



### Program Letter 13-1

**TO:** All Executive Directors

**FROM:** James J. Sandman, President 

**DATE:** February 15, 2013

**SUBJECT:** Compliance Guidance

---

This Program Letter describes the most common compliance issues observed by LSC staff during compliance oversight visits to legal services programs in 2012. We highlight these issues to alert you to potential risks in your organization so that you can take steps to avoid or mitigate them.

#### **Fiscal Management Issues**

The following are the fiscal internal controls issues requiring corrective action that arose most often during recent on-site reviews:

- Bank statement reconciliations to the general ledger should be conducted on a monthly basis and should be reviewed and approved by a responsible individual. The review must be appropriately documented and signed and dated. Bank reconciliations should be conducted by an individual who has no access to cash, is not a check signer, and has no cash bookkeeping duties. *See Accounting Guide for LSC Recipients (2010 Edition), § 3-5.2(d).*
- Voided checks should be recorded and retained. Voided or damaged checks should be entered into the General Ledger as VOID, should be marked "VOID" or defaced in a manner that would prevent their future use, and should be retained and filed (in a void check file or in sequence with canceled checks). *See Accounting Guide for LSC Recipients (2010 Edition), Appendix VII, § G1.7.*
- Journal entries should be approved by the Executive Director or other authorized individual. *See Accounting Guide for LSC Recipients (2010 Edition), § 3-5.6.*
- Accounting duties should be segregated to ensure no single individual can initiate, execute, and record a transaction without a second independent individual being involved in the process. Someone other than the initial preparer should be responsible for reviewing journal entries, and the review should be properly documented by a

signature and date. *See* Accounting Guide for LSC Recipients (2010 Edition), § 3-4.3 and Appendix VII, § A.11.

- Outstanding stale checks (over six (6) months old) should be investigated and resolved in accordance with the Accounting Guide for LSC Recipients or the grantee's board-approved policy. *See* Accounting Guide for LSC Recipients (2010 Edition), Appendix VII, § I.7.
- Salaries of attorneys and paralegals must be allocated based on total compensation, rather than actual hours, when determining PAI cost-allocation amounts. *See* 45 CFR § 1614.3(e)(1) and OMB Circular A-122 Cost Principles for Non-Profit Organizations.

### **Specific Regulatory Issues**

Pursuant to Grant Assurance Number 1, each LSC grantee assures that it will comply with LSC's regulations. Grantees should periodically review, and update, as necessary, all program policies and procedures to confirm compliance with any changes to LSC's regulations and/or directives. During recent on-site visits, the following regulatory areas were identified as requiring additional attention:

#### **45 CFR Part 1610 - Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity**

- Grantees may not accept funds in the amount of \$250.00 or more from any source other than the Corporation unless the grantee provides written notification of the prohibitions and conditions that apply to such funds. *See* 45 CFR § 1610.5.

- The LSC Board of Directors offered the following guidance at the time the final rule was published:

“Generally, notification should be provided before the recipient accepts the funds. Thus, notice should be given during the course of soliciting funds or applying for a grant or contract. However, for unsolicited donations where advance notice is not feasible, notice should be given in the recipient's letter acknowledging the contribution.”

62 Fed. Reg. 27,695 at 27,696 (May 21, 1997). Available on-line at:  
<http://www.lsc.gov/sites/default/files/LSC/pdfs/1997-05-211610FinalRule.pdf>

- Grantees may not transfer LSC funds to an organization that engages in LSC restricted activities. LSC funds also cannot subsidize restricted activities. *See* 45 CFR § 1610.8(a)(2). Grantees must keep this requirement in mind when partnering,

coordinating, or working with organizations that do restricted work, even if the purpose or object of the joint efforts is not itself restricted.

#### **45 CFR Part 1611 – Financial Eligibility**

- Grantees must screen applicants regarding income prospects and record the responses appropriately, regardless of intake method. *See* 45 CFR § 1611.7(a)(1); *see also* Office of Legal Affairs (“OLA”) Advisory Opinion # AO-2009-1006, available online at [http://www.lsc.gov/sites/default/files/LSC/lscgov4/AO\\_2009\\_1006.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/AO_2009_1006.pdf).
- Recipients should ensure that the value of food stamps is not used in the calculation of income. *See* 45 CFR § 1611.2(i).
- Pursuant to 45 CFR § 1611.3, grantees must periodically review their Part 1611 policy, and revise as necessary, to ensure continued compliance with LSC regulatory requirements. Special attention should be paid to §§ 1611.2(d), 1611.4(c), and 1611.6. The Office of Compliance and Enforcement (“OCE”) is available to review proposed policy changes and provide comments.
  - Grantees should consider eliminating the distinction between liquid and non-liquid assets in financial eligibility policies. LSC revised this former practice in 2005 in favor of language that focused more on the availability of assets. *See* 45 CFR § 1611.2(d).
  - Grantees should clarify in their financial eligibility policies that the exception under 45 CFR § 1611.4(c) (governmental program for the poor exception) only applies when an applicant’s sole source of income is derived from the selected governmental program(s).
  - Grantees should revise their financial eligibility policies to include the representation of groups, if the grantee has determined to consider providing such representation. Revisions should be made in accordance with 45 CFR § 1611.6, which lays out the screening and documentation requirements of group client eligibility.
- Group client application procedures must document all of the information required by 45 CFR § 1611.6 evidencing that the applicant group has no practical means of obtaining private counsel, in accordance with 45 CFR § 1611.6(a), and that the group “...is primarily composed of individuals who would be eligible for LSC-funded legal assistance,” in accordance with 45 CFR § 1611.6(a)(1), *or* that “[t]he 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 that activity,” in accordance with 45 CFR § 1611.6(a)(2).

#### **45 CFR Part 1612 – Restrictions on Lobbying and Certain Other Activities**

Pursuant to the requirements of 45 CFR § 1612.11, grantees must ensure that its Part 1612 policy is compliant. Additionally, pursuant to 45 CFR § 1612.10, grantees must ensure that separate recordkeeping and accounting records are maintained for any legislative and rulemaking activities undertaken with non-LSC funds.

#### **45 CFR Part 1614 – Private Attorney Involvement**

- Administrative, overhead, staff, support costs, and non-personnel costs should be allocated on the basis of reasonable operating data pursuant to 45 CFR § 1614.4(3)(e)(1)(i).
- Grantees must not include costs associated with the referral of ineligible applicants toward their PAI expense requirement. *See* 45 CFR § 1614.3.
- Grantees must ensure that any allocations of the direct time of attorneys and paralegals as a cost towards their PAI requirement is documented by time sheets accounting for the time spent on PAI activities. *See* 45 CFR § 1614.3(e)(1)(i).

#### **45 CFR Part 1626 – Restrictions on Legal Assistance to Aliens**

- Pursuant to the requirements of 45 CFR §§ 1626.6 and 1626.7, grantees must ensure that applicants and clients who are seen in person, as well as clients receiving extended services, execute a citizenship attestation or demonstrate alien eligibility and that all files contain the necessary documentation pursuant to CSR Handbook (2008 Ed., as amended 2011), § 5.5.
  - A person using a telephone in a grantee's branch office to call a centralized intake unit is considered an applicant seen in person. *See* OLA Advisory Opinion # AO-2009-1002, available on-line at: [http://www.lsc.gov/sites/default/files/LSC/lscgov4/AO\\_2009\\_1002.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/AO_2009_1002.pdf).
  - Similarly, persons who walk in to an office and sign up for a later call-back telephone intake interview are regarded as seen in person.
  - This Part must be satisfied even when in person contact is limited to a client dropping off paperwork.

#### **45 CFR Part 1630 – Cost Standards and Procedures**

- Grantees should not use LSC funds to pay for late fees, such as late credit card payment charges. LSC regulations require that only costs “reasonable and necessary for the performance of the grant or contract” be charged to the LSC grant. *See* 45 CFR § 1630.3(a)(2).

### **Technology Initiative Grants (“TIG”)**

- LSC’s TIG funds are subject to the LSC Act and other authorities, as detailed in TIG Award Letters and the Grant Assurances accompanying these awards.
  - For each individual TIG grant awarded, direct personnel costs must be supported by personnel activity reports, pursuant to 45 CFR § 1630.3(d).
  - Revenue and expenses relating to TIG funds must be reported separately in grantees’ annual audit reports submitted to LSC, and grantees must seek prior approval from the OCE Director before expending TIG funds after the expiration date of the grant as required by 45 CFR § 1628.3(g).

### **Case Service Reporting Issues**

LSC’s ability to report reliable case data to Congress and the public depends on each grantee’s compliance with the requirements of the CSR Handbook (2008 Ed., as amended 2011). Based on recent on-site visits, the following areas were identified as requiring increased awareness:

- Citizenship status or alien eligibility must be documented in all cases. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5.
- Legal assistance provided to a client must be documented in the case file or the CMS in order for a case to be reportable. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.6.
  - *Legal advice* provided to a client can be reported in CSR data, but *legal information* provided to an ineligible applicant cannot be reported. The same advice/information cannot be called legal advice in one place and legal information in another. *See* CSR Handbook (2008 Ed., as amended 2011), §§ 2.2 and 2.3.
  - PAI attorneys conducting *pro se* divorce clinics must document legal assistance that meets the requirements of the CSR Handbook § 5.6 (2008 Ed., as amended 2011) when such cases are included in CSR data.
- “LSC eligible” defaults in Automated Case Management Systems must be removed, as this is in an essential category of eligibility that must be determined affirmatively. *See* CSR Handbook (2008 Ed., as amended 2011), Chapter III.

If you have a concern or question regarding compliance with LSC regulations or directives, particularly the compliance areas noted in this Letter, please contact Lora M. Rath, the OCE Director, at [rathl@lsc.gov](mailto:rathl@lsc.gov) or 202-295-1524. In addition, OCE is available to provide both Executive Director Orientation and CSR Handbook training upon request. In most cases, training will be done via webcast. Training requests should also be submitted to Ms. Rath.