Summary Form to include directly on the form, abbreviated CSR explanations of the A, B, F, G, H, IA, IB, IC, K, L, M, and X closing codes to guide case handlers in making the proper closing code selection.

#### FUR Assessment: Further Corrective Action Required to bring OSLSA into Full Compliance

The implementation of LSC regulations should be consistent throughout the program. As such, and as a recommendation, OSLSA should provide staff training on the program's policies regarding 45 CFR § 1611.5 (exceptions to annual income ceiling) and 45 CFR § 1611.3(d)(1) (exempt assets). Additionally, as a corrective action, OSLSA should require its staff to adhere to the current asset policy as it pertains to considering prepaid funeral accounts and the availability of private affordable attorneys. Alternatively, the Board of Directors could adopt new policies consistent with OSLSA's current screening practices.

In its comments to the DR, OSLSA noted that it revised its asset policy to eliminate consideration of prepaid funeral accounts and the availability of private affordable attorneys. A review of the Financial Eligibility Policies submitted by OSLSA on August 13, 2012 and 16, 2012, evidenced that the policy changes implemented by OSLSA are designed to ensure consistency between its screening practices and policy.

Accordingly, and based upon the revision of the OSLSA's Financial Eligibility Policies, OCE has determined that OSLSA has taken sufficient action designed to implement Required Corrective Action items 4 and 6. However, OSLSA must continue to take corrective action to ensure that its Board of Directors adopts the revised Financial Eligibility Policies and that it updates its ACMS to reflect the policy changes.

**Finding 3: OSLSA is in non-compliance with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. OSLSA's income eligibility policy must be revised as it is in non-compliance with 45 CFR Part 1611. OSLSA has taken sufficient action designed to implement Required Corrective Action item 3 from the FR issued in 2008.**

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.<sup>15</sup> *See* CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed.), § 5.2.

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

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the applicant 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.), § 4.3.

#### OSLSA's Eligibility Policy is Inconsistent with Part 1611

OSLSA's financial eligibility policy at the time of the FUR continued to be in need of improvement. As stated in Finding 2, OSLSA provided LSC a copy of OSLSA Financial Eligibility Guidelines, the majority of which was most recently reviewed by the Board of

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<sup>15</sup> A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

Directors on January 14, 2010.<sup>16</sup> The policy set forth eligibility requirements for LSC funded assistance, however, it contained provisions that were inconsistent with LSC regulations and other authorities:

1. Policy fails to comply with 45 CFR § 1611.3(b).

First, OSLSA's income guidelines for LSC funded assistance were in non-compliance because they fail to specify "that only individuals and groups determined to be financially eligible under the Recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds." This provision is required to be part of all financial eligibility policies for LSC funded legal assistance pursuant to 45 CFR § 1611.3(b).

2. OSLSA cannot establish separate eligibility guidelines for LSC reported PAI Clinics.

Second, the financial eligibility policy provided authority for the Executive Director or his designee to establish separate income and asset eligibility guidelines for LSC funded PAI clinics.<sup>17</sup> This provision is inconsistent with the regulations, as only the governing body of a Recipient is permitted to adopt policies for determining the financial eligibility of applicants and groups for LSC funded assistance pursuant to 45 CFR § 1611.3(a). See Finding 17, *infra*, for a further discussion of PAI clinic eligibility.

3. OSLSA cannot set LSC Funded annual maximum income ceilings at 250% FPG.

Thirdly, the financial eligibility policy permitted a potential client to be deemed financially eligible if the potential client's maximum income level is at 250% FPG, after the consideration of prospective income and expenses.<sup>18</sup> This provision is inconsistent with the regulations as Recipients may only consider expenses for those applicants whose incomes are between 125-200% FPG (with the exception of incomes primarily committed to medical or nursing home expenses). See 45 CFR § 1611.5.

4. Applicants cannot be "deemed" under the maximum allowable income level.

Fourth, the financial eligibility policy *deems* income between 125-187½% FPG to be *under the maximum income level* (emphasis added). See OSLSA Financial Eligibility Guidelines, Section

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<sup>16</sup> Each page of the policy reflects the date revisions were last made to the page. The first two (2) pages of the policy were dated 12/13/08 and the rest of the policy was dated 1/14/10. Attachments contained a range of dates from 2003-2011.

<sup>17</sup> The financial eligibility policy states that "the Executive Director or his designee shall have the discretion to determine whether the availability and cost of legal services provided by the private bar and other free or low-cost legal services providers warrants an exception to the income limit of 187.5% of the FPIG for advice and counsel legal services provided in a clinic setting in collaboration with the private bar. Should the Executive Director or his designee determine that such an exception is warranted, a clinic participant shall be client eligible with an income level of up to 200% of the FPIG for clinical legal services not to exceed advice and counsel. Further, the Executive Director or his designee shall be empowered to set an appropriate asset limitation for each clinic based upon local needs within the limitations set by LSC regulations." See OSLSA Financial Eligibility Guidelines, Provision of Legal Services in a Clinic Setting.

<sup>18</sup> The financial eligibility policy provides that if "the potential client's income plus prospective income for the coming 12 months minus allowable expenses and allowable future expenses is no more than 250% of FPIG." See OSLSA Financial Eligibility Guidelines, Section I(G)(3).

I(G). This provision is inconsistent with the regulations as an applicant *remains* “over-income,” if income exceeds 125% FPG, however; under the regulation the expenses render the applicant “financially eligible (emphasis added).” *See* 45 CFR § 1611.5. This section should be revised to note that applicants “shall be deemed financially eligible” rather than be “deemed under the maximum allowable income.”

5. OSLSA’s policies needed to be updated to reflect current regulatory provisions.

Finally, the financial eligibility policy appeared to be referencing a former version of 45 CFR Part 1611, as it refers to sections of the regulations that currently do not exist,<sup>19</sup> or are incorrect,<sup>20</sup> and defines programs,<sup>21</sup> expenses,<sup>22</sup> and income<sup>23</sup> differently than in the current regulation. The DR required OSLSA to review its financial eligibility policy and adopt a policy that satisfies the requirements of 45 CFR Part 1611.

### Inclusion of Over-Income Cases in CSRs

The FUR team sampled files to assess general compliance with the requirements of 45 CFR Part 1611. With one (1) exception, closed 2009 Case No 19-09-06227, all files contained properly documented income and all sampled files, supported with LSC funds, contained eligibility

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<sup>19</sup> For example, the authority cited for the proposition that cases may be accepted if “affordable private legal representation is not available” is 45 CFR § 1611.5(b)(2)(C). Later in this section, 45 CFR § 1611.5(b)(2)(C), (E) is cited as authority for the proposition that cases must be within the local office’s priorities as a precondition financial eligibility. These sections do not exist as the current version of the regulation contains only (a) and (b) subsections. The specific section letters cited in Section I (G) (3), (4), and (5), as §§ 1611.5(b)(1)(B),(D), (E) and (F) likewise do not exist in the current version of the regulation. (Emphasis added) *See* OSLSA Financial Eligibility Guidelines, Section II and 45 CFR § 1611.5.

<sup>20</sup> The authority cited in the financial eligibility policy to exempt the principal residence and work related equipment should be 45 CFR § 1611.3(d)(1), not § 1611.6(c), and the authority cited in the financial eligibility policy to waive the annual asset ceiling should be 45 CFR § 1611.3(d)(2), not § 1611.6(e). *See* OSLSA Financial Eligibility Guidelines, Section II, (A)(3) and (4) and (A)(6) and (7).

<sup>21</sup> For example, “governmental program for the poor” should be “governmental program for low income individuals and families,” *See* OSLSA Financial Eligibility Guidelines, Section I(A) and 45 CFR § 1611.2(g).

<sup>22</sup> For example, “cost of medical care,” should be “unreimbursed medical expenses and medical insurance premiums” *See* OSLSA Financial Eligibility Guidelines, Section I (D) and 45 CFR §1611.5(a)(4)(ii). Similarly, nursing and medical expenses should be “notwithstanding the absolute income limit of 187.5% of the FPIG, the project director shall have discretion to accept a potential client for service if that potential client's gross income is primarily committed to medical or nursing home expenses for a member of the family unit *and that, excluding such portion of the applicant’s income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for services.*” (emphasis added) *See* OSLSA Financial Eligibility Guidelines, Section II (7) and 45 CFR § 1611.5(a)(2).

<sup>23</sup> Total cash receipts should be “total cash receipts include money, wages and salaries before any deductions, income from self-employment after deductions for business or farm expenses, regular payments from governmental program for low income persons or persons with disabilities, social security, unemployment and workers compensation benefits, strike benefits from union funds, veterans benefits, training stipends, alimony, child support and military family allotments or other regular support from absent family members or someone not living in the household, public or private employee pensions, regular insurance or annuity payments, income from dividends, interest, rents, royalties from estates and trusts. Total cash receipts do not include food or free rent in lieu of wages, money withdrawn from a bank, tax refunds, gifts, compensation and/or onetime insurance payments for injuries sustained, or *non-cash benefits and up to \$2000 per year of funds for Native Americans that is derived from Indian trust income or other distributions exempt by statute.* [Authority: 45 CFR § 1611.2(i)] (emphasis added) *See* OSLSA Financial Eligibility Guidelines, Section I(D).

determinations that considered expense factors as appropriate. However, sampled files reflected that cases exceeding OSLSA's income guidelines were included in the CSRs, in error. These reviewed cases reflected the following two (2) main patterns of error.

First, sampled files erroneously included in the CSRs, included those which were not supported with LSC funds, for clients with household incomes between 125-187½ FPG, but failed to contain documentation that authorized exceptions were considered. Some examples include open Case No. 11-10-1983, where household income was 140% FPG but there was no consideration of expenses or other factors, and closed 2010 Case Nos. 12-10-15570, where household income was 150.69% FPG, but there was no consideration of expense or other factors, and 12-09-00786, where household income was 126.24% FPG and there was no consideration of expenses or other factors. Further examples include open Case Nos. 18-10-21657, 18-0811616, and 14-09-00144, closed 2010 Case Nos. 14-10-14328, 14-10-14332, 14-08-05042, and closed 2009 Case Nos. 18-0716927, 16-08-11884, 16-08-11951, 15-09-07197, and 12-09-10855. OSLSA is not required to screen for expenses or other factors in non-LSC cases, however, OSLSA cannot report cases in which the over-income expenses are not documented in its CSR data submissions.

Second, the sample further contained cases in which the household income exceeded Board-approved maximum annual income ceiling of 187½ % FPG, without documentation that the cases were accepted pursuant to 45 CFR §§ 1611.5(a)(1) and (2). These non-LSC funded cases should have been excluded. For example, open Case No. 19-11-04175, where household income was 191% FPG, closed 2010 Case Nos. 13-10-13416, where household income was 223% FPG, and 19-08-07352, where household income was 191% FPG, and closed 2009 Case No. 12-08-04503, where the household income was 240% FPG. *See also* closed 2010 Case Nos. 13-08-11926, 15-09-10295, and 15-09-03359 and closed 2009 Case Nos. 19-08-08724 and 15-09-00794. The inclusion of these over-income cases in the CSR data submission does not appear to be a screening error, because as discussed in Finding 2, OSLSA has appropriately changed its screening documentation practices. These appear to be the result of a report generation error. An interview with the staff member who generates CSRs<sup>24</sup> revealed that OSLSA includes cases up to 200% of the FPG when generating CSR data submissions because this is LSC's maximum annual income ceiling. OSLSA is advised that it may only report cases in the CSRs up to 125% FPG without documentation of authorized factors, and may report cases up to 187½% FPG with documentation of authorized factors, and finally it may report cases exceeding its maximum income ceiling provided such cases meet the requirements of 45 CFR § 1611.5(a)(1) and (2).

The FUR determined that OSLSA implemented Required Corrective Action 3 in that it revised its over-income client acceptance procedures to document over-income clients as required by 45 CFR § 1611.5(b)(1). However, the FUR team found OSLSA to be in non-compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the FPG. The DR directed OSLSA to ensure that cases opened where the client's income level exceeds the income guidelines established by OSLSA, as required by 45 CFR § 1611.3(c)(1), are not supported with LSC funds or reported to LSC in the CSRs. The DR indicated that OSLSA should develop written procedures for the generation of the annual CSRs for both staff and PAI

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<sup>24</sup> SEOLS and LASC submit separate CSRs.

cases, so that all cases reported in the CSR data submission are within LSC eligibility guidelines. Any open cases identified in this review as being over-income, and failing to demonstrate over-income exception acceptance factors, should be excluded from the CSRs. As a FUR corrective action, OSLSA was directed to review its income eligibility policy and adopt a policy consistent with 45 CFR Part 1611.

In its comments to the DR, OSLSA noted that it revised its Financial Eligibility Policies to remedy the deficiencies described in the DR. Review of the Financial Eligibility Policies submitted on August 13 and 16, 2012, evidences that these policies now specify “that only individuals and groups determined to be financially eligible under the Recipient’s financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.” Additionally, there now is a single income and asset eligibility guideline for LSC funded PAI clinics, applicants with incomes between 125-187.5% of the FPG are “deemed financially eligible” rather than “deemed under the maximum allowable income,” and the policies have been updated to reflect current regulatory provisions. Finally, OSLSA submitted, with its comments to the DR, additional case closing protocols designed to ensure that over-income cases which fail to demonstrate over-income exception acceptance factors are excluded from the CSRs.

Accordingly, and based upon the revision of the OSLSA’s Financial Eligibility Policies and instruction, OCE has determined that sufficient action designed to implement Required Corrective Action items 5 and 6 has been taken. However, OSLSA must continue to take corrective action to ensure that its Board of Directors adopts the revised Financial Eligibility Policies and that it updates its ACMS system to reflect the policy changes. OSLSA must provide LSC with a copy of the Board-approval within 30 days of such action; not more than 90 days from the transmittal of the Final Report.

**Finding 4: With one (1) exception, OSLSA is in compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4.**

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant’s eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.<sup>25</sup> *See* CSR Handbook (2008 Ed.), § 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*

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<sup>25</sup> A numerical total value must be recorded, even if it is zero or below the Recipient’s guidelines. *See* CSR Handbook (2008 Ed.), § 5.4.

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. OSLSA's financial eligibility policy continues to be in need of improvement. As stated in Finding 2, OSLSA provided LSC a copy of SEOLS' current Financial Eligibility Guidelines, the majority of which was most recently reviewed by the Board of Directors on January 14, 2010.<sup>26</sup> The policy set forth eligibility requirements for LSC funded assistance, however, it contained provisions are inconsistent with LSC regulation and other authorities:

The FUR team reviewed OSLSA's policy and sampled cases to assess compliance with asset eligibility requirements. The FUR found that OSLSA's asset policy as it relates to exempt vehicles is in need of slight improvement. OSLSA's policy exempts one (1) operable car. This exemption was inconsistent with 45 CFR § 1611.3(d)(1) which requires that vehicles must be "used for transportation" be exempted. Additionally, the DR directed OSLSA to revise its asset policy to clarify that "vehicles used for transportations" are exempt pursuant to 45 CFR §1611.3(d)(1).

With one (1) exception, OSLSA is in compliance with the asset eligibility documentation requirement of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4. Case review identified one (1) case, closed 2009 Case No. 19-08-05794, not supported with LSC funds, that exceeded OSLSA's maximum asset ceiling (client's assets were recorded as \$10,350). As this over-asset case appears to be an isolated human screening error, the only corrective action issued related to the revision of the asset policy, as stated above.

In its comments to the DR, OSLSA noted that it revised its asset policy to include the exemption of vehicles used for transportation, consistent with 45 CFR § 1611.3(d)(1). A review of the policy submitted on August 13 and 16, 2012, evidenced that the policy change implemented by OSLSA is designed to ensure consistency with LSC regulations.

Accordingly, and based upon the revision of OSLSA's Financial Eligibility Policies, OSLSA has taken sufficient action to implement Required Corrective Action items 5 and 6. However, OSLSA must continue to take corrective action to ensure that its Board of Directors adopts the revised Financial Eligibility Policies and that it updates its ACMS to reflect the policy changes. OSLSA must provide LSC with a copy of the Board-approval within 30 days of such action; not more than 90 days from the transmittal of the Final Report.

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<sup>26</sup> As noted previously, each page of the policy reflects the date revisions were last made to the page. The first two (2) pages of the policy were dated 12/13/08 and the rest of the policy was dated 1/14/10. Attachments contained a range of dates from 2003-2011.

**Finding 5: OSLSA is in non-compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens), and with the documentation requirements of CSR Handbook (2008 Ed.), § 5.5. OSLSA has not taken sufficient action to implement Required Corrective Action item 5 from the FR issued in 2008.**

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.), § 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.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.<sup>27</sup> Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC Recipients are now allowed to include these cases in their CSRs.

The FR issued in 2008 noted that sampled files and Kemps forms evidenced that OSLSA's citizenship attestation was not compliant with 45 CFR Part 1626 because the form failed to provide a space for the applicant to date the attestation. The FR noted that OSLSA did not ensure that all applicants are screened for citizenship. Required Corrective Action item 5 required OSLSA to ensure that all applicants be screened for citizenship whether or not the case file was going to be reported to LSC.

The FUR reviewed sampled cases and obtained written citizenship attestations forms to assess compliance with 45 CFR Part 1626. This review indicated that while OSLSA made some changes to its attestation forms, further improvement is required, as there were files lacking attestations when required, and attestations forms were found that were not as set forth in CSR Handbook (2008 Ed.), § 5.5.

Several sampled cases lacked executed written citizenship attestations, when required. For example, in closed 2010 Case No. 16-10-13294, only one (1) of the two (2) clients executed an

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<sup>27</sup> *See* Kennedy Amendment at 45 CFR § 1626.4.

attestation. Several other files, such as closed 2010 Case Nos. 19-08-07352, 12-10-15870, and 18-10-22025, and closed 2009 Case Nos. 14-08-05841, 12-07-13378, and 12-09-05951 failed to contain the required attestations.

Several other files contained signed attestation forms that lacked date lines, or the form contained the date line but OSLSA failed to require the applicants to supply the date when executing the form. Examples include open Case Nos. 17-10-13802 (undated), 11-09-06856 (no date line on form), 11-09-09509 (no date line on form), 11-10-14514 (no date line on form), 01E-19001121 (no date line on form), 03E-19001429 (no date line on form), 06E-12000663 (no date line on form), and 12-10-23305 (no date line), closed 2011 Case Nos. 02E-19001219 (no date line on form), 12-10-24769 (undated), 12-10-16022 (undated), closed 2010 Case Nos. 08E-11000559 (no date line on form), 11-10-15023 (undated), 05-12000747 (undated), and 19-09-05245 (undated), and closed 2009 Case Nos. 03E-11000479 (no date line), 11-07-11111 (no date line), 03E-19000760 (no date line), and 05E-19000574 (no date line).

Finally, attestation forms were identified that failed to contain a separate signature line tied only to the attestation as required by CSR Handbook (2008 Ed.), § 5.5. For example, the attestation contained within the ACMS intake form, states:

I reviewed the information above and it is correct.  
I am a citizen of the United States.

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Name                      Date

Another form states:

I certify that I am/am not (Circle One) a United States citizen and that the information that I have given on this application is correct. I also understand that Southeastern Ohio Legal Services may stop representing me if it is not correct. I promise to notify this office of any change in the information.

None of these attestations comply with the format requirements established by the CSR Handbook (2008 Ed.) which requires citizenship attestations to contain the following statement on a separate document or a separate signature line:

I am a citizen of the United States: Signature of applicant Date: \_\_\_\_\_.

Based on documentation and case review, the FUR determined that OSLSA had not sufficiently implemented Required Corrective Action item 5 to ensure that all applicants are screened for citizenship whether or not the case file is going to be reported to LSC in accordance with 45 CFR Part 1626. It was therefore recommended that OSLSA develop additional checks and balances, such as including compliance related information on its "Opening Memo" or to note on files whether the citizenship attestation has been obtained, with a symbol, such as a purple star. Additionally, the DR indicated that OSLSA should require that all files are reviewed for 1626 eligibility determinations during the initial staffing of the case, during compliance reviews

throughout the case, and at closing to ensure that case handlers are collecting citizenship attestations during the first in person contact with the applicant. Finally, the DR directed OSLSA to ensure that all written citizenship attestations are in a form as stated in the CSR Handbook (2008 Ed). During the FUR, OSLSA advised that it would review its citizenship attestation forms and revise them to bring them into compliance with CSR Handbook (2008 Ed), § 5.5.

As part of its comments to the DR, OSLSA submitted its revised paper intake citizenship attestation form, and a printout of the intake form contained in the case management system, and noted that it included the revised attestations in its “Program wide” Handbook. The revised citizenship attestations contain the following statement on a separate document or a separate signature line:

I am a citizen of the United States: Name \_\_\_\_\_ Date: \_\_\_\_\_.

Additionally, OSLSA provided minutes of its June 2012 Managing Attorneys’ meeting, which contained the instruction that “every office must use only an application form with a correct citizenship attestation. The citizenship attestation must read: “I am a U.S. citizen” with a space for a signature and date. No other attestation is acceptable and no application with any different form of attestation can be used! If there are any applications with different attestations floating around, destroy them and find out where they came from!”<sup>28</sup>

Review of the actions taken by OSLSA indicates that the actions are designed to ensure that staff members are provided with the documentation and knowledge to obtain citizen attestations, in compliance with 45 CFR Part 1626.

Accordingly, OSLSA has taken sufficient action designed to implement Required Corrective Action item 7.

**Finding 6: OSLSA has not fully implemented Required Corrective Action items 9 and 10 from the FR issued in 2008 to bring it into compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements).**

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The

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<sup>28</sup> *See* OSLSA’s Responses to the FUR 2012 Draft Report’s Corrective Actions, Revised August 16, 2012.

lack of a retainer does not preclude CSR reporting eligibility.<sup>29</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

The FR issued in 2008 noted a pattern of non-compliance in that case files lacked retainers when required, were not dated or signed, and lacked adequate descriptions of the scope and subject matter of the representation undertaken by the program. The FR further noted that a “contributing factor to OSLSA’s non-compliance was that, in some offices, the clients are allowed to fill in the scope and subject matter of the retainers prior to meeting with an OSLSA attorney.”<sup>30</sup>

The FUR sampled extended service cases to assess whether OSLSA was executing retainer agreements in accordance with 45 CFR § 1611.9. The FUR identified the same errors patterns relating to the execution of retainers agreements, in files reviewed as were identified during the 2006 review, in that retainer agreements were missing when required, were not dated and/or failed to adequately describe the subject matter and the nature of the legal services provided to the client.

Sampled cases, such as open Case Nos. 11-09-06856 and 11-09-09509 and closed 2009 Case Nos. 14-08-05841 and 03E-11000479, failed to contain executed retainer agreements, or the retainers were not dated. Other cases, such as closed 2010 Case Nos. 18-0900009, which described the nature of the legal services as “prepare for PAI Attorney” when file reflected the OSLSA staff provided legal services to the client, and 12-08-11244, which described the nature of the legal services as “review file for possible representation at informal hearing” when file was closed with the closing code “H-Administrative Agency Decision” indicating that client had been represented, and closed 2008 Case No. 11-08-08739, which simply described the representation as “food stamps,” contained insufficient or incorrect scope and subject matter descriptions. Finally, the FUR identified retainers that appeared to have been completed by the client, such as open Case Nos. 08-11617, which described the nature of the legal services as “help me fight for custody of my son,” and 14-07-15126, which described the nature of the legal services as “keep me from having to pay what Medicaid should pay,” and closed 2010 Case No 05-12000747, which described the nature of the legal services “rework purchase or get it fixed.” As the specific legal issue and breadth of the program’s representation is usually not decided upon until an initial discussion is held between client and case handler, OSLSA should make certain that the scope of representation portion of retainer agreements is provided by the attorney or paralegal and not the clients. OSLSA legal staff is in the best position to describe the nature and scope of services it will provide to its clients.

The FUR determined that OSLSA had not implemented Required Corrective Action items 9 and 10, resulting from the FR issued in 2008. As a FUR corrective action, the DR indicated that OSLSA should develop additional periodic compliance monitoring procedures to ensure the consistent and timely completion of retainer agreements by OSLSA staff and to ensure agreements are updated during the pendency of the legal case as the subject matter and nature of the legal services changes.

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<sup>29</sup> However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a Recipient’s risk management.

<sup>30</sup> See FR issued in 2008 at page 19.

A review of the policy submitted on August 13, 2012 evidenced that the OSLSA revised its retainer agreement policy to instruct that “written retainers shall be executed when representation commences or as soon thereafter as practicable” and “if the level of service changes, for example, going from “investigation” to filing in court or going from trial court to an appellate court, the retainer must be updated and an updated retainer provided the client.”<sup>31</sup> OSLSA submitted, with its comments to the DR, additional case closing protocols which require its staff and managers to review retainer agreements at closing. The changes implemented by OSLSA are designed to ensure consistent the timely completion of retainer agreements and that they are updated during the pendency of the legal case as the subject matter and nature of the legal services changes.

**Finding 7: OSLSA is in non-compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). There were two (2) exceptions noted in the sampled cases.**

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 during the FUR indicated that OSLSA was in non-compliance with the requirements of 45 CFR Part 1636 as closed 2009 Case Nos. 18-07-09727 and 18-09-03325 failed to contain a statement of facts or a verified compliant when required. The DR directed OSLSA to develop additional periodic compliance monitoring procedures to ensure the consistent completion of client identity and statements of facts program-wide.

A review of the Case Closing Protocols submitted to OCE on September 20, 2012 evidenced that OSLSA revised its protocols to require its case handlers to review every file upon closure to determine whether the case requires a client identity and statements of facts, and whether the client identity and statements of facts is in fact contained in the file. The changes implemented by OSLSA are designed to ensure consistent completion of client identity and statements of facts.

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<sup>31</sup> *See* OSLSA’s Responses to the FUR 2012 Draft Report’s Corrective Actions, Revised August 16, 2012.

**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.

Sampled cases and interviews evidenced compliance with the requirements of 45 CFR §§ 1620.4 and 1620.6(c). OSLSA is in compliance with 45 CFR Part 1620.

No corrective action is needed and no recommendations are being made.

**Finding 9: OSLSA is in non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). OSLSA has not taken sufficient action to fully implement Required Corrective Actions items 6 and 8 from the FR issued in 2008.**

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

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

**Legal Information provided in screening manual cases was inappropriately reported in the CSRs**

The FR issued in 2008 found that OSLSA closed as CSR cases, "Screening Manual" activities. The FR questioned whether legal advice was administered and whether the applicants should be accepted as clients. OSLSA was required to ensure that legal advice was administered and documented and to ensure that “Screening Manual” cases reported to LSC include documented legal advice and to revise its packet disclaimers to negate any attorney-client relationship and legal analysis for files involving provision of legal information only pursuant to Required Corrective Action items 6 and 8 of the 2006 FR.

In advance of the FUR, OSLSA electronically provided OCE with a revised Screening Manual, totaling 266 pages, dated December 20, 2007. The manual contains an introduction regarding the use of the Manual, and screening procedures to be followed, and is organized by LSC problem and special sub-problem codes. For each code, the Manual lists the detailed information to be obtained from the applicant, information to be provided to the applicant, and the materials to be sent to the applicant.<sup>32</sup> The Manual also indicates the types of cases that should be referred to attorneys. The FUR noted that intake staff members follow the scripts to orally provide applicants with information and follow the Manual to determine the brochures, letters, and pamphlets to distribute to them. However, the FUR revealed related weaknesses which may result in compliance errors concerning the documentation of legal advice. The FUR found that the Screening Manual is silent on closing protocols. Thus, the intake staff are not provided guidance as to when files should be rejected, reported as matters (legal information), or, arguably, depending upon what is noted in the file, reported as cases. Secondly, not all of the OSLSA scripts supply legal advice and not all of the pamphlets provide legal analysis or establish an attorney-client relationship. A limited review of the packet disclaimers evidenced that OSLSA properly “negates any attorney/client relationship and legal analysis” as the packets provide legal information rather than legal advice.

The failure of the Screening Manual scripts to distinguish legal information from legal advice may have resulted in files being reported as cases in the CSRs when no legal assistance was provided.<sup>33</sup> Many of the sampled “Screening Manual” files document no activity other than the distribution of the pamphlets and forms. For example, open Case No. 18-11-03015 ( legal information Landlord-Tenant Rights pamphlet distributed), closed 2010 Case Nos. 12-09-07535

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<sup>32</sup> The introduction section also distinguishes Level A case types from Level B case types. Level A case types are those in which the intake staff do not have to complete an intake either because the case type is outside of established priorities, is a prohibited or restricted activity, such as criminal representation, or OSLSA determined it lacks sufficient resources to represent applicants with that legal problem, such as repossession of mobile homes. Level B case types are those legal problems for which applicants will be considered for services. Applicants with Level B issues must undergo a full intake screening.

<sup>33</sup> The FUR’s analysis of what constitutes legal advice is based upon the criteria set forth in the CSR Handbook and relevant ABA guidelines. (Additionally, the ethics laws of the State of Ohio could be considered, but were not part of the FUR’s analysis). The ABA guidelines indicate that the provision of legal advice occurs whenever the attorney applies their legal judgment to the client’s particular set of facts. The ABA Standards for the Provision of Civil Legal Aid, § 3.6, provides a discussion concerning the difference between legal information and legal advice that is helpful. The ABA Standards note that “*Legal information* is aimed at helping the Recipients of the information understand their rights and responsibilities and the appropriate procedures for redressing those rights and fulfilling those responsibilities. It is general in nature and not tailored to the unique facts of the individual’s situation, although when legal information is offered to individuals, the provider may have enough knowledge about the person’s situation to choose generally, what information is appropriate. Legal information is neutral and does not recommend a strategic course based on the judgment of the individual offering the information. Thus, the person offering the information might tell the Recipient of options that are available in response to the legal problem, but would not suggest what option to take. Similarly, legal information might inform an individual of forms that are appropriate to use and the general information about what to include in a statement of facts or a request for relief. It should not suggest the specific facts to put on the forms. A provider could, for example, explain the different grounds for divorce and let the litigant choose the applicable one. *Legal advice* in contrast is specific to the unique circumstances of the inquirer. It is strategic in that it offers an approach that is tailored to the fact situation of the asker and goes beyond mere general advice appropriate for all persons who confront the same issue. The giving of legal advice is legal representation and creates an attorney-client relationship.” See ABA Standards for the Provision of Civil Legal Aid, § 3.6. See also, Standard 3.4-1 (on Representation Limited to Legal Advice).

(legal information and pamphlets related to child support distributed), and 11-10-15030, 12-10-20313, 12-10-20314, 12-10-20314, 12-10-20973, and 12-09-04741 (legal information, pamphlets and *pro se* forms concerning custody distributed), and closed 2009 Case No. 11-09-07037 (*pro se* divorce packet distributed). Other examples include open Case Nos. 18-11-04754, 16-11-04927, and 16-11-04929, closed 2011 Case Nos. 18-11-01448, 18-11-01821, 18-11-02598, 18-11-03427, 18-1-03430, 18-11-03520, 18-11-03587, 18-11-03782, 18-11-03949, 16-11-02006, 6-11-03879, 16-11-04910, and 16-11-04809, and closed 2010 Case Nos. 18-10-18823 and 18-10-25071. These files, and others similar to them, are not CSR-reportable. In some of these files, OSLSA staff did not meet with or consult with the applicant and no advice was documented in any of these files). As there was no legal assistance provided to the client, these activities should have been excluded from the CSRs. While OSLSA has revised its “Screening Manual” case procedures, these revisions were not sufficient to ensure that “legal advice is administered” and documented.

The FUR generally assessed whether legal assistance was being documented in the case files sampled. Although many of the files sampled evidenced that OSLSA provided legal assistance, some of the documented activities did not rise to the level of legal assistance either because they were referrals and/or only legal information was provided. For example, open Case No. 15-11-04629, closed 2011 Case Nos. 14-11-02159, 16-11-04910, 13-11-03663, 13-11-03894, 13-10-25182, 15-11-02733, and 15-11-01577, closed 2010 Case Nos. 11-10-13356, 17-09-09815, 11-10-22192, 11-10-2579 and 11-09-05298, and closed 2009 Case No. 15-09-09298 evidenced that the services provided were legal information and/or referrals to another organization or another OSLSA subsidiary corporation, such as referrals to the Attorney General, the Housing Counsel, Integrated Services, or LASC. Referrals without the provision of legal assistance may not be closed with a CSR closing code. The CSR Handbook notes that recipients may not report the referral of an applicant for legal services as a case when the referral is the only form of assistance that the applicant receives from the program, although it may be included in the Other Services Report. Moreover, the referral to another office within the recipient’s program may not be included in the Other Service Report (“OSR”) or reported in the CSR data submission as a case. *See* CSR Handbook (2008 Ed.), Chapter VII. The files noted above, and others similar to them, are not CSR-reportable.

The FUR review of sampled “Screening Manual” and other cases indicates continuing concern that legal information is being provided to clients, rather than legal services, through referrals, the distribution of various self-help brochures, pamphlets and forms, and oral communication. OSLSA management clearly wishes to provide relevant and helpful information through its referrals and “Screening Manual” cases, but as documented, this information does not rise to the level of legal assistance as defined in § 2.2 of the CSR Handbook.

The FUR determined OSLSA had not fully implemented Required Corrective Action items 6 and 8, and was not in compliance with CSR Handbook (2008 Ed.), §§ 2.3 and 5.6. the DR required OSLSA to review its “Screening Manual” and referral case procedures and documentation requirements and develop written program policies and training materials to guide staff in documenting legal information and legal assistance. As a FUR corrective action, OSLSA was directed to cease reporting “Screening Manual” activities and other cases which lack evidence of legal advice in the CSRs.

In its comments to the DR, OSLSA noted that it would revise its “Screening Manual” practice and policy and that it would cease reporting these activities as cases in the CSRs. To this end, OSLSA is presently revising its Screening Manual and has informed staff that all applications in which the only service provided is a pro se packet (or booklet, information materials, or referral to another legal aid, social or governmental agency, the website, etc.) are to be closed using case closure category “M-Legal Information.” OSLSA noted that it intends to review all cases closed during the 2012 calendar year with case closing category “A-Counsel and Advice” to determine whether the more appropriate action would have been to close the file with “M-Legal Information” because the level of services documented in the file indicates that no legal assistance was provided to the applicant. Finally, OSLSA submitted, with its comments to the DR, additional case closing protocols designed to ensure that staff and management review the documentation of legal assistance prior to case closure.

A review of the actions taken by OSLSA indicates that these actions are designed to ensure that staff members are provided with the knowledge to cease reporting in the CSRs activities or other cases which lack evidence of legal advice.

Accordingly, OSLSA is in the process of taking sufficient action to implement Required Corrective Action item 10. However, OSLSA must continue to take corrective action to ensure that the Screening Manual is revised and that all cases closed during the 2012 calendar year are reviewed as stated herein and as part of this corrective action, OSLSA must provide LSC with a copy of the Screening Manual revisions no more than 90 days from the transmittal of the Final Report. A certification that the closed case review has been completed must be submitted within 30 days of the review being completed.

**Finding 10: OSLSA’s application of the CSR case closure categories is generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). OSLSA has fully implemented Required Corrective Action item 7 from the FR issued in 2008.**

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.), § 6.1.

OSLSA revised its case closing protocol and implemented Required Corrective Action item 7 from the 2006 FR

The FR issued in 2008 noted that there was some confusion among staff concerning the use of certain closing codes. The FR attributed this confusion to OSLSA’s case closing protocols. Pursuant to Required Corrective Action item 7, OSLSA was to revise its case closing protocols to ensure that the closing definitions provided coincided with the CSR Handbook closing code definitions.

The FUR reviewed the Case Closing Protocol provided by OSLSA and found that it was consistent with the CSR case closing categories contained in Chapters VIII and IX, CSR Handbook (2008 Ed.).

The FUR identified some inconsistent closing code applications.

The FUR assessed whether OSLSA's application of the CSR case closing categories is consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). The sampled files reflected general compliance with the CSR Handbook but also identified limited patterns of error.

1. Use of the H Closing Code

First, the sampled files reflected the incorrect use of the "H-Administrative Agency Decision" ("H") closing code as follows:

- in closed 2010 Case Nos. 13-10-13416, 18-09-00009 and 19-09002542, the H code was used when the more appropriate closing code would have been F because formal administrative agency action was not initiated to resolve the tax matters.
- in closed 2010 Case No. 12-09-07748 the H code was used when the more appropriate closing code would have been B because it was the client, acting *pro se*, who obtained the administrative agency decision without the formal involvement of the program (the program provided consultation and brief services).

The CSR Handbook provides that the H code should be used when the "program represented a client in an administrative agency action that resulted in a case-dispositive decision by the administrative agency or body, after a hearing or other formal administrative process (e.g., a decision by the hearings office of a welfare department). However, H should not be used for "settlements made during the course of litigation" or if the "case is resolved informally through contacts with an administrative agency, but without any formal administrative agency action." In those instances, "the case should be closed as CSR Closure Categories B – Limited Action or F – Negotiated Settlement without Litigation, depending on the level of service." *See* CSR Handbook (2008 Ed.), § 8.3.

2. Use of the K Closing Code

Another pattern of error noted was the apparent misunderstanding of the "K-Other" ("K") closing code. The CSR Handbook requires cases be closed in the category that best reflects the level of service provided and if a descriptive closure category is applicable, then the K code should not be used. *See* CSR Handbook (2008 Ed.), § 8.1 fn. 41. A few cases were identified in which the program employed the K closing code for cases in which another closing code category more accurately described the nature of the legal services performed. For example, in closed 2011 Case No. 16-11-03816, the case was closed K when the more appropriate action would have been to exclude the file as the applicant was referred to another legal services program to resolve her common law marriage in Texas. Other examples include, closed 2011 Case No. 12-1102353, closed 2010 Case No. 19-10-14801, and closed 2009 Case Nos. 17-07-

15364 and 11-09-05298. These cases indicate that OSLSA should review its use of the K closing category, as LSC does not anticipate that this closing category will be used frequently, as most common services provided to clients should fit more accurately within another closing code category.

### 3. Use of the A Closing Code

Finally, the DR advised OSLSA to review its assignment of closure codes in limited assistance cases as it may be under-reporting the levels of service provided to its clients. For example, sampled cases were closed “A-Counsel and Advice” (“A”) when the file reflected that pleadings or correspondence were prepared for the client so it may have been appropriate to close the files with higher level of service closing codes. For example, in closed 2011 Case No. 14-10-2323, the case was closed as an A, but it should have been closed as F because the creditor was contacted and accepted the offer to reduce the amount of the garnishment against client. Other examples include closed 2011 Case No. 17-10-22357 (closed with closing code A but should have been closed with L), and closed 2010 Case No. 19-08-02495 (closed with closing code A but should have been closed with L). As a program may exercise its judgment in the assignment of closure codes, these may not be errors, but may indicate a need for a program-wide review of the case work necessary to support LSC closure categories.

The files reviewed demonstrate, that with a few patterns of error, OSLSA’s application of the CSR case closing categories are consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). As a recommendation, OSLSA should review the application of its closing codes and provide training to staff consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.).

**Finding 11: OSLSA is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3 regarding the timely closing of cases. However, there were a few dormant and untimely closed cases in the sampled files.**

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.), § 3.3(a).<sup>34</sup> 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.), § 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

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<sup>34</sup> The time limitation of the 2001 Handbook that a brief service case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

The FUR assessed compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3(a). While most of the files that were reviewed during the visit were timely closed, there were a few exceptions in staff case files. Examples include: open Case No. 18-10-15342 (This case was opened March 8, 2010 and the last legal work documented in the file, brief services consisting of tax return preparation, was in April of 2010, with no notations in the file of any further legal assistance needed or provided since 2010. This case is dormant.); closed 2011 Case No. EIC-120 14-10-15583 (This case was opened on March 15, 2010 and the only legal work documented in the file, advice and counsel, was on June 10, 2010 with no notations in the file of any further legal assistance needed or provided since 2010. This case was closed on January 20, 2011 and is untimely.); closed 2010 Case No. 19-09-02542 (This case was opened on March 9, 2009 and the only legal work documented in the file, brief services consisting of tax return preparation, was during 2009, with no notations in the file of any further legal assistance needed or provided since 2009. This case was closed on March 1, 2010 and is untimely.); and closed 2009 Case No. 05E-19000574 (This case was opened on May 18, 2005 and the only legal work documented in the file, brief services, was on December 13, 2006, with no notations in the file of any further legal assistance needed or provided since 2006. This case was closed on January 21, 2009 and is untimely.). Accordingly, the open files noted above should be excluded from future LSC CSR data submission and the closed files were reported to LSC in the CSR data submission in error.

Many of these cases appear to have become dormant because OSLSA did not timely review or close them after the limited assistance was provided to the client. The DR noted that, while OSLSA has oversight practices in place, it should develop and implement additional methods to prevent dormant and untimely closed files. OSLSA staff may want to adopt oversight methods, such as generating case lists indicating files that have not had time entered for three (3) months, and conducting semi-annual compliance reviews. OSLSA should also consider targeted training for those individuals who may require additional assistance. OSLSA is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3(a).

In its comments to the DR, OSLSA submitted additional case closing protocols which set standards for the timely closure of cases and are designed to ensure that staff and management review files for timeliness prior to case closure and exclude untimely cases from the CSRs.

A review of the Case Closure Protocol submitted on May 10, 2012 evidenced that the changes implemented by OSLSA are designed to ensure compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3(a).

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

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

When a recipient provides more than one (1) type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2008 Ed.), § 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.), § 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.), § 6.4.

With one (1) exception, the sampled cases indicated that OSLSA is in compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. The case sample included several targeted files to test possible duplicate files. The sampled cases disclosed no duplicate files.

No corrective action is needed and no recommendations are being made.

**Finding 13: OSLSA is in substantial 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 Recipient's 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.

45 CFR § 1604.4. Permissible outside practice.

A Recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

- (a) The director of the Recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the Recipient's clients;
- (b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the Recipient; and

(c) The attorney is---

- (1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or
- (2) Acting on behalf of him or herself, a close friend, family member or another member of the Recipient's staff; or
- (3) Acting on behalf of a religious, community, or charitable group; or
- (4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by bar association, other legal organization or religious, community or charitable group.

The OSLSA policy on the Outside Practice of Law in effect at the time of the FUR went into effect on January 14, 2010. The policy authorized OSLSA attorneys to engage in outside practice under limited circumstances provided the attorney does not accept fees and OSLSA approves such practice. *See* OSLSA Policy on Outside Practice of Law, adopted on January 14, 2010 provided in advance of the FUR. Both OSLSA's policy and approval form state that approval to engage in outside practice may be granted by the attorney's supervisor, the Executive Director, the SEOLS Director, or the OPLC Director. The DR noted that OSLSA should amend its policy and form to delete the OPLC Director as the Director of OPLC is not an employee of SEOLS but is employed by a separate subsidiary corporation of OSLSA. Secondly, OSLSA was directed to amend its policy and form to provide that "representation in such case or matter is consistent with the attorney's responsibilities to the Recipient's clients," and that "the attorney does not intentionally identify the case or matter with the Corporation or the Recipient" during the course of the outside practice engagement. *See* 45 CFR § 1604.4.

According to the list provided by OSLSA in advance of the FUR review, there have been five (5) instances of outside practice during the scope of review. Three (3) of these were for friends, one (1) was for a fellow member of the staff, and one (1) was for a family member. These instances of outside practice were all approved by the Executive Director pursuant to the prior policy on the outside practice of the law. Review of the Recipient's policies and interviews of management and staff indicated compliance with the requirements of 45 CFR Part 1604. However, interviews revealed an instance in which an OSLSA staff attorney engaged in the unauthorized outside practice. Upon discovery, OSLSA took reasonable actions to determine the scope of the unauthorized practice and whether OSLSA resources had been used in the outside practice. OSLSA reviewed the court docket, the attorney's emails, telephone records and hard drive to OSLSA's investigation was inconclusive in that it could not determine if the practice occurred during the attorney's work hours. OSLSA determined that there was a *de minimis* use of OSLSA's physical resources. Additionally, OSLSA requested the employee resign in lieu of termination, filed a complaint with the Ohio State Bar against the employee, and conducted an independent investigation.

Pursuant to discussions with the Director of SEOLS, OSLSA does not engage in further follow-up with an attorney engaging in outside practice after determining that representation in such case or matter is consistent with the attorney's responsibilities. OSLSA does not separately review time records or other pleadings or memoranda to ensure that no OSLSA resources are being used in the outside practice of law and that the attorney does not intentionally identify the case or matter with the Corporation or the recipient.

OSLSA is in substantial compliance with the requirements of 45 CFR Part 1604. The DR recommended that OSLSA develop oversight protocols and practices to ensure that no OSLSA resources are being used in the outside practice of law and that such attorneys do not intentionally identify the case or matter with the Corporation or the recipient. The DR further recommended OSLSA amend its policies pursuant to 45 CFR § 1604.4.

In its comments to the DR, OSLSA submitted its revised it policy for Outside Practice of Law and its revised Request for Permission to Engage in Outside Practice of Law form. The Policy now instructs staff that no OSLSA resources are to be used in the outside practice of law and that attorneys cannot intentionally identify the outside practice case or matter with the Corporation or the recipient. The attorney engaging in the outside practice of law must certify on the Request for Permission to Engage in Outside Practice of Law that he will not use OSLSA resources or intentionally identify the Corporation or the recipient while engaged in outside practice case or matter.

A review of OSLSA's Policy on the Outside Practice of Law submitted on May 10, 2012, evidenced that the policy changes implemented by OSLSA are designed to ensure compliance with 45 CFR § 1604.4.

**Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).**

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

Sampled cases and interviews evidenced compliance with the requirements of Part 1608.

No corrective action is needed and no recommendations are being made.

**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 (2) private attorneys; neither the referral service nor two (2) 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).

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has 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 of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

Sampled cases and interviews evidenced compliance with the requirements of Part 1609.

No corrective action is needed and no recommendations are being made.

**Finding 16: Additional information is needed to assess OLSA's compliance with 45 CFR § 1610.8 regarding program integrity from entities engaging in LSC restricted activities. OLSA has implemented Required Corrective Action item 12 (donor notification) from the FR issued in 2008.**

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 and legal assistance to aliens, drug related evictions

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;
- i) the existence of separate accounting and timekeeping records;
- ii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iii) 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).

45 CFR § 1610.8 requires that LSC recipients maintain program integrity from entities that engage in LSC restricted activities by maintaining objective integrity and independence from such organizations.

The FUR confirmed that OSLSA has a relationship with Ohio Poverty Law Center (“OPLC”) a Limited Liability Corporation, with OSLSA as its sole member. OPLC engages in restricted activities. OPLC has executed a management contract with OSLSA for management and administrative support, and OSLSA and OPLC share a building located at 555 Buttles Avenue in Columbus. After assessing the information gathered during the FUR, it has been determined

that additional information is needed before a finding can be made regarding OSLSA's compliance with 45 CFR § 1610.8. LSC will be contacting OSLSA to schedule a Program Integrity Review sometime in 2013.

The FR issued in 2008 noted that a review of the thank you letters sent to donors revealed that the letters did not conform to the requirements of 45 CFR § 1610.5(a) because the letters did not notify all donors of the prohibitions and conditions which apply to the funds. Required Corrective Action item 12 from the FR issued in 2008 required OSLSA to notify contributors and donors in accordance with 45 CFR Part 1610.

The FUR conducted a limited review of accounting records and documentation for the period January 1, 2009 through May 31, 2011. This review indicated that OSLSA provided written notification for fiscal years 2009 through 2011 to all funders who contributed \$250 or more of the prohibitions and conditions that apply to the funds.

OSLSA has fully implemented Required Corrective Action item 12.

**Finding 17: OSLSA has implemented the Required Corrective Action items 13, 14, and 16 from the FR issued in 2008. However, OSLSA has not fully implemented Required Corrective Action items 1, 4, 5, 6, 8, and 15 from the FR issued in 2008 were not fully implemented and is in non-compliance with 45 CFR § 1614.4(3)(e)(1)(i).**

LSC regulations require LSC Recipients to devote an amount of LSC and/or non-LSC funds equal to 12½% 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.

## Description of PAI Program

OSLSA involves private attorneys in the delivery of legal services by *pro bono* referral of cases, contract cases, reduced fee referrals, and clinic services. The intake process for cases referred to PAI attorneys (contract and pro bono) is the same as the process for staff cases. However, the case component of OSLSA's PAI program is relatively small. The primary PAI emphasis of the program is to develop and maintain relationships with private attorneys and Bar Associations to provide assistance on a variety of legal topics to participants in informational and legal assistance clinics.

## Overview of the Required PAI Corrective Actions and PAI Components Reviewed

The FUR assessed whether OSLSA implemented the following Required Corrective Actions pertaining to the PAI Program:

- develop a PAI plan that meets the requirements of 45 CFR Part 1614 pursuant to Required Corrective Action item 14;
- ensure that PAI Coordinator time spent representing clients is not incorrectly allocated as PAI time pursuant to Corrective Action item 16;
- ensure that all clinic forms comply with (assets and citizenship screening) pursuant to Required Corrective Action item 1;
- ensure that all applicants are screened for citizenship regardless of whether the case file is going to be reported to LSC pursuant to Required Corrective Action item 5;
- ensure that all case files include documentation of legal advice pursuant to Required Corrective Action item 8;
- ensure that staff time spent at clinics was not allocated to the PAI requirement pursuant to Corrective Action item 15; and
- ensure that PAI time is allocated in actual time and not on a percentage basis pursuant to Required Corrective Action items 13.

In addition to the above, the FUR assessed general compliance with PAI requirements, including consistent designation and reporting of PAI cases, case oversight and follow-up requirements for PAI cases, as set forth in 45 CFR Part 1614. The general review identified the reporting of certain cases that do not qualify as PAI in the Grant Activity Report ("GAR") and cases being improperly designated and reported as PAI. Specifically, cases in which the clients pay a reduced fee have been reported by OSLSA as PAI. Further the FUR fiscal team assessed general compliance with the requirements of 45 CFR § 1614.3(e)(1)(ii) which requires programs to maintain contracts on file which set forth payment systems, hourly rates, and maximum

allowable fees, and whether OSLSA developed a reasonable operating methodology for PAI costs.

All of the above corrective actions and assessments are discussed below.

1. OSLSA created a PAI Plan that accurately describes its activities

OSLSA's PAI plan was reviewed to determine whether OSLSA implemented Required Corrective Action item 14 (create a PAI plan in accordance with 45 CFR Part 1614). During the 2006 review which is the subject of the FR issued in 2008, OSLSA was in the process of creating a plan that reflected its emphasis on clinic activities as the prior plan was based primarily on pro bono attorney involvement, and a small amount of contracts to private attorneys.

Review of the 2010 PAI plan and interviews of key OSLSA staff indicated that, as written, the current PAI plan generally describes OSLSA's PAI activities. However, as discussed below, these activities do not always meet corresponding LSC requirements. As the PAI plan describes the range of activities OSLSA engages in to involve private attorneys in the delivery of legal services, OSLSA has taken sufficient action designed to implement Required Corrective Action item 14, however, OSLSA should review this plan in light of the compliance concerns with its overall PAI approach to ensure that the plan, as applied, meets the requirements of 45 CFR Part 1614.

2. With limited exceptions, OSLSA maintains effective case oversight and follow-up for PAI cases

The FUR generally demonstrated effective oversight and follow-up of PAI cases for the *pro bono* and contract cases, and OSLSA was found to maintain appropriate systems of intake, referral, oversight, and case closing of pro bono and contract cases.<sup>35</sup> It should also be noted that *pro bono* referral of PAI cases is extremely limited, and almost non-existent in some offices, and that OSLSA is phasing out its contract case component.<sup>36</sup>

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<sup>35</sup> The intake process for PAI cases is the same as for staff cases and the individual offices are responsible for the recruitment, referral, and oversight of PAI cases files generated by the office. Each office conducts oversight, by performing status checks of every case monthly. Staff members determine the status of the case by reviewing court dockets and/or emailing PAI attorneys directly. Generally, the Managing Attorney, not the PAI Coordinator, is responsible for overseeing the PAI program administered by his or her office. However, the Managing Attorney may not necessarily be the contact person for the cases handled by the private attorneys. Rather, PAI cases may be assigned to a staff attorney to provide oversight. This system seemed to be sufficient – especially given the low number of outstanding *pro bono* cases being handled in each of the offices at any one time (generally one (1) at a time and probably not more than three (3) in any office).

<sup>36</sup> Previously, the Newark, Steubenville, Marietta, and Zanesville offices maintained limited contracts with a few attorneys to provide legal assistance to some clients. However, these contracts have ended or will end and OSLSA has no plans on making any more referrals. The intake process for the contract PAI cases was the same as it is for staff cases. The cases referred to contract PAI contract attorneys (“contract attorney”) are primarily domestic/family law related. Once a decision has been made to refer the case to a contract attorney, a letter confirming this is sent to the contract attorney and to the client. The letter to the client provides contact information for the private attorney. The introductory referral letter sent to the contract attorney includes a “Personal Service Contract” between OSLSA/SEOLS and the contract attorney. Once the case is concluded, the program sends a closing letter to the client, including a client survey and a grievance form. Oversight for these cases consists, in part, of the contract

### 3. OSLSA incorrectly reports certain reduced fee cases in the GAR

The Lancaster and Chillicothe offices operate a Reduced Fee Divorce Program (“RFDP”) in which eligible applicants seeking to file for uncontested divorce cases are referred to a private attorney. Interested parties are placed on a six (6) month waiting list and sent a letter explaining the terms of the program and the fees.<sup>37</sup> At the end of the six (6) months, a letter instructing the applicant to call the program once they have the fee is sent. Once the applicant contacts the program, a referral letter is sent with a Retainer Agreement to be signed by both the private attorney and the applicant. OSLSA is not identified except to state that in the event significant issues arise, the attorney will discuss any additional fees and that at that point OSLSA may be able to help. A referral letter is also sent to the attorney. OSLSA has no further involvement in the activity and does not even determine if the person follows through with the referral. The activities are reported to LSC in the GAR’s “Judicare/Reduced Fee Panel” on Form J. Only cases in which the program pays the reduced fee are appropriate for PAI designation. This reporting practice must cease as only reportable cases should be reported on form J. Additionally, as these activities fail to have appropriate follow-up and documentation of legal advice, they cannot be reported in the CSRs as they are not actual reduced fee cases, as it is the client who is paying the reduced fee, not the program and OSLSA has no evidence of the legal advice or service provided. Any instance in which the client pays a fee to the attorney is not a reportable case for the GAR or CSR. As these activities are not reportable – for numerous reasons - the program should include these referrals on the OSR report not on GAR form J.

As a FUR corrective action, the DR directed OSLSA to cease reporting RFDP cases to LSC in the GAR.

In its comments to the DR, OSLSA noted that it would cease reporting cases where clients pay reduced fees directly to private attorneys, as part of OSLSA’s RFDP in the GAR, and will now begin to report them in the Other Services Reports (“OSR”). To this end, OSLSA has instructed its staff members responsible for the preparation of these reports to include RFDP cases in the OSRs.

A review of the actions taken by OSLSA indicates that these actions are designed to ensure that staff members are provided with the knowledge to cease reporting in the GARs activities that are more appropriate to report in the OSRs.

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attorney’s contractual duty to forward any pleadings filed on behalf of the client to the program. Case status is checked regularly; in one (1) office, case status is checked approximately once per week by viewing the court docket and/or following up with the contract attorney. Every office with contract cases provides quarterly reports to the Columbus Office regarding open PAI cases. OSLSA maintains a “PAI Process” form which sets forth the steps that staff must take to execute and oversight a contract case. Once final billing is received from the contract attorney, case paperwork and the preparation of the case for closure is handled by the Legal Secretary, with the Managing Attorney conducting the final review and closure. This system seemed to be sufficient – especially given the few number of outstanding *pro bono* cases being handled in each of the offices at any one time.

<sup>37</sup> Lancaster has approximately 150 persons on the waiting list at any given time and two (2) active attorneys on the referral panel. Chillicothe’s waiting list is only about 10 persons with two (2) active attorneys. The client pays a reduced fee: \$200 with children and \$150 without children.

Accordingly, OSLSA has taken sufficient action designed to implement Required Corrective Action item 14.

4. OSLSA incorrectly designates staff cases as PAI in the CSRs

There were many instances of erroneous PAI/staff designations in the sampled files, either because there was no evidence of private attorney involvement or because the staff attorney provided the highest level of assistance. For example in, open Case No. 13-08-03285, designated PAI, the staff attorney placed a telephone call to a private attorney seeking advice as to whether the program should file an appeal after the staff attorney represented the client and received an unfavorable ruling. In this instance, the staff attorney provided the highest level of service and therefore the case should be coded to staff. Interviews revealed significant confusion as to when and who should change the case designation from “PAI” to “staff.” Staff members reported the case designation is left as PAI even when staff handles the case. Other examples of this error type include open Case No. 15-11-03089, closed 2011 Case Nos. 13-11-00394, 13-09-06041, 16-11-02125, 11-10-17005, 11-11-00457, 11-11-00185, and 15-11-00957, closed 2010 Case Nos. 119-09-02542, 11-10-15065, 15-09-10295, and 15-09-03359, and closed 2009 Case Nos. 17-09-06981, 19-09-06227, and 15-09-02076.

Interviews and case review further evidenced that some cases were designated PAI because they were “co-counseled” with private attorneys. However, these cases were in reality staff cases. For example, closed 2010 Case Nos. 12-09-03002 and 15-10-14087 and closed 2009 Case Nos. 11-09-01167, 19-08-08724, 15-09-06404, and 15-09-07197, evidenced that the private attorney involvement was a phone consultation, the private attorney was mentored by the staff attorney, or there was no private attorney involvement indicated in the file.<sup>38</sup> These cases remained assigned to the staff attorney and reflected minimal to no private attorney involvement.

OSLSA apparently designated to PAI almost any case touched by a private attorney. However, the CSR Handbook provides specific guidance on designating staff and PAI cases. A case in which a PAI referral was attempted, and no assistance was provided, may not be closed as either a PAI or staff case, but should be excluded because it is not a case. A case must be closed as a staff case if the PAI referral was not successful, and the assistance was provided by a staff attorney. A case in which a private attorney co-counsels with a staff attorney may be closed as either PAI or staff, at the discretion of the program. However, for a case to be co-counseled, the private attorney must provide legal assistance to the client. Lastly, if both a staff attorney and a private attorney provide legal assistance, but have not co-counseled, the case may be closed as staff or PAI depending upon whether the staff or PAI attorney provided the highest level of legal assistance. *See* CSR Handbook (2008 Ed.), § 10.1.

The DR noted that, as there appears to be a lack of clarity in the designations of staff and PAI cases, OSLSA must develop written procedures for designating PAI cases and should conduct staff training to ensure maintenance of accurate information in the ACMS and in the CSRs.

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<sup>38</sup> In contrast, there were a few sampled co-counseling cases in which the staff attorney and the private attorney executed a written agreement and the client received extended representation by the private attorney. These cases were properly designated PAI by OSLSA and are not the subject of this Finding.

Additionally, OSLSA was advised to refer to CSR Handbook (2008 Ed.), § 2.1, for a better understanding of the definition of a “case” for CSR reporting purposes.

In its comments to the DR, OSLSA noted that it instructed staff that time spent providing services to clinic participants where there is no PAI attorney present cannot be allocated toward its PAI requirement. Also, on August 16, 2012, OSLSA submitted a copy of its PAI instruction titled “Private Attorney Involvement-What Counts as PAI?” This instruction was distributed to staff to clarify the difference between a staff and PAI activity. These actions are designed to ensure the proper allocation of PAI time so that staff time is properly allocated to the PAI requirement.

Accordingly, OSLSA has taken sufficient action designed to implement Required Corrective Action item 12.

5. OSLSA’s PAI Coordinator properly allocates staff case time to the basic field grant

The FR issued in 2008 found the PAI Coordinator was incorrectly allocating time spent working on IRS tax cases as PAI time. Per item Required Corrective Action item 16, OSLSA was required to ensure that the PAI Coordinator time spent representing clients was not incorrectly allocated as PAI time.

The FUR found that the PAI Coordinator handles tax matters, as well as, coordinating the referrals and handling the administrative record keeping for the PAI program. Interviews, case review, and a review of time records for the PAI Coordinator of hours reported as PAI (1,568) and total hours reported as LITC (515.6) indicates that the hours spent representing clients is not allocated as a PAI cost.

Required Corrective Action item 16 has been implemented as interviews, case review, and a limited fiscal review indicated that OSLSA has ensured that the PAI Coordinator’s time spent representing clients is not being incorrectly allocated to the PAI allocation.

6. OSLSA fails to adequately screen PAI clinic participants for financial and citizenship/alien eligibility, it does not consistently document the legal advice provided to clinic participants

a. Findings and Corrective Actions related to the FR issued in 2008

The FR issued in 2008 noted that information concerning clinic participants was not entered into the ACMS but that a “tally sheet” of the number of attendees assisted by an attorney at the clinic was sent to the Columbus office for statistical purposes. The FR found that while intake was conducted during these clinics, it did not include eligibility screening (assets, citizenship and, in some cases priorities). The FR concluded that that OSLSA did not screen clients for eligibility as required, as defined in the then CSR Handbook (2001 Ed.), nor did OSLSA document the legal assistance provided to its clinic participants. As a result, participants could not be considered “eligible clients.” To bring these clinics into compliance, OSLSA was instructed to screen

applicants pursuant to LSC regulations, and other applicable authorities, and to document any legal advice provided.

b. FUR assessment of clinic forms

The FUR found that OSLSA operates 16 PAI clinics, with every office holding at least one (1) clinic in every county within its respective service areas.<sup>39</sup> The clinics are designed in accordance with parameters set by each county’s Bar Association, each Bar Association adopts its own financial and citizenship eligibility guidelines, and requires participants to complete an intake form tailored to its guidelines. Each clinic uses a modified version of OSLSA’s intake application to implement its particular eligibility criteria. A review of the clinic intake applications provided by the PAI Coordinator<sup>40</sup> indicates that while OSLSA conducts eligibility screening during clinics, the eligibility screening (income, assets, and citizenship/eligible alien status) is not consistent with OSLSA policy or LSC regulations, and other authorities. This is because many of the income eligibility guidelines established for the clinics are in excess of 125% FPG (at least six (6) of the clinics have set guidelines in excess of 187½% FPG), and none of the clinics require the documentation of expense information to allow assistance for those participants with incomes between 125 and 187½% FPG. Furthermore, only four (4) of the Bar Associations require assets be screened to determine eligibility. Finally, only two (2) Bar Associations require the use of citizenship attestations. A summary of the information collected at each clinic intake is as follows:<sup>41</sup>

Office	County	Income Guidelines	Collects Assets	Citizenship Attestation	Private or Staff Attys
Athens	Athens	125%	No	No	PAI
	Gallia	150%	No	No	PAI
	Meigs	125%	No	No	PAI
	Vinton	125%	No	No	PAI
Chillicothe	Pickaway	200%	Yes	Yes	Staff
	Pike	200%	Yes	Yes	Staff
Lancaster	Fairfield	250%	No	No	PAI
	Hocking	250%	No	No	PAI
Marietta	Washington	187%	No	No	PAI
Newark	Knox	Not Provided			
	Licking	Not Provided			
New Philadelphia	Tuscarawas	Not Provided			
Portsmouth	Scioto	Not Provided			

<sup>39</sup>All but two (2) of the clinics, the newly created clinics held in Pickaway and Pike counties, are conducted by volunteer private attorneys. Although temporarily staffed by OSLSA attorneys, the Pickaway and Pike clinics are considered part of the PAI program because OSLSA plans on recruiting private attorneys to staff these clinics.

<sup>40</sup> All clinic forms and associated income ceilings were requested from the Pro Bono Coordinator, and all were received except for the forms used at the Newark, New Philadelphia, and Portsmouth clinics.

<sup>41</sup> The Muskingum and Perry clinics determine if the participant are US Citizens. However, the clinic form does not contain an attestation.

Steubenville	Belmont	250%	Yes	None	PAI
Zanesville	Muskingum	150%	Yes	No	PAI
	Perry	250%	Yes	No	

c. FUR assessment of clinic eligibility policies

The FUR also found that with respect to financial eligibility for clinics, OSLSA’s Board-adopted Financial Eligibility Guidelines are not consistent with 45 CFR Part 1611, as they include a provision allowing the Executive Director or his designee the discretion to authorize an exception to the income limit of 187½% FPG up to 200% FPG for clinics held in collaboration with the Bar Associations. As discussed, *supra*, in Finding 3, these policies are inconsistent with 45 CFR Part 1611 as they related to LSC supported assistance.

d. Clinic financial eligibility screening and documentation of legal assistance

The FUR team reviewed information provided to clinic participants and clinic intake processes. The FUR team interviewed members of OSLSA’s staff and management team concerning clinic services. The FUR team directly observed a staff clinic held in Pickaway County.<sup>42</sup> Documents reviewed reflect that clinics are advertised to the participants as “advice clinics.”<sup>43</sup> The FUR found, and OSLSA confirmed, that it provides legal assistance to some clinic participants, and legal information, document preparation, and referral to other participants. As noted previously, OSLSA does not screen for financial and citizenship/alien status eligibility, and does not maintain clinic participant information in its ACMS, so legal assistance and conflict check information is not maintained electronically. However, sometimes, documentation of legal assistance provided is captured on the OSLSA’s Clinic Record/Closing Sheets. The FUR found, and OSLSA confirmed, that even when the legal assistance provided is documented in the Clinic Record/Closing Sheets, the clinic participant is not fully screened for eligibility, and the participants’ information is not entered into its ACMS. OSLSA argued that because it treats such activities as “matters,” and does not report such activities to LSC in the CSRs, it is not required to document legal assistance, screen for financial or citizenship/alien status eligibility, or store such information in its ACMS. OSLSA essentially argued that because it chooses to not consider clinic activities “cases,” it is excused from complying with LSC eligibility and legal

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<sup>42</sup> The Pickaway County clinic is held at the Juvenile Court. The FUR attended the second of three (3) clinics scheduled. The process is that attendees sign-in, complete intake forms, and are divided into groups by issue. The clinic handled most family law issues for unmarried persons and cases which fall under the jurisdiction of the Juvenile Court. A staff attorney leads the group through the appropriate paperwork for the issue. The attendees either already have the paperwork prior to the clinic or they obtain it from the Clerk’s office down the hallway. The FUR observed that the staff attorney advised the attendees that the program is not their attorney, that no individualized advice will be provided, and that they must file the paperwork *pro se*. During the time the FUR observed the clinic, the staff attorney deftly avoided answering questions regarding individual situations and provided only legal information. However, the FUR team was not able to observe the one-on-one clinic held downstairs as it was concluded before the observation period.

<sup>43</sup> OSLSA’s Welcome Letter informs participants that the clinic is an “advice clinic” and that they may receive advice concerning their legal or non-legal problem.

documentation requirements for cases. This argument is inconsistent with 45 CFR §§1614.3(b) and 1626.1, CSR Handbook (2008 Ed.), § 2.1, OLA Opinion, EX-2008 (March 19, 2008), and Matters Service Report Definitions of Key Terms.

e. Parts 1611 and 1626 screening and legal assistance requirements

Whether a legal service is a matter or a case must be considered on a case-by-case basis, based on the nature of the legal activity, and not upon the service delivery method used by a Recipient to provide the service, or whether the attorney providing the service is a PAI or staff. LSC regulations specifically define “case” as a form of program service in which the Recipient provides legal assistance. Legal assistance is individualized legal advice applying the law to a particular set of facts. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Whereas, a “matter” is defined in 45 CFR § 1620.2(b), as an action that contributes to the overall delivery of program services, but does not involve direct legal advice to or legal representation of one (1) or more specific clients. Generalized legal information, such as in the form of individual information pamphlets, fact sheets, oral information provided over the phone or in person – or in the form of group activities such as community legal education sessions, clinics or outreach sessions are considered to be matters. Matters generally involve providing information in some sort of public forum” such as in *pro se* clinics.

While both sets of activities are authorized by the LSC Act, the determination of whether an activity is a case or a matter is relevant as LSC has determined that matters do not require Recipients to document the legal services provided or screen for eligibility. *See* 45 CFR §§ 1614.3(b) and 1626.1, CSR Handbook (2008 Ed.), § 2.1, OLA Opinion, EX-2008 (March 19, 2008), and Matters Service Report Definitions of Key Terms. However, if legal assistance is provided, then Recipients must screen for financial and citizenship/alien status eligibility, store this information in the Recipient’s ACMS, document the services provided, and report these activities to LSC in the CSR data submission consistent with the requirements of 45 CFR Parts 1611 and 1626, CSR Handbook (2008 Ed.), and other applicable laws and authorities. *See* OLA Opinion (April 9, 1998), OLA Opinion, EX-2008-1001 (March 19, 2008), and Matters Service Report Definitions of Key Terms (burdensome eligibility screening process is not imposed on Recipients for *pro se* workshops, clinics if the information being provided is generalized, rather than individualized and fact-specific), and Matters Service Reports Frequently Asked Questions, updated January 10, 2003 (LSC does not require documentation of eligibility information for matters reporting).

f. OSLSA has not taken sufficient corrective action

LSC requires programs to screen each applicant in accordance with its board-approved policies, LSC regulations, and other applicable authorities. As OSLSA’s policies, LSC regulations, and other applicable authorities, require screening for income, asset, and citizenship/alien status, items such as these, must be the subject of inquiry and consideration in determining whether an applicant is eligible for assistance whenever legal assistance is provided whether the services are provided at a clinic, courthouse, office, or other setting, and regardless of whether a staff member or PAI attorney provides the service.

The FUR found that OSLSA attempted to implement screening and documentation requirements for its clinics, because it has developed eligibility and closing forms in response to the 2006 on-site review. However, OSLSA appears to have misunderstood core LSC eligibility and documentation requirements for legal assistance services because the forms and screening practices instituted by OSLSA do not capture all of the information required by LSC regulation and other authorities.

g. Further corrective action required

Accordingly, the FUR determined that OSLSA has not taken sufficient corrective action designed to implement Required Corrective Action items 1, 5, and 8 from the FR issued in 2008. In order to bring OSLSA's clinics in compliance, the DR advised that OSLSA should:

- review the applications in use by the clinics to ensure that they are compliant with LSC regulations and OSLSA Board-approved policies;
- conduct a full eligibility screening in clinics whenever legal assistance is provided; and
- establish standards that provide the necessary separation between cases and “other services” at clinics and develop protocols and procedures for staff to follow to determine on a case-by-case basis when screening is required for clinic participants.

The DR indicated that, as a FUR corrective action, OSLSA must ensure that all cases in which OSLSA provides legal assistance, whether in a clinic or otherwise, contain:

- citizenship attestations or evidence of alien eligibility determination, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.); and
- documentation establishing financial and other eligibility consistent with LSC Act, regulations, and other authorities and OSLSA policy.

These measures may be accomplished without too much disruption to the clinic model OSLSA has in place. OSLSA may continue to conduct its legal information clinics without the screening of any participant who receives legal information, which is the majority of the clinic participants. In the more limited instances in which OSLSA would like to provide legal assistance, OSLSA may conduct an eligibility screening by use of a handwritten intake form consistent with its ACMS intake form and policies. This will allow OSLSA to continue its current clinic model, while at the same time ensuring proper eligibility compliance, conflict avoidance, and permitting OSLSA to direct its resources to its neediest participants. After the creation of these protocols, staff should be trained on their implementation.

In its comments to the DR, OSLSA agreed it must obtain citizenship attestations and obtains documentation establishing financial and other eligibility consistent with LSC Act, regulations, and other authorities whenever OSLSA attorneys provide legal assistance to an individual, whether in a clinic or otherwise. To this end, OSLSA revised the Application for Legal Services, in its case management system and its paper forms, and its LSC-Funded Services Eligibility

Worksheet, to provide for income, assets, and citizenship eligibility screening for use in its clinics. With these revisions, the forms contain compliant citizenship, income, and asset screenings.

However, OSLSA continues to disagree that it is required to obtain citizenship attestations or obtain documentation establishing financial eligibility consistent with LSC Act, regulations, and other authorities when PAI attorneys provide the legal services in the clinics because clinic participants are not the “clients” of OSLSA. OSLSA argues that is merely providing “support” assistance at these clinics, which does not require eligibility screening under LSC regulation or other authorities.

In support of its position, OSLSA cited a May 14, 2008, Memorandum sent to LSC by the Center for Law and Social Policy (“CLASP”). The Memorandum was sent to LSC from CLASP on behalf of OSLSA. In this Memorandum, CLASP states that “in recent years, in coordination with local bar associations, judges, religious organizations, and other local entities such as local departments of job and family services, OSLSA has been able to help organize a number of pro bono clinics (including many “interfaith clinics”) where private attorneys provide limited services to residents of these rural areas on a pro bono basis.”<sup>44</sup> CLASP further states that, where private attorneys provide legal services to clinic participants, these individuals are “never clients of OSLSA” because OSLSA does not establish a direct attorney relationship.<sup>45</sup> CLASP contends, on OSLSA’s behalf, that even “for those who may have originally sought help from [OSLSA], the program has no continuing relationship with them after referral to the clinic” and for “those who sought assistance directly from the clinics or were referred there by the courts or other entities, OSLSA has had no direct contact with them at all.” CLASP explains that OSLSA’s “role is limited to helping the bar associations and religious organizations that sponsor the clinics to organize them, to providing technical support, training and materials, and to answering questions from the private attorneys regarding poverty law issues that may arise during the clinics. This support is generally not related to the specific clients who are helped by the private attorneys who volunteer their time to the clinics.”<sup>46</sup> The substance of this position is that because the PAI attorneys provide legal assistance to, and form attorney-client relationships with, the participants in the clinics, the participants do not receive legal assistance from OSLSA and thereby are not the clients of OSLSA. Thus, CLASP argues, OSLSA is under no duty to screen financial or citizenship eligibility.

CLASP, on OSLSA’s behalf, further contends that there is no duty to screen for eligibility for PAI activities in clinics because OSLSA is merely providing “support” assistance which may be provided without screening pursuant to LSC regulation and states that OSLSA’s participation:

in these clinic activities is not intended to be viewed as “the direct delivery of legal assistance to eligible clients...” under 45 CFR 1614.3(a), which is only one aspect of PAI activity. Rather, OSLSA’s participation is limited to the kind of support activities intended to be provided under 45 CFR 1614.3(b)(2) which states that “[a]ctivities undertaken by recipients to meet the requirements of this part

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<sup>44</sup> See Memorandum to Karen Sargeant from Linda Pearle (May 14, 2008), at page 2.

<sup>45</sup> See Memorandum to Karen Sargeant from Linda Pearle (May 14, 2008), at page 3.

<sup>46</sup> See Memorandum to Karen Sargeant from Linda Pearle (May 14, 2008), at page 3.

may also include, but are not limited to ...[s]upport provided the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources....” OSLSA provides a variety of support services to the clinics such as training the private attorneys, providing reference materials and pro se packets, answering questions from private attorneys about poverty law, providing laptops with frequently utilized court forms, and providing access to legal research as needed. These support services are generally not related to legal assistance to specific eligible clients. They are, however, clearly the kind of support services that are anticipated to be provided under 45 CFR 1614.3(b)(2).<sup>47</sup>

In its comments to the DR, OSLSA further contended that its interpretation of LSC regulations is consistent with LSC goals because “LSC has launched several initiatives to encourage creative approaches to involving the private bar in helping low income people.” OSLSA requested that LSC review its interpretation of 45 CFR Part 1614 to determine whether the LSC regulation and other authorities permit recipients to administer pro bono clinics in which private attorneys provide legal assistance to persons not screened for financial or citizenship eligibility.

Accordingly, OCE has consulted with the Office of Legal Affairs and the question of whether OSLSA has taken sufficient action designed to implement Required Corrective Action items 8 and 9 will be held in abeyance until LSC fully reviews this matter.

## 7. Allocation of clinic time to the PAI requirement

### a. Findings and Corrective Actions related to the FR issued in 2008

The FR issued in 2008 determined found that OSLSA was allocating time to the PAI requirement improperly. OSLSA was advised that time spent by staff must be for private attorney’s direct delivery of legal assistance to “eligible clients” pursuant to 45 CFR § 1614.3. OSLSA was advised that its current clinic model did not meet the requirements of PAI activities as described in 45 CFR Part 1614. To implement Required Corrective Action item 15, the FR required OSLSA to stop allocating staff time spent at clinics as PAI time. OSLSA disagreed, and sought, and received a legal opinion from LSC’s Office of Legal Affairs (“OLA”). On March 19, 2008, OLA advised that “...in order for OSLSA to allocate towards its Part 1614 PAI requirement the resources it provides to the clinics, the persons served by the clinics must be screened for eligibility, determined to be eligible and considered clients of OSLSA.” Additionally, OSLSA was instructed that it could not allocate to its PAI requirement activity undertaken by private attorneys for persons who have not been determined to be eligible and not considered clients of OSLSA. *See* OLA Opinion, EX-2008-1001 (March 19, 2008). As noted above, OSLSA requested a reconsideration of the opinion through the Center for Law and Social

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<sup>47</sup> *See* Memorandum to Karen Sargeant from Linda Pearle (May 14, 2008), at pages 2- 3.

Policy (“CLASP”). During the FUR, the Executive Director stated that OSLSA had not taken corrective action on these items as they were waiting for a response to the CLASP letter.<sup>48</sup>

b. Allocation requirements for direct service activities

The FUR further found that OSLSA includes as PAI expenses, costs related to clinics in which the participants were provided legal assistance, but were not screened for financial and citizenship eligibility in compliance with LSC regulations and other authorities.<sup>49</sup> The delivery of legal assistance to clinic participants is a direct service delivery system within the parameters contemplated by 45 CFR § 1614.3(a). As such, eligibility screening of clinic participants receiving legal assistance is required for OSLSA to allocate towards its PAI requirement the time spent assisting these private attorneys in the provision of legal assistance. As noted previously, eligibility screening is required because allocations to support the provision of direct services may only be expended on behalf of eligible clients. To the extent clinic participants were provided with legal assistance, time spent by staff and PAI attorneys on these activities was not properly allocated as PAI expenses because of the failure to provide adequate screening and documentation of legal assistance. As OSLSA failed to adequately screen clinic participants receiving legal assistance but nonetheless allocated the time spent to the PAI requirement, the FUR found that OSLSA had not taken sufficient corrective action designed to implement Required Corrective Action item 15 (stop allocating staff time spent at clinics as PAI time). OSLSA’s practice is inconsistent with 45 CFR Part 1614. As a FUR corrective action, the DR directed OSLSA must cease allocating staff time spent at clinics toward its PAI requirement.

In its comments to the DR, OSLSA noted that it disagreed that it could not allocate “any of the significant time its staff spends helping the local bar associations, courts, and communities in establishing, supporting, and maintaining our pro bono clinics at which low income, non-clients of OSLSA receive legal assistance from private attorneys.”<sup>50</sup> OSLSA asserted that its “pro bono clinics are strongly supported by the local bar, courts, and appellate districts’ ‘Access to Justice’ committees who all recognize them as the best way to get meaningful involvement by the bar in our small counties in providing legal help to low income people.” For the reasons stated previously herein, OSLSA is relying on the May 14, 2008, CLASP Memorandum as support for its position that LSC regulations and other authorities permit it to allocate staff time spent at clinics where PAI attorneys provide legal assistance to participants who have not been screened for financial, citizenship, or other eligibility, toward its PAI requirement.

As previously stated, OSLSA requested that LSC review its interpretation of 45 CFR Part 1614 to determine whether the LSC regulation and other authorities permits recipients to allocate to its PAI requirement time spent by recipient staff administering support to the local bar associations, courts, and communities for the purpose of establishing, supporting, and maintaining pro bono

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<sup>48</sup> OSLSA cited no authority to support its assertion that it was not required to implement an LSC corrective action because of an outstanding letter from a third party and the FUR team has no knowledge of any such authority.

<sup>49</sup> To the extent clinic participants were provided with legal information and referral, time spent by staff and PAI attorneys on activities properly denoted as “matters,” properly allocated as PAI expenses.

<sup>50</sup> It is relevant to note that these clinic participants are referred to as “low income residents” in the CLASP Memorandum. However, without full eligibility screening consistent with 45 CFR Parts 1611 and 1626, there is no way of verifying the income or residency of any of the clinic participants. See Memorandum to Karen Sargeant from Linda Pearle (May 14, 2008), at page 3.

clinics at which low income, non-clients of OSLSA receive legal assistance from private attorneys.

c. Allocation requirements for indirect services and support activities

The FR issued in 2008 left open the question of whether time spent by OSLSA assisting private attorneys engaged in the delivery of “support activities,” as part of a compliant PAI program, could be allocated to the 12½% PAI Requirement.<sup>51</sup> Specifically, the FR left open the question of whether time spent assisting private attorneys to provide legal information, referral, and document preparation, at clinics could be allocated towards OSLSA’s PAI requirement, as a “support” activity within the parameters of § 1614.3(b).

As noted earlier, there is no requirement to screen for Parts 1611 and 1626 eligibility clinic participants receiving legal information through community legal education activities. The PAI regulation, 45 CFR § 1614.3(b)(1), expressly permits support provided by private attorneys to a Recipient in providing community legal education to be considered an appropriate PAI activity, and, as such, the value of the Recipient's resources used in connection with this permissible activity is generally allocable to the Recipient's PAI spending requirement. Thus, 45 CFR Part 1614 as reasonably interpreted by LSC permits OSLSA to count the value of resources expended in connection with community legal education activities provided by private attorneys without regard to 1611 or 1626 screening of the participants, so long as the community outreach activities are reasonably targeted at the eligible client community and the support activities are provided within a compliant direct services PAI program. OSLSA clinics are within its priorities as they relate to a variety of topics in the areas of family law and civil law, including, small claims, and are reasonably targeted at the eligible client community.<sup>52</sup> To the extent that OSLSA engages in permissible support activities, within a compliant PAI program, OSLSA may allocate the value of the resources expended in connection with these activities provided by private attorneys without regard to 1611 or 1626 screening of the participants.

d. OSLSA has not taken sufficient action and further corrective action is required

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<sup>51</sup> The authority for funding of “support activities” is found in the LSC Act. LSC's purpose is to provide "financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance." 42 U.S.C §2996b (a). The LSC Act defines 'legal assistance' as "the provision of any legal services consistent with the purposes and provisions of this title." 42 U.S.C § 2996(a) (5). To implement its purpose, LSC is authorized to provide six (6) types of funding: 1) "financial assistance to qualified programs furnishing legal assistance to eligible clients," 2) grant or contracts with other individuals, organizations or government entities "for the purpose of providing legal assistance to eligible clients," 3) "other grants and contracts as are necessary to carry out the purposes and provisions of [the LSC Act]," 4) grants or contracts for research related to the representation of eligible clients, 5) grants or contracts for training and technical assistance, and 6) grants or contracts for a clearinghouse for information. 42 U.S.C. §§ 2996e (a)(1) - (3). These six (6) types of funding encompass three (3) general areas of work furthering the provision of legal services to eligible clients: 1) direct provision of legal assistance to eligible clients, 2) other activities carrying out the purposes and provisions of the LSC Act, and 3) support services such as research, training, technical assistance and information distribution. These types of work were funded by LSC's predecessor, the Office of Economic Opportunity, and which LSC has continued to support.

<sup>52</sup> However, other outreach or education activities could be problematic, and the expenditure of LSC funds at all for such activities would be questionable, regardless of the issues of eligibility screening or PAI allocation. For example, legal education sessions targeted to legal problems specifically involving the application of the estate tax.

It is unclear, at this point, to what extent OSLSA has allocated to its PAI requirement the value of resources expended for permissible support activities, within its overall PAI program, and to what extent it has allocated the value of resources expended for the provision of legal assistance for those participants who were not compliantly screened for eligibility. The FUR could make no determination of whether OSLSA's support activities are compliant. As a FUR corrective action, the DR directed OSLSA to:

- review its journal entries and back-out any time allocated to the 2012, 2011, and 2010 PAI requirement for activities in which legal assistance was provided to unscreened or partially screened clinic participants pursuant to a reasonable methodology.<sup>53</sup> The costs must be, in total, charged to non-LSC funds; and
- with its comments to the FUR Draft Report, provide a summary indicating the total costs (staff time and other costs) that it was required to back-out and a statement or other evidence indicating that the costs have been fully charged to a non-LSC grant source.<sup>54</sup>

8. Allocation of staff provided legal activities to the PAI Requirement

a. Findings and Corrective Actions related to the FR issued in 2008

The FR issued in 2008 noted that OSLSA allocated the actual staff time spent at the clinics toward its 12½% PAI requirement—whether or not a private attorney was involved in the delivery of services. The FR further noted that private attorneys were not present during many of the clinics for which staff time was allocated towards its PAI requirement. OSLSA was advised that it could not allocate service activities to its PAI requirement if the services were undertaken by staff attorneys. These activities should be allocated to the basic field grant as staff activities. Required Corrective Action item 15 required OSLSA stop allocating staff time spent at clinics as PAI time.

b. OSLSA continues to allocate staff time to the PAI requirement

The FUR team conducted interviews with management, and conducted limited fiscal and other document review, to determine whether OSLSA allocates staff time spent at clinics as PAI time. The FUR found OSLSA has not implemented Required Corrective Action item 15 consistently throughout its program, as on-PAI expenses (costs related to staff conducted *pro se* clinics) were included in its PAI allocation. These allocations included time costs for OSLSA staff when staff serviced clinics, and when staff provided legal services jointly with private attorneys during PAI clinics. OSLSA explained that the clinics are collaborations with community entities and local bar associations. The local Bar Associations provide the volunteer attorneys and retain “ownership” of the clinics. As a result, the size, subject matter, and number of private attorneys

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<sup>53</sup>A reasonable methodology may be to review the closing information provided in the Clinic Record/Closing Sheets and “back-out” time expenses for all clinic participants whose Clinic Record/Closing Sheets indicates legal assistance was provided, however, full and compliant eligibility was not determined, and legal assistance was not documented in the file. For both of these categories of activities, the related staff time and any other costs of the case must be in total charged to non-LSC funds.

<sup>54</sup> OSLSA is reminded of the waiver provision of 45 CFR Part 1614 if this adjustment causes OSLSA concerns in meeting its 12.5% PAI requirement.

attending clinics vary. Given that the clinics service remote and rural areas, there are frequently insufficient private attorneys in the clinic service area licensed to practice law and able to volunteer, so OSLSA attorneys are called upon to service clients at the very same PAI clinics they are coordinating and supporting. The legal activities provided by OSLSA attorneys are consistent with private counsel's assistance. An example is the clinics held in Athens County. OSLSA reports that during clinics, OSLSA attorneys may be the only attorneys participating because of the lack of private attorneys practicing in that County. OSLSA reports that whenever OSLSA participates in a clinic, all time is allocated to the 12½% PAI requirement, whether they were coordinating and supporting the clinic or directly providing legal services (legal information, referral, document preparation, legal advice and consultation, or other brief services). OSLSA was reminded that 45 CFR Part 1614 activities require the involvement of private attorneys in the delivery of legal assistance. 45 CFR Part 1614 defines a private attorney as an attorney who is not a staff attorney. As such, staff time spent engaging in legal activities on behalf of clinic participants must not be allocated as PAI time; instead it should be allocated to the basic field grant.

Accordingly, the FUR found that OSLSA had not taken sufficient corrective action designed to satisfy Required Corrective Action item 15 from the FR issued in 2008 (stop allocating staff time spent at clinics as PAI time). In order to bring OSLSA's clinics in compliance and as a FUR Required Corrective Action, the DR required OSLSA to:

1. cease allocating staff time spent providing services to clinic participants where there is no PAI attorney present toward its PAI requirement;
2. review journal entries and back-out any staff time allocated to the PAI requirement for clinic activities where legal assistance was provided by staff for 2012 and 2011; and
3. provide OCE with a follow-up summary indicating the total costs (staff time and other costs), if any, that were backed out for 2012 and 2011.

In its comments to the DR, OSLSA agreed that it would cease allocating staff time spent providing services to clinic participants where no PAI attorney was present and for clinic activities where legal assistance was provided by staff for 2012 and 2011. OSLSA further agreed that it would provide a summary indicating the total costs (staff time and other costs) that were backed out for 2012 and 2011.

However, for the reasons previously discussed, OSLSA failed to review journal entries or back-out staff time allocated to the PAI requirement for clinic activities where legal assistance was provided by PAI attorneys to participants not screened for financial or citizenship eligibility.

As the failure to review journals and back-out staff time allocated to the PAI requirement relates to the disputed issue of whether LSC regulation and other authorities requires eligibility screening for PAI clinic participants (Required Corrective Action items 8 and 9), the question whether OSLSA has taken sufficient action designed to implement Required Corrective Action item 13 will be held in abeyance until LSC fully reviews this matter and resolves the disagreements concerning Required Correction Action items 8 and 9.

#### 9. Allocation of Time on Percentage Basis for PAI Requirement

The FR noted that PAI time was being allocated on a percentage basis. Required Corrective Action item 13 from the 2006 FR, required OSLSA to ensure that PAI time is allocated in actual time and not on a percentage basis.

The review of the spread sheets for OSLSA/SEOLS and LASC which contain the allocations of PAI staff salary for the calendar year ending December 31, 2010, disclosed that the OSLSA/SEOLS and LASC correctly allocates the salaries of attorneys and paralegals on an actual basis and these allocations are supported by time records. Indirect costs are being allocated on the basis of reasonable operating data, in accordance with the requirements of 45 CFR § 1614.3(e)(1)(i) based on PAI hours over total work hours of attorneys and paralegals.

OSLSA has implemented Required Corrective Action item 13 resulting from the 2006 FR, as OSLSA is now allocating PAI time based on actual time and not on a percentage basis.

#### 10. Reasonable operating data basis for PAI Requirement

The Audited Financial Statement (“AFS”) for Fiscal Year Ending December 31, 2009 did report as separate expenditure costs dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). The AFS reported a total PAI expenditures of \$437,869 by OSLSA and LASC which translates to 12.7% of the combined total basic field grant (\$3,434,436), complying with the 12½% requirement.<sup>55</sup> The review of the spread sheet and costs on the General Ledger report allocating PAI staff salary for the calendar year ending December 31, 2010 disclosed that the OSLSA and LASC correctly allocates the salaries of attorneys and paralegals on total workable hours, supported by time records, and non-personnel costs are being allocated on the basis of reasonable operating data in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i).

Several costs allocated to PAI, including payments to contract attorneys were reviewed and were found to be related to PAI activities, and fully documented and approved. The review of contracts for the private contract attorneys for OSLSA and LASC indicates compliance with the requirements of 45 CFR § 1614.3(e)(1)(ii), which requires that programs shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees.

However, LSC recommends that OSLSA and LASC revise their contracts to note that the contracts are subject to the following terms:

- the contract is conditioned upon the attorney deriving less than one-half of his annual professional income from the proceeds of a grant from the Legal Services Corporation (“LSC”), or a grant from a LSC recipient, subrecipient, grantee, or contractor that limits

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<sup>55</sup> However, if PAI costs are based by each organization individually the Association did not meet the 12½% being short by \$6,737 or 12.2% of its Basic Field Grant. OSLSA/SEOLS and LASC combine their PAI costs to meet the Association’s PAI requirement. This appears to be permissible as 45 CFR §1614.1 provides that “12½% of the *Recipient’s* LSC annualized basic field award” shall be devoted to “the involvement of private attorneys in the delivery of legal services. OSLSA, as the umbrella corporation, receives one (1) basic field grant as is one (1) Recipient.

its activities to providing legal assistance to clients eligible for assistance under the Legal Services Act pursuant to 45 CFR § 1600.1; and

- the contract is on the condition that a subgrant agreement will be executed if payments to an attorney or law firm are in excess of \$25,000 in a year, and this subgrant agreement will need LSC's approval pursuant to 45 CFR § 1627.2(b)(1).

LSC further recommends that the OSLSA and LASC revise their contracts by eliminating the paragraph that relates to attorneys' fees, 45 CFR Part 1642, which indicates that contract attorneys cannot receive attorney's fees if they are compensated by the Association and the Society and the second sentence of page two (2) of the OSLSA's contract because it is on a one (1) time basis and not yearly. LSC recommends that contracts with private attorneys be executed on a yearly basis. Finally, LSC recommends that contracts with private attorneys for the OSLSA and LASC be standardized.

**Finding 18: OSLSA is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and is in compliance with 45 CFR § 1627.2(b)(1) which requires LSC prior approval of payments made to attorneys which total in excess of \$25,000 per year. OSLSA has implemented Required Corrective Action 17 from the FR issued in 2008.**

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.<sup>56</sup> Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 *Federal Register* 28485 (June 2, 1983) and 48 *Federal Register* 54207 (November 30, 1983).

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

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<sup>56</sup> Programmatic activities includes those that might otherwise be expected to be conducted directly by the Recipient, such as representation of eligible clients, or which provides direct support to a Recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a Recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000 is included.

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

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

The FR issued in 2008 noted that during 2005 OSLSA allocated a percentage of LSC funds to pay for non-mandatory membership fees or dues to any private or non-profit organization. OSLSA paid the National Legal Aid and Defender Association ("NLADA"), dues totaling \$7,800.00. LSC funds in the amount of \$3,120.00 were used to cover a portion of the dues paid to NLADA. Required Corrective Action item 17 of the FR required OSLSA to credit LSC \$3,120.00- the amount of LSC funds used to pay for NLADA dues in contradiction to 45 CFR § 1627.4(a).

The FUR conducted a review of the Supplemental Statement of Activities of December 31, 2007 and determined that the LSC fund has been credited \$3,120.00.

OSLSA has fully implemented Corrective Action item 17, as it provided evidence that LSC funds have been credited the sums that had been paid to NLADA for membership dues contrary to 45 CFR § 1627.4(a).

During the FUR, limited fiscal review of OSLSA's accounting records, related operating policies and procedures, and the audited financial statements for the review period along with discussions with program management disclosed compliance with the financial reporting requirements of 45 CFR § 1627.3. The FUR noted no exceptions or inconsistencies in this area.

The fiscal review of OSLSA and LASC's accounting records for selected general ledger expenses accounts that track and account for litigation expenses which include fees and dues payments for the years 2010 and 2011 through May 31, 2011, disclosed that all non-mandatory dues and fees are being paid with non-LSC funds. OSLSA is in compliance with the requirements of 45 CFR § 1627.4(a).

No corrective action is needed and no recommendations are being made.

**Finding 19: OSLSA is in compliance with 45 CFR Part 1635 (Timekeeping requirements). OSLSA has implemented Required Corrective Action item 6 (recording “Screening Manual” activity time) from the FR issued in 2008.**

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 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 work 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. *See* 45 CFR § 1635.3.

Required Corrective Action item 6, of the FR required OSLSA to ensure that intake staff members document time as required by 45 CFR Part 1635 when engaging in “Screening Manual” case work. The fiscal and case review during the FUR of selected time entries for sampled “Screening Manual” cases demonstrated that intake staff notes their time in the timekeeping and case activity logs as matters. For example, in closed 2010 Case No. 11-10-18978, the legal secretary provided the applicant with *pro se* forms, and documented the time spent on this activity (.3) in “LSC Other” section of the ACMS as a matter, and described the activity as *pro se* forms. The FUR found that OSLSA instituted sufficient procedural changes to ensure intake staff captured time spent engaging on “Screening Manual” activities to implement this element of Required Corrective Action item 6.

Additionally, the FUR assessed OSLSA’s timekeeping practices and entries for general compliance. Interviews with the Controller disclosed that there are no part-time case handlers of OSLSA working for an organization that engages in restricted activities in compliance with 45 CFR § 1635.3(d).

The FUR assessed general compliance with 45 CFR §§ 1635.3(b) and (c). The fiscal review of OSLSA's timekeeping policies and procedures and a sample of completed time records for case handlers housed in different offices for the period of May 1-14, 2011 (LASC), and for the period of May 21 through June 3, 2011 (OSLSA), reflected that time records are kept electronically and contemporaneously in compliance with 45 CFR §§ 1635.3(b) and (c). The time spent on each case, matter or supporting activity is recorded in substantial compliance with 45 CFR §§ 1635.3(b) and (c). The review disclosed that the LASC uses their timekeeping records for payroll purposes, contrary to the time sheets OSLSA uses.

Although OSLSA is in compliance, the DR recommended that the OSLSA adopt a single timekeeping system for both OSLSA and LASC and that OSLSA adopt LASC's policy of using the same procedure to process staff time via their timekeeping records as a best practice.

**Finding 20: Sampled cases, interviews and limited fiscal review evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the Recipient. *See* 45 CFR § 1642.3.<sup>57</sup> However, with the enactment of LSC's fiscal year 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010, recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter10-1 (February 18, 2010).<sup>58</sup>

During the FUR, fiscal review of OSLSA's accounting records and audited financial statements for the review period along with discussion with program management determined that the program has recognized and reported the receipt of any attorneys' fees or court-awarded payments for cases during the review period. The 2010 AFS and interviews with the Controller and the Executive Director evidenced that there was \$33,850.71 of attorneys' fees awarded and collected for cases serviced directly by LASC that would not violate this Part.<sup>59</sup>

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<sup>57</sup> The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

<sup>58</sup> Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

<sup>59</sup> As no case review was conducted at LASC pursuant to the nature of the FUR, this case was not reviewed by the FUR team, but it was reported that LASC represented individuals in a suit against the Ohio Department of Jobs and Family Services.

The sampled files reviewed did not contain requests for attorneys' fees, and as such OLSA is in compliance with the requirements of 45 CFR Part 1642.

No corrective action is needed and no recommendations are being made.

**Finding 21: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

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.

Sampled cases and interviews evidenced compliance with the requirements of Part 1612.

No corrective action is needed and no recommendations are being made.

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

Recipients are prohibited from using LSC funds to provide legal assistance with respect to a criminal proceeding. *See* 45 CFR § 1613.3. Nor may recipients provide legal assistance in an action in the nature of a habeas corpus seeking to collaterally attack a criminal conviction. *See* 45 CFR § 1615.1.

Sampled cases and interviews evidenced compliance with the requirements of Parts 1613 and 1615.

No corrective action is needed and no recommendations are being made.

**Finding 23: Sampled cases and 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).<sup>60</sup>

Sampled cases and interviews evidenced compliance with the requirements of Part 1617.

No corrective action is needed and no recommendations are being made.

**Finding 24: Sampled cases and 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.

Sampled cases and interviews evidenced compliance with the requirements of Part 1632.

No corrective action is needed and no recommendations are being made.

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

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens the health or safety of other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

Sampled cases and interviews evidenced compliance with the requirements of Part 1633.

No corrective action is needed and no recommendations are being made.

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

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

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<sup>60</sup> It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

Sampled cases and interviews evidenced compliance with the requirements of Part 1637.

No corrective action is needed and no recommendations are being made.

**Finding 27: Sampled cases and 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.<sup>61</sup> This restriction has been contained in all subsequent appropriations acts. This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

Sampled cases and interviews evidenced compliance with the requirements of Part 1638.

No corrective action is needed and no recommendations are being made.

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

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

Sampled cases and interviews evidenced compliance with the requirements of Part 1643.

No corrective action is needed and no recommendations are being made.

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

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

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<sup>61</sup> *See* Section 504(a)(18).

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.

Sampled cases and interviews evidenced compliance with the above LSC statutory prohibitions.

No corrective action is needed and no recommendations are being made.

**Finding 31: The fiscal review of OSLSA's internal control policies and procedures compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed).**

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, Accounting Guide For LSC Recipients (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 Accounting Guide for LSC Recipients (2010 Ed.).

The Accounting Guide for LSC Recipients 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 limited fiscal review of OSLSA's draft accounting policies and procedures manual and accounting records, as well as discussions with program management, found that the program has established an adequate internal control structure which includes adequate accounting records, competent personnel, defined duties and responsibilities, segregation of duties, independent checks and proofs and a written accounting manual, which was being revised and updated. Further, the auditor's reports for OSLSA concerning internal controls for the review period did not identify any deficiencies in the internal controls that could be considered material weaknesses.

While on-site, OSLSA provided the FUR team with its internal control policy statement that indicates accounting duties and responsibilities of its accounting staff and completed LSC's internal control worksheet that also identifies the duties and responsibilities of accounting staff. Review of these documents indicates adequate segregation of duties in that a transaction cannot be completed without someone else's knowledge and/or approval. Further, a sample of vendor files containing supporting payment documentation, e.g., invoices and program documentation approving the disbursement was examined. A limited review of credit card payments of the LASC (OSLSA does not maintain credit cards) disclosed no exceptions, and no late payment fees were noted. Bank reconciliations were reviewed for OSLSA and LASC for the month of May 2011, and were adequately and timely reconciled. No outstanding checks were noted beyond a reasonable period. Interviews conducted with the Director of Finance and limited review of the OSLSA's Accounting Manual disclosed that the manual is being revised and updated, with the purpose of integrating the Manuals of the LASC and OSLSA.

No corrective action is needed and no recommendations are being made.

#### **IV. IMPLEMENTATION OF REQUIRED CORRECTIVE ACTIONS ITEMS FROM THE FR ISSUED IN 2008**

With regard to the implementation of the Required Corrective Actions from the 2006 CSR/CMS Review and the FR issued in 2008, and consistent with the findings of this report, OSLSA:

1. Has not ensured that all clinic forms comply with 45 CFR Part 1611 and 45 CFR Part 1626 (assets and citizenship screening);
2. Has ensured that all case files in which the erroneous 2006 income guidelines were used were reviewed to ensure that all accepted clients are actually within OSLSA income guidelines. OSLSA has taken sufficient action designed to document the mistake in the affected files in accordance with 45 CFR Part 1611;
3. Has revised its current over-income client acceptance procedures to document over-income clients as required by 45 CFR § 1611.5(b)(1);
4. Has partially revised its intake procedures to mirror the program's asset policy as well as ensure that all intakes conducted document the applicant's assets in accordance with OSLSA Board policy and CSR Handbook requirements;
5. Has not ensured that all applicants are screened for citizenship regardless of whether the case file is going to be reported to LSC;
6. Has not fully revised its "Screening Manual" case procedures to ensure that legal advice is administered and documented; has ensured that intake staff is properly supervised, the intake staff is documenting their time as required by 45 CFR Part 1635, and the packet disclaimers negate any attorney/client relationship and legal analysis;
7. Has revised its Case Closing Protocol to ensure that the definitions provided coincide with the CSR Handbook closing code definitions;
8. Has not ensured that all case files include documentation of legal advice;
9. Has not ensured that all files for extended service include a properly executed retainer;
10. Has not ensured that all retainers are properly executed with the required signature, date and adequate description of the nature of the legal services to be provided;
11. This Corrective Action was removed by OCE upon issuance of the 2006 FR;
12. Has notified contributors and donors in accordance with 45 CFR Part 1610;
13. Has ensured that PAI time is allocated in actual time and not on a percentage basis;
14. Has created a PAI plan in accordance with 45 CFR Part 1614;

15. Has not stopped allocating staff time spent at clinics as PAI time;
16. Has ensured that the PAI Coordinator time spent representing clients is not incorrectly allocated as PAI time; and
17. Has provided evidence that LSC funds have been credited \$3,120.00 - the amount of LSC funds used to pay for NLADA dues in contradiction to 45 CFR § 1627.4(a).

## V. RECOMMENDATIONS<sup>62</sup>

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

1. Provide training to staff regarding the proper coding of PAI and LSC eligible cases; develop additional case opening procedures to ensure the consistent maintenance of information in both ACMS and the case file, such as having case handlers reconcile information contained in the file with that yielded by ACMS at case acceptance, during case reviews, as well as during case closing; and develop written procedures for the generation of the annual CSRs for the income eligibility parameters for LSC funded assistance for staff and PAI cases;
2. Provide training to staff on the program's policies regarding 45 CFR §1611.5 (exceptions to annual income ceiling); 45 CFR §1611.3(d)(1) (exempt assets); 45 CFR § 1611.6 (group eligibility); and CSR Handbook (2008 Ed.), § 5.5, and revise its Opening Memo, Case Closing Protocols, and Clinic Outreach Intake forms so that they are consistent with LSC regulations, the CSR Handbook and OSLSA policies as discussed herein in Finding 2;
3. Remove the expense categories from its drop-down list to prevent staff from using the drop down menu expenses categories in lieu of the Eligibility Worksheet form;
4. Implement procedures requiring Managing Attorneys and/or Staff Attorneys to review financial eligibility information and citizenship eligibility documentation during case acceptance meetings;
5. Provide targeted training to staff members in need of assistance on the proper use of the closing code categories to comply with CSR Handbook (2008 Ed.), consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.);
6. Develop additional oversight methods to ensure timeliness of case closure, such as generating case lists indicating files that have not had time entered for three (3) months, conducting semi-annual compliance reviews, and providing targeted training for those individuals who may require additional assistance;
7. Establish standards that provide the necessary separation between cases and "other services" at clinics and develop protocols and procedures for staff to follow to determine on a case-by-case basis when screening is required for clinic participants and when time spent by staff on activities may be allocated towards its PAI requirement and provide staff with training on the standards, protocols and procedures;

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<sup>62</sup> Items appearing in the "Recommendations" section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors. By contrast, the items listed in "Required Corrective Actions" must be addressed by the program, and will be enforced by LSC.

8. Develop oversight protocols and practices to ensure that no OSLSA resources are being used in the outside practice of law and attorneys do not intentionally identify the case or matter with the Corporation or the Recipient; amend its policies pursuant to 45 CFR § 1604.4;
9. Develop compliance procedures that requires retainer agreements to be completed by the program legal staff, and that the retainers are updated throughout the representation when the nature and scope of the legal services changes;
10. Adopt a single timekeeping system for both OSLSA and LASC and that OSLSA by adopting LASC's policy of using the same procedure to process staff time via their timekeeping records;
11. Revise its private attorney contracts to include that the contract is conditioned upon the attorney deriving less than one-half of his annual professional income from the proceeds of a grant from LSC, or a grant from a LSC recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Legal Services Act pursuant to 45 CFR § 1600.1; and the contract is on the condition that a subgrant agreement will be executed if payments to an attorney or law firm are in excess of \$25,000 in a year, and this subgrant agreement will need LSC's approval pursuant to 45 CFR§ 1627.2(b)(1); and
12. Eliminate the provisions from its private attorney contracts related to 45 CFR Part 1642 (Attorneys' fees) which indicate that contract attorneys cannot receive attorney fees if compensated by the OSLSA; amend its contracts to provide that contracts with private attorneys be executed on a yearly basis; and standardize the OSLSA and LASC contracts for private attorney involvement.

## VI. REQUIRED CORRECTIVE ACTIONS

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

4. Require staff to adhere to the current asset policy as it pertains to considering prepaid funeral accounts and the availability of private affordable attorneys, or adopt new policies consistent with OSLSA's current screening practices;

In its comments to the DR, OSLSA noted that it revised its asset policy to eliminate consideration of prepaid funeral accounts and the availability of private affordable attorneys. A review of the Financial Eligibility Policies submitted on August 13 and 16, 2012, evidenced that the policy changes implemented by OSLSA are designed to ensure consistency between screening practices and policy. Accordingly, and based upon the revision of OSLSA's Financial Eligibility Policies, OSLSA has taken sufficient action designed to implement Required Corrective Action item 4. However, OSLSA must continue to take corrective action to ensure that its Board adopts the revised Financial Eligibility Policies and that it updates its ACMS to reflect the policy changes. OSLSA must provide LSC with a copy of the Board-approval within 30 days of such action; not more than 90 days from the transmittal of the Final Report.

5. Revise OSLSA's asset policy to include that the exemption of "vehicle" or "vehicles used for transportation" pursuant to 45 CFR § 1611.3(d)(1);

In its comments to the DR, OSLSA noted that it revised its asset policy to include the exemption of vehicles used for transportation consistent with 45 CFR § 1611.3(d)(1). A review of the Financial Eligibility Policies submitted on August 13 and 16, 2012, evidenced that the policy change implemented by OSLSA is designed to ensure consistency with the LSC regulation and other authorities. Accordingly, and based upon the revision of the OSLSA's Financial Eligibility Policies, OSLSA has taken sufficient action to implement Required Corrective Action item 5. However, OSLSA must continue to take corrective action to ensure that its Board adopts the revised Financial Eligibility Policies and that it updates its ACMS system to reflect the policy change. OSLSA must provide LSC with a copy of the Board-approval within 30 days of such action; not more than 90 days from the transmittal of the Final Report.

6. Review OSLSA's income eligibility policy and adopt a policy consistent with 45 CFR Part 1611, as discussed herein in Finding 3;

In its comments to the DR, OSLSA noted that it revised its Financial Eligibility Policies to remedy the deficiencies described in the DR. A review of the Financial Eligibility Policies submitted on August 13 and 16, 2012, evidenced that the policy now specify "that only individuals and groups determined to be financially eligible under the recipient's Financial Eligibility Policies and LSC

regulations may receive legal assistance supported with LSC funds,” that there now is a single income and asset eligibility guideline for LSC funded PAI clinics, that applicants with incomes between 125-187.5% of the FPG are “deemed financially eligible” rather than “deemed under the maximum allowable income,” and that the policies have been updated to reflect current regulatory provisions. Finally, OSLSA submitted, with its comments to the DR, additional case closing protocols designed to ensure that over-income cases which fail to demonstrate over-income exception acceptance factors are excluded from the CSRs. Accordingly, and based upon the revision of OSLSA’s Financial Eligibility Policies and the creation of new protocols, sufficient action designed to implement Required Corrective Action item 6 has been taken. However, OSLSA must continue to take corrective action to ensure that its Board adopts the revised Financial Eligibility Policies and that it updates its ACMS system to reflect the policy change. OSLSA must provide LSC with a copy of the Board-approval within 30 days of such action; not more than 90 days from the transmittal of the Final Report.

7. Ensure all written citizenship attestations used by OSLSA are in the form as stated in the CSR Handbook (2008 Ed.);

As part of its comments to the DR, OSLSA submitted its revised citizenship attestation in paper intake form, provided a printout of the intake form contained in the ACMS, and noted that it included the revised attestation in its “Program wide” Handbook. The revised citizenship attestation forms are compliant because they contain the attestation statements on separate signature and date lines. Additionally, OSLSA provided OCE staff with the minutes of its June, 2012 Managing Attorneys’ meeting, which contained the instruction that “every office must use only an application form with a correct citizenship attestation. The citizenship attestation must read: I am a U.S. citizen with a space for a signature and date. No other attestation is acceptable and no application with any different form of attestation can be used! If there are any applications with different attestations floating around, destroy them and find out where they came from!” A review of the actions taken by OSLSA indicates that these actions are designed to ensure that staff members are provided with the documentation and knowledge needed to obtain citizen attestations in compliance with 45 CFR Part 1626. Accordingly, OSLSA has taken sufficient action designed to implement Required Corrective Action item 7.

8. Ensure all cases, in which OSLSA provides legal assistance, whether in a clinic or otherwise, contain citizenship attestations, where appropriate, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.);

In its comments to the DR, OSLSA agreed that it must obtain citizenship attestations and obtain documentation establishing financial and other eligibility consistent with the LSC Act, regulations, and other authorities whenever OSLSA attorneys provide legal assistance to an individual, whether in a clinic or

otherwise. To this end, OSLSA instructed its staff and revised its Application for Legal Services in its ACMS and on its paper forms. The forms contain compliant citizenship screenings. However, OSLSA disagreed that it is required to obtain citizenship attestations when PAI attorneys provide legal services in clinics because OSLSA takes the position that clinic participants are not “clients” of OSLSA as OSLSA is merely providing “support” assistance, which does not require citizenship screening under LSC regulations or other authorities. In support of its position, OSLSA cited to May 14, 2008, Memorandum sent to LSC by the Center for Law and Social Policy (“CLASP”). OSLSA requested that LSC review its interpretation of 45 CFR Part 1614 to determine whether the LSC regulation and other authorities permit recipients to administer pro bono clinics in which private attorneys provide legal assistance to persons not screened for citizenship eligibility. Accordingly, whether OSLSA has taken sufficient action designed to implement Required Corrective Action item 8 will be held in abeyance until LSC fully reviews this matter.

9. Ensure all cases in which OSLSA provides legal assistance, whether in a clinic or otherwise, contain documentation establishing financial and other eligibility consistent with LSC Act, regulations, and other authorities and OSLSA policy;

In its comments to the DR, OSLSA agreed it must ensure obtain documentation establishing financial eligibility consistent with LSC Act, regulations, and other authorities whenever OSLSA attorneys provide legal assistance to an individual, whether in a clinic or otherwise. To this end, OSLSA revised its Application for Legal Services in its ACMS, on its paper forms, and on its LSC-Funded Services Eligibility Worksheet, to provide for income and asset eligibility screening for use in its clinics. With these revisions, the forms contain compliant income and asset screenings. However, OSLSA disagreed that it is required to obtain documentation establishing financial eligibility consistent with the LSC Act, regulations, and other authorities when PAI attorneys provide legal services in the clinics because clinic participants are not “clients” of OSLSA as OSLSA is merely providing “support” assistance which does not require financial eligibility screening under LSC regulations or other authorities. In support of its position, OSLSA cites to May 14, 2008, Memorandum sent to LSC by the Center for Law and Social Policy (“CLASP”). OSLSA requested that LSC review its interpretation of 45 CFR Part 1614 to determine whether the LSC regulation and other authorities permit recipients to administer pro bono clinics in which private attorneys provide legal assistance to persons not screened for financial eligibility. Accordingly, whether OSLSA has taken sufficient action designed to implement Required Corrective Action item 9 will be held in abeyance until LSC fully reviews this matter.

10. Cease reporting “Screening Manual” and other cases which lack evidence of legal advice in the CSR data submission;

In its comments to the DR, OSLSA noted that it would revise its “Screening Manual” practice and policy and would cease reporting these Screening Manual activities as cases in the CSRs. To this end, OSLSA is presently revising its Screening Manual. OSLSA also indicated that it informed staff that all applications in which the only service provided is a pro se packet (or booklet, informational materials, or referral to another legal aid, governmental or social service agency, its website, etc.) are to be closed using the case closing category M-Legal Information. OSLSA noted that it intends to review all cases closed during the 2012 calendar year closed with the CSR case closure category “A-Counsel and Advice” in order to determine whether the more appropriate action would have been to close the file M-Legal Information, because the level of services documented in the file indicates that no legal assistance was provided to the applicant. Finally, OSLSA submitted, with its comments to the DR, additional case closing protocols which are designed to ensure that case handlers and management review the documentation of legal assistance prior to case closure. A review of the actions taken by OSLSA indicates that these actions are designed to ensure that staff members are provided with the knowledge to cease reporting in the CSRs activities and other cases which lack evidence of legal advice. Accordingly, OSLSA is in the process of taking sufficient action designed to implement Required Corrective Action item 10. However, OSLSA must continue to take corrective action to ensure that the Screening Manual is revised and that all cases closed during the 2012 calendar year are reviewed as stated herein and as part of this corrective action, OSLSA must provide LSC with a copy of the Screening Manual revisions no more than 90 days from the transmittal of the Final Report. A certification that the closed case review has been completed must be submitted within 30 days of the review being completed.

11. Ensure proper coding of PAI and LSC eligible cases so that cases are properly reported to LSC in the CSRs;

In its comments to the DR, OSLSA noted that it reviewed all open PAI cases for proper PAI or staff designations. Also, on August 16, 2012, OSLSA submitted a copy of its PAI instruction titled “Private Attorney Involvement-What Counts as PAI?,” which was distributed to staff to guide them with selecting appropriate designations. Finally, OSLSA submitted, with its comments to the DR, additional case closing protocols which are designed to ensure comprehensive management oversight review of cases at the time of case closing. These actions are designed to ensure the proper coding of PAI cases so that they are properly recorded in the CSRs. Accordingly, and based upon the review of open cases and the guidance provided to staff, OSLSA has taken sufficient action designed to implement Required Corrective Action item 11.

12. Cease allocating staff time spent providing services to clinic participants where there is no PAI attorney present toward its PAI requirement;

In its comments to the DR, OSLSA noted that it has instructed staff that time spent providing services to clinic participants where there is no PAI attorney present cannot be allocated toward its PAI requirement. Also, on August 16, 2012, OSLSA submitted a copy of its PAI instruction titled “Private Attorney Involvement-What Counts as PAI?,” which was distributed to staff in order to clarify the difference between a staff and a PAI activity. These actions are designed to ensure the proper allocation of PAI time so that staff time is properly allocated to the PAI requirement. Accordingly, OSLSA has taken sufficient action designed to implement Required Corrective Action item 12.

13. Review journal entries and back-out any time allocated for activities in which legal assistance was provided to:
  - a. unscreened clinic participants and staff time spent providing direct legal services to clinic participants that may have been allocated to the PAI requirement expended at clinics beginning with the 2012, 2011 and 2010 PAI allocation;<sup>63</sup> and
  - b. provide OCE with a follow-up summary indicating the total costs (staff time and other costs), if any, that were backed out for 2012 and 2011, together with a statement and/or other evidence indicating that the costs have been fully charged to a non-LSC grant source; and

In its comments to the DR, OSLSA agreed that it would cease allocating staff time spent providing services to clinic participants where no PAI attorney was present and for clinic activities where legal assistance was provided by staff for 2012 and 2011. OSLSA further agreed that it would provide a summary indicating the total costs (staff time and other costs) that were backed out for 2012 and 2011.

However, for the reasons previously discussed, OSLSA failed to review journal entries or back-out staff time allocated to the PAI requirement for clinic activities where legal assistance was provided by PAI attorneys to participants not screened for financial or citizenship eligibility.

As the failure to review journals and back-out staff time allocated to the PAI requirement relates to the disputed issue of whether LSC regulation and other authorities requires eligibility screening for PAI clinic participants (Required Corrective Action items 8 and 9), the question whether OSLSA has taken sufficient action designed to implement Required Corrective Action item 13 will be held in abeyance until LSC fully reviews this matter and resolves the disagreements concerning Required Correction Action items 8 and 9.

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<sup>63</sup> For both of these categories of activities, the related staff time and any other costs of the case must be in total charged to non-LSC funds.

14. Cease reporting cases in which the client pays reduced fees directly to private attorneys as part of OSLSA's Reduced Fee Divorce Program in the LSC Grant Activity Report.

In its comments to the DR, OSLSA noted that it would cease reporting cases where clients paid reduced fees directly to private attorneys as part of OSLSA's RFDP in the GAR and will now begin to report them in the OSRs. To this end, OSLSA has instructed staff responsible for the preparation of these reports to include RFDP cases in the OSRs. A review of the actions taken by OSLSA indicates that these actions are designed to ensure that staff members are provided with the knowledge to cease reporting in the GARs activities that would be more appropriately reported in the OSRs. Accordingly, OSLSA has taken sufficient action designed to implement Required Corrective Action item 14.



555 Buttles Avenue  
Columbus, OH 43215-1137  
614/221-7201  
800/589-5888  
614/221-7625, Fax

<http://www.ohiolegalservices.org>

July 2, 2012

Delivered via Email: [rathl@lsc.gov](mailto:rathl@lsc.gov)

Lora M. Rath, Acting Director  
Office of Compliance and Enforcement  
3333 K Street, NW, 3<sup>rd</sup> Floor  
Washington, DC 2007-3522

RE: Follow Up Review, Recipient 436070

Dear Ms. Rath:

I am responding to the Draft Report from the June 20-24, 2011 Follow Up Review. Accompanying this emailed letter are our responses to each of the Corrective Actions listed on pp. 60-61 of the Report. I had a little difficulty matching each individual corrective action with where it was discussed in the narrative part of the Report to better understand what was wanted. So, if you believe any response does not fully address a listed Corrective Actions, let me know. Please also note that in our response to Corrective Action No. 13 we have asked to have until August 2<sup>nd</sup> to provide the requested information. In addition, along with this emailed response, I am attaching a copy of the Memo, referenced on p. 46 of the Report and in our response to Corrective Action No. 13.

We appreciate the Recommendations in the Report. They have been and will be useful to us in improving our compliance.

Thank you for your attention to this and for Lisa Melton's time reviewing and commenting on our revised financial eligibility policies.

Respectfully,

/s/Jim Daniels

James M. Daniels  
Director, SEOLS

cc: Thomas W. Weeks, Executive Director, OSLSA

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**Executive Director**  
Thomas W. Weeks



## OSLSA'S RESPONSES TO THE FUR 2012 DRAFT REPORT'S CORRECTIVE ACTION

4. Require staff to adhere to the current asset policy as it pertains to considering prepaid funeral accounts and the availability of private affordable attorneys, or adopted new policies consistent with OSLSA's current screening policies.

We drafted new financial policies and sent them to the FUR Team Leader Lisa Melton for review. Pending her review our Board approved them. On June 25, Lisa Melton responded with comments. A phone discussion is set for July 17<sup>th</sup> with Lisa Melton to discuss her comments.

5. Revise OSLSA's asset policy to include that the exemption of vehicle or vehicles used for transportation pursuant to 45 CFR 166.3(d)(1).

This revision was made in the financial policies discussed above.

6. Review OSLSA's income eligibility policy and adopt a policy consistent with 45 CFR Part 1611, as discussed in Finding 3.

We have reviewed and this will be addressed in our review of the revised financial policies mentioned above with Ms. Melton.

7. Ensure all written citizenship attestations used by OSLSA are in the form as stated in the CSR Handbook (2008 Ed.)

We have revised the citizenship attestations in our application to comply with the CSR handbook (2008 Ed.)

8. Ensure all cases, in which OSLSA provides legal assistance, whether in a clinic or otherwise, contain citizenship attestations, where appropriate, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.)

We agree that OSLSA must ensure that it obtains citizenship attestations whenever it provides legal assistance to an individual, whether in a clinic or otherwise, as required by the CSR Handbook (2008 Ed.). To the extent that the Report found that OSLSA staff has provided legal assistance to individuals at our pro bono clinics or elsewhere, we will take steps to correct that problem. We do not believe that OSLSA is providing legal assistance to the low income people who access free legal advice from volunteer private attorneys through pro bono clinics established and operated in conjunction with local courts, bar associations, and community groups. If LSC differs with this belief, please advise.

9. Ensure all cases in which OSLSA provides legal assistance, whether in a clinic or otherwise, contain documentation establishing financial and other eligibility consistent with LSC Act, regulations, and other authorities and OSLSA policy.

We agree that OSLSA must ensure that it obtains documentation establishing financial and other eligibility consistent with LSC Act, regulations, and other authorities and OSLSA policy whenever it provides legal assistance to an individual, whether in a clinic or otherwise. To the extent that the Report found that OSLSA staff has provided legal assistance to individuals at our pro bono clinics or elsewhere, we will take steps to correct that problem. We do not believe that OSLSA is providing legal assistance to the low income people who access free legal advice from volunteer private attorneys through pro bono clinics established and operated in conjunction with local courts, bar associations, and community groups. If LSC differs with this belief, please advise.

10. Cease reporting "Screening Manual" and other cases which lack evidence of legal advice in the CSR data submission.

The issue under this Finding is OSLSA's practice and policy of reporting as legal advice the hundreds of pro se packets, containing forms and instructions, reviewed by an attorney and sent to clients. We have always reported this service as legal advice based on our knowledge that if any of those low income individuals went to a private attorney's office in our service area and were told in response to their specific legal question and problem (1) where they needed to have their legal problem heard and decided, (2) what specific documents were needed to be filed, (3) were provided the needed documents, (4) told how to file those documents in court, (4) how to complete the required documents, and (5) what evidence to present in court, the individual and attorney would consider the "information" obtained to be legal advice and the individual would be charged accordingly. Similarly, a non-attorney who performed these services in Ohio would be engaging in the unauthorized practice of law and would be subject to appropriate sanctions. However, we recognize that the actual value or status of the service for the recipient is not affected by the nomenclature applied to the service for LSC reporting purposes. We will revise our practice and policy on this issue to cease reporting such legal services as "cases" in our CSR.

11. Ensure proper coding of PAI and LSC eligible cases so that cases are properly reported to LSC in the CSRs.

My understanding from reading the narrative portion of the Report is that this Corrective Action addresses the situations found by the FUR Team where OSLSA staff coded whole cases as PAI even though the private attorney involvement was minimal. Based on this understanding, we agree and will take steps to correct. If this Corrective Action addresses other issues, please advise.

Also, it is my understanding that while the whole case may not be reported as PAI when there is minimal private attorney involvement, the actual time spent in such cases by OSLSA staff consulting or working with a private attorney would be countable as PAI

time. If my understanding is incorrect, please advise.

12. Cease allocating staff time spent providing services to clinic participants where there is no PAI attorney present toward its PAI requirement.

OSLSA staff will be so instructed and such time will not be allocated toward our PAI requirement.

13. Review journal entries and back-out any time allocated for activities in which legal assistance was provided to:

- a. unscreened clinic participants and staff time spent providing direct legal services to clinic participants that may have been allocated to the PAI requirement expended at clinics beginning with the 2012, 2011 and 2010 PAI allocation; and

- b. provide OCE with a follow-up summary indicating the total costs (staff time and other costs), if any, that were backed out for 2012 and 2011, together with a statement and/or other evidence indicating that the costs have been fully charged to a non-LSC grant source.

Consistent with our responses to Corrective Actions 8 and 9 above, we will review journal entries to see what if any such time spent by OSLSA staff in providing direct legal services to unscreened clinic participants has been captured and reported as PAI time that can be backed out of our 2012 and 2011 PAI allocation. We would request that we have until August 2<sup>nd</sup> to provide OCE with the requested summary and statement.

To the extent that this Corrective Action requires that OSLSA not report as PAI any of the significant time its staff spends helping the local bar associations, courts, and communities in establishing, supporting, and maintaining our pro bono clinics at which low income, non-clients of OSLSA receive legal assistance from private attorneys, we disagree. Our pro bono clinics are strongly supported by the local bar, courts, and appellate districts' 'Access to Justice' committees who all recognize them as the best way to get meaningful involvement by the bar in our small counties in providing legal help to low income people. The reasons for our disagreement are more fully set forth in the Memo referenced on p. 46 of the Report (copy of referenced Memo accompanies this response). To date we have not received a response to that Memo.

Since that Memo was sent, LSC has launched several initiatives to encourage creative approaches to involving the private bar in helping low income people. I was involved in the initiative launched by former LSC President Helaine Barnett. The latest effort is the LSC Pro Bono Task Force established by LSC Board Chairman John Levi. It is our understanding from Task Force members that it will be making or already has made recommendations consistent with that Memo that time spent providing such support by legal aid programs for such pro bono clinics is and should be countable as PAI time. This is consistent with, and supports, our interpretation of the LSC Act and regulations.

14. Cease reporting cases **in** which the client pays reduced fees directly to private attorneys as part of OLSA's Reduced Fee Divorce Program **in** the LSC Grant Activity Report.

OLSA will cease reporting such cases in its GAR. **It** will add them to its OSR as suggested in the Report.

# Memo

To: Karen Sarjeant

Victor Fortuno

From: Linda Perle and Alan Houseman

Date: 5/14/2008

Re: OSLSA Finding on PAI

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We are writing this memo on behalf of Ohio State Legal Services Association (OSLSA). OSLSA is questioning the conclusions reached by the LSC Office of Compliance and Enforcement (OCE) and the Office of Legal Affairs (OLA) with regard to whether OSLSA is permitted to count certain costs associated with its pro bono clinics toward its PAI allocation, and we urge you to reconsider these conclusions.

## Background

In order to set the context for this memo, it should be noted that OSLSA operates in a rural area of Ohio where there are few private attorneys and where it has been difficult to establish successful PAI programs in the past. In recent years, in coordination with local bar associations, judges, religious organizations, and other local entities such as local departments of job and family services, OSLSA has been able to help organize a number of pro bono clinics (including many "interfaith clinics") where private attorneys provide limited services to residents of these rural areas on a pro bono basis.

OSLSA's participation in these clinic activities is not intended to be viewed as "the direct delivery of legal assistance to eligible clients..." under 45 CFR 1614.3(a), which is only one aspect of PAI activity.<sup>1</sup> Rather, OSLSA's participation is limited to the kind of support activities intended to be provided under 45 CFR 1614.3(b)(2) which states that "[a]ctivities undertaken by recipients to meet the requirements of this part may also include, but are not limited to ...[s]upport provided by

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<sup>1</sup> OLA External Opinion #EX-2008-1001 presumes that OSLSA's support activities are the direct delivery of legal assistance to eligible clients under §1614.3(a), ignoring the fact that Part 1614 clearly recognizes that support activities under §1614.3(b)(2) are a separate category of PAI activities that may also be allocated to fulfill a program's PAI requirement.

the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources....”

OSLSA provides a variety of support services to the clinics such as training the private attorneys, providing reference materials and pro se packets, answering questions from private attorneys about poverty law, providing laptops with frequently utilized court forms, and providing access to legal research as needed. These support services are generally not related to legal assistance to specific eligible clients. They are, however, clearly the kind of support services that are anticipated to be provided under 45 CFR 1614.3(b)(2). OSLSA’s support for the clinics is very limited in scope and remains “behind the scenes” so that the sponsorship and “ownership” of the clinics rests firmly in the hands of the local bar and the interfaith community that recruits the lawyers who agree to participate as members of the local legal communities or as congregants of the local churches that sponsor the interfaith clinics.

These pro bono clinics meet the mandate of 45 C.F.R. 1614.2 that PAI funds be “expended in economic and efficient manner.” They also represent precisely the kind of effective, strategic, and innovative effort to engage the private bar in the delivery of legal services to members of the low-income community that President Barnett encouraged LSC recipients to undertake in her December 20, 2007 Program Letter (07-2). That letter specifically encouraged programs “to undertake renewed, thoughtful and strategic efforts to leverage private attorney resources in order to address more of the civil legal needs of low-income persons and communities.” These pro bono clinics have succeeded in engaging private attorneys to provide legal assistance in an area of the state where, in the past, that has been very difficult to do using conventional PAI techniques. Even when OSLSA has tried to contract directly with private attorneys to take cases at a reduced rate, few responded and those that did only agreed to handle domestic relations cases. In contrast, the clinics have resulted in numerous private attorneys providing advice and brief service in a wide range of legal areas.

Because OSLSA’s role has been limited to the kind of support anticipated in §1614.3(b)(2) of the LSC regulations, the local bars and religious entities that sponsor the clinics have had much more success in recruiting their members to participate than would be true if OSLSA had tried to do that directly and if OSLSA ran the clinics. In part because its participation in the clinics is so limited, and in part because of the issues discussed below, OSLSA has not claimed the clinic cases as PAI cases for CSR purposes and seeks only to continue to have the time spent in its support efforts count toward its 12.5% PAI allocation.

#### OLA Opinion

OCE has ordered OSLSA to stop allocating the staff time that the program devotes to supporting the pro bono clinics to PAI unless the clinics do eligibility screening of the clients who are assisted by the private attorneys through the clinics and the program “counts” the cases handled by the private attorneys as OSLSA cases. OSLSA objected to the imposition of these requirements and sought an opinion from OLA on whether they were appropriate. OLA recently

responded to OSLSA's inquiry with an External Opinion (EX-2008-1001) that concluded that "in order for OSLSA to allocate toward its Part 1614 requirement the resources it provides to the clinics, the persons served by the clinics must be screened for eligibility, determined to be eligible and considered clients of OSLSA."

The OLA opinion focused its analysis on the requirements of 45 CFR §1614.3(a) which says that "[a]ctivities undertaken by the recipient must include the direct delivery of legal assistance to eligible clients...." The opinion does not even mention §1614.3(b)(2) which is the section on which OSLSA relies. That section does not specifically mention eligible clients but does describe the kinds of support activities that OSLSA provides to the clinics. If §1612.3(b)(2) is not designed to encompass these kinds of support activities, it is unclear why the provision is in the rule at all and what kinds of activities it was meant to include.

#### Requiring Clinic Participants to Be Treated as OSLSA Clients

Even assuming the clinics were willing and able to screen for financial and alien eligibility and priorities,<sup>2</sup> OCE and OLA have also taken the position that OSLSA cannot count its support for the clinics as part of its PAI allocation unless the clients whose cases are handled by private attorneys as part of the pro bono clinics are considered to be OSLSA's clients, claiming that it "has been the longstanding interpretation and practice of LSC that cases referred to private attorneys pursuant to a recipient's PAI program remain cases of the recipient and the clients in those cases remain clients of the recipient." The opinion does not cite any regulatory provisions to support this proposition. In fact, the only support given by either OLA or OCE is a footnote in the OLA opinion that references the preamble to the 2005 revision of Part 1611. However, this preamble discussion deals only with the question of whether retainer agreements are required in PAI cases where clients are referred by LSC recipients to private attorneys. It is not relevant to the question at issue and does not address the situation of clinic clients whose only relationship is with the private pro bono attorneys who serve them.

These individuals were never clients of OSLSA, and for those who may have originally sought help from OSLSA, the program has no continuing relationship with them after referral to the clinic. For those who sought assistance directly from the clinics or were referred there by the courts or other entities, OSLSA has had no direct contact with them at all. OSLSA's role is limited to helping the bar associations and religious organizations that sponsor the clinics to organize them, to providing technical support, training and materials, and to answering questions from the private attorneys regarding poverty law issues that may arise during the clinics. This support is generally not related to the specific clients who are helped by the private attorneys who volunteer their time to the clinics.

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<sup>2</sup> While OSLSA has decided not to contest the issue of screening for eligibility at this time, I note that numerous other programs have contacted CLASP in response to the OLA opinion to indicate that they also provide support to a variety of pro bono clinics that do not screen those who seek help from the clinics for eligibility and do not count the clinic clients as their own. They have indicated that this opinion will have a major impact on their ability to fulfill their PAI obligations and to continue their support for these clinics.

OSLSA considers the issue of whether clinic clients are OSLSA clients to be crucial to the continued success of the pro bono clinic effort, primarily because of conflicts issues that arise whenever an individual enters into an attorney-client relationship with OSLSA. As was noted above, the areas served by these clinics are very rural, with a limited number of private attorneys who practice there, and no legal services providers other than OSLSA. In some instances, there are so few private attorneys practicing in the local areas served by the clinics that the attorneys who volunteer as part of the clinics constitute the great majority of the private attorneys who practice there. If the clinic clients are considered to be OSLSA clients, conflicts of interest would be created that would severely limit the availability of legal assistance to the low-income community in the areas served by the clinics.

Although the clinic attorneys provide assistance on a wide variety of subjects, the biggest demand for legal assistance in the areas served by the clinics is for help with domestic problems. Most often both parties in a domestic dispute are poor and unable to afford legal counsel. Every time OSLSA assists one poor parent in a domestic case, a potential conflict is created that bars the program from advising or representing the other poor parent on a range of legal problems, including, but not limited to that particular domestic issue.

As the clinics presently work, each side in a domestic case can get some free legal assistance from either OSLSA or the local clinic. If LSC were to require the clinics to be structured so that clinic participants had to be considered to be OSLSA clients, there would be only one source of free legal assistance, because the conflict rules would prevent OSLSA from providing legal assistance to an individual where the opposing party has been helped by the clinic and vice versa.

Perhaps a couple of examples would be instructive. If all of the clinic participants had to be considered OSLSA clients, OSLSA would be precluded from later representing any person with interests adverse to a clinic client. Thus, if a man goes to the clinic and gets advice from a private attorney about a divorce, custody, visitation, or support issue and his wife or girlfriend subsequently seeks assistance from OSLSA alleging domestic violence, OSLSA would be prevented from helping her if her husband or boyfriend were considered an OSLSA client because he had received assistance from the clinic. Similarly, if one party to a dispute over the sale of a used vehicle went to a clinic for advice on his rights regarding the transaction and the other party tried to get help from OSLSA, he or she would be turned away because there was a conflict of interest.

On the other side of the issue is the situation where OSLSA cannot accept a case in the first instance because of an existing conflict of interest. In that situation a referral to the clinic is usually the only alternative that the program or the local community can offer to that person. Thus, if OSLSA is representing a woman in a custody case and her ex-husband comes to the program seeking advice as to what his rights are in the custody matter, referral to the clinic is all that OSLSA or the local judiciary can now offer. If that avenue is barred because it would be

considered to be a conflict of interest when all clinic clients are considered OLSLA clients, then in most areas served by the clinics there are no other alternative private attorneys or other providers of legal assistance to whom he can be referred.

Section 1614.3(c) makes it clear that “[t]he specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient’s taking into account the following factors:…(3) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients....”

### Conclusion

By requiring OLSLA to consider clinic clients to be program clients, LSC would be acting to limit the legal assistance available to low-income individuals in the areas served by the clinics. This is counter-productive to, and inconsistent with, the goals of the PAI rule as well as Program Letter 07-02 which was intended to enhance private attorney involvement and to increase the number of low-income people helped by the private bar. It was certainly not intended to simply increase the number of OLSLA clients, and LSC has provided no compelling reason why these individuals should be required to be treated as program clients.

Over the years since the PAI rule has been in effect, OLSLA and many other rural civil legal aid programs have struggled hard to develop effective PAI programs, often without much success. Once OLSLA realized that the key to a successful PAI program in its service area was to give “ownership” of the program to the local bar and to other local institutions, including faith based organizations, with much closer relationships to the private attorneys in their areas, private attorneys have been much more willing to participate in the effort and to provide pro bono services.

However, if LSC were to require that all of the clients served by both OLSLA and the clinics be considered to be OLSLA clients, much of the progress of the last several years would be undermined. Conflicts of interest rules would severely limit the ability of OLSLA to serve individuals where an adverse party had been served by one of the clinics and vice versa. The sense of ownership of these clinics by the bar and faith-based community that has contributed so greatly to their success would be significantly reduced. Rather than narrowing the justice gap by leveraging the resources of the private bar to handle additional clients, this requirement would have the effect of excluding many individuals who are now able to receive assistance from either OLSLA or the clinics.

LSC should be flexible in interpreting Part 1614 and should permit programs to use their creativity and imagination in order to achieve the goals of the PAI program to expand the availability of legal assistance through the involvement of private attorneys.

We urge LSC to reconsider this issue and to permit OLSLA to count the costs associated with its support for the pro bono clinics for purposes of its PAI allocation. We would like to have an opportunity to discuss this issue with both of you. Please contact Linda to set up a time for a meeting. She can be reached at 202-906-8002 or at [lperle@clasp.org](mailto:lperle@clasp.org).

## **OHIO STATE LEGAL SERVICES ASSOCIATION**

### **POLICY ON OUTSIDE PRACTICE OF LAW**

Reference: 45 CFR Part 1604

Federal regulations, as well as Program policy, prohibit the outside practice of law except under limited circumstances. Outside practice of law means the provision of any legal assistance to a client who is not entitled to receive that legal assistance from the Program. The federal regulation permits representation of ineligible persons under certain limited circumstances, such as where the client is a family member or close friend, provided that representation in such case or matter is consistent with the attorney's responsibilities to the OSLSA's clients and the attorney does not intentionally identify the case or matter with the Legal Services Corporation or with OSLSA during the course of the outside practice engagement. Of course, even under those circumstances, the services must be provided without fee of any kind. If you wish to perform services under that exception, you must have the approval of your supervisor and either the executive director or the SEOLS director. A form for obtaining such approval is attached, and should be completed in every instance where you wish to provide legal services to anyone other than an eligible client accepted through normal Program procedures. If the person to receive the services objects to disclosure of his/her identity, call the director to discuss how to accommodate that. It is not Program policy to discourage anyone from providing services under this exception; however, this is a very sensitive matter and the executive director wants to be sure that we are in absolute compliance with the regulations.

It is also important to explain to every person who receives representation under this exception that they are not a Program client and that the Program's malpractice insurance does not cover them. The attached form provides for the person receiving the service to acknowledge receiving this information.

Thank you for your cooperation in assuring that this will not be a problem. If you have any questions concerning this policy generally or its application in a specific instance, please call the director.

**REQUEST FOR PERMISSION TO ENGAGE IN OUTSIDE PRACTICE OF LAW**

I request permission to provide legal services to \_\_\_\_\_,  
a close friend, family member, or religious, community, or charitable group, in the matter  
of \_\_\_\_\_.

This service will be done on my own time, without the use of Program resources, and  
without fee of any nature. My representation in this case or matter is consistent with my  
responsibilities to OSLSA/SEOLS's clients and I will not identify the case or matter with  
the Legal Services Corporation or with OSLSA/SEOLS during the course of the outside  
practice engagement. I have informed \_\_\_\_\_  
that s/he will not be a client of OSLSA/SEOLS, that OSLSA/SEOLS malpractice  
insurance will not provide coverage, and that I do not have malpractice insurance.

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date

I, \_\_\_\_\_, understand that legal  
services to be provided me by \_\_\_\_\_ are not provided under the  
auspices of Ohio State Legal Services Association or Southeastern Ohio Legal Services,  
that the malpractice insurance policies covering those organizations will not cover the  
services provided to me by \_\_\_\_\_, and that  
\_\_\_\_\_ does not have malpractice insurance.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
Managing Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Executive Director / SEOLS Director

\_\_\_\_\_  
Date

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555 Buttlers Avenue  
Columbus, OH 43215  
614/221-7201  
800/589-5888  
614/221-7625, Fax

<http://www.ohiolegalservices.org>  
<http://www.seols.org>

May 10, 2012

By Email: [rathl@lsc.gov](mailto:rathl@lsc.gov)

Lora M. Rath, Acting Director  
Office of Compliance and Enforcement  
Legal Services Corporation  
3333 K Street, NW Third Floor  
Washington, DC 20007-3522

RE: Follow Up Review Recipient No. 436070

Dear Ms. Rath:

I am emailing this letter to you on behalf of OSLSA's executive director, Tom Weeks, to request an extension of time until Monday, July 2 to respond to the Draft Report dated April 11.

As Lisa Melton and her team likely remember, we are a far flung organization with offices in nine cities spread out over southeast Ohio. We have a meeting every other month with the managing attorneys from our field offices and SEOLS's upper management. The Draft Report was received just before our April meeting, so we did not have time to seriously discuss and digest the report at that time. Our next such meeting is not until June 13. I would like to have time to discuss the Draft Report with our management team in person before drafting our response. That is the reason for the requested extension.

Even though we would like an extension to respond, we have already begun steps to implement a number of the recommendations. As examples, we have made draft revisions of some of our policies as recommended. Along with the email to which this letter is attached, I am attaching drafts of those draft revised policies. Specifically, attached are:

1. Draft revised Case Closing Protocol

The Draft Report made several recommendations that we revise our Case Closing Protocol as a way of addressing some of the errors found. The attached draft would require would require our managing attorneys at closing review to include in that review assurances that the financial information is correct, there is a proper retainer, that the level of service identified by the closing code is supported by documentation in our CMS or in the case file, and that the proper funding, problem, and closing code has been entered.

**Executive Director**  
Thomas W. Weeks



**Director**  
James M. Daniels

2. Draft revised Outside Practice of Law policy and form

The Draft Report recommended that we delete reference to OPLC from the policy as it is not LSC-funded and that we add the following language: “representation in such cases or matter is consistent with the attorney’s responsibilities to the Recipient’s clients” and that “the attorney does not intentionally identify the case or matter with the Corporation or the Recipient” during the course of the outside practice engagement. The attached draft policy was revised to make those changes.

3. Citizenship Attestation

The Draft Report reported finding citizenship attestations that did not comply with the required language. Attached is our CMS generated application with the required citizenship attestation. I found that there were hard copies of the old incorrect citizenship attestation floating around in some offices that were being used by casehandlers when needing to do intakes outside the office. Those forms are being destroyed.

Also, earlier on April 27, I emailed to Team Leader Lisa Melton, cc’ing you, a draft of revised draft financial policies and worksheet for review and feedback. Those revisions, if correct, once approved, would help address a number of issues identified in the Draft Report.

Feedback about the draft policies accompanying this letter and the previously sent financial policies would be appreciated.

Thank you for your time and attention to this. Please let me know if you have any questions.

Respectfully,

James M. Daniels  
SEOLS Director

cc: Thomas W. Weeks

P:\3-jd\LSC\2011FollowUpReview orarathfollowupltr.dot

OSLSA'S RESPONSES TO THE FUR 2012 DRAFT REPORT'S CORRECTIVE ACTION  
REVISED AUGUST 16, 2012

4. Require staff to adhere to the current asset policy as it pertains to considering prepaid funeral accounts and the availability of private affordable attorneys, or adopted new policies consistent with OSLSA's current screening policies.

We drafted new financial policies and sent them to the FUR Team Leader Lisa Melton for review. Pending her review our Board approved them. On June 25, Ms Melton responded with comments. A phone discussion was had July 17<sup>th</sup> with Ms. Melton to discuss her comments. The policies were re-drafted in light of Ms. Melton's comments and were re-sent to her for further review. Another phone call is scheduled for August 17<sup>th</sup> with Ms. Melton.

Action: Significant revisions made to our financial policies which are being reviewed with FUR Team Leader Lisa Melton.

5. Revise OSLSA's asset policy to include that the exemption of vehicle or vehicles used for transportation pursuant to 45 CFR 166.3(d)(1).

This revision was made in the financial policies discussed above.

Action: Significant revisions have been drafted to our financial policies which are being reviewed with FUR Team Leader Lisa Melton as described under Corrective Action 4 above.

6. Review OSLSA's income eligibility policy and adopt a policy consistent with 45 CFR Part 1611, as discussed in Finding 3.

We have reviewed and this is will be addressed in our review of the revised financial policies mentioned above with Ms. Melton.

Action: Significant revisions have been drafted to our financial policies which are being reviewed with FUR Team Leader Lisa Melton as described under Corrective Action 4 above.

7. Ensure all written citizenship attestations used by OSLSA are in the form as stated in the CSR Handbook (2008 Ed.)

We have revised the citizenship attestations in our application to comply with the CSR handbook (2008 Ed.)

Action: Copy of revised application accompanies this Revised Response. The revised application is being inserted into our Programwide Handbook. Also minutes of our June Managing Attorneys' meeting, which were sent to all staff, stated: "every office must use only an application form with a correct citizenship attestation. The citizenship attestation

must read: "I am a U.S. citizen" with a space for a signature and date. No other attestation is acceptable and no application with any different form of attestation can be used! If there are any applications with different attestations floating around, destroy them and find out where they came from!"

8. Ensure all cases, in which OSLSA provides legal assistance, whether in a clinic or otherwise, contain citizenship attestations, where appropriate, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.)

We agree that OSLSA must ensure that it obtains citizenship attestations whenever it provides legal assistance to an individual, whether in a clinic or otherwise, as required by the CSR Handbook (2008 Ed.). To the extent that the Report found that OSLSA staff has provided legal assistance to individuals at our pro bono clinics or elsewhere, we will take steps to correct that problem. We do not believe that OSLSA is providing legal assistance to the low income people who access free legal advice from volunteer private attorneys through pro bono clinics established and operated in conjunction with local courts, bar associations, and community groups. If LSC differs with this belief, please advise.

Action: Email was sent to all staff stating that before any legal advice could be given by a staff member to an individual at one of our clinics, an application must be completed, the individual must be eligible for our services, and the eligibility information and advice provided entered into our case management system.

9. Ensure all cases in which OSLSA provides legal assistance, whether in a clinic or otherwise, contain documentation establishing financial and other eligibility consistent with LSC Act, regulations, and other authorities and OSLSA policy.

We agree that OSLSA must ensure that it obtains documentation establishing financial and other eligibility consistent with LSC Act, regulations, and other authorities and OSLSA policy whenever it provides legal assistance to an individual, whether in a clinic or otherwise. To the extent that the Report found that OSLSA staff has provided legal assistance to individuals at our pro bono clinics or elsewhere, we will take steps to correct that problem. We do not believe that OSLSA is providing legal assistance to the low income people who access free legal advice from volunteer private attorneys through pro bono clinics established and operated in conjunction with local courts, bar associations, and community groups. If LSC differs with this belief, please advise.

Action: Email was sent to all staff that before any legal advice could be given by a staff member to an individual at one of our clinics, an application must be completed, the individual must be eligible for our services, and the eligibility information and advice provided entered into our case management system.

10. Cease reporting "Screening Manual" and other cases which lack evidence of legal advice in the CSR data submission.

The issue under this Finding is OSLSA's practice and policy of reporting as legal advice the hundreds of pro se packets, containing forms and instructions, reviewed by an attorney and sent to clients. We have always reported this service as legal advice based on our knowledge that if any of those low income individuals went to a private attorney's office in our service area and were told in response to their specific legal question and problem (1) where they needed to have their legal problem heard and decided, (2) what specific documents were needed to be filed, (3) were provided the needed documents, (4) told how to file those documents in court, (4) how to complete the required documents, and (5) what evidence to present in court, the individual and attorney would consider the "information" obtained to be legal advice and the individual would be charged accordingly. Similarly, a non-attorney who performed these services in Ohio would be engaging in the unauthorized practice of law and would be subject to appropriate sanctions. However, we recognize that the actual value or status of the service for the recipient is not affected by the nomenclature applied to the service for LSC reporting purposes. We will revise our practice and policy on this issue to cease reporting such legal services as "cases" in our CSR.

Action: Email was sent to all secretaries and managing attorneys that all applications in which the only service provided is a pro se packet (or booklet, information materials, or referral to another legal aid, agency, the website, etc.) are to be closed using closing code 'M' for legal information. This is a change in our Screening Manual instructions and a group, including SEOLS Director, is in process of revising our Screening Manual to reflect this change. Also, we will be asking each office to go back and re-visit cases closed in 2012 as Advice and Counsel (A) under our old policy to change the closing code to Legal Information (M) if no legal advice, as defined by LSC, is documented.

11. Ensure proper coding of PAI and LSC eligible cases so that cases are properly reported to LSC in the CSRs.

My understanding from reading the narrative portion of the Report is that this Corrective Action addresses the situations found by the FUR Team where OSLSA staff coded whole cases as PAI even though the private attorney involvement was minimal. Based on this understanding, we agree and will take steps to correct. If this Corrective Action addresses other issues, please advise.

Also, it is my understanding that while the whole case may not be reported as PAI when there is minimal private attorney involvement, the actual time spent in such cases by OSLSA staff consulting or working with a private attorney would be countable as PAI time. If my understanding is incorrect, please advise.

Action taken: An interim CSR report was ran and I reviewed all cases marked as PAI for proper coding. Our PAI Coordinator has revised a Guidance she had previously distributed to staff on "What is PAI." That revised Guidance accompanies this Revised Response. It will be re-distributed to all staff and entered into our Programwide Handbook.

12. Cease allocating staff time spent providing services to clinic participants where there is no PAI attorney present toward its PAI requirement.

OSLSA staff will be so instructed and such time will not be allocated toward our PAI requirement.

Action taken: Our PAI Coordinator has revised a Guidance she had previously distributed to staff on "What is PAI." That revised Guidance accompanies this Revised Response. It will be re-distributed to all staff and entered into our Programwide Handbook.

13. Review journal entries and back-out any time allocated for activities in which legal assistance was provided to:

- a. unscreened clinic participants and staff time spent providing direct legal services to clinic participants that may have been allocated to the PAI requirement expended at clinics beginning with the 2012, 2011 and 2010 PAI allocation; and

- b. provide OCE with a follow-up summary indicating the total costs (staff time and other costs), if any, that were backed out for 2012 and 2011, together with a statement and/or other evidence indicating that the costs have been fully charged to a non-LSC grant source.

Consistent with our responses to Corrective Actions 8 and 9 above, we will review journal entries to see what if any such time spent by OSLSA staff in providing direct legal services to unscreened clinic participants has been captured and reported as PAI time that can be backed out of our 2012 and 2011 PAI allocation. We would request that we have until August 2<sup>nd</sup> to provide OCE with the requested summary and statement.

To the extent that this Corrective Action requires that OSLSA not report as PAI any of the significant time its staff spends helping the local bar associations, courts, and communities in establishing, supporting, and maintaining our pro bono clinics at which low income, non-clients of OSLSA receive legal assistance from private attorneys, we disagree. Our pro bono clinics are strongly supported by the local bar, courts, and appellate districts' 'Access to Justice' committees who all recognize them as the best way to get meaningful involvement by the bar in our small counties in providing legal help to low income people. The reasons for our disagreement are more fully set forth in the Memo referenced on p. 46 of the Report (copy of referenced Memo accompanied the original Response emailed July 2<sup>nd</sup>). To date we have not received a response to that Memo.

Since that Memo was sent, LSC has launched several initiatives to encourage creative approaches to involving the private bar in helping low income people. I was involved in the initiative launched by former LSC President Helaine Barnett. The latest effort is the LSC Pro Bono Task Force established by LSC Board Chairman John Levi. It is our

understanding from Task Force members that it will be making or already has made recommendations consistent with that Memo that time spent providing such support by legal aid programs for such pro bono clinics is and should be countable as PAI time. This is consistent with, and supports, our interpretation of the LSC Act and regulations.

Action: Requested Summary from our Finance Director, entitled "PAI recalculated hours 2010-2011" is submitted with this Revised Response. We reviewed our clinic report forms. If a staff attorney was listed as having talked with a client, we assumed that legal advice was given in all such instances and not just legal information. This likely over counted the number of individuals seen or whom received legal advice from one of our staff attorneys as some of the instances, it is likely only information was provided. We then assumed that each staff attorney spent an average of 15 minutes per individual and backed such time out of our PAI allocation.

14. Cease reporting cases in which the client pays reduced fees directly to private attorneys as part of OSLSA's Reduced Fee Divorce Program in the LSC Grant Activity Report.

OSLSA will cease reporting such cases in its GAR. It will add them to its OSR as suggested in the Report.

Action: Individual, Jan Legg, who does these reports was so instructed.

I have reviewed the clinic hours and recalculated the PAI based on the revised hours. We still have enough PAI expenditures for the combined service areas.

The following is a summary of the adjustments for 2010 and 2011:

	2010		2011	
	Original	Revised	Original	Revised
Wages	171,288	169,716	143,783	141,724
Benefits	56,805	56,279	54,393	53,610
Support wages and benefits	33,139	32,632	42,853	42,273
Occupancy	49,714	51,861	38,485	39,678
Consultants and contract services	22,781	22,830	7,635	7,615
Travel and staff training	10,267	10,241	6,925	6,850
Consumable supplies and library	8,128	6,795	7,639	6,250
Equipment	1,995	1,990	1,745	1,730
Liability insurance	1,334	1,358	879	875
Litigation expense	3,359	3,420	2,485	2,477
Telephone expense	7,659	7,670	5,614	5,568
Postage expense	2,926	2,928	2,304	2,287
Volunteer related expense	48,391	48,391	59,134	59,134
Other expense/CLE and trainings	18,581	18,603	43,884	43,881
Total	436,377	434,716	417,758	413,951

Wages and Benefits are the only costs that are allocated to LSC by Ohio State Legal Services for Service Area OH 17. The other costs are paid by non LSC funding. The Wages and Benefits are allocated based on percentage of LSC funding to OLAF funding less other sources offunding. Since LSC funds are not required for PAI, journal entries are not into a PAI account unless it is specific cash expenditure for PAI. A higher percentage of our wages and benefits are allocated to non LSC funding than LSC funding, however, to be the most conservative I have removed all the wages and benefits for 2010 and 2011 from LSC and used a non LSC funding source,

I certify that I have removed wages and benefits of \$2,605 from 2010 LSC funding and \$3,422 from 2011 LSC funding and reclassified them to non LSC funding.

*/s/ vJ!J*

Lynn A. Dwyer  
Director of Finance



**SEOLS -- LSC-FUNDED SERVICES ELIGIBILITY WORKSHEET**

APPLICANT/CLIENT: \_\_\_\_\_ DATE: \_\_\_\_\_  
SCREENER: \_\_\_\_\_

DIRECTIONS: This sheet must be completed for all applicants with incomes above the income or asset ceilings before legal assistance may be provided. It must also be completed for all clients whose income or assets change and exceed those ceilings before legal assistance may continue.

**AUTHORIZED EXCEPTIONS TO ANNUAL INCOME LIMIT OF 125% FPIG**

The applicant's assets do not exceed the asset ceiling or the asset ceiling has been waived and:

1. The Executive Director or his designee, the Director, has determined on the basis of documentation received that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the Applicant's income which is committed to medical or nursing home expenses, the applicant's remaining income would be at or below 125% of FPIG. (Such documentation shall be maintained in the client's records.)

Yes Executive Director's or Director's approval and date: \_\_\_\_\_

2. The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families.

Yes

3. Applicant's income does not exceed 187.5% FPIG and Applicant is seeking legal assistance to obtain benefits provided by a governmental program for low-income individuals or families.

Yes

4. Applicant's income does not exceed 187.5% FPIG and the applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities.

Yes

5. Applicant's income does not exceed 187.5% FPIG and Applicant has the following expenses for which Applicant's income is being spent that if deducted would bring the household's available income to at or below 125% of FPIG:

- a. Un-reimbursed medical expenses and medical insurance premiums: \$ \_\_\_\_\_
- b. Dependent care, transportation (mileage@ 1/2 IRS rate), clothing, and equipment expenses necessary for employment, job training, or educational activities in preparation for employment: \$ \_\_\_\_\_
- c. Child support/alimony that is paid: \$ \_\_\_\_\_
- d. Non-medical expenses associated with age or disability: \$ \_\_\_\_\_
- e. Fixed debt payments: \$ \_\_\_\_\_

Yes Income after above expenses: \$ \_\_\_\_\_ = \_\_\_\_\_ % of FPIG.

6. Applicant's income does not exceed 187.5% FPIG and the office's managing attorney has determined that the applicant's income has seasonal variation and the applicant's current income prospects are at or below 125% FPIG and the need for legal assistance cannot wait until the applicant's income increases.

Yes Managing Attorney's approval and date: \_\_\_\_\_

7. Applicant's income does not exceed 187.5% FPIG and the Director has determined there are other significant factors that affect Applicant's ability to afford legal assistance and those factors are listed below.

Significant Factors: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Yes Director's approval and date: \_\_\_\_\_

#### **AUTHORIZED EXCEPTIONS TO \$5,000 ASSET LIMIT**

The Executive Director or his designee, the Director, has determined that the asset limit should be waived due to unusual circumstances and those circumstances are listed below.

Unusual circumstances: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Yes Executive Director's or Director's approval and date: \_\_\_\_\_

**Keep a copy of the completed Worksheet with client's file and make an appropriate entry on the Pika Eligibility Screen under Income Justification.**

**APPLICATION FOR LEGAL SERVICES**

Name \_\_\_\_\_ Date \_\_\_\_\_

SSN \_\_\_\_\_ Did you serve in the military? Reserves? National Guard? Yes No

Address, City, State, Zip \_\_\_\_\_ County \_\_\_\_\_

Email \_\_\_\_\_ Phone # \_\_\_\_\_ Other Phone # \_\_\_\_\_

DOB \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Marital Status \_\_\_\_\_ Citizenship \_\_\_\_\_

Spouse's Name \_\_\_\_\_

Opposing Party \_\_\_\_\_ Phone # \_\_\_\_\_

Address, City, State, Zip \_\_\_\_\_

A. Total number CHILDREN you support in household: \_\_\_\_\_ Total CHILDREN NOT in household you support: \_\_\_\_\_

Total Number ADULTS: \_\_\_\_\_ **TOTAL NUMBER OF PEOPLE IN HOUSEHOLD:** \_\_\_\_\_ Does or has any person in your household served in the military? Reserves? National Guard? Yes No

**PLEASE READ AND SIGN:**

**I AM A CITIZEN OF THE UNITED STATES:** Signature \_\_\_\_\_ Date \_\_\_\_\_

**I AM A CITIZEN OF THE UNITED STATES:** Signature \_\_\_\_\_ Date \_\_\_\_\_

What do you need help with? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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**B. LIST ALL HOUSEHOLD INCOME (before taxes):**

**Include** wages/salaries before deductions; self-employment income after deductions for business/farm expenses; regular payments from governmental programs for low-income persons or persons with disabilities; Social Security payments; unemployment and worker's compensation payments; strike benefits from union funds; veteran benefits; training stipends; alimony; child support; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; dividends, interest, rents, royalties, estates, and trusts income; regular or recurring sources of financial support currently and actually available to you.

**Do not include** value of food or rent received instead of wages; money withdrawn from a bank; tax refunds; gifts; compensation or one-time insurance payments for injuries; non-cash benefits; or up to \$2,000 per year received as a Native American from Indian trust income or other distributions exempt by statute.

SOURCE

GROSS AMOUNT  
wk / bi / mn / annual

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**TOTAL \$** \_\_\_\_\_

Receive Food Stamps? No Yes: Amount \$ \_\_\_\_\_

On Medicaid? No Yes

Number of uninsured people in household: \_\_\_\_\_

C. Have there been any changes in income within the past six months or are you expecting any changes in the next six months for you or anyone in your household? No Yes

**D. ASSETS (include cash and other household resources readily convertible to cash, currently and actually available to you or someone in your household.)**

(1) Do you or anyone in household have:

Cash \$ \_\_\_\_\_ Checking Acct \$ \_\_\_\_\_

Savings Acct \$ \_\_\_\_\_

Other: \_\_\_\_\_ \$ \_\_\_\_\_

**TOTAL \$** \_\_\_\_\_

(2) Do you or anyone in household have Personal Property not used to produce income?

No Yes—Value: \$ \_\_\_\_\_

Describe: \_\_\_\_\_

(3) Do you or anyone in household have vehicles not used for transportation? No Yes

If yes, give FAIR MARKET VALUE of those vehicles: \$ \_\_\_\_\_

(4) Do you or anyone in your household have Real Estate you/they do not live in and is not used to produce income? No Yes

If yes, give FAIR MARKET VALUE of the real estate:

\$ \_\_\_\_\_

Owners: \_\_\_\_\_

FOR OFFICE USE ONLY

LSC Problem Code \_\_\_\_\_ Main Benefit Code \_\_\_\_\_

**Major Reason Closed (check one):**

- |   |   |
|---|---|
| <input type="checkbox"/> Counsel and Advice                   | <input type="checkbox"/> Deselect                 |
| <input type="checkbox"/> Limited Action                       | <input type="checkbox"/> Deselect—over income     |
| <input type="checkbox"/> Negotiated Settlement w/o Litigation | <input type="checkbox"/> Deselect—over assets     |
| <input type="checkbox"/> Negotiated Settlement w/Litigation   | <input type="checkbox"/> Deselect—untimely closed |
| <input type="checkbox"/> Administrative Agency Decision       | <input type="checkbox"/> Deselect—citizenship     |
| <input type="checkbox"/> Court Decision—Uncontested           | <input type="checkbox"/> Deselect—no show         |
| <input type="checkbox"/> Court Decision—Contested             |   |
| <input type="checkbox"/> Appeals Court Case                   |   |
| <input type="checkbox"/> Extensive Service                    |   |
| <input type="checkbox"/> Other: _____                         |   |

Avoidance \$ \_\_\_\_\_

Recovery \$ \_\_\_\_\_

Survey sent?

Grievance?

Date Closed: \_\_\_\_\_ MA Approval: \_\_\_\_\_

## CASE CLOSING PROTOCOL

Once a client/applicant matter has been resolved, the case must be closed promptly.

- Cases accepted at GCAM must be closed within 14 days after the case is over.
- Client matters resolved by the casehandler before GCAM, or which the GCAM decides not to accept for representation, must be closed before the next GCAM.
- All applications/cases must be closed following established Program closing policy.

Closing policy requires that the casehandler decide the major reason the case is resolved and is ready to be closed (see below). That reason, the Main Benefit Code, and the amount of any Avoidance or Recovery, should be recorded by the casehandler on the Intake Sheet. The Intake Sheet and file or accompanying documents should then be submitted to the managing attorney who will review all aspects of closing:

- whether it is appropriate to close the case at this time;
- whether financial eligibility has been correctly determined and entered into the case management software;
- whether a retainer, when required by LSC regulations, is present and properly and timely executed;
- whether the level of service indicated by the closing code is documented in the case management software or the case file;
- whether the appropriate funding, LSC problem, closing, and main benefit code have been identified;
- whether the Avoid and Recovery has been properly identified;
- whether there is proper citizenship attestation;
- whether there is documentation on the Intake Sheet or in the file or in the case management software of appropriate legal advice having been given;;
- whether a Client identity and Statement of Facts, when required by LSC regulations, is present and properly and timely executed;
- whether the case is being timely closed under LSC regulations; and
- authorize/require closing letter or memo and sending of client survey, return of original client documents, file clean-up, etc.



## FINANCIAL ELIGIBILITY POLICIES

Southeastern Ohio Legal Services (SEOLS) adopts the following Financial Eligibility Policies for individuals and groups who are provided legal assistance supported in whole or in part with funds received from the Legal Services Corporation (LSC). Only individuals and groups determined to be financially eligible under these policies and the LSC Regulations may receive legal assistance supported in whole or in part with LSC funds. These policies do not apply to individuals or groups for whom service is wholly supported by funds from sources other than LSC; in such situations, representation of individuals or groups must be determined based on law, regulations, specific grant requirements or other program policies.

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

### I. DEFINITIONS

- A. "Applicant" means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation, or association.
- B. "Applicant's Household" means a family, an individual or several individuals dependent on other residents of the household or who substantially benefit from this living arrangement, unless an individual constitutes a separate household as a result of regular and significant contributions to household expenses or other factors which indicate lack of support by household members. In determining the income of a household, consideration should be given to the living arrangements, familial relationships, length of time an applicant has resided in the household, any financial arrangement with household members, significant contributions to the household, legal obligations of household members to support an applicant and any equitable considerations that affect an applicant's ability to afford legal assistance.
- C. "Assets" means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant. Assets do not include applicant's principal residence, vehicles of the applicant's household used for transportation, or household assets used in producing income. If the applicant is a victim of domestic violence, assets do not include those held by the alleged perpetrator, jointly held by the applicant with the alleged perpetrator, or assets jointly held by any member of the applicant's household with the alleged perpetrator.
- D. "Governmental program for low income individuals or families" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need. These programs are: \_\_\_\_\_.
- E. "Governmental program for persons with disabilities" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

**Comment [JD1]:** We will not have a Board meeting until Sept. 29, 2012.

F. "Income" means actual current annual 'total cash receipts' before taxes of all persons who are resident members of and contribute to the support of an applicant's household. If the applicant is a victim of domestic violence, income does not include the income of the alleged perpetrator of the domestic violence.

G. "Total cash receipts" includes, but is not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

## II. INDIVIDUAL FINANCIAL ELIGIBILITY

To be eligible for legal assistance, an applicant must meet both the income and asset eligibility requirements set forth below.

### A. INCOME CEILING:

The annual income ceiling for applicants and their households served by SEOLS using LSC funds is at or below 125% of the current Federal Poverty Income Guidelines (FPIG).

### B. AUTHORIZED EXCEPTIONS TO THE ANNUAL INCOME CEILING:

An applicant whose income exceeds the annual income ceiling may be determined to be financially eligible if the applicant's assets do not exceed the asset ceiling or the asset ceiling has been waived under II(D) below, and

1. The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or
2. If the Executive Director or his designee, the Director, has determined on the basis of documentation received, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant remaining income would be at or below 125% of FPIG. (The documentation received shall be maintained in the client's records); or
2. The applicant's income does not exceed does not exceed 187.5% of FPIG and:

a. The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or

b. The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or

3. The applicant's income does not exceed 187.5% of FPIG and the applicant has any of the following expenses for which the applicant's income is being spent that if deducted would bring the household available income at or below 125% of FPIG:

- i. Un-reimbursed medical expenses and medical insurance premiums;
- ii. Dependent care, transportation (mileage@1/2 IRS rate), clothing, and equipment expenses necessary for employment, job training, or education activities in preparation for employment;
- iii. Child support/alimony that is paid;
- iv. Non-medical expenses associated with age or disability;
- v. fixed debt payments; or

5. The applicant's income does not exceed 187.5% of FPIG and the office's managing attorney has determined that the applicant's income has seasonal variation and the applicant's current income prospects are at or below 125% FPIG and the need for legal assistance cannot wait until the applicant's income increases; or

6. The applicant's income does not exceed 187.5% of FPIG and the Director has determined that there are other significant factors that affect the applicant's ability to afford legal assistance.

#### **C. ASSET CEILING**

The asset ceiling for applicants or their households served by SEOLS using LSC funds is \$5000.

#### **D. AUTHORIZED EXCEPTIONS TO ASSET CEILING:**

The asset ceiling may be waived for a particular applicant under unusual circumstances and when approved by the Executive Director or his designee, the Director.

#### **E. DOCUMENTATION OF AUTHORIZED EXCEPTIONS TO THE INCOME OR ASSET CEILINGS:**

If any of the above exceptions are relied on to waive the income or asset ceilings and to find an applicant eligible for legal assistance from SEOLS using LSC funds, the exceptions relied on shall be documented on the "SEOLS – LSC-Funded Services Eligibility Worksheet ("Eligibility Worksheet") which shall be signed and dated and kept with the applicant's file. In addition, the appropriate entry shall be made in the Case Management System documenting the waiver.

### **III. DETERMINATION OF FINANCIAL ELIGIBILITY**

**A.** SEOLS shall make reasonable inquiry regarding the sources of the applicant's income, income prospects and assets, and shall record that information and include it in the client's file.

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

### **IV. REPRESENTATION OF GROUPS**

The eligibility requirements set forth in this section apply only to legal assistance supported by LSC funds, provided that any legal assistance provided by SEOLS, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulations.

**A.** In order for a group, corporation, association or other entity to be eligible for LSC-funded legal assistance, it must provide information regarding the resources available to the group, showing that it lacks, and has no practical means of obtaining funds to retain private legal counsel and either:

(1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded assistance; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

**B.** A determination that a group, corporation, association, or other entity is eligible for legal services shall be based on a consideration of the resources available to the group, such as the group's income and income prospects, assets, and obligations and either:

(1) for a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

(2) for a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

C. SEOLS shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein and in 45 CFR §1611.6, and shall preserve such information in the client's file.

## **V. REFERRALS BETWEEN LSC-FUNDED PROGRAMS**

If a LSC-funded program has determined that a client is financially eligible for service in a particular case or matter, and that program requests SEOLS to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination, SEOLS is not required to review or re-determine the client's financial eligibility unless there is a change in financial eligibility status, as described in Section VI below or there is substantial reason to doubt the validity of the original determination, provided that the referring program provides and SEOLS retains a copy of the intake form documenting the client's financial eligibility.

## **VI. CHANGE IN FINANCIAL ELIGIBILITY**

A. If, after making a determination of financial eligibility and accepting a client for LSC-funded service, SEOLS becomes aware that a client has become financially ineligible through a change of circumstances, SEOLS shall discontinue representation supported by LSC funds if (1) the change is sufficient, and is likely to continue, to enable the client to afford private legal assistance and (2) discontinuation is not inconsistent with applicable rules of professional responsibility. If SEOLS discontinues representation, the case shall be closed at the highest level of service provided prior to closing.

B. If, after making a determination of financial eligibility and accepting a client for LSC-funded service, SEOLS later becomes aware that the client is financially ineligible on the basis of later discovered or disclosed information; SEOLS shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility. If SEOLS discontinues representation, the case when closed shall be "deselected" in the case management system.

## **VII. RETAINER AGREEMENTS**

A. SEOLS shall execute written retainer agreements, signed by the client, in all LSC-funded, extended service cases handled by SEOLS. The retainer agreements shall be in a form consistent with the Ohio Rules of Professional Conduct and shall include, at a minimum, a statement identifying the legal problem for which representation is sought and the nature of the legal services to be provided which shall be written by a SEOLS casehandler. Written retainers shall be executed when representation commences or as soon thereafter as practicable. A copy of the executed retainer agreement shall be provided to the client.

B. If the level of service changes, for example, going from "investigation" to filing in court or going from trial court to an appellate court, the retainer must be updated and an updated retainer provided the client.

C. A written retainer is not required for advice and counsel or brief service provided by SEOLS, but it may be appropriate to obtain in some circumstances.

D. Copies of all executed retainer agreement shall be retained in the client's file for review by LSC.

#### **VIII. BOARD REVIEW OF POLICY**

The Ohio State Legal Services Association's Board shall review the Financial Eligibility policies at least once every three years and make adjustments as necessary.

## Private Attorney Involvement - What counts as PAI?

Who does PAI? We all do, but we must make sure that we are capturing our efforts. LSC requires that we expend funds equaling 12.5% of the money we receive from LSC on PAI work. Projects that are funded by other grants can count towards our PAI requirement. For example, cases done under our tax project funding or our foreclosure project can also be PAI.

Any type of expense that you incur could be a PAI expense if the time or funds are spent in furtherance of our PAI efforts. This includes mileage, copy expenses, phone calls. Are you talking to an attorney in a non-adverse situation? Are you talking to your pro bono coordinator? If so, then you may be engaging in PAI and you need to make sure that your time and/or expense records reflect your efforts. Below are some examples of activities that may be PAI.

Case Work	Non-Case work (matters)
<ol style="list-style-type: none"> <li>1. Any work on behalf of a client in a case co-counseled by a private attorney.</li> <li>2. Any work to prepare a case to refer to a private attorney</li> <li>3. Any work monitoring a case that has been referred to a private attorney</li> <li>4. Any work supervising a private attorney volunteer doing case work</li> <li>5. Any time spent evaluating a case for PAI referral</li> <li>6. Mileage incurred while traveling in a PAI case or involving a PAI volunteer</li> <li>7. Phone calls made in a PAI case or involving a PAI volunteer (code 19)</li> <li>8. Litigation expenses in a PAI case or involving a PAI volunteer</li> <li>9. Providing support for a PAI attorney who is working on a referred case</li> </ol>	<ol style="list-style-type: none"> <li>1. Participation in the bar associations and Activities related to PAI activities</li> <li>2. Time or expense relating to publicizing, planning, recruiting, scheduling, and training with regard to PAI clinics</li> <li>3. Time spent on discussions or activities related to using private attorneys for outreach, clinics, etc.</li> <li>4. Driving to and from PAI clinics</li> <li>5. Time spent preparing materials or recruiting volunteers for PAI clinics</li> <li>6. Long distance calls about clinic work (use code 19) relating to PAI activities</li> <li>7. Time or expense spent recruiting PAI volunteers or working for PAI support</li> <li>8. Time or expense for recognizing PAI work</li> <li>9. Time or expense in developing PAI plan or developing PAI projects</li> <li>10. Time or expense training PAI attorneys or planning PAI trainings</li> <li>11. Time or expense regarding compliance with LSC's PAI rules</li> <li>12. Time or expense regarding PR for pro bono work</li> </ol>
<p><b>NOT PAI</b></p> <ol style="list-style-type: none"> <li>1. Clinic or outreach work that does not involve any PAI volunteers</li> <li>2. Time by staff directly advising clinic clients</li> <li>3. Cases on behalf of non-LSC eligible clients</li> <li>4. Working with unlicensed volunteers (students, accountants, paralegals)</li> <li>5. Work on a case after it has returned from being with a volunteer or after a failed PAI placement attempt</li> <li>6. Contract payments to former employees within two years of their employment or attorneys whom receive over half of their income from an LSC program</li> </ol>	

## Private Attorney Involvement - What counts as PAI?

### PAI FAQ's

1. Does work with law school students or graduates, accountants, community members or other non-attorney volunteers count towards our PAI requirement?

No, the LSC regulations limit PAI expenses as those relating specifically to work with involving a private attorney. Private attorneys are defined as attorneys who are not "staff attorneys," meaning that only attorneys who earn less than 50% of their professional income from an LSC recipient qualify as private attorneys.

2. Does our work supporting clinics count towards PAI?

Yes, if the clinic is staffed by private attorneys involved in SEOLS/OSLSA's PAI activities, staff time supporting a clinic should be coded as PAI. Your time copying forms, recruiting volunteers, publicizing the clinic, and registering participants counts as PAI time. SEOLS staff should not provide advice during clinics without a completed intake and such time does not count as PAI.

3. What counts as a "PAI case"?

Cases that are being handled in their entirety or being co-counseled with a private attorney are PAI cases and the entire case can be coded PAI. A co-counseled case should require a court appearance for matters in a court case. A co-counseling agreement is preferable. Limited consultations do not qualify as a PAI case, although the specific time devoted to the consultation is PAI time. If a case is being handled by a PAI attorney but then reverts to SEOLS for resolution, then case then ceases to be PAI.

4. Do we need a retainer for PAI clients?

Yes, SEOLS should sign a retainer with the client stating that we will refer their case to a private attorney.

5. Does the PAI need to sign a retainer with the client?

Yes, and we should have a copy of this retainer in the file. PAI attorneys may use the retainer we provide to them or a retainer of their own, if it is substantially similar.

6. Must a client be LSC-eligible to be served by a PAI attorney?

In order to code the case as PAI, the client must be LSC-eligible. Clients may be served through other projects at the agreement of the private attorney, but this is not PAI.

7. Do I need to keep a PAI case open?

If a case is to be reported to LSC as a PAI case, the file should remain open until the resolution of the case. The progress of the case should be monitored by SEOLS staff periodically.

8. What if a PAI case needs to be appealed?

## Private Attorney Involvement - What counts as PAI?

The initial retainer should specify that the private attorney is representing the client at the trial level. If a case needs to be appealed, it should be reviewed by SEOLS management before the appeal can be a SEOLS case.

### 9. When is a PAI attorney covered by our malpractice insurance?

Any work by a volunteer (attorney or otherwise) on behalf of our clients is covered by our malpractice insurance. This is primary coverage. Best practices require some documentation that special projects, like clinics are SEOLS projects and therefore covered by our malpractice coverage.

### 10. Who is monitoring PAI cases?

Every open PAI case should be monitored by a SEOLS staff member. Most cases will be monitored by a member of the local office staff. Special projects, such as the LITC, will be monitored by the Pro Bono Coordinator. The staff person responsible for monitoring the case should be listed as the primary counsel in PIKA.

### 11. Does a PAI case have to be pro bono?

PAI does not necessarily have to be pro bono. PAI attorneys could be receiving payment from SEOLS to work on the client's behalf or reduced fee arrangements. Permissible activities include "the direct delivery of legal assistance to eligible clients through programs such as organized pro bono plans, reduced fee plans, judicare panels, private attorney contracts, or those modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems." §1614.3

### 12. Does the work have to be on a "case" to be counted, or can it be on a "matter"?

PAI work can be provided through an individual case or as a matter.

Permissible activities include, but are not limited to (1) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or pro bono basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and (2) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer-assisted legal research systems or other resources. §1614.3(b).

### 13. Does a PAI case have to be within SEOLS priorities?

Yes, PAI "shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients." §1614.2(c)

# Private Attorney Involvement - What counts as PAI?

**OSLSA** Pika Home > Cases > 20-12-11180 You are logged in as mblevins.

Site Map | Case List | Address Book | Calendar | Intake | Time Slip | Reports | Support

LSC Problem Code is Blank No Opposing Parties Have Been Entered

**CASE SUMMARY** Notes Conflict Eligibility Case Info Documents VAWA09 Litigation PAI Client Trust

Project Summary (public):

Hours: Date: 08/15/2012 Start Time: 7:00 PM Type of Activity: CWPAL - PAI Casework Staff: Skiller, Melissa Funding Source: 19 PAI HotDocs Used: Pro Se Materials: Accepted and in court: Affirmative Filing Completed: Foreclosure Settlement Reached:

Notes (private):

PAI 2012 Primary Client Address: Phone: Notes: Language: English Birth Date: remove

**ACTIONS**

- Popup Timer
- Add Tickle
- Add LSC Other Services
- Send Email
- Transfer this case
- Duplicate this case
- Delete this case
- LITC Info
- Foreclosure Screen
- Shortcuts

Add to this case: Client

Save Problem

Intake Scripts: Load

Reference Materials: PAI:  Go

Marking individual timeslips as PAI

A time entry can be marked as PAI by any of the above three methods: by choosing a PAI activity code, by selecting PAI as the funding code, or by checking the box on the timeslip.

**OSLSA** Pika Home > Cases > 20-12-11180 You are logged in as mblevins.

Site Map | Case List | Address Book | Calendar | Intake | Time Slip | Reports | Support

LSC Problem Code is Blank No Opposing Parties Have Been Entered

**CASE SUMMARY** Notes Conflict Eligibility Case Info Documents VAWA09 Litigation PAI Client Trust

Project **ADMINISTRATIVE INFORMATION**

Case Status: Project Primary Counsel (assign): Skiller, Melissa LSC Problem Code (2008 codes): Co-counsel #1 (assign): Co-counsel #2 (assign): Undup. Service: Funding: 19 PAI Primary Client: PAI 2012 Is This DV Related?

Date Opened: 01/01/2012 Office: OSLSA PAI:

Special Problem Code:

**CLOSING INFORMATION**

Date Closed: [today] Reason Rejected: Destroy Date: LSC Closing Code (2008 codes): Not Fully Served: Main Benefit: Recovery: \$ Avoid: \$ Outcome: Recovery Monthly: \$ Avoid Monthly: \$ Good Story:

**EXTRA INFORMATION**

County: Intake Screener: Record Last Edited Date:

Marking an entire case as PAI

A full case can be coded as PAI by checking the "PAI" box on the "case info" tab, or by selecting PAI as the funding code.