

Program Letter 14-1

TO: All Executive Directors
FROM: James J. Sandman, President 
DATE: February 24, 2014
SUBJECT: Compliance Guidance

This Program Letter describes the most common compliance issues that Legal Services Corporation (“LSC”) staff observed during compliance oversight visits in 2013 and offers compliance guidance with respect to those matters. We highlight these issues so that you can avoid or mitigate compliance risks. More extensive guidance, including examples of how LSC grantees have implemented the compliance requirements listed below, can be found in LSC’s Office of Compliance and Enforcement (“OCE”) reports, which are available at <http://www.lsc.gov/local-programs/program-visit-reports/office-compliance-enforcement-office-program-performance-program-visit-reports>.

Fiscal Management Issues

- To maintain sufficient internal controls, accounting duties should be segregated to ensure no single employee has the authority to initiate, execute, and record financial transactions without a second independent individual being involved in the process. For example, 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) (“LSC Accounting Guide”), § 3-4.3 and Appendix VII, § A(11).*
- 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, 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 LSC Accounting Guide, § 3-5.2(d).*
- Outstanding stale checks (over six (6) months old) should be investigated and resolved in accordance with the LSC Accounting Guide or the grantee’s board-approved policy. *See LSC Accounting Guide, Appendix VII, § I (7).*

Specific Regulatory Issues

Required Written Policies and Procedures

- Certain LSC regulations require grantees to adopt written policies and procedures. Grantees should periodically review their written policies and procedures to ensure they meet these requirements. *See* 45 CFR §§ 1604.3, 1605.3, 1609.6, 1611.3, 1612.11, 1617.4, 1619.2, 1620.4, 1626.12, 1627.8, 1632.4, 1633.4, 1636.5, 1637.5, 1638.5, 1639.6, 1643.5, and 1644.5. OCE is available to review proposed policy changes and provide comments.

45 CFR Part 1607 – Governing Bodies

- Grantees should regularly evaluate the composition of their governing bodies to ensure compliance with the requirements of 45 CFR Part 1607. Specific attention should be paid to composition-related requirements provided under 45 CFR § 1607.3 (providing specific requirements for, among other things, the appointment of attorney, non-attorney, and client board members).

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. 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 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. 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. 45 CFR § 1611.7(a)(1); *see also* Office of Legal Affairs (“OLA”) Advisory Opinion # AO-2009-1006, available at http://www.lsc.gov/sites/default/files/LSC/lscgov4/AO_2009_1006.pdf.
- 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 the exclusive list of allowable asset exceptions in 45 CFR § 1611.3(d)(1). OCE is available to review proposed policy changes and provide comments.
- Grantees must sufficiently document the basis for financial eligibility under 45 CFR Part 1611. Special attention should be paid to the requirement in 45 CFR § 1611.5(b) that “[i]n the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination[, and] shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.”
- Pursuant to 45 CFR § 1611.9, “[w]hen a recipient provides extended services to a client, the recipient shall execute a written retainer agreement with the client...[which] shall include, at a minimum, a statement identifying the legal problem, and the nature of the legal services to be provided.”

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

- Pursuant to 45 CFR § 1612.10, grantees must maintain separate recordkeeping and accounting records for any legislative and rulemaking activities undertaken with non-LSC funds. LSC recipients must track and maintain information in a way that provides sufficient separation to permit them to clearly and easily provide information to LSC “documenting the expenditure of non-LSC funds” for certain legislative and rule making activities for which they can use only non-LSC funds. 45 CFR § 1612.10(b).

45 CFR Part 1614 – Private Attorney Involvement (“PAI”)

- For administrative, overhead, staff, and support costs:
 - Non-personnel costs should be allocated on the basis of reasonable operating data.
 - Direct or indirect time of staff attorneys or paralegals allocated as a cost to PAI must be documented by time sheets, while personnel costs allocations for non-

attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented. 45 CFR § 1614.3(e)(1)(i).

- Under 45 CFR § 1614.3(d), “[s]ystems designed to provide direct services to eligible clients by private attorneys on either a pro bono or reduced fee basis, shall include at a minimum” those attributes listed in 45 CFR § 1614.3(d)(1-4). Particular attention should be paid to the requirement that the system include “[c]ase oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources[.]”¹ 45 CFR § 1614.3(d)(3).

45 CFR Part 1626 – Restrictions on Legal Assistance to Aliens

- Pursuant to 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.

45 CFR Part 1627 – Subgrants and Membership Fees or Dues

- Recipients may not use LSC funds to pay dues to any private or nonprofit organization other than dues mandated as a requirement of practicing a profession by a governmental organization. 45 CFR § 1627.4.

45 CFR Part 1630 – Cost Standards and Procedures

- LSC regulations require that only costs “reasonable and necessary for the performance of the grant or contract” be charged to the LSC grant. 45 CFR § 1630.3(a)(2).
 - LSC grantees should regularly evaluate their compensation policies. Office of Management and Budget (“OMB”) Circular No. A-122 provides guidance to assist grantees with ensuring their compensation systems are allowable and reasonable. *See* OMB Circular No. A-122, Attachment B, ¶ 8 (Revised May 10, 2004). It also includes guidance on “incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.” OMB Circular No. A-122, Attachment B, ¶ 8(a).

45 CFR Part 1635 – Timekeeping Requirement

- Time spent by attorneys and paralegals must be documented by contemporaneous time records that record the amount of time spent on each case, matter, or supporting activity. 45 CFR § 1635.3(b).

¹ Although LSC does not require a grantee to adopt specific oversight procedures to meet this requirement, LSC has found that the most successful oversight systems typically include, at a minimum, quarterly or bi-annual updates from the pro bono or reduced fee attorney with whom the case was placed.

Technology Initiative Grants

- LSC's Technology Initiative Grants ("TIG") funds are subject to the LSC Act and other authorities, as detailed in TIG Award Letters and the Grant Assurances accompanying these awards. 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 LSC before expending TIG funds after the expiration date of the grant as required by 45 CFR § 1628.3(g). Grantees with outstanding TIG fund balances should contact LSC to schedule the return of those funds to LSC.

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. CSR Handbook (2008 Ed., as amended 2011), § 5.5.
- Legal assistance, including specific legal advice, provided to a client must be documented in the case file or the CMS in order for a case to be reportable. CSR Handbook (2008 Ed., as amended 2011), § 5.6.
- Grantees are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. CSR Handbook (2008 Ed., as amended 2011), § 3.2.
- Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. CSR Handbook (2008 Ed., as amended 2011), § 6.1, Chapter VIII.
- Defaults in Automated Case Management System fields important to a determination of eligibility must be removed. CSR Handbook (2008 Ed., as amended 2011), § 3.6 and LSC Program Letter 02-06 (June 6, 2002), available at http://grants.lsc.gov/sites/default/files/Grants/pdfs/Prgltr2002_6.htm.

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 or 202-295-1524. In addition, OCE is available to provide Executive Director Orientation or CSR Handbook training upon request. In most cases, training will be done via webcast. Training requests should also be submitted to Ms. Rath.