



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Blue Ridge Legal Services, Inc.

Program Integrity Review
November 13-14, 2012

Recipient No. 447081

I. EXECUTIVE SUMMARY

The findings, recommendations, and corrective actions in this report are based on the facts and history of Blue Ridge Legal Services, Inc. (BRLS); they do not necessarily apply to other programs in different situations.

Finding No. 1: BRLS is in compliance with the program integrity requirements of 45 CFR § 1610.8, that grantees have objective integrity and independence from any organization that engages in restricted activities.

A. Legal Separation of Organizations

BRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(1). BRLS and Legal Aid Society of Roanoke (LASRV) are incorporated as separate legal entities. They maintain separate boards and hold separate meetings.

B. Transfer and Subsidization

BRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(2). BRLS does not transfer LSC funds to a restricted entity and does not subsidize restricted activities with LSC funds.

C. Physical and Financial Separation

BRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(3). Based on the totality of the facts gathered during the onsite program integrity review, BRLS is sufficiently separate, physically and financially, from LASRV.

II. BACKGROUND

General Background

On October 18, 1966, Legal Aid Society of Roanoke (LASRV) was incorporated to provide legal services to low-income residents of southern Virginia.¹ Blue Ridge Legal Services, Inc. (BRLS) was incorporated June 3, 1977, as a non-profit corporation, to provide free civil legal assistance to low-income residents of Shenandoah Valley.² In 1998, the Charlottesville-Albemarle Legal Aid Society, which was an entity providing legal services to low-income residents of Charlottesville, Virginia, created an entity named Piedmont Legal Services (PLS).³ In 1999, in order to more efficiently provide low-cost representation to eligible residents, LASRV decided to decline further LSC funding. Under this arrangement, PLS entered into a relationship with LASRV by which PLS' Roanoke office began providing all intake, PAI, and referral services for the Roanoke Valley legal service area, with LASRV performing most of the legal case work for area.

In 2000, LSC consolidated the LASRV and BRLS service areas encompassing the Shenandoah Valley and the Roanoke Valley service areas, effective 2001. Subsequently, PLS ceased to exist and their Charlottesville office was taken over by the Central Virginia Legal Aid Society, Inc.⁴ In 2001, BRLS obtained additional LSC funding in order to provide services in Lexington. BRLS then assumed the position of PLS by taking over its two (2) offices in Lexington and Roanoke. BRLS obtained prior approval from LSC to continue the arrangement intake arrangement that had been entered into between LASRV and PLS, and began performing intake and referral services for LASRV from BRLS' Roanoke office.

The Legal Services Corporation of Virginia (LSCV), which provides state funding to legal programs in Virginia, adopted the new LSC service areas for its state grant awards process in 2001, except that they continued to fund LASRV on its original service area that included the Roanoke Valley, as well as the Lexington area. To maintain services at existing levels, BRLS and LASRV entered into an agreement regarding the use of state funds in the new service areas. The two (2) programs agreed to apply for state funds for the service areas served by each program before the consolidation and to use those funds in their respective former service areas. BRLS agreed to use LSC and other non-LSCV funds to assume the activities formerly provided by PLS in Roanoke and Lexington, in the old LASRV service area. Such services included conducting intake for both programs. The Agreement entered into in 2001, allowed for an annual review of terms, in association with the submission of grant applications to LSCV. *See Proposed Plan for Coordinating the Provision of Civil Legal Services to Low Income Residents of the Shenandoah Valley/Roanoke Valley Service Area.*

In 2005, BRLS initiated negotiations with LASRV to modify the agreement with respect to the allocation of state funding for the Lexington office. Pursuant to the plan as described above, BRLS assumed responsibility for staffing the Lexington office but LASRV received state funding for the Lexington service area. Negotiations were unproductive and the programs submitted competing applications for state funding. Following mediation, a new agreement was reached in which LASRV

¹ LASRV ceased to be an LSC funded program in 1999.

² BRLS has been an LSC funded program since 1979, and expanded its service area in 2001 to include Lexington.

³ Both programs were LSC funded entities.

⁴ Central Virginia Legal Aid Society, Inc. is an LSC funded program.

paid BRLS the state funds it received for the Lexington service area (for which LASRV does not operate an office) which was offset by the amount BRLS underspends for services in the Roanoke service area (due to LASRV's presence). The parties agreed that if funding changes threatened the viability of either program, the concerned party must notify the other and LSCV not less than two (2) weeks before the due date of the LSCV grant applications for the following year. *See* Exhibit No. 1, Agreement for BRLS-LASRV Service Delivery Collaboration and Addendum, signed by BRLS and LASRV on September 28, 2006 and September 22, 2006, respectively.

Currently, BRLS maintains offices in Harrisonburg, Winchester, Lexington, and Roanoke Valley. BRLS also maintains part-time "outreach" offices in Waynesboro and Staunton. These offices are not staffed; rather, they are used, as needed, by the Harrisonburg and Lexington staff for the convenience of their clients from Staunton, Waynesboro, and Augusta Counties.

LASRV engages in restricted activities. LASRV estimates that approximately 1% of its activities are restricted by LSC. The majority of this work, historically, being attorneys' fees cases prior to the lifting of the restriction in 2010. LASRV currently engages in the following restricted activities: prisoner representation, drug related evictions, class actions, representation of undocumented immigrants, abortion related cases, and legislative and administrative advocacy. LASRV reported that, from 2001 to present, they have provided services in 116 cases in which attorneys' fees were sought⁵; 34 cases in which prisoners were assisted and/or represented; 31 cases dealing with drug-related convictions from public housing; one (1) case concerning a class action; three (3) cases representing undocumented immigrants; and one (1) abortion case for a minor. Additionally, LASRV reported having engaged in legislative and administrative advocacy for increased legal aid funding and issues effecting low-income Virginians.

Background of Review

On November 13-14, 2012, the Office of Compliance and Enforcement (OCE) conducted an onsite Program Integrity Review (PIR) of BRLS. The stated purpose of the visit was to review BRLS' compliance with 45 CFR Part 1610. The visit was conducted by a team consisting of three (3) LSC staff, and one (1) temporary employee. The visit focused on a review of the totality of BRLS' and LASRV's relationship in light of the requirements of Part 1610 and an assessment of BRLS' policies and procedures relating to Part 1610, to determine whether they are consistent with the LSC Act, regulations, and other applicable authority.

In preparation for the visit, OCE requested that BRLS provide, among other things;

⁵ 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. However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. 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).

- 1) A copy of BRLS' Certificate of Incorporation;
- 2) A copy of LASRV's Certificate of Incorporation;
- 3) A list of any staff that provides services in any capacity to, are employed by, or are shared by BRLS who also provides services in any capacity to, are employed by, or are shared by an organization which engages in restricted activities. For each staff member listed in response to this inquiry, BRLS was asked to provide: 1) the name of the organization employing such staff; 2) the position occupied and a detailed description of the duties performed by such staff for BRLS and for the organization which engages in restricted activities; and 3) the terms and conditions of employment between BRLS and such staff;
- 4) A list of any joint utilization of office space or equipment (telephonic equipment, electronic equipment, and/or physical equipment such as fax machines, telephones, copier, and automobiles) between BRLS and any organization that engages in restricted activities in which the office space or any of the equipment is under the control of either BRLS or the other organization. For each space and/or piece of equipment BRLS was asked to provide: 1) the name of the organization with whom BRLS jointly utilizes the facility or equipment; 2) the specific facilities and/or equipment that are jointly utilized; 3) the breakdown of the frequency of use of such facilities or equipment by BRLS and by the other organization; 4) the financial arrangement for such joint utilization; and 5) whether there are separate entrances, signs and/or other forms of identification distinguishing BRLS from the other organization;
- 5) A detailed floor plan which clearly indicates the location of all the above mentioned equipment, office space and its user in response to request no. 4;
- 6) A detailed floor plan of all facilities which house both BRLS and any organizations which engage in restricted activities detailing the uses of the space by each entity;
- 7) A copy of any and all contracts regulating or specifying the transfer of non-LSC funds from BRLS to any organization which engages in restricted activities;
- 8) A copy of any and all lease/sublease agreements between BRLS and organizations which engage in restricted activities;
- 9) A list of all cases in which BRLS is/was co-counsel with an organization which engages in restricted activities, since 1997. BRLS was asked to provide the name and job title of each attorney involved, both for BRLS and the restricted organization;
- 10) A copy of the written report with all back-up material submitted to BRLS' Governing Body in support of BRLS' Certificate of Program Integrity. BRLS was also asked to

provide a copy of any other material considered by the Governing Body in this process;

- 11) A complete and detailed description of BRLS' accounting system;
- 12) Copies of all BRLS' and LASRV's Board and Board committee minutes from January 1, 2010 to August 27, 2012;
- 13) Copies of any contracts, memoranda of understanding, or other written agreements between BRLS and any organizations which engage in restricted activities which are housed in the same facility;
- 14) BRLS' litigation and administrative manuals;
- 15) All current leases to which BRLS is a signatory; and
- 16) A list of any and all entities conducting restricted activities that the BRLS has a relationship with involving funding, sub-grants, subsidies, sharing of staff, resources and/or facilities, including a brief description of all such relationships.

Additional document requests were made based on the program's response and the onsite review. BRLS cooperated fully with the OCE Review team and provided all documents requested by the team in an organized, thorough, and timely manner.

The visit was primarily conducted at BRLS' main office in Harrisonburg, but a brief on-site visit was also conducted at BRLS' Roanoke office. Interviews were conducted with BRLS staff members in both locations.

By letter dated January 29, 2013, OCE issued a Draft Report (DR) detailing its findings, and recommendations. BRLS was asked to review the DR, and provide written comments within thirty (30) days of its receipt of the letter. By letter dated February 26, 2013, BRLS submitted its comments to the DR. The entirety of BRLS' comments to the DR was that they did not find any material factual error or inaccuracies and they did not have any objections to the DR's findings, recommendations or conclusions.

III. APPLICABLE LAW

45 CFR § 1610.8(a) requires recipients to maintain program integrity by having "objective integrity and independence from any organization that engages in restricted activities." The regulation specifies three (3) separate factors, each of which must be met, for a recipient to be determined to have objective integrity and independence from such an organization. First, the organizations must be legally separate entities. *See* 45 CFR § 1610.8(a)(1). Second, there can be no transfer of LSC funds from the recipient to the other organization and LSC funds cannot subsidize restricted activities. *See* 45 CFR § 1610.8(a)(2). For the purposes of Part 1610, a "subsidy" is:

a payment of LSC funds to support, in whole or part, a restricted activity conducted by another entity, or payment to another entity to cover overhead, in whole or in part,

relating to a restricted activity. A recipient will be considered to be subsidizing the restricted activities of another organization if it provides the use of its LSC-funded resources to the organization without receiving a “fair-market price” for such use.

62 Fed. Reg. 27698 (May 21, 1997) (Preamble to final rule).

Finally, the organizations must be physically and financially separate. Physical and financial separation is characterized by a variety of indicators, including but not limited to:

1. The existence of separate personnel;
2. The existence of separate accounting and timekeeping records;
3. The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
4. The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

45 CFR § 1610.8(a)(3).

The financial separation requirement is separate and distinct from the non-subsidization requirement. While separate accounting may be evidence of lack of subsidization, the regulation explicitly states that mere bookkeeping separation is insufficient to meet the physical and financial separation requirements. Taken together, the recipient and the other organizations engaged in LSC- restricted activities must operate as two (2) separate entities (that may collaborate), and cannot operate as essentially one entity with administrative separation on paper.

Physical and financial separation is the most nuanced and complex of the three (3) factors required by the regulation. Whether physical and financial separation exists is determined on a case-by-case basis, considering the totality of the circumstances. Individual factors present in one situation might be acceptable in the context of the overall relationship between the entities, although they might be unacceptable in another situation in which other factors weigh more heavily against a finding of sufficient separation. Each factor weighs for or against separation. Some factors are weighed heavily; some lightly. It is the total weight of all the factors taken together that LSC looks at in determining the strength of the grantee’s physical and financial separation from the other entity.

Thus, determinations taking into account the physical and financial separation standard must ensure that there is no identification of the recipient with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient’s involvement with or endorsement of prohibited activities.

62 Fed. Reg. at 27698.

Ultimately, in all situations the separation between the organizations must be clear to clients, courts, agencies and others with whom the recipient comes into contact, and to the general public. *See* LSC/OLA External Opinion 2003-1009 (June 24, 2003).

In addition to Part 1610, LSC issued a program letter on October 30, 1997, with “Guidance in Applying the Program Integrity Standards”. In discussing the separate personnel factor of physical and financial separation, LSC stated: “There is no per se bar against a recipient employing part-time staff who are also employed part-time by an organization which engages in restricted activities.” 1997 Program Integrity Guidance at 3. LSC cautioned, however, that “the more staff ‘shared,’ or greater the responsibilities of the staff who are employed by both organizations, the more danger that program integrity will be compromised.” *Id.*

IV. FINDINGS

The findings, recommendations, and corrective actions in this report are based on the facts and history of BRLS; they do not necessarily apply to other programs in different situations.

Finding No. 1: BRLS is in compliance with the program integrity requirements of 45 CFR § 1610.8, that grantees have objective integrity and independence from any organization that engages in restricted activities.

In order to comply with these requirements, a grantee must meet each of the three (3) separate factors in 45 CFR § 1610.8. BRLS has sufficiently implemented the appropriate measures necessary to comply with these requirements.

A. Legal Separation of Organizations

BRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(1). BRLS has a legal and fiscal identity separate from LASRV. BRLS's operation is clearly independent from LASRV.⁶

BRLS was incorporated in 1977 and has been an LSC grantee since 1979. *See* BRLS Certificate of Incorporation. LASRV was incorporated October 18, 1966. *See* LASRV Certificate of Incorporation.

1. Boards of Directors: BRLS and LASRV maintains separate Boards of Directors.

Prior to the expansion detailed above, BRLS served the Shenandoah Valley service area of Virginia and maintained a Board of Directors with 12 members. In 2001, after PLS left the service area and merged with CVLAS, BRLS assumed PLS' Board configuration, in which half of the Board was composed of members from the former Roanoke Valley service area. Additionally, by assuming PLS' service area, BRLS' service area significantly expanded resulting in the Board increasing to 18 members. Prior to merging with CVLAS, PLS had reached an agreement with LASRV to have at least half of its Board be comprised of members of LASRV's Board. As a result, when BRLS assumed PLS' position, nine (9) of the 18 member Board also served on LASRV's Board. Despite sharing Board members, each Board still maintained its own independence and operated as totally separate Boards, with separate meetings and minutes.

In 2005, BRLS' By-laws were revised to remove the requirement that at least half of BRLS' Board be comprised of LASRV Board members to avoid potential conflict. As of the date of the PIR visit, there were no BRLS Board members who also served on LASRV's Board.

⁶ This finding of compliance is based upon the circumstances at the time of the PIR.

2. *Board Minutes: Minutes reflect the distinct nature of the meetings.*

Board minutes from 2010-2012 for both BRLS and LASRV confirm that both entities maintain Boards with separate membership which hold separate meetings.⁷ The BRLS Board meets four (4) times per year rotating between Harrisonburg, Lexington, Winchester, and Roanoke locations.

Review of the minutes reveal that either the LASRV Executive Director or President has attended over half of the BRLS board meetings since 2010.⁸ There is no evidence in the minutes that the LASRV representatives participated in these meetings in any manner other than as attendees. Based upon the LASRV minutes provided, no BRLS staff or Board members have attended the LASRV meetings since 2010.

No program integrity concerns were noted in the BRLS and LASRV minutes. Reference to the other program in the minutes was mainly limited to discussions about staffing and service pursuant to the collaborative agreement. There were also brief references to each program's community collaboration. For example, in 2011, LASRV and BRLS and a few other community programs jointly applied for an Office of Violence Against Women grant to focus on services to rural underserved domestic violence populations. The grant was highly competitive and the joint neither application was not funded. Another example was a meeting of parties interested in local pro bono efforts, attended by the Executive Directors of BRLS and LASRV, to discuss application for Neighborhood Assistance Project state tax credits.

B. Transfer and Subsidization

BRLS is in compliance with the requirements of 45 CFR § 1610.8(a)(2). BRLS does not transfer LSC funds to a restricted entity and does not subsidize restricted activities with LSC funds.

Where an LSC recipient is conducting intake for an entity engaged in restricted activities, the recipient must be able to demonstrate that LSC funds are not subsidizing those restricted activities. The determination of whether LSC funds are subsidizing restricted activities is highly fact-specific and requires a thorough assessment of the intake services provided to the restricted entity. The actual act of conducting intake on cases that are determined to be restricted or cases that are not within the programs priorities is not prohibited. However, the act of providing the information gathered from any applicant such as their income, assets, citizenship status, and legal problem to an entity engaged in restricted activity is what can raise the subsidy question. Once a recipient completes intake and determines that they will not be accepting the case either because the activity is restricted, or rejected for any other reason (i.e. financially ineligible, undocumented alien, outside priorities) the recipient may either simply reject the applicant or reject the applicant while providing basic contact information for a person or entity that handles such cases. LSC recipients can avoid subsidy issues by simply directing applicants whose cases involve restricted activities or whose cases are outside their priorities to an unrestricted entity and leaving that entity to conduct its own intake at its own cost.

⁷ In response to the pre-visit document request, BRLS provided BRLS Board approved minutes from February 25, 2010 thru May 22, 2012 and LASRV Board approved minutes from January 21, 2010 to June 19, 2012.

⁸ Minutes reflect that of the 10 BRLS Board meetings held from February 2010 thru May 2012, the LASRV Executive Director attended the February 25, 2010, September 23, 2010, June 14, 2011, March 13, 2012, and May 22, 2012 meetings and the LASRV President attended the December 6, 2011 meeting.

Alternately, if a recipient handles the intake for another entity (that engages in restricted activities), in full or in part, then the recipient must structure the arrangement to avoid impermissible subsidies through apportionment of costs, fair-market value based reimbursements, or other appropriate measures. In these instances, the recipient must be able to document the arrangement, such as through a contract or a memorandum of understanding, and be able to provide a reasonable basis for the valuations of the services provided to prevent a subsidy.

Agreement for BRLS-LASRV Service Delivery Collaboration

On September 1, 2006, BRLS and LASRV entered into an agreement titled, “Agreement for BRLS-LARV Service Delivery Collaboration” (Agreement), which memorialized the two (2) programs’ agreement to collaborate in their delivery of legal services in their overlapping service areas.

The Agreement stated that LASRV will pay BRLS the amount it is underspending in Lexington minus the amount BRLS is underspending in Roanoke. The Agreement defined the amount that LASRV is underspending in the Lexington office service area as the total LSCV funding allocated to that area based on poverty population, less an administrative fee. The administrative fee is equal to half of LASVR’s total administrative cost, expressed as a percentage multiplied by the total LSCV funding allocated to the Lexington office service area. Amounts spent on actual services provided by LASRV shall be computed as follows: the amount of attorney personnel costs (number of hours expended on Lexington area cases by each LASRV attorney divided by the total number of hours worked by that attorney during the year, multiplied by that attorney’s salary and benefit costs) plus a corresponding percentage overhead costs (total time expended on Lexington area cases divided by all LASRV attorney time for the year and then multiplied by all LASRV overhead costs during the year). The Agreement further defined the amount that BRLS is underspending in the Roanoke office service area as the difference between the total amount of funding BRLS receives for that jurisdictions from all sources, and the amount it actually spends in operating and staffing the Roanoke office. LSC funding for the Lexington and Roanoke areas will be computed by first deducting administrative costs program wide from the total LSC funding, and then allocating the balance based on the poverty population distribution.

The Agreement requires both BRLS and LASRV to project revenue and expenses at the beginning of each fiscal year, which is July 1 for both BRLS and LASRV, in order to create a basis on which to determine the aforementioned amounts of underspending for each. These projections are to be based on actual data available, e.g. known revenue to be received and historical data where no actual data is available. At the end of each fiscal year, both BRLS and LASRV are required to provide appropriate corrections (actual amounts expended where they vary from projected amounts) to their beginning-of-the year projections and adjust the amount paid by LASRV for the fiscal year just concluding.

Summary of Intake Service Provided by BRLS to LASRV

Since 2001 BRLS and LASRV intake has been integrated. BRLS began to conduct intake for both programs when it assumed the service delivery role previously performed by PLS. LASRV does not conduct any independent intake. The Agreement outlining each entities responsibilities was not entered into until September 1, 2006. In exchange for the intake services that BRLS provides to

LASRV in Roanoke, LASRV provides legal services in both LSC eligible and non-LSC eligible cases that are accepted by LASRV in the Roanoke service area.

From the date of the Agreement to the date of the visit, BRLS' Roanoke office provided intake services and referred approximately 1500 cases to LASRV per year, including both LSC-eligible and non-LSC eligible cases. The non-LSC eligible cases included those that BRLS could not handle at all because of the LSC entity restrictions and those that BRLS could handle, but only with otherwise available non-LSC funds (*e.g.*, over-income applicants with otherwise permissible legal matters). In 2008-2009, BRLS referred 1553 cases to LASRV, with 22, or 1.42% of them, being non-LSC eligible cases. In 2009-2010, BRLS referred 1570 cases to LASRV, with 20, or 1.27% of them, being non-LSC eligible cases. In 2010-2011, BRLS referred 1532 cases to LASRV, with 10, or 0.65% of them, being non-LSC eligible cases. In 2011-2012, BRLS referred 1359 cases to LASRV, with 23, or 1.69% of them, being non-LSC eligible cases. LASRV estimates that approximately 1% of its activities are restricted by LSC, the majority of this work historically being attorneys' fees cases prior to the lifting of the restriction in 2010.

LASRV reported that, on average, it provides services to approximately 84% of the referred cases. In 2008-2009, LASRV provided services and closed 1303 cases of the 1553 referred. In 2009-2010, LASRV provided services and closed 1350 cases of the 1570 referred. In 2010-2011, LASRV provided services and closed 1259 cases of the 1532 referred. In 2011-2012, LASRV provided services and closed 1130 cases of the 1359 referred.

According to information provided by BRLS, the estimated cost of the intake services provided to LASRV by BRLS was \$44,581.64 in 2008-2009, \$43,539.05 in 2009-2010, \$43,496.79 in 2010-2011 and \$43,893.28 in 2011-2012. The estimated cost of handling cases transferred from BRLS to LASRV was \$811,023.64 in 2008-2009, \$852,954.42 in 2009-2010, \$852,654.30 in 2010-2011, and \$890,631.21 in 2011-2012. Accordingly, the net benefit to BRLS for the exchange of services in the Roanoke office was \$766,442.00 in 2008-2009, \$809,416.37 in 2009-2010, \$809,157.50 in 2010-2011, and \$846,737.92 in 2011-2012. Based on these numbers, LSC finds that the net benefit to BRLS is of an order of magnitude sufficiently larger than the LSC-ineligible cases, which are less than 2% of the total cases, and as such not significant for further follow up or analysis under these facts.

Review of the information obtained from the program, the Operating Agreement, the General Ledger, Cash Receipts, Cash Disbursements, and the Audit Report for the period ending December 31, 2011, evidenced that since entering into the Agreement, BRLS has been, and continues to be, compensated for the intake services it provides LASRV, and as such is not subsidizing LASRV.

2. BRLS does not transfer non-LSC funds to organizations that may engage in restricted activities.

The review of the General Ledger, Cash Receipts, Cash Disbursements, and the Audit Report for the period ending December 31, 2011 evidenced that BRLS does not transfer non-LSC funds to organizations that may engage in restricted activities.

C. Physical and Financial Separation

BRLS is in substantial compliance with the requirements of 45 CFR § 1610.8(a)(3). Based on the totality of the facts gathered thus far, it appears that BRLS is sufficiently separate, physically and financially, from LASRV.

BRLS does not employ, share, nor utilize the same personnel, office space, facilities or equipment with LASRV or other entities that engage in restrictive activity. As a result of historical relationships and developments set forth above, BRLS' Roanoke office conducts intake for both BRLS and LASRV. BRLS is compensated for such services according to terms set forth in the Agreement for BRLS-LASRV Service Delivery Collaboration, signed September 2006.

45 CFR § 1610.8(a)(3) requires that LSC recipients maintain physical and financial separation from any organization that engages in restricted activities. Whether physical and financial separation exists is determined on a case-by-case basis, considering the totality of the circumstances. It is the total weight of all the factors taken together that LSC looks at in determining the strength of the grantee's physical and financial separation from the other entity.

For convenience, some of the factors are grouped according to the enumerated factor headings in 45 CFR § 1610.8(a)(3), but that is not an exhaustive list. Also, factors in one grouping, such as separation of facilities, may also have effects in other groupings, such as forms of identification.

1. *Separate personnel*

Each program maintains separate staffing. *See* Exhibit No.2, current Staffing Chart for BRLS and LASRV. Each program wholly pays its staff's salary. No staff sharing was identified.

a. At the time of the review, the BRLS Roanoke office employed three (3) full-time staff: a Managing Attorney, a Receptionist and an Intake Paralegal. A second Intake Paralegal, hired in August 2012, was employed 16 hours per week. LASRV, based solely in Roanoke, employed six (6) full-time staff: an Executive Director, three (3) Staff Attorneys, two (2) Legal Secretaries. LASRV also employed a part-time Administrator.

b. Low-income applicants living in Roanoke Valley are directed to call a BRLS local or toll-free phone number which is publically advertised. BRLS' Roanoke Receptionist answers the phone identifying the program as BRLS. She asks if the caller is seeking a particular staff member or if they would like to apply for assistance. The Receptionist stated that callers rarely inquire about differences between the programs but that she will answer questions if asked.

The Receptionist conducts a pre-screen of the caller's county of residence and legal problem. If the caller appears to have a legal issue that is handled by BRLS or LASRV, the call is transferred to an Intake Paralegal. According to the part-time Intake Paralegal, the first step of the eligibility screening process is a conflict check which reveals conflicts for both BRLS and LASRV. If a conflict is identified for either program, the applicant is rejected. If no conflict is identified, eligibility information is collected following the order of the Kemps case management system screens.

The Executive Director advised that conflict information has been collected for both program since BRLS began conducting intake for LASRV in 2001 and it is maintained in the system indefinitely. It is unclear whether the collection of eligibility information rises to the level of a conflict in the State of Virginia; however, the Executive Director acknowledged that BRLS may interpret Virginia conflicts rules more conservatively than necessary. He is nevertheless comfortable with BRLS' conflict policy.

The BRLS and LASRV Boards have adopted the same financial eligibility guidelines. *See* BRLS Eligibility Guidelines and LASRV Guidelines of Eligibility. The programs have also adopted, generally, the same priorities. ASRV's state funding prohibits several types of assistance that are also prohibited by LSC. LASRV's acceptance requirements for fee-generating cases and the prohibition of criminal cases are consistent with LSC regulations. LASRV is permitted to provide advice to undocumented persons more broadly than LSC, but it is prohibited from filing lawsuits on behalf of aliens present in the United States in violation of law and is prohibited from providing legal representation to migrant workers in employment matters. The LASRV priorities also prohibit other types of assistance consistent with LSC requirements, for example assistance in a habeas corpus proceeding collaterally attacking a criminal conviction is prohibited.

Following the eligibility screening, eligible applicants are referred to a BRLS staff member for in-house assistance or pro bono referral, or to LASRV. If referred to LASRV, depending upon the type of case, an eligible applicant is scheduled for an LASRV Debt Collection workshop held once per month, or an appointment with a LASRV staff member.

According to the Managing Attorney, the BRLS Roanoke office's limited staff handle: no fault divorces for Bedford, Franklin, and other counties - if no pro bono attorney is available; bankruptcies; birth certificate corrections; close family adoptions; and a few other miscellaneous types of cases. Pro bono attorneys largely handle no fault divorces and staff a hotline to provide advice on child support, custody, and some other family issues.

Applicants with custody cases where the opposition is represented by an attorney, domestic violence, landlord tenant, and non-bankruptcy debt collection cases are transferred to LASRV. Appointments are made for LASRV attorneys on Novell GroupWise scheduling software according to blocked time for each attorney that is prepared by LASRV each month. Each attorney has time dedicated to telephone advice, hotline, and in-person appointments. Changes to LASRV's case acceptance guidelines are verbally communicated to BRLS.

LSC prohibited cases are also referred to LASRV. Interviews with the BRLS Managing Attorney and part-time Intake Paralegal revealed that few prohibited cases are intaked by BRLS. The Managing Attorney stated that prior to the Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 103-322, being signed into law on January 5, 2006, and the repeal of LSC's regulatory prohibition on claiming of, collection and retention of attorneys' fees on February 11, 2010, most cases referred to LASRV were for undocumented persons or cases in which attorneys' fees were expected. The part-time Intake Paralegal stated that inquiries from prisoners are by mail and the letters are taken to LASRV without a BRLS intake being conducted. Data provided by BRLS prior to the review indicated that since 2001, BRLS has screened and

transferred approximately 15,500 cases to LASRV. Of these, as noted above, LASRV has sought attorneys' fees in 116 cases, assisted prisoners in 34 cases, assisted clients in 31 cases dealing with drug-related evictions from public housing, filed one (1) class action, assisted three (3) undocumented immigrants, and obtained an injunction in one (1) abortion case for a minor. It is unclear whether all of these cases were prohibited by LSC as some of the attorneys' fees cases may have occurred after the restriction was repealed and some of the prisoner cases may have involved limited assistance.

The part-time Intake Paralegal stated that applicants transferred to LASRV are advised that they have been scheduled to meet with a staff member from LASRV, a separate program. Applicants are provided the name of the staff member and LASRV's phone number and the address, with the separate suite information. While the programs have clear signage and the BRLS staff clearly explains when appointments are scheduled at LASRV, the Receptionist reported that, on occasion, people with LASRV appointments arrive at BRLS. In such cases, the Receptionist directs them to the second floor.

The cases that are transferred to LASRV are designated as Case Type "T," Transfer in the case management system. At the end of the day, the data from the transfers are deposited into a database packet and emailed to LASRV. The transfers are not considered cases for BRLS. The BRLS Managing Attorney and part-time Intake Paralegal stated that once a case is transferred, there is no communication between the programs regarding the case.

- c. Legal work of BRLS and LASRV is separate. Each program maintains its own legal staff and there is no integration of legal work management systems.
- d. There are no part-time employees that are employed by both programs.
- e. LASRV and BRLS do not share a receptionist.
- f. BRLS has its own practice and policies manuals.
- g. BRLS and LASRV staff have not collaborated as co-counsel since 1997.⁹

2. Separate accounting and timekeeping records

BRLS has established a fiscal separation from LASRV and maintains separate accounting and timekeeping records.

- a. Separate Accounting Records.* BRLS and LASRV are completely separate entities with their own management, accounting personnel, timekeeping, equipment, and separate signs and

⁹ BRLS informed the review team that since 1997, BRLS has co-counseled four (4) cases with the Virginia Poverty Law Center: *Billy Gibbs v. Gregg A. Pane, Director, Virginia Dept. of Medical Assistance Services*; *Gladys Shifflett v. Patrick W. Finnerty, Director, Virginia Dept. of Medical Assistance Services*; *Patricia Combs, Guardian of Lina Wakefield v. Cynthia B. Jones, Director, Virginia Dept. of Medical Assistance Services*; and *Adrian Whetsel v. Patrick W. Finnerty, Director, Virginia Dept. of Medical Assistance Services*. These cases were not reviewed.

entrances in place. A review of the corresponding lease of 2009 for the Roanoke office indicates that BRLS occupies the 3rd floor, with no indication of sharing space or subleasing with LASRV. The review of the General Ledger, Chart of Accounts, Payroll, and other accounting documents and interviews with staff and management indicates that BRLS and LASRV are completely separate entities physically and financially.

b. Separate Timekeeping Records. BRLS maintains its timekeeping and payroll system in a manner defined in its Policy Book. BRLS' timekeeping records are completely separate from LASRV's timekeeping records.

c. 45 CFR § 1610.9 (Accounting). The review of the General Ledger, Cash Receipts, Cash Disbursements, and Audit Report for the period ending December 31, 2011 evidenced that funds received and disbursed by BRLS from a source other than LSC are accounted for as separate and distinct receipts and disbursements in a manner directed by the LSC. The review evidenced no payments to LASRV.

3. Degree of separation from facilities in which restricted activities occur

The restricted activities that LASRV engages in include: prisoner representation, drug related evictions, class actions, representation of undocumented immigrants, abortion-related cases, and legislative and administrative advocacy.

a. In Roanoke, BRLS and LASRV offices are located on separate floors in the same building, at 132 Campbell Avenue, SW. BRLS is located in Suite 300 on the third floor and LASRV is located in Suite 200 on the second floor. There is no internal access between programs.

b. The offices are distinct with separate signage and addresses. Legal information pamphlets on LSC eligible legal subject areas, which are distributed by both BRLS and LASRV, include the LASRV address and the BRLS with separate suite numbers. The pamphlets instruct applicants to call (540) 344-2080 for an appointment. Although this is the BRLS phone number, it is located below the LASRV address and above the BRLS address and, accordingly, it is unclear that the phone number is BRLS'

c. BRLS' Roanoke Lease Agreement solely covers selected suites on the third floor

d. LASRV allows BRLS to use their conference room for a Board of Directors meeting once a year for a couple of hours in the evening. BRLS' annual meeting in Roanoke is held in the LASRV conference room, wholly contained in the LASRV office suite on the second floor of the building at 132 W. Campbell Avenue. Use of the room is necessary as the BRLS office suite on the third floor does not have sufficient space for a board meeting. Use of the LASRV conference room is provided free of charge. The LASRV Board generally meets monthly in the LASRV conference room, on separate dates than the BRLS Board.

4. Signs and other forms of identification which distinguish the recipient from the organization:

a. BRLS and LASRV have separate entrances to the office space in Roanoke. Each program is clearly identified by name with prevalent signage, which sufficiently distinguishes the organizations.

- b. Each entity has its own receptionist who answers the phone identifying its own program by name.
- c. The office directory in the building entrance lists both programs' names and separate suite numbers.
- d. BRLS and LASRV have their own letterhead and logos.
- e. All pamphlets, brochures, and documents reviewed in the Harrisonburg office related to BRLS' services and did not name or otherwise refer to LASRV.
- f. Most of the pamphlets and brochures reviewed in the Roanoke office informed LASRV applicants to contact BRLS' Roanoke office for intake screening. However, there were a few LASRV pamphlets that provided a number for the applicants to call but did not clarify that the number they were calling belonged to BRLS.
- g. BRLS and LASRV do not conduct joint fundraising.
- h. BRLS and LASRV each have their own website. There is a link on the BRLS website to LASRV's website.
- i. BRLS and LASRV have separate published mailing address.

5. *Other factors:*

- a. Since 2005, BRLS and LASRV have maintained separate Boards which hold separate meetings. While an LASRV representative attends some BRLS board meetings, they do not participate in the meetings. The BRLS and LASRV Board minutes reflect minimum discussion of the other program, except as related to the collaborative agreement.
- b. While BRLS and LASRV have developed core regional priorities, BRLS has adopted program priorities in conformance with 45 CFR Part 1620.
- c. BRLS has its own program manuals, staff directory, orientation materials, case acceptance policy, and case management and compliance forms.
- d. BRLS does not conduct intake for any other entities, with the exception of the Roanoke office which conducts intake for LASRV.
- e. BRLS and LASRV have applied for at least one (1) grant with other community partners. The application was not funded.
- f. BRLS and LASRV have entered into a collaborative agreement in which LASRV pays BRLS the state funds it receives for the Lexington service area offset by the amount BRLS underspends for services in Roanoke.

g. The programs do not share staff. The BRLS Intake Paralegals conducting intake for BRLS and LASRV are wholly employed by BRLS. Intake services are reimbursed pursuant to the collaborative agreement. No BRLS part-time staff are employed by an entity that engages in prohibited activities.

h. The programs do not share equipment.

i. BRLS and LASRV do not share space. They occupy separate floors, with separate signage, of the same building in Roanoke.

j. The BRLS and LASRV's Boards have adopted the same financial eligibility guidelines, which are consistent with LSC requirements.

k. The programs have adopted similar program priorities.

l. While BRLS and LASRV have divided responsibilities for the provision of LSC eligible services in the Roanoke Valley according to substantive legal areas, legal work systems are independent and the programs do not co-counsel cases together.

m. A BRLS conflict check includes conflicts for LASRV. If a conflict is identified for either program, the applicant is rejected

n. The two (2) programs use separate Kemps systems as its case management system. They do not share a database, administration, or maintenance.

The weight of the factors and the information obtained during the review demonstrate a sufficient physical and financial separation between BRLS and LASRV and other unrestricted organizations. A few recommendations were made throughout the onsite review.

V. RECOMMENDATIONS¹⁰

In view of the foregoing, OCE recommends that BRLS:

1. Clarify in future printings of brochures that the advertised appointment telephone number is that of BRLS;
2. Reduce to writing the case referral guidelines for cases transferred to LASRV; and
3. Purge income eligibility information from the ACMS, once it is determined that the applicant's case cannot be accepted due to a conflict.

¹⁰ Items appearing in the "Recommendations" section are not required by LSC for compliance purposes. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the recipient with items addressed in the report. Often recommendations address potential issues and may assist a recipient in avoiding future compliance errors. By contrast, the items listed in the "Required Corrective Actions" section must be addressed by the recipient, and will be enforced by LSC.

VI. REQUIRED CORRECTIVE ACTIONS

Based on the forgoing, BRLS is required to take the following corrective actions:

None.

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BLUE RIDGE LEGAL SERVICES, INC.

204 N. HIGH STREET
P.O. Box 551
HARRISONBURG, VIRGINIA 22803
(540) 433-1830
FAX (540) 433-2202

DANA J. CORNETT
PRESIDENT

JOHN E. WHITFIELD
EXECUTIVE DIRECTOR
& GENERAL COUNSEL



(800) 237-0141
FOR CLIENTS ONLY

PLEASE RESPOND TO BOX 551
February 26, 2013

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

LEGAL SERVICES CORP
FEB 22 10 56 AM '13
OFFICE OF COMPLIANCE

**Re: Comments to Program Integrity Review Draft Report
from Blue Ridge Legal Services, Inc., Recipient # 447081**

Dear Ms. Rath:

I am writing to provide our comments to the LSC's Draft Report, dated January 29, 2013, for the on-site Program Integrity Review of Blue Ridge Legal Services, Inc. which took place November 13-14, 2012.

As a preliminary matter, I want to convey my appreciation for the professionalism and cordiality displayed by the LSC's Program Integrity Review team leader and team members during their visit. They were a pleasure to work with.

Having reviewed the Draft Report a number of times, I have not found any material factual errors or inaccuracies set forth in the document, nor do I have any objections to the draft report's findings, recommendations and conclusions.

With kind regards, I remain

Yours truly,

John E. Whitfield
Executive Director