



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

**Legal Aid and Defender Association, Inc.  
Case Service Report/Case Management System Review  
June 7 – 11, 2010**

Recipient No. 423148

## **I. EXECUTIVE SUMMARY**

**Finding 1: LAD's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.**

**Finding 2: LAD's intake procedures and case management system support the program's compliance related requirements.**

**Finding 3: LAD's financial eligibility policy is not consistent with the requirements of 45 CFR Part 1611.**

**Finding 4: Without exception, the LSC-funded files that were reviewed during the visit contained the income documentation required by LSC.<sup>1</sup>**

**Finding 5: Without exception, the LSC-funded files that were reviewed during the visit contained the asset determination required by LSC.**

**Finding 6: LAD is in non-compliance with the documentation requirements of 45 CFR Part 1626.**

**Finding 7: Nine (9) exceptions to the requirements of 45 CFR § 1611.9 were noted.**

**Finding 8: Without exception, the files that were reviewed during the visit that required a Part 1636 statement of facts contained one.**

**Finding 9: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).**

**Finding 10: With six (6) exceptions, the files that were reviewed during the visit contained a description of the legal assistance provided to the client.**

**Finding 11: Without exception, LAD's application of the CSR case closure categories is consistent with Chapter VIII, CSR Handbook (2008 Ed.)**

**Finding 12: With five (5) exceptions, the files that were reviewed during the visit demonstrated LAD's compliance with CSR Handbook (2008 Ed.), § 3.3, Timely Closing of Cases.**

**Finding 13: No duplicates were identified among the files that that were reviewed during the visit.**

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<sup>1</sup> There were four (4) non-LSC funded files that were reviewed during the visit that involved financially ineligible clients. See Main open File Nos. 200915742, 200913808, 201003614, and 200916130. Although these files were not identified for exclusion from LAD's CSR data submission to LSC, LAD provided assurances that once the legal assistance had been completed the files would be so identified.

**Finding 14: A review of policies, financial records, and the sample of cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).**

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

**Finding 16: A limited review of LAD's accounting and financial records indicate substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

**Finding 17: The activities undertaken by LAD to meet the requirements of 45 CFR Part 1614 are consistent with LSC regulations.**

**Finding 18: Contrary to the requirements of 45 CFR §§ 1614.3(e)(1) and (2), LAD does not accurately identify all staff costs related to its PAI activities, does not allocate common costs on the basis of reasonable operating data, and for Fiscal Year ("FY") 2009 its auditors did not render an opinion on the requirements of 45 CFR Part 1614.**

**Finding 19: LAD is in substantial compliance with 45 CFR Part 1627 (Subgrants and membership fees or dues) however, care should be taken to ensure consistency in assigning general ledger accounts for posting.**

**Finding 20: LAD is in substantial compliance with 45 CFR Part 1635 (Timekeeping).**

**Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

**Finding 22: Sampled cases and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

**Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).**

**Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).**

**Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

**Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).**

**Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

**Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).**

**Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

**Finding 30: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a)(8) (Abortion), 42 USC 2996f § 1007 (a)(9) (School desegregation litigation), and 42 USC 2996f § 1007 (a)(10) (Military selective service act or desertion)).**

**Finding 31: LAD's Internal Control Structure compares favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System. (Accounting Guide for LSC Recipients - Chapter 3).**

## II. BACKGROUND OF REVIEW

On June 7 thru 11, 2010, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management Systems ("CSR/CMS") on-site visit at Legal Aid and Defender Association, Inc. ("LAD"). The purpose of the visit was to assess LAD's compliance with the LSC Act, regulations, and other applicable law. The visit was conducted by a team of three (3) OCE program counsel, one (1) OCE program analyst, and one (1) fiscal consultant.

Founded in 1909, LAD is a non-profit legal services organization that provides free legal services to low-income Michigan residents.<sup>2</sup> LAD receives annual grants from LSC for the purpose of providing legal assistance to persons eligible for legal assistance under the LSC Act in LSC service area MI-13, consisting of Wayne, Oakland and Macomb counties. In 2008, LAD received LSC basic field funding in the amount of \$3,707,470.00. In 2009, it received an LSC basic field award of \$4,080,124, and, in 2010, it was awarded \$4,405,468.00. Upon receipt of its LSC grant, LAD agreed, in writing, to comply with the requirements of the LSC Act, applicable appropriations acts and other applicable laws, the regulations promulgated by LSC, and such other rules, policies, guidelines, instructions and directives issued by LSC. In addition, LAD has applied for and received Technology Initiative Grants ("TIG") during this period, which have been reported separately.

LAD also received grant and contract support from various local, State and Federal, and private sources. According to LSC's Recipient Information Network, LSC, non-LSC grant support, derivative income and fundraising revenue totaled \$8,264,672.00 in 2008 and \$8,564,873.00 in 2009. See [www.rin.lsc.gov](http://www.rin.lsc.gov).

LAD is headquartered in Detroit and maintains offices in Pontiac and Clinton Township. It is staffed by its Executive Director, Finance Director, Chief Counsel, Deputy Chief Counsel, Director of Legal Information Systems, Director of Litigation, Director of Community and Governmental Affairs, five (5) Managing Attorneys, two (2) Supervising Attorneys, 23 staff attorneys, five (5) Equal Justice Works attorneys, ten (10) paralegals, and various other administrative, secretarial and clerical employees.

According to the Statement of Priorities provided by LAD prior to the visit, its priorities are assisting clients in:

1. obtaining and maintaining basic income and other necessities for household stability;
2. securing health care;
3. preventing homelessness;
4. obtaining and maintaining access to education;
5. legal matters that result in securing accessibility to efficient, reliable and affordable transportation;
6. securing safety from violence in their homes; and

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<sup>2</sup> LAD's LSC funding is used to support the operation of its Civil Law Group. LAD also provides non-LSC funded juvenile and criminal legal assistance. As such, the focus of the visit – and this report – was the operation of LAD's Civil Law Group and LAD's administration of the funds used to support the group.

7. maintaining stable homes for children.

For 2008, LAD reported 8,998 closed cases. Family law accounted for approximately 26% of all closed cases; housing, 25%; consumer/finance, 24%; income maintenance, 8%; employment, 5%; and miscellaneous, 10%. Education, juvenile, health, and individual rights combined for approximately 2%. Approximately 91% of all closed cases were closed after counsel and advice or limited action; 3% were court decision; 1% were agency decisions; and 2% were settled. Extended services and other accounted for approximately 4% of all closed cases. In that same year, LAD reported an error rate of 4.8%. Exceptions were noted with respect to CSR Handbook (2008 Ed.), §§ 3.2, 5.5, and 5.6.

For 2009, LAD reported 8,308 closed cases. Family law accounted for approximately 26% of all closed cases; housing, 25%; consumer/finance, 23%; income maintenance, 10%; employment, 3%; and miscellaneous, 11%. Education, juvenile, health, and individual rights combined for less than 2%. Approximately 90% of all closed cases were closed after counsel and advice or limited action; 3% were court decision; 2% were agency decisions; and 1.5% were settled. Extended service and other accounted for some 3% of all closed cases. In that same year, LAD reported an error rate of 1.2%. Exceptions were noted with respect to CSR Handbook (2008 Ed.), § 3.2.

The on-site visit was designed and executed to assess LAD's compliance with basic client eligibility, intake, case-management, statutory and regulatory requirements, the reporting requirements set forth in the CSR Handbook (2008 Ed.). Specifically, the review team assessed LAD's compliance with regulatory requirements 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1611 (Financial eligibility); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 (Restrictions on legal assistance with respect to criminal proceedings); 45 CFR Part 1614 (Private attorney involvement) ("PAI"); 45 CFR Part 1615 (Restrictions on action collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1620 (Priorities in use of Resources); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR Part 1627 (Sub-grants and membership fees or dues); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1642 (Attorneys' fees);<sup>3</sup> 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing); and Section 1007(b)(8) – (10) of the LSC Act, 42 USC §§ 2996f(b)(8) – (10) (Abortion, school desegregation litigation, Military Selective Service Act or desertion).

In preparation for the visit, OCE requested that LAD provide, among other things, a list of all cases reported to LSC in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases reported to

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<sup>3</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.

LSC in its 2009 CSR data submission (“closed 2009 cases”), a list of all cases closed between January 1, 2010 and April 15, 2010 (“closed 2010 cases”), and a list of all cases which remained open as of April 15, 2010 (“open cases”). 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. LAD 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 4, 2005). LAD was instructed to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

LAD advised OCE that it would afford OCE access through the use of staff intermediaries. Thereafter, LAD provided the requested materials. OCE then selected a sample of 543 case files to be reviewed during the visit. An effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was distributed proportionately among open and closed cases, as well as among LAD’s various office 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.

During the visit, LAD cooperated fully. It provided all requested materials in a timely manner. LAD afforded access to information in the case files through the use of intermediaries. LAD disclosed financial eligibility information, the problem code, and the general nature of the legal assistance provided to the client.<sup>4</sup> Additionally, LAD displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements and Part 1636 statements. OCE also interviewed members of LAD’s upper and middle management, fiscal personnel, staff attorneys and support staff. The visit also included an assessment of LAD’s case intake, case acceptance, case management, and case closure practices and policies.

OCE visited LAD’s Main office in Detroit and its offices in Pontiac and Clinton Township.<sup>5</sup> During the visit, OCE interviewed LAD’s Executive Director, its Finance Director, the Grants Manager, the Vice President for Human Resources, the Chief Counsel of the Civil Law Group, the Director of Legal Information Systems, the Program Services Officer, and several of LAD’s Managing Attorneys. A review of pertinent program files and documentation was also conducted in order to gain an understanding and explanation of program operations, policies and procedures sufficient to assess facts and circumstances regarding the fiscal operation of LAD during the period January 1, 2008 and April 15, 2010. OCE also reviewed 543 files, including 135 open files, 142 closed 2010 files, 146 closed 2009 files, and 120 closed 2008 files. Eighty-five (85) of the files that were reviewed were selected to test for compliance with certain regulatory and reporting requirements. The remaining 458 files that OCE reviewed were randomly selected.

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<sup>4</sup> Using LAD’s automated case management system, all of the files that were reviewed during the visit were reviewed online.

<sup>5</sup> During the visit, OCE discovered that LAD relocated one of its staffed branch offices. LAD was reminded that LSC Grant Assurance No. 14 requires recipient to notify the LSC Office of Information Management within (30) calendar days after a decision to close or relocate any main or staffed branch office.

An attempt was made to advise LAD of any compliance issues during the course of the visit. This was accomplished by notifying intermediaries and managing attorneys of any compliance issues identified during the case reviews. At the conclusion of the visit, OCE held a brief exit conference during which OCE advised LAD of its preliminary findings. OCE advised LAD that while no patterns of non-compliance were detected, there were instances of non-compliance with certain regulatory and reporting requirements, including citizenship/alien eligibility documentation, documentation of the legal assistance provided to the client, timely closing of cases, and incomplete retainer agreements. LAD was instructed that such findings were merely preliminary and that OCE might well make further and more detailed findings in this report.

By letter dated July 7, 2010, OCE issued a Draft Report (“DR”) detailing its findings, recommendations, and required corrective actions. LAD was afforded an opportunity to review the DR and submit written comments. By letter dated August 20, 2010, LAD submitted its comments and corrections to the DR. OCE has carefully considered LAD’s comments and corrections and made such revisions as it deems appropriate. LAD’s comments and corrections are reflected in this Final Report and have been attached as an appendix hereto.

### III. FINDINGS

**Finding 1: LAD’s automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.**

Recipients are required to utilize ACMS and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2008 Ed.), § 3.1.

LAD uses Microsoft “SharePoint”, which allows staff online access to case information and LAD’s various policy and operations manuals. Documents, including client signatures, are scanned into the ACMS, allowing ready retrieval of important case information and reducing storage costs. The CSR Handbook is also accessible using SharePoint and LAD advised that staff attended an LSC sponsored CSR training in Chicago, IL.

The ACMS features compliance templates which facilitate management review of cases. Monthly reports are generated and used to identify cases that do not conform to LSC’s regulatory and reporting requirements. Consistent with CSR Handbook (2008 Ed.), § 3.5, such cases are coded for exclusion from LAD’s CSR data submission to LSC.

The information contained in the case lists provided by LAD prior to the visit was consistent with the information disclosed during the visit.<sup>6</sup>

In its response to the DR, LAD provided additional information relative to two (2) of the files cited in the DR. Specifically, LAD explained that the advocates identified in the case lists in two (2) of the files cited in the DR was consistent with the advocates identified by LAD during the review.

OCE has considered the information provided by LAD and has revised the Final Report accordingly.

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

LAD’s intake and eligibility screening is centralized except for walk-in clients. The Oakland and Macomb offices conduct their own intake for walk-in applicants. The practices and procedures were substantially identical in all three (3) of LAD’s offices.

Applicants may either telephone the centralized intake line or walk-in during the designated times at the Oakland or Macomb offices. Centralized intake is conducted in Detroit, Monday through

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<sup>6</sup> Main open File No. 200913635 appeared as a staff case on the case lists provided by LAD, but during the review of the case, LAD disclosed that it had been referred to PAI. In Main open File No. 201004500 the advocate identified in the case lists was different from the one identified by LAD during the review. LAD explained that the case had been re-assigned.

Thursday from 9:00 am – 11:00 am, and 1:00 pm - 3:00 pm. There is no intake, except for emergency cases on Fridays.

Intake and eligibility screening is conducted in two steps. The screener first establishes that the case is within LAD's priorities and the applicant is eligible. Once this determination is made, the screener conducts a conflict check and then proceeds with the screening in SharePoint.

For walk-in applicants, the receptionist hands the applicant a packet which includes a manual intake form and a citizenship attestation form. The manual intake forms are identical in each office. Once the forms are completed the receptionist reviews the document to ensure that it was completed properly. Thereafter, the information is entered into SharePoint and forwarded to the appropriate advocate. If intake is being conducted over the telephone, the receptionist completes a short manual intake form which captures the applicant's legal problem and LSC eligibility information. The screener then conducts a conflict check and if there is no conflict enters the information into SharePoint and proceeds to a full intake screening.

There were no defaults noted in LAD's ACMS with respect to citizenship, income and asset information. The receptionist enters the information into SharePoint as prompted. For applicants whose income exceeds the applicable guidelines, SharePoint prompts the screener to select one (1) of the factors listed in 45 CFR § 1611.5. Questions regarding prospective income are asked by all the screeners interviewed.

None of the screeners that were interviewed were fully aware of LSC Program Letter 06-02 (February 21, 2006), "Violence Against Women Act 2006 Amendments". Nor did they seem to be aware of the requirements of 45 CFR § 1611.3(e).

In its response to the DR, LAD stated that no comments were required.

**Finding 3: LAD's financial eligibility policy is not consistent with the requirements of 45 CFR Part 1611.**

LSC regulations require that the governing body of a recipient adopt policies consistent with 45 CFR Part 1611 for determining the financial eligibility of applicants and groups. At a minimum, each recipient's financial eligibility policy must: (1) 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; (2) establish an annual income ceiling not to exceed 125% of the Federal Poverty Guidelines; (3) establish asset ceilings; and (4) specify that, notwithstanding any other provisions of the regulation or the recipient's financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the applicant and shall not consider any assets jointly held with the abuser. *See* 45 CFR §1611.3; *see also*, 70 *Federal Register* 45545, 45550 (August 8, 2005).

In reviewing the financial eligibility policy adopted by LAD, *see* "Legal Aid and Defender Association, Civil Law Group, Legal Services Corporation Regulations: Policies and Procedures

Manual” (“LSC Policy Manual”) pages 6-7, OCE notes that it does not 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; nor does it specify that, notwithstanding any other provisions of the regulation or the recipient’s financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the applicant and shall not consider any assets jointly held with the abuser. Accordingly, LAD is directed to take such action as to comply with the requirements of Part 1611.

Regarding assets, the policy excludes the applicant’s principal residence, one automobile, liquid and non-liquid assets up to \$5,000.00, personal and household effects, the reasonable equity value of tools or equipment necessary for employment, including farmland or farm equipment used for employment, assets excluded under AFDC, food stamps, or SSI programs, and any assets necessitated by or attributable to a medical condition or disability.

The list of excludable assets set forth at 45 CFR § 1611.3(d) is exhaustive. *See 70 Federal Register*. 45545, at 45550 - 45551 (August 8, 2005). Accordingly, LAD’s asset policy is consistent with LSC regulations only to the extent that the one automobile excluded from consideration is a vehicle used for transportation, and that the personal and household effects, the assets excluded under AFDC, food stamps, or SSI programs, and the assets necessitated by or attributable to a medical condition or disability are assets exempt from attachment under state or federal law. In response to this Draft Report, LAD is requested to provide a citation to the federal or state law exempting these assets from attachment.

Finally, OCE notes that Section C. of the policy states:

The Chief Counsel or designee may, consistent with the federal regulations, waive the income and asset limitations of this policy in unusual or meritorious cases.

While a recipient’s financial eligibility policy may provide authority for waiver of the recipient’s asset ceiling, under no circumstances is a recipient authorized to “waive” its LSC annual income ceiling. As such, an amendment to Section C. of the policy is warranted.

In its response to the DR, LAD reported that it has revised its LSC Policy Manual to reflect that only individuals and groups determined to be financially eligible under its financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds. The revision also contains the language required by 45 CFR § 1611.3(e) and provides authority for the Chief Counsel or designee to waive asset - but not income - ceiling. The response also provided citations to the federal and state laws exempting the listed assets from attachment.

**Finding 4: Without exception, the LSC-funded files that were reviewed during the visit contained the income documentation required by LSC.<sup>7</sup>**

For each case reported to LSC, recipients are required to record the number of members in the applicant's household and the total income received by all members of the applicant's household. *See* CSR Handbook (2008 Ed.), § 5.3. The documentation of eligibility shall be recorded electronically in a case management system record, or in a simple form as provided by 45 CFR § 1611.7(b) and shall be preserved for audit purposes for a period of five years. *See* CSR Handbook (2008 Ed.), § 5.2.

Without exception, the LSC-funded files that were reviewed during the visit contained the income documentation required by LSC.

In its response to the DR, LAD acknowledged that an applicant whose income does not exceed 200% of the Federal Poverty Guidelines may be determined income eligible based on the recipient's consideration of the applicant's transportation expenses necessary for employment, job training, or educational activities in preparation for employment. *See* 45 CFR § 1611.5(a)(4)(iv). However, LAD argued that the transportation expenses of an unemployed applicant seeking employment is a significant factor that it has determined affect an applicant's ability to afford legal assistance. In support of its argument, LAD cites the high rate of employment in its service area and the fact that transportation issues are among its priorities.

OCE has considered LAD's response and for reasons other than those urged by LAD has revised the Final Report accordingly. OCE disagrees that the transportation expenses of an unemployed applicant seeking employment is an other significant factor that a recipient may determine affects an applicant's ability to afford legal assistance. The Supplementary Information published at the time LSC revised Part 1611 tends to suggest that 45 CFR § 1611.5(a)(4)(iv) is not to be used routinely. Instead, the Supplementary Information tends to suggest that the consideration should be reserved for more discreet or unusual circumstances. *See* 70 *Federal Register* 45545, 45555 (August 8, 2005).

Rather, OCE is more inclined to permit consideration of this expense within the ambit of 45 CFR § 1611.5(a)(4)(iv). That section permits recipients to consider employment related expenses, including transportation, clothing and equipment, and dependent care. To the extent that 45 CFR § 1611.5(a)(4)(iv) expressly permits consideration of expenses that do not necessarily presuppose employment, *i.e.* job training and educational activities in preparation for employment, it is a narrow construction that would not permit recipients to consider transportation expenses incurred by an unemployed applicant in his/her efforts to find employment. Transportation expenses in general may not be properly considered under 45 CFR § 1611.5(a)(4)(iv). However, so long as the recipient is able to demonstrate that the expense is related to the applicant's efforts to secure employment, OCE can discern no reason why the expense may not be properly considered pursuant to 45 CFR § 1611.5(a)(4)(iv).

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<sup>7</sup> There were four (4) non-LSC funded files that were reviewed during the visit that involved financially ineligible clients. *See* Main open File Nos. 200915742, 200913808, 201003614, and 200916130. Although these files were not identified for exclusion from LAD's CSR data submission to LSC, LAD provided assurances that once the legal assistance had been completed the files would be so identified.

**Finding 5: Without exception, the LSC-funded files that were reviewed during the visit contained the asset determination required by LSC.**

As noted above, for each case reported to LSC, recipients are required to document the total value of assets held by all members of the applicant's household. *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).

Without exception, the LSC-funded files that were reviewed during the visit contained the asset determination required by LSC.

In its response to the DR, LAD stated that no comments were required.

**Finding 6: LAD is in non-compliance with the documentation requirements of 45 CFR Part 1626.**

The level of documentation necessary to evidence citizenship or alien eligibility depends, in part, 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. Recipients must have written policies and procedures to guide its staff in complying with Part 1626 and shall maintain records sufficient to document the recipient's compliance. *See* 45 CFR § 1626.12.

Since 2006, in accordance with the "Violence Against Women Act 2006 Amendment", recipients 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. Recipients are also allowed to include these cases in their CSRs. *See* LSC Program Letter 06-2 (February 21, 2006).

LAD has adopted written policies and procedures to guide its staff in complying with Part 1626. *See* LSC Policy Manual, pages 20 - 25. The policy should be updated to reflect the guidance provided by LSC Program Letter 06-2 (February 21, 2006), but is otherwise consistent with Part 1626.

With five (5) exceptions, the files that were reviewed during the visit contained the citizenship/alien eligibility documentation required by LSC regulations and the CSR Handbook. Three (3) of the

exceptions were Main open PAI File Nos. 201003038 and Main closed 2010 File Nos. 201003279 and 201003610. Consistent with CSR Handbook (2008 Ed.), § 3.5, LAD has identified Main closed 2010 File No. 201003279 for exclusion from its CSR data submission to LSC. LAD is advised that absent the documentation required by LSC regulations and the CSR Handbook, the open file and the remaining closed 2010 file should also be identified for exclusion from future CSR data submissions to LSC.

The remaining exceptions were Macomb closed 2009 File No. 200911185 and Oakland closed 2009 File No. 200914613, neither of which should have been included in LAD's 2009 CSR data submission to LSC.

In its response to the DR, LAD provided a copy of the necessary citizenship/alien eligibility documentation for three of the files cited in the DR. OCE has considered the documentation provided by LAD and has revised the Final Report accordingly.

LAD's response to the DR also includes a copy of its LSC Policy Manual, revised August 10, 2010. The revised LSC Policy Manual reflects the guidance provided by LSC Program Letter 06-2 (February 21, 2006).

**Finding 7: Nine (9) exceptions to the requirements of 45 CFR § 1611.9 were noted.**

LSC regulations require that recipients execute a retainer agreement with each client who receives extended legal services from the recipient. *See* 45 CFR § 1611.9(a). No written retainer agreement is required for advice and counsel or brief services provided by the recipient, or for legal services provided by a private attorney pursuant to 45 CFR Part 1614. *See* 45 CFR § 1611.9(b).

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

Five (5) of the files that were reviewed during the visit that required a retainer agreement lacked one. *See* Main open File Nos. 201005092 and 200913808, Main closed 2010 File Nos. 200914193 and 200914007, and Macomb closed 2009 File No. 200913078. Four (4) other files were reviewed that contained retainer agreements, but the retainers lacked either a statement identifying the legal problem for which representation was sought or the nature of the legal service to be provided, or both. *See* Main open File Nos. 201004500, 201000509, and 201003364, and Main closed 2009 File No. 200905523.

In its response to the DR, LAD provided additional information relative to one (1) of the files cited in the DR and stated that its managers will work with staff to ensure compliance with the

requirements of 45 CFR § 1611.9. OCE has considered the additional information provided by LAD and has revised the Final Report accordingly.

**Finding 8: Without exception, the files that were reviewed during the visit that required a Part 1636 statement of facts contained one.**

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). Recipients must have written policies and procedures to guide its staff in complying with Part 1636 and shall maintain records sufficient to document the recipient's compliance. *See* 45 CFR § 1636.5.

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).

LAD has adopted a written policy to guide its staff in complying with 45 CFR Part 1636. *See* LSC Policy Manual, page 28. OCE has reviewed the policy and has determined that it is consistent with Part 1636. Without exception, the files that were reviewed during the visit that required a Part 1636 statement of facts contained one.

In its response to the DR, LAD stated that no comments were required.

**Finding 9: 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.

None of the files that were reviewed during the visit revealed cases that were outside of LAD's priorities.

In its response to the DR, LAD stated that no comments were required.

**Finding 10: With six (6) exceptions, the files that were reviewed during the visit contained a description of the legal assistance provided to the client.**

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 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, the client’s case file or the ACMS must contain a description of the legal assistance provided to the client.<sup>8</sup> Such description should be sufficient to support the level of assistance selected to close the case. *See* CSR Handbook (2008 Ed.), § 5.6.

With six (6) exceptions, the files that were reviewed during the visit contained a description of the legal assistance provided to the client. One of the exceptions was Main closed 2010 File No. 201000647. LAD explained that the file involved an issue that was not within its priorities. Macomb open File Nos. 2010000298 and 201000302 were declined due to conflicts. Consistent with CSR Handbook (2008 Ed.), §3.5, LAD identified these three (3) files for exclusion from its CSR data submission to LSC.

Two (2) other exceptions, Main closed 2009 File No. 200907500 and Oakland closed 2010 File No. 201002677 involved legal information and may not be reported to LSC. In Main closed 2009 File No. 200999549, there was no indication that legal assistance had been provided. These three (3) files should have been excluded from LAD’s CSR data submission to LSC.

In its response to the DR, LAD noted the exceptions and stated that it will continue to train its staff in this area of compliance.

**Finding 11: Without exception, LAD’s application of the CSR case closure categories is consistent with Chapter VIII, CSR Handbook (2008 Ed.)**

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

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<sup>8</sup> Legal assistance is defined as the provision of limited or extended service on behalf of a client that meets the criteria of the CSR Closing Categories. Legal assistance is specific to the client’s unique circumstances and involves a legal analysis that is tailored to the client’s factual situation. Legal assistance involves applying judgment in interpreting the particular facts and applying relevant law to the facts presented. *See* CSR Handbook (2008 Ed.), § 2.2.

according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2008 Ed.), § 6.1.

Generally, the files that were reviewed during the visit demonstrated that LAD's application of the CSR case closing categories is consistent with Chapter VIII, CSR Handbook (2008 Ed.). *But see* Oakland closed 2009 File No. 200908332 (closed as "counsel and advice", but level of assistance disclosed by LAD is more consistent with "limited action") and Main closed 2009 File No. 200906120 (closed as "limited action", but level of assistance disclosed by LAD is more consistent with "counsel and advice").

In its response to the DR, LAD stated that no comments were required.

**Finding 12: With five (5) exceptions, the files that were reviewed during the visit demonstrated LAD's compliance with CSR Handbook (2008 Ed.), § 3.3, Timely Closing of Cases.**

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases closed as CSR Limited Service Closure Categories A and B shall be reported as closed in the grant year in which the case was opened, except that cases opened after September 30 may be reported either in the year that the case was opened or the following year, and cases containing a determination to hold the case open should be closed in the grant year in which assistance on behalf of the client is completed. *See* CSR Handbook (2008 Ed.), § 3.3(a). Cases closed as CSR Extended Service Closure Categories F through L shall be reported as having been closed in the grant year in which assistance on behalf of the client was completed. In the absence of an entry in the ACMS or file noting case closure or stating a reason why the case should be held open into the following year, work shall be deemed completed on grant year after the last assistance on behalf of the client is noted in the file. *See* CSR Handbook (2008 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).

Four (4) of the closed 2010 files reviewed during the visit were untimely closed, and one (1) open file was inactive. *See* Main closed 2010 PAI File Nos. 200607320 and 200607319 (opened April 2006 and closed as "counsel and advice" February 2010, LAD disclosed that legal assistance was provided in 2006), Main closed 2010 File No. 200911793 (opened July 2009 and closed as "counsel and advice" April 2010. File lacked a CSR Handbook (2008 Ed.), §3.3(a)(ii) determination); Main closed 2010 File No. 200914881 (opened September 2009 and closed as "counsel and advice" March 2010. File lacked a CSR Handbook (2008 Ed.), §3.3(a)(ii) determination), and Main open PAI File No. 200516255 (opened August 2005, last PAI update December 2008). Consistent with CSR Handbook (2008 Ed.), §3.5, LAD has identified the four (4) closed files for exclusion from its CSR data submission to LSC. LAD is advised that the open file should also be identified for exclusion from future CSR data submissions to LSC.

In its response to the DR, LAD stated that Main closed 2010 File No. 200911793 was closed as a non-CSR because it was untimely closed.

**Finding 13: No duplicates were identified among the files that that were reviewed during the visit.**

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 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.

No duplicates were identified among the files that were reviewed.<sup>9</sup>

In its response to the DR, LAD stated that no comments were required.

**Finding 14: A review of policies, financial records, and the sample of cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).**

LSC regulations prohibit recipients from expending grant 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.

An examination of LAD's financial and policy documents and discussion with management staff revealed that the LAD Accounting Manual contains a section entitled *Political Activity and Contributions*, which prohibits political contributions or the provision of services for political purposes, or the lending of the corporate name in support of candidates for election or ballot measures. It further prohibits the use of any resources and the activities of staff during working hours in support of or in opposition to candidates or ballot measures. Additionally, LAD's "Personnel Policy Manual" contains a statement prohibiting support for or promotion of political activities or interests by LAD employees during working hours or with LAD resources. LAD's LSC Policy Manual also substantially incorporates the requirements of Part 1608.

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<sup>9</sup> OCE noted that some client names and case numbers appeared more than once on some of the lists. LAD explained, however, that the listings were not duplicates. Rather, they were distinguished by the different advocates who had worked in the case.

A review of the LAD Chart of Accounts and Check Payee register (Vendor Summary) found no indication of monetary support of political parties or partisan political action groups. A Web search for news articles referencing LAD activities (Bing, Google and Yahoo search of news, video and web) identified no documents, news stories or commentary identifying political activities in which LAD or its staff was referenced. Sampled files that were reviewed indicated that LAD is not involved in such activity.

In its response to the DR, LAD stated that no comments were required.

**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 must have written policies and procedures to guide its staff in complying with Part 1609 and shall maintain records sufficient to document the recipient's compliance. *See* 45 CFR §1609.4.

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b). LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

None of the files that were reviewed during the visit involved legal assistance with respect to a fee-generating case. However, the written policy adopted by LAD to guide its staff in complying with 45 CFR Part 1609, *see* LSC Policy Manual, page 5, is not entirely consistent with the LSC regulation. First, LAD's policy permits legal assistance in "cases where the inclusion of a counterclaim requesting damages is necessary for the effective defense of a suit or in which the inclusion of such a counterclaim is mandated by rules regarding the joinder of counterclaims", and "cases where the legal issue involved is of significant importance to the client community and/or where our expertise in the area of the law involved is necessary to successfully litigate the cases." *See* LSC Policy Manual, page 5, Sections 2.C. and 2.D.

Part 1609 sets forth an exhaustive list of circumstances in which a fee-generating case may be accepted. *See* 41 *Federal Register* 38505 (September 10, 1976). Recipients may work within the limits of Section 1609.4, but they may not add to the list of circumstances. Accordingly, LAD is

directed to take appropriate action to conform its fee-generating case policy to the applicable LSC regulation.

Second, LAD's policy contains a list of specific types of cases – eviction and foreclosure prevention cases, including those in which damage claims or counterclaims may be filed on behalf of the client; domestic violence cases and ancillary family law cases, including cases where money claims may be made against the assailant; cases seeking benefits through needs-based public benefits program; consumer cases where the primary objective of the case is to prevent attachment or garnishment or to challenge a policy of practice affecting numerous low income consumers; and [w]age claim cases where the amount of wages claimed by each individual client is under \$5,000. *See* LSC Policy Manual, page 5, Section 3. In response to this Draft Report, LAD should provide the basis for its determination that adequate private counsel resources are not available for these types of cases, and indicate how each one fits within one or more of the stated exceptions to the general requirements for fee-generating cases.

Third, LAD's policy states that “Potentially fee-generating cases may be referred through the Pro Bono Program.” *See* LSC Policy Manual, page 5, Section 4. Although LAD may indeed refer fee-generating cases to attorneys participating in any of its pro bono programs, neither such case nor the costs associated with it may be included in LAD's PAI. Stated differently, absent compliance with the requirements of Part 1609, the case may not be reported to LSC, nor may the cost associated with it be allocated to LAD's 12.5% PAI requirement. Private attorney involvement is intended to be an integral part of a recipient's overall delivery of permissible legal assistance to eligible clients. Accordingly, cases referred to a recipient's PAI components pursuant to 45 CFR Part 1614, as well as expenses allocated to a recipient's 12.5% PAI requirement must conform to the requirements of LSC regulations.

Finally, LAD's fee-generating case policy reflects the pre-December 2009 restriction on claiming, collecting and retaining attorney's fees. As noted *infra*, LAD may wish to take action consistent with LSC Program Letter 10-1 (February 18, 2010).

In its response to the DR, LAD stated that the legal assistance provided in cases where inclusion of a counterclaim requesting damages is necessary for the effective defense of a suit or in which the inclusion of such a counterclaim is mandated by rules regarding joinder of counterclaims, *see* LSC Policy Manual, page 5, Section 2.C., is appropriate because Michigan Court Rules, MCR 2.203(A) require mandatory joinder of claims involving the same transaction and occurrence. LAD, citing 45 CFR §§ 1609.3(b)(2) and 1609.3(b)(3)(ii), asserted that in some instances the appropriate claim for damages may need to be joined with either a claim for immediate injunctive relief, a claim which LAD has had previous difficulty placing with private attorneys, or where recovering damages is not the principal object of the case and substantial statutory attorneys' fees are not likely available in order to preserve the client's right to such claim.

LAD further stated that its LSC Policy Manual is being revised to eliminate the reference to “cases of significant importance to the client community”. Regarding cases accepted based upon a determination that expertise in its areas of practice are necessary to successfully litigate the case, LAD stated that such cases are typically those that private attorneys usually will not accept or will not accept without payment of a fee and, as such, are permissible pursuant to 45 CFR § 1609.3(b)(2).

Additionally, as directed by the DR, LAD has provided the basis for its determination that adequate private counsel resources are not available for the types of cases listed in its LSC Policy Manual, page 5, Section 3, and has indicated how each one fits within one or more of the stated exceptions to the general requirements for fee-generating cases. Specifically, LAD responded that legal assistance provided in eviction and foreclosure prevention cases, including those in which damage claims or counterclaims may be filed on behalf of its client is consistent with 45 CFR §§ 1609.3(b)(3)(ii) and 1609.3(b)(3)(iii); in domestic violence cases and ancillary family law cases, including cases where money claims may be made against the assailant, 45 CFR §§ 1609.3(b)(2), 1609.3(b)(3)(ii), and 1609.3(b)(3)(iii); in cases seeking benefits through needs-based public benefits programs, 45 CFR § 1609.3(b)(3)(iii); in consumer cases, where the primary objective of the case is to prevent the attachment or garnishment or to challenge a policy of practice affecting numerous low income consumers, 45 CFR §§ 1609.3(b)(2) and 1609.3(b)(3)(iii); and in [w]age claims where the amount of wages claimed is under \$5,000.00, 45 CFR § 1609.3(b)(2). A letter from the Detroit Metropolitan Bar Association (“DMBA”) cites examples of cases that member attorneys would not be likely to accept, or would not accept unless the damages exceeded \$15,000.00. The examples include actions against auto mechanics for faulty or incomplete repairs; actions against landlords for damages for lock-outs, damages to personal property, or damages for failure to repair rental property; actions against storage facilities for disposal of one’s property; actions against home repair contractors; and “no-fault” auto insurance actions. The letter also states that it is more likely than not that unless damages reached the threshold level for a circuit court action (\$25,000.00), private attorneys in the area would not take the case on a contingent fee basis.

As to concerns expressed about Section 4, LAD responded that it does not accept for representation, or attempt to refer fee-generating cases to its PAI components unless the case meets the general requirements of 45 CFR § 1609.3, including the cases listed in Section 3.

Regarding LAD’s LSC Policy Manual, page 5, Section 2.C., indeed, prior to 1997 LSC regulations authorized legal assistance in a fee-generating case where inclusion of a counterclaim requesting damages was necessary for an effective defense or because of applicable rules governing joinder of counter claims. However, LSC deleted the language relating to ancillary relief and counterclaims. *See 76 Federal Register* 19398, 19399 (April 21, 1997).

OCE acknowledges that legal assistance provided in the instances described in LAD’s response might well be consistent with LSC regulations. However, in a policy designed to guide staff in complying with Part 1609, it is perhaps more appropriate to address such instances in the terms stated in 45 CFR §§ 1609.3(b)(2) and 1609.3(b)(3)(ii), rather than by reference to language that has been deleted by LSC as confusing and unnecessarily complicated.

Similarly, to the extent that LAD is required to adopt written policies and procedures to guide its staff in complying with Part 1609, it is more appropriate that LAD’s policy reflect the fact that legal assistance in a fee-generating case is permitted without attempting a referral not because LAD’s expertise in the area of law involved is necessary to the successful litigation of the case, but rather because the area of law involved is typically one that private attorneys usually will not accept or will not accept without payment of a fee. The DMBA letter provides precisely the type of information that LAD would need.

As for LAD's response to the findings concerning LSC Policy Manual, page 5, Section 3, while the DMBA letter is sufficient to support legal assistance provided in cases involving a claim for damages that is less than \$25,000.00, not every eviction and foreclosure or domestic violence and ancillary family law case and the damage claims/counterclaims that may be filed in connection therewith present emergency circumstances compelling immediate action. For example, based on the language of Section 3, legal assistance provided in filing a damage claim or counterclaim in an eviction or foreclosure prevention case is permissible, regardless of the existence of emergency circumstances.

Again, the policy should set forth considerations and safeguards developed to ensure that LAD does not commit scarce legal services resources when private attorneys are available to provide effective representation. *See* 45 CFR § 1609.1; *see also*, 41 *Federal Register* 38505 (September 10, 1976) ("The [LSC] Act requires [LSC] to issue guidelines ... with appropriate safeguards to prevent legal services lawyers from competing with the private bar when private representation is in fact available.")

**Finding 16: A limited review of LAD's accounting and financial records indicate substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

LSC regulation 45 CFR Part 1610 was adopted to implement statutory restrictions on the use of non-LSC funds and to ensure that no LSC funded entity engages in restricted activities. The regulation is further intended to ensure that recipients maintain objective integrity and independence from organizations that engage in restricted activities. Recipients may not accept funds from sources other than LSC, unless the recipient provides the source with written notification of the prohibitions and conditions that apply to the funds. *See* 45 CFR § 1610.5. Further, recipients must certify annually to LSC that it is in compliance with Part 1610. *See* 45 CFR § 1610.8(b).

Based on a limited review of the chart of accounts and detailed General Ledger ("G/L") for specific G/L accounts for 2008, 2009 and 2010 through May, and observations of the physical locations, it appears that LAD maintains objective integrity and independence from organizations engaged in restricted activities.<sup>10</sup> As noted *infra*, in addition to the LSC funded Civil Law Group, LAD operates at least two separately funded public defender programs. *See* 45 CFR § 1610.6. Both programs are physically and financially separate from the Civil Law Group, receive no transfer of LSC funds and LSC funds do not subsidize the activities of the program.

Although the thank you letter sent by LAD's Administrative Services Group did not meet the requirements of 45 CFR § 1610.5, the donor notification letter sent by the Civil Law Group fully complies with the regulatory requirement.<sup>11</sup>

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<sup>10</sup> As noted *infra*, in addition to its LSC funded Civil Law Group, LAD operates at least two (2) separately funded public defender programs. *See* 45 CFR § 1610.6. Both programs are housed in locations apart from the Civil Law Group.

<sup>11</sup> During the visit, the Administrative Services Group took corrective action and developed a donor notification letter that complies with the requirements of 45 CFR § 1610.5.

In its response to the DR, LAD stated that the thank you letter issued by the Administrative Services Group is in response to donations that are not directed to the Civil Law Group.

**Finding 17: The activities undertaken by LAD to meet the requirements of 45 CFR Part 1614 are consistent with LSC regulations.**

LSC regulations require LSC recipients to devote an amount of LSC and/or non-LSC funds equal to 12.5% of its LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. This requirement is referred to as the "PAI (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. At a minimum, direct delivery components must include a system of 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. Otherwise, Part 1614 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).

Recipients are required to develop a plan and budget to meet the requirements of the LSC regulation. In developing a plan, recipients are required to consult with significant segments of its client community, and must consider the legal needs of eligible clients in the area served by the recipient and the delivery mechanisms potentially available to provide opportunity for participation by private attorneys. *See* 45 CFR §1614.4.

LAD has developed a plan and budget to meet the requirements of Part 1614. The plan is designed to offer a variety of options for private attorney participation and to increase services to eligible clients, through pro bono mechanisms.

Private attorneys participate in the direct delivery of legal assistance to eligible clients at clinics, through the acceptance of cases, and co-counseling arrangements. There are no private attorneys under contract and there are no PAI sub-grants.

All clients referred to LAD's PAI components are screened for eligibility through LAD's intake system. LAD has developed a list of case types that can be referred. The case types are slightly different from LAD's staff priorities, but are consistent with established priorities. The intake unit uses the list to refer cases to the PAI unit. LAD advised that most of the cases are non-emergency, although there is an area law firm that has expressed a willingness to take immediate litigation cases.

LAD's Operations Manual contains a section detailing the various PAI projects and outlining the procedure for transferring a case to the PAI unit. The section also details LAD's follow-up and oversight procedure.

LAD's PAI Unit is staffed by a Managing Attorney, two staff attorneys, two paralegals, an office manager, and clerical staff. The Managing Attorney is responsible for recruitment and maintains relationships with the pro bono coordinators within participating law firms who place the cases with an attorney in the firm or assigns firm attorneys to a clinic. The PAI staff prepare the cases for referral, either by preparing pleadings or securing necessary records and documents. At closing, the PAI paralegals prepare a closing template based on information provided by the PAI attorney. The templates are designed to ensure compliance with LSC reporting requirements. The paralegal makes a preliminary closing determination which is reviewed by the Managing Attorney before the case is actually closed.

In its response to the DR, LAD stated that no comments were required.

**Finding 18: Contrary to the requirements of 45 CFR §§ 1614.3(e)(1) and (2), LAD does not accurately identify all staff costs related to its PAI activities, does not allocate common costs on the basis of reasonable operating data, and for Fiscal Year ("FY") 2009 its auditors did not render an opinion on the requirements of 45 CFR Part 1614.**

LSC regulations require that recipients utilize financial systems and procedures and maintain supporting documentation to identify and account separately for cost related to the recipients PAI effort. Such systems and records must meet the requirements of LSC's Audit and Accounting Guide for Recipients and Auditors and must accurately identify and account for the recipient's administrative, overhead, staff, and support costs related to PAI activities; payments to private attorneys for support or direct client services rendered; contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipients; and other actual costs as may be incurred by the recipient. *See* 45 CFR § 1614.3(e).

Non-personnel costs are to be allocated on the basis of reasonable operating data, and all methods of allocating common costs are to be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. Personnel costs allocations for non-attorney and non-paralegal staff should also be based on other reasonable operating data which is clearly documented. *See* 45 CFR § 1614.3(e)(1).

Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. *See* 45 CFR § 1614.3(e)(2).

LAD's FY 2008 and 2009 audited financial statements reported PAI support and expenses separately as required by LSC regulations. The FY 2009 audit reports PAI expenditures totaling \$549,684.00, or 13.5% of LAD's total LSC basic field award.

However, the FY 2009 audit reports "Administrative Fees" totaling \$90,000.00 as a PAI expense. The expense does not appear in the FY 2008 audit. The Finance Director advised that the amount stated in the FY 2009 audit is based on a budget estimate. As such, it does not appear that the expense is being allocated on the basis of reasonable operating data.

LAD should utilize actual costs, rather than budget amounts, or an appropriate ratio, when determining the percentage to be used in the allocation of indirect costs. Appropriate ratios could be PAI salaries divided by total program salaries; or PAI closed cases divided by total program closed cases, or any other reasonable operating data related to PAI. *See* 45 CFR § 1630.4(f).

Contrary to the requirements of 45 CFR § 1614.3(e)(2) and LAD's Accounting Manual, the FY '09 audit revealed that the auditors did not render an opinion on the recipient's compliance with the requirements of 45 CFR Part 1614. LAD should take corrective action and require that the auditor render an opinion on LAD's compliance with the requirements of 45 CFR Part 1614.

Additionally, OCE reviewed LAD's PAI cost allocations and determined that LAD allocates the time of attorneys and paralegals as a cost to PAI on the basis of their time sheets. However, OCE also determined that LAD does not allocate the non-LSC funded time of the staff of the PAI Unit as a cost to its PAI. As such, LAD is not accurately identifying and accounting for staff costs related to its PAI activities. LAD should take corrective action to report as a PAI cost time spent by staff of the PAI Unit on PAI related activities with non LSC funds.

In its response to the DR, LAD stated that the administrative fees allocated to PAI for fiscal year 2009 was not a budget estimate, but was part of the PAI expenses for 2009. The budget process for the Civil Law Group, as identified in the Accounting Policies and Procedures Manual, was followed for fiscal year 2009. The expense was allocated on the basis of reasonable operating data. The allocation of indirect costs, as stated in the Accounting Policies and Procedures Manual, are based on reasonable operating data.

LAD also responded that as noted in the Independent Auditor's Report on Compliance with Requirements Applicable to Each Major Program and on Internal Control Over Compliance, its auditor did render an opinion on LAD's compliance with the requirements of Part 1614.

Additionally, LAD responded that it reports staff time to LSC and non-LSC funded programs according to timesheets. All time worked on PAI cases, matters, and supporting activities are charged to the PAI grant, even if the staff member is not assigned to the PAI unit. If an assigned PAI staff member works on a non-LSC funded case, matter, or supporting activity, then that staff member's time is allocated to the appropriate funding source. Therefore, only time spent on PAI cases, matters, or supporting activities are allocated to the PAI grant.

In considering LAD's response, OCE has determined that the FY '08 and '09 audits contain the auditor's opinion on LAD's compliance with the requirements of LSC regulations. As such, OCE has revised the Final Report accordingly.

**Finding 19: LAD is in substantial compliance with 45 CFR Part 1627 (Subgrants and membership fees or dues) however, care should be taken to ensure consistency in assigning general ledger accounts for posting.**

Recipients may not transfer LSC funds to another entity for the purpose of conducting any of the recipient's programmatic activities without prior LSC approval of a sub-grant, unless the transfer is an amount less than \$25,000 paid to a private attorney or law firm for the provision of legal assistance to eligible clients, or is an amount paid for the provision of goods and services by vendors, consultants, or professionals. *See* 45 CFR § 1627.2. For each sub-grant of LSC funds, recipients must ensure that sub-recipient complies with the financial and audit requirements of LSC, particularly those regarding the proper expenditure of, accounting for, and audit of, delegated funds. *See* 45 CFR § 1627.3(c). Funds of a sub-recipient remaining at the end of the grant period must be included in the recipient's fund balance. *See* 45 CFR § 1627.3(b)(1). The requirements of 45 CFR § 1627.3 also apply to all sub-grants by one recipient to another recipient. *See* 45 CFR § 1627.6(a).

Part 1627 also prohibits the use of 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. *See* 45 CFR § 1627.4. Nor may recipients make contributions or gifts of LSC funds to another organization or to an individual. *See* 45 CFR § 1627.5.

Recipients must have written policies and procedures to guide their staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part (45 CFR § 1627.8).

LAD has adopted a written policy to guide its staff in complying with 45 CFR Part 1627. *See* LSC Policy Manual, page 26. OCE has reviewed the policy and has determined that it is consistent with Part 1627. In addition, the requirements of Part 1627 are stated in LAD's Accounting Manual.

Prior to the visit, LAD advised LSC that there had been no transfers of LSC or non-LSC funds to other entities during the period January 1, 2008 through April 15, 2010. Discussions with LAD's Finance Director and Grants Manager confirmed that there were no sub-grants made during the period October 1, 2007 through April 15, 2010. Nor have there been any payments to private attorneys or law firms in excess of \$25,000 for the provision of legal assistance to eligible clients.

An examination of the annual audits for fiscal years ending September 30, 2008 and September 30, 2009 reflected funds received from two (2) other LSC recipients, Legal Services of Eastern Michigan and Legal Services of South Central Michigan. It was determined that these transfers consisted of pass-through of location specific federal grants. These included a HUD Fair Housing Grant through Legal Services of Eastern Michigan and a HUD Foreclosure Grant through Legal Services of South Central Michigan. These transactions did not reflect any subgrant relationship between the recipients.

A review for expenditures attributable to membership fees and dues paid with LSC funds was made by requesting and examining the vendor activity listing reflecting the expenditure of LSC funds and the cash disbursement journals, incorporating charges to LSC funds during FY 2008, 2009 and 2010. This review determined that it appeared that LAD in each fiscal year 2008-2010, had paid a

“membership fee” of \$10,000 to the National Legal Aid and Defenders Association (“NLADA”) and in each year (FY 2008-2010) \$1,000 of this fee was prorated to the Civil Law Group, and paid using LSC funding.<sup>12</sup>

Due to the fact that general ledger entries indicated that LSC funds were being expended for “membership” dues in NLADA, examination of subsidiary and originating documents were made. It was determined that LAD maintains an annual membership with NLADA and also sources their professional liability insurance through them. Billing for the membership is made annually and the membership billing document includes an option to subscribe to CLASP (Policy Solutions for Low Income) Services and updates for a subscription fee of \$1,000. It was found that the NLADA membership dues portion was prorated to non-LSC funds, while the CLASP subscription was allocated to LSC funding. Such a subscription fee is an appropriate expenditure of LSC funds. It was noted that there was inconsistency in assigning general ledger chart of account codes to which the allocation of the subscription fee was made, (variously books, subscriptions and telephone services). Further examination of the allocation worksheet determined that the posting to telephone services was most likely the result of an entry error.

In its response to the DR, LAD stated that all books and subscription fees were previously recorded to the “Book” general ledger code. During FY ‘09, the “Subscription” general ledger code was reactivated to allow for a more accurate allocation of expenses. The one entry to the “Telephone” general ledger code was a data entry error. All future expenses for subscriptions will be charged to the “Subscription” code.

**Finding 20: LAD is in substantial compliance with 45 CFR Part 1635 (Timekeeping).**

LSC regulations require that the time spent by attorneys and paralegals on cases, matters and supporting activity be documented on timesheets that 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. Further, each record of time spent must contain a unique client name or, for cases, a case number or, for matters or supporting activities, an identification of the category of action on which the time was spent. Attorneys and paralegals who work part-time for a recipient and part-time for an organization that engages in restricted activities are required to certify in writing that they have not engaged in restricted activity during any time for which they were compensated by the recipient or have not used recipient resources for restricted activities. *See* 45 CFR § 1635.3.

LAD’s uses an on-line software program and requires all employees to document time worked and leave taken. Since July, 2009, LAD has utilized Practice Manager software for both timekeeping and payroll purposes. The software is capable of meeting LSC timekeeping requirements,

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<sup>12</sup> *See* 2008 Cash Journal ck# 14558, 2009 Cash Journal ck#16854 and 2010 Cash Journal ck# 19476; Sample Check Request (2008) reflects funding coding to Civil Law Group (200) for “books”(GL COA 5414) LSC Account (2000) and LSC Agency Code (2000); Examination of the General Journals reflects that payment for 2008 is posted to GL COA 5414, *Books*; Payment for 2009 was allocated to GL COA 5410, *Telephone Services* and payment for 2010 was allocated to GL COA 5416, *Subscriptions*.

requiring the entry of time in one tenth of an hour (6 minute) increments, records cases by unique identifiers, requires contemporaneous time entry, requires the recordation of all case and other activity, requires that leave entries are entered by managers following approval and generates time print-outs required to be signed by the employee and the manager which are used for payroll and leave recordation on a twice-monthly basis. For management purposes, the system is capable of generating data base on case, matter, employee, work unit, fund charged or any variation thereof.

The Executive Director and Finance Director confirmed that all LSC-funded attorneys and paralegals work full-time for LAD. There are no attorneys or paralegals working part-time for LAD and part-time for an organization that engages in restricted activities.

In its response to the DR, LAD stated that no comments were required.

**Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

Prior to December 16, 2009, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient, except as otherwise provided by LSC regulations. *See* 45 CFR § 1642.3.<sup>13</sup> However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. 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 Letter 10-1 (February 18, 2010); *see also*, 75 *Federal Register* 21506 (April 26, 2010).<sup>14</sup>

LAD has adopted a written policy to guide its staff in complying with 45 CFR Part 1642. *See* LSC Policy Manual, page 35. The policy is consistent with the pre-December 2009 restriction on attorneys' fees, but LAD should take action consistent with LSC Program Letter 10-1 (February 18, 2010).

LAD's Executive Director and its Finance Director advised that LAD had not requested or received attorney fees during the period October 1, 2007 through June 10, 2010. Neither the files nor the financial records that were reviewed during the visit indicate any activity inconsistent with Part 1642.

In its response to the DR, LAD stated that no comments were required.

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<sup>13</sup> The regulations defined "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>14</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.

**Finding 22: Sampled cases and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

The purpose of 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. Recipients must have written policies and procedures to guide its staff in complying with Part 1612. *See* 45 CFR § 1612.11.

LAD has adopted a written policy to guide its staff in complying with 45 CFR Part 1612. *See* LSC Policy Manual, pages 9 - 10. OCE has reviewed the policy and has determined that it is consistent with Part 1612. Neither the files nor the financial records that were reviewed during the visit indicate any activity inconsistent with Part 1612.

In its response to the DR, LAD stated that no comments were required.

**Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).**

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

None of the files that were reviewed during the visit involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction.

In its response to the DR, LAD stated that no comments were required.

**Finding 24: Sampled cases 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>15</sup> Recipients must have written policies and procedures to guide its staff in complying with Part 1617. *See* 45 CFR § 1617.4.

LAD has adopted a written policy to guide its staff in complying with 45 CFR Part 1617. *See* LSC Policy Manual, page 11. OCE has reviewed the policy and has determined that it is consistent with Part 1632. None of the files that were reviewed during the visit involved LAD's initiation of, or participation in a class action.

In its response to the DR, LAD stated that no comments were required.

**Finding 25: Sampled cases 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. Recipients must have written policies and procedures to guide its staff in complying with Part 1632. *See* 45 CFR § 1632.4.

LAD has adopted a written policy to implement the requirements of 45 CFR Part 1632. *See* LSC Policy Manual, page 27. OCE has reviewed the policy and has determined that it is consistent with Part 1632. Neither the files nor the financial records that were reviewed during the visit indicated LAD's involvement in such activity.

In its response to the DR, LAD stated that no comments were required.

**Finding 26: Sampled cases 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. Recipients must have written policies and procedures to guide its staff in complying with Part 1633 and shall maintain records sufficient to document the recipient's compliance. *See* 45 CFR § 1633.4.

LAD has adopted a written policy to guide its staff in complying with 45 CFR Part 1633. *See* LSC Policy Manual, page 27. OCE has reviewed the policy and has determined that it is consistent with Part 1633. None of the files that were reviewed involved defense of any such eviction proceeding.

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<sup>15</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).

In its response to the DR, LAD stated that no comments were required.

**Finding 27: Sampled cases 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. Recipients must have written policies and procedures to guide its staff in complying with Part 1637 and shall maintain records sufficient to document the recipient's compliance. *See* 45 CFR § 1637.5.

LAD has adopted a written policy to implement the requirements of 45 CFR Part 1637. *See* LSC Policy Manual, page 30. OCE has reviewed the policy and has determined that it is consistent with Part 1637. None of the files that were reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person.

In its response to the DR, LAD stated that no comments were required.

**Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).**

Recipients and their employees are prohibited from representing, or referring to other recipients, individuals as a result of a face-to-face encounter, or personal encounter via other means of communication such as a personal letter or telephone call, in which the recipient or its employee advised the individual to obtain counsel or take legal action, where the individual did not seek the advice and with whom the recipient has no attorney-client relationship. *See* 45 CFR §§ 1638.2 and 1638.3. Recipients must adopt written policies and procedures to implement the requirements of Part 1638. *See* 45 CFR § 1638.5.

LAD has adopted a written policy to guide its staff in complying with 45 CFR Part 1638. *See* LSC Policy Manual, page 32. OCE has reviewed the policy and has determined that it is consistent with Part 1638. Neither the files that were reviewed during the visit indicate LAD's involvement in such activity.

In its response to the DR, LAD stated that no comments were required.

**Finding 29: 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. Recipients must have written policies and procedures to guide its staff in complying with Part 1643 and shall maintain records sufficient to document the recipient's compliance. *See* 45 CFR § 1643.5.

LAD has adopted a written policy to guide its staff in complying with 45 CFR Part 1643. *See* LSC Policy Manual, page 36. OCE has reviewed the policy and has determined that it is consistent with Part 1643. Neither the files nor the financial records that were reviewed during the visit indicate LAD's involvement in such activity.

In its response to the DR, LAD stated that no comments were required.

**Finding 30: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a)(8) (Abortion), 42 USC 2996f § 1007 (a)(9) (School desegregation litigation), and 42 USC 2996f § 1007 (a)(10) (Military selective service act or desertion)).**

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

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

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

All of the sampled files that were reviewed demonstrated LAD's compliance with the above LSC statutory prohibitions.

In its response to the DR, LAD stated that no comments were required.

**Finding 31: LAD's Internal Control Structure compares favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System. (Accounting Guide for LSC Recipients - Chapter 3).**

LSC recipients, under the direction of its board of directors, are required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as the process put in place by the recipient's board of directors, management, and other personnel which is designed to provide reasonable assurance of achieving objectives of safeguarding of assets against unauthorized use or disposition, reliability of financial information and reporting; and compliance with regulations and laws that have a direct and material effect on the program. *See Accounting Guide for LSC Recipients, Chapter 3 (August 1997).*

The bank reconciliations for the LSC funds and the general fund were reviewed and found to be reconciled timely and approved.

A review of the internal controls and the review of payments disclosed that LAD has good segregation of duties, internal controls and defined procedures through its Accounting Manual. However, the review disclosed that the originator of the journal entries is the same as the reviewer. LAD should take corrective action and assign someone else to perform such reviews, *i.e.* the President and CEO.

In order to protect funds from theft, LAD has a fraud protection service called Positive Pay. The general fund and payroll checking accounts are being protected by this service. LAD provides its bank with details on all checks written, the bank compares that information to the checks presented for payment. Any check that does not match the information provided will be marked as an exception and will be available for review.

In its response to the DR, LAD stated that journal entries will be entered by a member of the Finance Department other than the Vice President of Finance. Supporting documentation will be attached for all journal entries that are not normal monthly entries.

#### **IV. RECOMMENDATIONS<sup>16</sup>**

In view of the foregoing, OCE makes the following recommendations:

1. Subscription fees for CLASP services in past years have been charged in the general ledger variously to “subscriptions”, “books”, and “telephone services”. Care should be taken to ensure consistency in assigning accounts for posting.

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<sup>16</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.

## V. REQUIRED CORRECTIVE ACTIONS

Consistent with the Findings of this report, LAD is required to take the following corrective actions:

1. Ensure that its financial eligibility policy conforms to the minimum requirements of Part 1611.

In its response to the DR, LAD reported that it has revised its LSC Policy Manual to reflect that only individuals and groups determined to be financially eligible under its financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds. The response also provided citations to the federal and state laws exempting the listed assets from attachment.

Accordingly, this Required Corrective Action is closed.

2. Amend Section C. of its financial eligibility policy consistent with the discussion in Finding 3.

In its response to the DR, LAD's revision to its LSC Policy Manual also contains the language required by 45 CFR § 1611.3(e) and provides authority for the Chief Counsel or designee to waive asset - but not income - ceiling.

Accordingly, this Required Corrective Action is closed.

3. Exclude Oakland closed 2010 File No. 201002677 from future CSR data submissions to LSC.

In its response to the DR, LAD stated that it will continue to train its staff with regard to the exception noted in Oakland closed 2010 File No. 201002677.

Accordingly, LAD is directed that without a description of the legal assistance provided to the client in Oakland closed 2010 File No. 201002677, this file may not be included in its CSR data submission to LSC.

4. Ensure proper application of the authorized exceptions to its annual income ceiling.

In its response to the DR, LAD asserted that the transportation expenses of an unemployed applicant seeking employment is a significant factor that it has determined affect an applicant's ability to afford legal assistance. In support of its argument, LAD cites the high rate of employment in its service area and the fact that transportation issues are among its priorities.

OCE has considered LAD's response, but disagrees that the transportation expenses of an unemployed applicant seeking employment is an other significant factor that a recipient may determine affects an applicant's ability to afford legal assistance. The Supplementary Information published at the time LSC revised Part 1611 tends to

suggest that 45 CFR § 1611.5(a)(4)(iv) is not to be used routinely. Instead, the Supplementary Information tends to suggest that the consideration should be reserved for more discreet or unusual circumstances. *See 70 Federal Register 45545, 45555 (August 8, 2005).*

Rather, OCE has determined to permit consideration of this expense within the ambit of 45 CFR § 1611.5(a)(4)(iv). That section permits recipients to consider employment related expenses, including transportation, clothing and equipment, and dependent care. To the extent that 45 CFR § 1611.5(a)(4)(iv) expressly permits consideration of expenses that do not necessarily presuppose employment, *i.e.* job training and educational activities in preparation for employment, it is a narrow construction that would not permit recipients to consider transportation expenses incurred by an unemployed applicant in his/her efforts to find employment. Transportation expenses in general may not be properly considered under 45 CFR § 1611.5(a)(4)(iv). However, so long as the recipient is able to demonstrate that the expense is related to the applicant's efforts to secure employment, OCE can discern no reason why the expense may not be properly considered pursuant to 45 CFR § 1611.5(a)(4)(iv).

Accordingly, this Required Corrective Action is closed.

5. Amend its Part 1626 policies and procedures to reflect the guidance provided in LSC Program Letter 06-2 (February 21, 2006).

LAD's response to the DR also includes a copy of its LSC Policy Manual, revised August 10, 2010. The revised LSC Policy Manual reflects the guidance provided by LSC Program Letter 06-2 (February 21, 2006).

Accordingly, this Required Corrective Action is closed.

6. Ensure compliance with 45 CFR §§ 1626.6 and 1626.7 and CSR Handbook (2008 Ed.), § 5.5.

In its response to the DR, LAD provided a copy of the necessary citizenship/alien eligibility documentation for three of the files cited in the DR. OCE has considered the documentation provided by LAD and has revised the Final Report accordingly.

OCE notes that five (5) of the files that were reviewed during the visit lacked the citizenship/alien eligibility documentation required by LSC regulations and the CSR Handbook. Accordingly, LAD is required to take appropriate corrective action to ensure compliance with 45 CFR §§ 1626.6 and 1626.7 and CSR Handbook (2008 Ed.), § 5.5.

7. Ensure compliance with 45 CFR § 1611.9(a).

In its response to the DR, LAD stated it will monitor cases and work with attorney staff to ensure that clients who receive extended legal services execute an appropriate

retainer agreement as required by 45 CFR § 1611.9 and LAD's LSC Policy Manual – Eligibility and Asset Policy, Section J, Retainer Agreements, page 9.

Accordingly, LAD is required to take appropriate corrective action to ensure compliance with 45 CFR §§ 1611.9(a).

8. Ensure compliance with CSR Handbook (2008 Ed.), § 3.3.

In its response to the DR, LAD stated it will comply with Finding 12 with attorney staff to ensure that clients who receive extended legal services execute an appropriate retainer agreement as required by 45 CFR § 1611.9 and LAD's LSC Policy Manual – Eligibility and Asset Policy, Section J, Retainer Agreements, page 9.

Accordingly, LAD is required to take appropriate corrective action to ensure compliance with CSR Handbook (2008 Ed), § 3.3.

9. Take appropriate action to conform its fee-generating case policy to the applicable LSC regulation.

In its response to the DR, LAD eliminated the reference to “cases of significant importance to the client community”, but did not otherwise revise its LSC Policy Manual. Regarding cases accepted based upon a determination that expertise in its areas of practice are necessary to successfully litigate the case, LAD stated that such cases are typically those that private attorneys usually will not accept or will not accept without payment of a fee and, as such, are permissible pursuant to 45 CFR § 1609.3(b)(2).

LAD also stated that the legal assistance provided in cases where inclusion of a counterclaim requesting damages is necessary for the effective defense of a suit or in which the inclusion of such a counterclaim is mandated by rules regarding joinder of counterclaims, *see* LSC Policy Manual, page 5, Section 2.C., is appropriate because Michigan Court Rules, MCR 2.203(A) require mandatory joinder of claims involving the same transaction and occurrence. Citing 45 CFR §§ 1609.3(b)(2) and 1609.3(b)(3)(ii), LAD asserted that in some instances the appropriate claim for damages may need to be joined with either a claim for immediate injunctive relief, a claim which LAD has had previous difficulty placing with private attorneys, or where recovering damages is not the principal object of the case and substantial statutory attorneys' fees are not likely available in order to preserve the client's right to such claim.

Additionally, LAD responded that legal assistance provided in eviction and foreclosure prevention cases, including those in which damage claims or counterclaims may be filed on behalf of its client is consistent with 45 CFR §§ 1609.3(b)(3)(ii) and 1609.3(b)(3)(iii); in domestic violence cases and ancillary family law cases, including cases where money claims may be made against the assailant, 45 CFR §§ 1609.3(b)(2), 1609.3(b)(3)(ii), and 1609.3(b)(3)(iii); in cases seeking benefits

through needs-based public benefits programs, 45 CFR § 1609.3(b)(3)(iii); in consumer cases, where the primary objective of the case is to prevent the attachment or garnishment or to challenge a policy of practice affecting numerous low income consumers, 45 CFR §§ 1609.3(b)(2) and 1609.3(b)(3)(iii); and in [w]age claims where the amount of wages claimed is under \$5,000.00, 45 CFR § 1609.3(b)(2). A letter from the Detroit Metropolitan Bar Association (“DMBA”) cites examples of cases that member attorneys would not be likely to accept, or would not accept unless the damages exceeded \$15,000.00. The examples include actions against auto mechanics for faulty or incomplete repairs; actions against landlords for damages for lock-outs, damages to personal property, or damages for failure to repair rental property; actions against storage facilities for disposal of one’s property; actions against home repair contractors; and “no-fault” auto insurance actions. The letter also states that it is more likely than not that unless damages reached the threshold level for a circuit court action (\$25,000.00), private attorneys in the area would not take the case on a contingent fee basis.

As to concerns expressed about Section 4, LAD responded that it does not accept for representation, or attempt to refer fee-generating cases to its PAI components unless the case meets the general requirements of 45 CFR § 1609.3, including the cases listed in Section 3.

Regarding LAD’s LSC Policy Manual, page 5, Section 2.C., indeed, prior to 1997 LSC regulations authorized legal assistance in a fee-generating case where inclusion of a counterclaim requesting damages was necessary for an effective defense or because of applicable rules governing joinder of counter claims. However, LSC deleted the language relating to ancillary relief and counterclaims. *See 76 Federal Register* 19398, 19399 (April 21, 1997).

OCE acknowledges that legal assistance provided in the instances described in LAD’s response might well be consistent with LSC regulations. However, in a policy designed to guide staff in complying with Part 1609, it is perhaps more appropriate to address such instances in the terms stated in 45 CFR §§ 1609.3(b)(2) and 1609.3(b)(3)(ii), rather than by reference to language that has been deleted by LSC as confusing and unnecessarily complicated.

Similarly, to the extent that LAD is required to adopt written policies and procedures to guide its staff in complying with Part 1609, it is more appropriate that LAD’s policy reflect the fact that legal assistance in a fee-generating case is permitted without attempting a referral not because LAD’s expertise in the area of law involved is necessary to the successful litigation of the case, but rather because the area of law involved is typically one that private attorneys usually will not accept or will not accept without payment of a fee. The DMBA letter provides precisely the type of information that LAD would need.

As for LAD’s response to the findings concerning LSC Policy Manual, page 5, Section 3, the DMBA letter is sufficient to support legal assistance provided in cases

involving a claim for damages that is less than \$25,000.00, but not every eviction and foreclosure or domestic violence and ancillary family law case and the damage claims/counterclaims that may be filed in connection therewith present emergency circumstances compelling immediate action. For example, based on the language of Section 3, legal assistance provided in filing a damage claim or counterclaim in an eviction or foreclosure prevention case is permissible, regardless of the existence of emergency circumstances.

Again, the policy should set forth considerations and safeguards developed to ensure that LAD does not commit scarce legal services resources when private attorneys are available to provide effective representation. *See* 45 CFR § 1609.1; *see also*, 41 *Federal Register* 38505 (September 10, 1976) (“The [LSC] Act requires [LSC] to issue guidelines ... with appropriate safeguards to prevent legal services lawyers from competing with the private bar when private representation is in fact available.”)

Accordingly, LAD is directed to take action consistent herewith to conform its fee-generating case policy to 45 CFR § 1609.3.

10. Amend its attorneys’ fee policy consistent with LSC Program Letter 10-1 (February 18, 2010).

In its response to the DR, LAD stated that it intends to review its policy in the fall and make recommendations to its governing body as to which cases it thinks are appropriate to seek attorneys’ fees.

Pending action by LAD, this Required Corrective Action shall remain open.

11. Ensure that all administrative, overhead, staff and support costs related to PAI are accurately identified. Corrective action taken by LAD shall ensure that non-personnel costs, non-attorney, and non-paralegal staff costs are allocated on the basis of reasonable operating data. Direct and indirect attorney and paralegal time is to be allocated on the basis of time sheets.

In its response to the DR, LAD stated that direct time is – and always has been – allocated to the PAI unit based on staff timesheets. LAD stated that the administrative fees allocated to PAI for fiscal year 2009 was not a budget estimate, but was part of the PAI expenses for 2009. The budget process for the Civil Law Group, as identified in the Accounting Policies and Procedures Manual, was followed for fiscal year 2009. The expense was allocated on the basis of reasonable operating data. The allocation of indirect costs, as stated in the Accounting Policies and Procedures Manual, are based on reasonable operating data.

Additionally, LAD responded that it reports staff time to LSC and non-LSC funded programs according to timesheets. All time worked on PAI cases, matters, and supporting activities are charged to the PAI grant, even if the staff member is not assigned to the PAI unit. If an assigned PAI staff member works on a non-LSC funded case, matter, or supporting activity, then that staff member’s time is allocated

to the appropriate funding source. Therefore, only time spent on PAI cases, matters, or supporting activities are allocated to the PAI grant.

Accordingly, this Required Corrective Action is closed.

12. Require that its auditor render an opinion on LAD's compliance with the requirements of 45 CFR Part 1614.

In its response to the DR, LAD stated that as noted in the Independent Auditor's Report on Compliance with Requirements Applicable to Each Major Program and on Internal Control Over Compliance, its auditor did render an opinion on LAD's compliance with the requirements of Part 1614.

OCE has determined that the FY '08 and '09 audits contain the auditor's opinion on LAD's compliance with the requirements of LSC regulations. Accordingly, this Required Corrective Action is closed.

13. Assign someone else to perform the reviews of the journal entries.

In its response to the DR, LAD stated that journal entries will be entered by a member of the Finance Department other than the Vice President of Finance. Supporting documentation will be attached for all journal entries that are not normal monthly entries.

Accordingly, this Required Corrective Action is closed.



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Client Service Center  
1240 Third Street  
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Civil Law Group

Rajna Daniels Thomas  
Co-Chair  
Juvenile Law Group

Donald L. Johnson  
Chief Defender  
State Defender Office

[www.ladadetroit.org](http://www.ladadetroit.org)

August 20, 2010

Danilo A. Cardona, Director  
Office of Compliance and Enforcement  
Legal Services Corporation  
3333 K Street, NW 3<sup>rd</sup> Floor  
Washington, DC 20007-3522

**RE: CSR/CMS Visit, Recipient No. 423148**

Dear Mr. Cardona:

This letter is in response to the Legal Service Corporation (LSC) on-site Case Services Report/Case Management System (CSR/CMS) review of the Legal Aid and Defender Association (LAD), Inc., which took place in June 2010.

LAD's has attached several documents in response to LSC report.

If you have any questions, please feel free to contact Angela Smith, VP Finance at (313) 967-5602 or [asmith@ladadetroit.org](mailto:asmith@ladadetroit.org).

Sincerely,

Deirdre L. Weir  
President & CEO

cc: Joan Howard, Chief Counsel, Civil Law Group  
Angela Smith, Vice President Finance

## ATTACHMENTS

### LEGAL AID AND DEFENDER ASSOCIATION, INC

#### ATTACHMENT 1

*RESPONSE TO CASE SERVICE REPORT/CASE MANAGEMENT SYSTEM REVIEW FINDINGS*

#### ATTACHMENT 2

*ATTACHMENT TO FINDING 6 - CITIZENSHIP ATTESTATION*

#### ATTACHMENT 3

*ATTACHMENT TO FINDING 15 – LETTER FROM THE DETROIT METROPOLITAN BAR ASSOCIATION*

#### ATTACHMENT 4

*RESPONSE TO CASE SERVICE REPORT/CASE MANAGEMENT SYSTEM REVIEW RECOMMENDATIONS*

#### ATTACHMENT 5

*RESPONSE TO CASE SERVICE REPORT/CASE MANAGEMENT SYSTEM REVIEW CORRECTIVE ACTIONS*

#### ATTACHMENT 6

*REVISED CIVIL LAW GROUP LEGAL SERVICES CORPORATION REGULATIONS POLICIES AND PROCEDURES MANUAL WHICH UPDATES THE INFORMATION THAT WAS NOTED IN YOUR REPORT. WE WILL BE REVIEWING THE ADDITIONS AND MODIFICATIONS TO THE MANUAL WITH ALL OF OUR STAFF AT A FULL STAFF TRAINING SESSION.*

#### ATTACHMENT 7

*REVISED ACCOUNTING MANUAL POLICIES FOR TWO SECTIONS:*

- 1. MONTHLY FINANCIAL REPORTS*
- 2. AUDIT WORK PAPERS*

**ATTACHMENT 1**

**RESPONSE TO**  
**CASE SERVICE REPORT/CASE MANAGEMENT SYSTEM REVIEW**  
**FINDINGS**

**FINDING 1 (FOOTNOTE 5):** In main open files nos. 201001940 and 200606177, the advocate identified in the case lists was different from the one identified by LAD during the review.

Response: File Nos. 200606177 and 20101940, the advocate is correctly identified. Andre Dale and Terrance Andre Dale are the same staff person.

**FINDING 2:** LAD'S intake procedures and case management system support the program's compliance related requirements.

Response: No response required.

**FINDING 3:** LAD's financial eligibility policy is not consistent with requirements of 45 CFR Part 1611.

Response: See response to corrective action number 1.

**FINDING 4:** With one (1) exception, the LSC-funded files that were reviewed during the visit contained the income documentation required by LSC.

Response: As has always been LAD's practice, cases are evaluated for CSR eligibility at the time of closing. Any cases that do not meet CSR criteria are excluded from the CSR data report submitted to LSC.

LAD argues that LSC regulations do permit LAD to authorize exceptions to the annual income ceiling for transportation expenses associated with an unemployed applicant looking for work.

45 CFR § 1611.5(a)(4)(vii) states:

*(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following facts as applicable to the applicant or members of the applicant's household:*

*(vii) Other significant facts that the recipient has determined affect the applicant's ability to afford legal assistance.*

**FINDING 5: Without exception, the LSC-funded files that were reviewed during the visit contained the asset determination required by LSC.**

Response: No response required.

**FINDING 6: LAD is in non-compliance with the documentation requirements of 45 CFR Part 1626.**

Response: File 200902613 (Macomb Office) contains a properly executed citizenship attestation signed by the client on March 27, 2009 (copy attached).

Note - citizenship attestations were not required in the cases cited below:

File number 200910400 remains open and there has been no in person contact nor any correspondence sent to the client.

File number 200915806 – there was never any in person contact and no continuous assistance and thus no citizenship attestation required.

**FINDING 7: Ten (10) exceptions to requirements of 45 CFR § 1611.9 were noted.**

Response: Managers will work with staff to ensure compliance. However, please note file number 2010001940 was closed with an "A" code and client proceeded in pro per. Accordingly, no retainer required pursuant to § 1611.9(b).

**FINDING 8: Without exception, the files that were reviewed during the visit that required a Part 1636 statement of facts contained one.**

Response: No response required.

**FINDING 9: Sampled evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).**

Response: No response required.

**FINDING 10: With six exceptions, the files that were reviewed during the visit contained a description of the legal assistance provided to the client.**

Response: Exception noted. LAD will continue to train staff in this area of compliance.

**FINDING 11: Without exception, LAD's application of the CSR case closure categories is consistent with Chapter VIII, CSR Handbook (2008 Ed.)**

Response: No response required.

**FINDING 12: With five (5) exceptions, the files that were reviewed during the visit demonstrated LAD's compliance with CSR Handbook (2008 Ed.), § 3.3, Timely Closing of Cases.**

**Main closed 2010 File No. 200911793 (Opened July 2009 and closed as “counsel and advice” April 2010. File lacked a CSR Handbook (2008 Ed.), §3.3(a)(ii) determination).**

Response: File Number 200911793 was closed by LAD as non-CSR because of untimely closing.

**FINDING 13: No duplicates were identified among the files that were reviewed during the visit.**

Response: No response required.

**FINDING 14: A review of policies, financial records, and the sample of cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited Political activities)**

Response: No response required.

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

Response: In response to the first issues under Finding 15, the LSC Policy Manual 2.C. permits handling of cases where inclusion of a counter claim requesting damages is necessary for the effective defense of a suit or in which the inclusion of such a counterclaim is mandated by rules regarding joinder of counterclaims

These claims are appropriate because the Michigan Court Rules, MCR 2.203(A), requires mandatory joinder of claims involving the same transaction and or occurrence. In some cases, the appropriate claim for damages may need to be joined with the claim for immediate injunctive relief (which are permissible pursuant to 45 CFR 1609.3(B)(ii)), or a claim in cases which we have had difficulty placing with private attorneys in the past (which are permissible under 45 CFR 1609.3(b)(2) or where recovering damages is not the principal object of the case

and substantial statutory attorneys' fees are not likely available, is not to prevent the client from having waived the claim.

LSC Policy Manual 2.D. permits handling of cases where the legal issue involved is of significant importance to the client community and/or where our expertise in the area of the law involved is necessary to successfully litigate the case. The policy manual is being revised to eliminate the reference to "cases of significant importance to the client community". Cases accepted based upon a determination that expertise in our areas of practice is necessary to successfully litigate the case are typically cases that private attorneys usually will not accept or will not accept without payment of a fee, and therefore are permissible under 45 CFR 1609.3(b)(2).

Responding to the second point raised under Finding 15, please note that LAD does not accept for representation or attempt to place via its PAI unit, cases that are fee-generating unless there is an applicable exception in 45 CFR 1609.3. On occasion, LAD represents in or places cases which may contain an element of damages, but only in those cases in which there is an applicable exception under 45 CFR 1609(b)(2) or 45 CFR 1609 (b)(3), such as immediate action is required on behalf of the client, where recovery damages is ancillary to the main objective of the representation and substantial statutory attorneys' fees are unlikely, or where our experience in trying to place similar cases in the past has been unsuccessful. Such exceptions would include cases such as:

- Eviction and foreclosure prevention cases, including those in which damage claims or counterclaims may be filed on behalf of the client:
  - These cases are permissible under 1609.3(b)(3)(ii) because emergency circumstances compel immediate action before a referral can be made but if appropriate, and consistent with professional obligations, referral will be attempted at a later time, and 1609.3(b)(3)(iii) because recovery damages is not the principal object of the client's case and substantial statutory attorneys' fees are not likely to be available.

- Domestic violence cases and ancillary family law cases including those where money claims may be made against the assailant:
  - These cases are permissible under 1609.3(b)(2) because consultations with the private bar have determined that these types of cases are such that private attorneys in our service area do not ordinarily accept these types of cases without prepayment of a fee, 1609.3(b)(3)(ii) because emergency circumstances compel immediate action before a referral can be made but if appropriate, and consistent with professional obligations, referral may be attempted at a later time, and 1609.3(b)(3)(iii) because recovery damages is not the principal object of the client's case and substantial statutory attorneys' fees are not likely to be available.
  
- Cases seeking benefits through needs-based public benefits programs;
  - These cases are permissible under 1609.3(b)(3)(iii) because recovery damages is not the principal object of the client's case and substantial statutory attorneys' fees are not likely to be available.
  
- Consumer cases where the primary objective of the case is to prevent the attachment or garnishment or to challenge a policy of practice affecting numerous low income consumers
  - These cases are permissible under 1609.3(b)(2), because consultations with the private bar have determined that private attorneys in our service area do not ordinarily accept these types of cases and under 1609.3(b)(3)(iii) because recovery of damages is not the principal objective of the case and substantial statutory attorney fees are not likely to be available.

- Age claim cases where the amount of wages claimed by each individual client is under \$5000:
  - These cases are permissible under 1609.3(b)(2), because consultations with the private bar have determined that private attorneys in our service area do not ordinarily accept these types of cases. (Letter available upon request)
  
- Additional note: In Michigan, attorney fees are only available if provided via statute, court rule, or agreement of the parties. And as result of recent case law, the applicability of Michigan's Consumer Protection Act, which has been drastically reduced, and no longer applies to a large number of circumstances.

Finally, the "potentially fee-generating cases" referenced in LAD's LSC Policy Manual, page 5, Section 4, advises staff that the same types of cases which the program can handle pursuant to 45 CFR 1609.3, may also be referred through our PAI program. The policy does not provide for referral of cases through PAI in which there is not an applicable exception to the fee-generating case prohibition contained in the LSC regulations. As these referred cases would be permissible under the LSC regulations if representation was provided by a staff attorney, the costs and expenses for representation through a pro bono referral are properly expensed under the PAI budget.

Please see attached letter from the Detroit Metropolitan Bar Association.

**FINDING 16: A limited review of LAD's accounting and financial records indicate substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).**

Response: The Thank you letter issued by the Administrative Services Group is for donations that are not directed to the Civil Law Group.

**FINDING 17: The activities undertaken by LAD to meet the requirements of 45 CFR Part 1614 are consistent with LSC regulations.**

Response: No response required.

**FINDING 18: Contrary to the requirements of 45 CFR §§ 1614.3(e)(1) and (2), LAD does not accurately identify all staff costs related to its PAI activities, does not allocate common costs on the basis of reasonable operating data, and for Fiscal Year (“FY”) 2009 its auditors did not render an opinion on the requirements 45 CFR Part 1614.**

Response: The Administrative Fees allocated to the PAI program for fiscal year 2009 was not a budget estimate; however, it was part of the PAI program expenses for 2009. The budget process for the Civil Law Group, as identified in the Accounting Policies and Procedures Manual, was followed for the law group for fiscal year 2009. The expense was allocated on the basis of reasonable operating data. The allocation of indirect costs, as stated in the Accounting Policies and Procedures Manual, are based on reasonable operating data.

The LAD audit did render an opinion on the recipient’s compliance with the requirements of 45 CFR Part 1614 (as noted in the Independent Auditors’ Report on Compliance With Requirements Applicable to Each Major Program And On Internal Control Over Compliance).

LAD reports staff time to LSC and non-LSC funded programs according to timesheets. All time worked on PAI cases, matters, and supporting activities are charged to the PAI grant , even if the staff member is not assigned to the PAI unit. If an assigned PAI staff member works on a non-LSC funded case, matter or supporting activity, then that staff members time is allocated to the appropriate funding source. Therefore, only time spent on PAI cases, matters, or supporting activities are allocated to the PAI grant.

**FINDING 19: LAD is in substantial compliance with 45 CFR Part 1627 (Subgrants and membership fees or dues) however, care should be taken to ensure consistency in assigning general ledger accounts for posting.**

Response: All books and subscription fees were previously recorded to the "Book" general ledger code. During fiscal year 2009, the "Subscription" general ledger code was reactivated to allow for a more accurate allocation of expenses. The one entry to the "Telephone" general ledger code was a data entry error. All future expenses will for subscriptions will be charged to the "Subscription" code.

**FINDING 20: LAD is in substantial compliance with 45 CFR Part 1635 (Timekeeping).**

Response: No response required.

**FINDING 21: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

Response: No response required.

**FINDING 22: Sampled cases and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

Response: No response required.

**FINDING 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).**

Response: No response required.

**FINDING 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).**

Response: No response required.

**FINDING 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

Response: No response required.

**FINDING 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).**

Response: No response required.

**FINDING 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

Response: No response required.

**FINDING 28: Sampled cases evidenced compliance with the requirements of 45 CFR 1638 (Restriction on solicitation).**

Response: No response required.

**FINDING 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

Response: No response required.

**FINDING 30:** Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007(a)(9) (School desegregation litigation), and 42 USC 2996f § 1007(a)(10) (Military selective service act or desertion)).

Response: No response required.

**FINDING 31:** LAD's Internal Control Structure compares favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting system. (Accounting Guide for LSC Recipients – Chapter 3).

Response: Journal entries will be entered by a member of the Finance Department, other than the Vice President of Finance. Supporting documentation will be attached for all journal entries that are not normal monthly entries (see attached new Accounting procedure).

ATTACHMENT 2

*ATTACHMENT TO FINDING NUMBER SIX- CITIZENSHIP ATTESTATION*



**ATTACHMENT 3**

*ATTACHMENT TO FINDING 15 – LETTER FROM THE DETROIT METROPOLITAN BAR ASSOCIATION*



August 12, 2010

Ms. Lynda Krupp  
Managing Attorney, Private Attorney Involvement Unit  
Legal Aid & Defender Association, Inc.  
613 Abbott  
Detroit, Michigan 48226

Dear Ms. Krupp:

You have recently asked us to consider when attorneys in private practice who may be members of the Detroit Metropolitan Bar Association would handle certain types of cases for indigent clients on a fee generating, or contingency, basis. In accepting the case on a fee generating basis the attorney would not seek pre-payment of costs or their attorney fees but would execute a contingent fee agreement that would provide for payment from the proceeds of a successful lawsuit.

Examples of such types of litigation might include, but are not limited to:

- Actions against car repair facilities for faulty or incomplete repairs
- Actions against landlords for damages for locking a tenant out of a premises and/or destroying the tenant's personal property
- Actions against storage facilities who dispose of a person's personal property
- Actions against landlords for damages for failure to repair rental property
- Actions against home repair contractors for damages for incomplete or faulty repairs
- Actions based in the Michigan "No-Fault" Automobile Insurance Act.

Understanding the costs and demands on an attorney's time in undertaking litigation, we feel that such cases would either not be accepted by private attorneys as fee generating cases or would not be accepted on a fee generating basis unless the damages were above \$15,000. This would only pertain to cases filed at the District Court level. There is a trend to be noted in the area that no case filed in the District Court, other than a case that may allow recovery against a collectible entity (such as an insurance company) would be taken on a contingent fee basis. This would mean that it is more likely than not that a case would not be taken on a contingent fee basis

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16 Aug. 2010 9:14 AM



unless the damages reached the threshold level for a Circuit Court action, which in this jurisdiction would be \$25,000.00.

Thank you for allowing us to assist you in this matter. Should you need any further information, please feel free to contact the Detroit metropolitan Bar Association.

Sincerely,

Dennis T. Donahue  
Access to Justice Programs Administrator  
Detroit Metropolitan Bar Association

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---

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**ATTACHMENT 4**

**RESPONSE TO**  
**CASE SERVICE REPORT/CASE MANAGEMENT SYSTEM REVIEW**  
**RECOMMENDATIONS**

**RECOMMENDATION 1: Subscription fees for CLASP services in past years have been charged in the general ledger variously to “subscriptions”, “books”, and “telephone services”. Care should be taken to ensure consistency in assigning accounts for posting.**

Response: All books and subscription fees were previously recorded to the “Book” general ledger code (5414). During fiscal year 2009, the “Subscription” general ledger code was reactivated to allow for a more accurate allocation of expenses. The one entry to the “Telephone” general ledger code was a data entry error. All future expenses will for all subscriptions will be charged to the “Subscription” code (5416).

**ATTACHMENT 5**

**RESPONSE TO**  
**CASE SERVICE REPORT/CASE MANAGEMENT SYSTEM REVIEW**  
**CORRECTIVE ACTIONS**

1. **Ensure that financial eligibility policy conforms to the minimum requirements of Part 1611.**

Response: See revised Part 1611 of the LSC Policy Manual.

2. **Amend Section C. of its financial eligibility policy consistent with the discussion in Finding 3.**

Response: See revised Section C of § 1611.

3. **Exclude Main closed 2010 File No. 201001555 and Oakland closed 2010 File No. 201002677 from future CSR data submissions to LSC.**

Response: LAD argues that LSC regulations do permit LAD to authorize exceptions to the annual income ceiling for transportation expenses associated with an unemployed applicant looking for work.

45 CFR § 1611.5(a)(4)(vii) states:

*(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following facts as applicable to the applicant or members of the applicant's household:*

*(vii) Other significant facts that the recipient has determined affect the applicant's ability to afford legal assistance.*

The U.S. Department of Labor – Bureau of Labor Statistics reported on July 28, 2010 that of the 49 metropolitan areas of 1 million or more, that the Detroit-Warren-Livonia area had a 14.3% unemployment rate in the month of June making it the 3<sup>rd</sup> highest unemployment rate in the country. This 14.3% unemployment rate is up from 13.7% from May 2010.

The Bureau of Statistics further reports that the Detroit metropolitan area showed a 7.3% increase in unemployment for the year ended September 30, 2009, which represents the highest increase of any metropolitan area in the country. The Detroit News reports that the unemployment in Detroit, “for a variety of reasons, e.g., access to transportation, job availability, etc.,” was 48.5% for male Detroiters ages 20-64 in 2008.

Therefore, due to the fact that transportation is one of LAD's programs priorities and in light of the high unemployment rates in the service area, LAD takes the position that pursuant to 45 CFR § 1611.5(a)(4)(vii)] that transportation expenses related to an applicant looking for work is permissible under LSC regulations and that the cases sited in corrective action #3 are appropriate for inclusion on LAD's CSR data submission to LSC.

**4. Ensure proper application of the authorized exceptions to its annual income ceiling.**

Response: See revisions to LSC Policy Manual – Eligibility and Asset Policy Section D, pages 6-7.

**5. Amend its Part 1626 policies and procedures to reflect the guidance provided in LSC Program Letter 06-2 (February 21, 2006).**

Response: See revisions to LSC Policy Manual – Restrictions on Legal Assistance to Aliens, pages 21-27.

**6. Ensure compliance with 45 CFR §§ 1626.6 and 1626.7 and CSR Handbook (2008 Ed.), § 5.5**

Response: See revisions to LSC Policy Manual – Restrictions on Legal Assistance to Aliens, pages 21-27.

**7. Ensure compliance with 45 CFR § 1611.9(a)**

Response: LAD Management will monitor cases and work with attorney staff to ensure that clients who receive extended legal services execute an appropriate retainer agreement pursuant to LSC regulation 1611.9(a) and LAD's LSC Policy Manual – Eligibility and Asset Policy, Section J, Retainer Agreements, page 9.

**8. Ensure compliance with CSR Handbook (2008 Ed.), § 3.3**

Response: LAD will comply with findings in Finding 12 of the Case Management Review and will exclude open PAI file No. 200516255 from future CSR data submissions to LSC.

**9. Take appropriate action to conform its fee-generating case policy to the applicable LSC regulation.**

Response: See LAD's response to Finding 15.

**10. Amend its attorneys' fee policy consistent with LSC Program Letter 10-1 (February 18, 2010).**

Response: LAD has plans this fall to review its policy and make recommendations to the Board as to which cases we think are appropriate to seek attorney's fees.

**11. Ensure that all administrative, overhead, staff and support costs related to PAI are accurately identified. Corrective action taken by LAD shall ensure that non-personnel costs, non-attorney, and non-paralegal staff costs are allocated on the basis of reasonable operating data. Direct and indirect attorney and paralegal time is to be allocated on the basis of time sheets.**

Response: All direct time is, and always have been, allocated to the PAI unit based on staff time sheets. Please see LAD's response to Finding 18.

**12. Require that its auditor render an opinion on LAD's compliance with the requirements of 45 CFR Part 1614**

Response: See LAD's response to Finding 18.

**13. Assign someone else to perform the reviews of the journal entries.**

Response: See LAD's response to Finding 31.

**ATTACHMENT 6**

*REVISED CIVIL LAW GROUP LEGAL SERVICES CORPORATION REGULATIONS POLICIES AND PROCEDURES MANUAL WHICH UPDATES THE INFORMATION THAT WAS NOTED IN YOUR REPORT. WE WILL BE REVIEWING THE ADDITIONS AND MODIFICATIONS TO THE MANUAL WITH ALL OF OUR STAFF AT A FULL STAFF TRAINING SESSION.*

Legal Aid and Defender Association  
Civil Law Group

Legal Services Corporation Regulations: Policies and Procedures Manual

[View Table of Contents](#)

**Adopted February 25, 1999**

*Revised August 10, 2010*

Legal Services Corporation Regulations: Policies and Procedures Manual

The policies and procedures contained in this manual are not intended to impose restrictions or obligations which are more limiting or onerous in their effect than those specified by the Legal Services Corporation Act (42 U.S.C. §2996 et. seq.) and its implementing regulations, as presently in effect or amended.

All references to "LAD" are limited to Legal Aid and Defender Association - Civil Law Group.

The following policies and procedures were approved and adopted by the LAD Board of Directors on February 25, 1999.

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## **1605 - APPEALS REVIEW POLICY**

This policy for review of appeals on behalf of clients has been developed in accordance with the Legal Services Corporation Act (42 U.S.C. 2996-2996L), the Code of Federal Regulations (45 C.F.R. 1605) and the intention of LAD's Board of Directors.

### PURPOSE AND POLICY DECLARATIONS

The purpose of this policy is to provide the Chief Counsel with review and approval authority of all proposed appeals on behalf of clients from courts and administrative bodies of original jurisdiction to a higher court or tribunal. By authority of this body, the Chief Counsel shall have the exclusive authority to approve any appellate civil action brought in behalf of a client.

### APPLICABILITY

Appeals under this policy include any civil appellate action as defined under Michigan law. This policy includes, but is not limited to:

1. Appeals from District Court to Circuit Court;
2. Appeals from Circuit Court (including Family Courts) to state Supreme Court;
3. Appeals from an administrative body to any state court or to Federal District Court; and
4. Appeals within the Federal Court System.

### PROCEDURE

Any staff person intending to file an appeal in matters funded by LSC shall do one, or both, of the following actions:

1. Write a memorandum, reviewed and approved by the Litigation Director, to the Chief Counsel outlining the basic facts, issues for appeals and reason for the appeal attaching appropriate case documents; or,
2. Arrange a meeting with the Litigation Director and the Chief Counsel to discuss the appeal fully.

After review, the Chief Counsel shall sign and date a memorandum to the case file stating briefly the reasons for approval or denial of such appeal.

### STANDARDS OF REVIEW

In every consideration of a proposal appeal, the Chief Counsel shall ensure that an appeal is not frivolous. The following factors shall be considered, as a minimum:

1. Current agency priorities regarding allocation of resources;
2. That there is no interference with professional responsibilities of an attorney to the client;
3. Ability of agency to fully represent client;
4. Whether an attorney participating in the agency private bar program should be involved;
5. Value to the clients and the possible outcome.

(11/27/00)

## **1608 – PROHIBITED POLITICAL ACTIVITIES**

Consistent with the Legal Services Corporation Act and its implementing regulations, program employees may engage in lawful political activity on their own time, except that they may not be candidates for elective office. They may not use program time, resources, equipment or supplies, or represent themselves as spokespersons for LAD or the Legal Services Corporation in connection with any political activity. (Representation of a legal service client in accordance with the Act, Regulations and with policies of the program does not constitute "political activity" as that expression is used in this policy.)

Under 5 U.S.C. §1502(a), one may take an active part in political management and political campaigns, but may not be a candidate for elective office. See 1974 U.S. Code Cong. Adm. News, p. 5569. The Corporation has promulgated implementing regulations codified at 45 C.F.R. §1608.5-8, which provide in pertinent part as follows:

Sec. 1608.5 Prohibitions applicable to Corporation employees and to staff attorneys:

While employed under the Act, no Corporation employee and no staff attorney shall, at any time:

1. Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan;
2. Directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any recipient to pay, end, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or
3. Be a candidate for partisan elective public office.

Sec. 1608.6 Prohibitions applicable to attorneys and to staff attorneys:

While engaged in legal assistance activities supported under the Act, no attorney shall engage in:

1. Any political activity;
2. Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election; or
3. Any voter registration activity.

Sec. 1608.7 Attorney-client relationship.

Nothing in this Part is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

The governing regulation expressly directs that it "should be construed and applied so as to further ...(its)...purpose(s) without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients."

## 1609 - FEE-GENERATING CASES

1. General Rule. As a general rule, all cases involving damages from which a contingent fee may be obtained or for which statutory attorneys fees (e.g., 42 USC 1988 fees; Equal Access to Justice Act fees; Elliott-Larsen Civil Rights Act fees; Michigan Consumer Protection Act fees) may be awarded must be referred to private attorneys. In general, these referrals should go through a local bar or state bar lawyers referral service.
2. Exceptions. LAD can handle the following types of cases.
  - A. A case that has been referred to and turned down by two private lawyers.
  - B. Cases where the recovery of damages is incidental to the primary purpose of obtaining injunctive relief.
  - C. Cases where the inclusion of a counterclaim requesting damages is necessary for the effective defense of a suit or in which the inclusion of such a counterclaim is mandated by rules regarding the joinder of counterclaims.
  - D. Cases where the legal issue involved is of significant importance to the client community and/or where our expertise in the area of the law involved is necessary to successfully litigate the cases.
  - E. Cases involving Social Security of SSI benefits.
  - F. Emergency cases in which the client needs representation or relief immediately. (Generally, these cases should be referred to private counsel after the emergency is resolved.)
3. Specific types of cases. The primary areas of current legal work in the program are cases in which there are not adequate private counsel resources available and which fit in one or more of the exceptions listed above. These areas include:
  - A. eviction and foreclosure prevention cases, including those in which damage claims or counterclaims may be filed on behalf of our client;
  - B. domestic violence cases and ancillary family law cases, including cases where money claims may be made against the assailant;
  - C. cases seeking benefits through needs-based public benefits program;
  - D. consumer cases where the primary objective of the case is to prevent attachment or garnishment or to challenge a policy of practice affecting numerous low income consumers;
  - E. wage claim cases where the amount of wages claimed by each individual client is under \$5,000.
4. Co-counsel and PAI programs. Any case that can be accepted by LAD can also be accepted and referred through LAD's PAI program. Potentially fee-generating cases may be referred through the Pro Bono Program. (See the PAI Plan for a full description of these programs.) Any case that can be accepted under LAD's direct service priorities, or under a LAD-approved paid-plan, can also be counseled between LAD staff and a private attorney.

5. Prohibition of claiming or retaining attorneys fees. Although LAD can handle cases where the client may receive an award of cash benefits or money damages, LAD may not claim, seek, or retain attorneys' fees. See 1642 Attorney's Fees for a full explanation.
6. Questions. Please contact the Managing Attorney or designee, if you have any questions about this policy or about the application of this policy to any case.



## 1611 - CLIENT ELIGIBILITY GUIDELINES

### ELIGIBILITY AND ASSET POLICY

#### A. General Eligibility

Only individuals and groups determined to be financially eligible under LAD's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

#### B. Eligibility of Domestic Violence Victims

In assessing the income and assets of an applicant who is the victim of domestic violence, LAD will consider only the assets and income of the applicant and members of the applicant's household than those of the alleged perpetrator of the domestic violence, and does not include any assets held by the alleged perpetrator, whether held individually, jointly with the victim of the domestic violence or jointly with any member of the applicant's household.

#### C. Automatic Eligibility

Applicants who are recipients of public benefits which apply a means test that includes income levels of no more than 125% of poverty are automatically income as well as asset eligible for legal services from LAD. Those programs specifically are: SSI, SDA and FIP. Automatic eligibility does not apply to recipients of food stamps.

#### D. Income Guidelines

1. It is the policy of LAD that clients whose income, as defined by 45 CFR 1611, is less than 125% of the federal poverty guidelines shall be eligible for service.
  
2. Program staff may represent persons whose income is over 125% of the federal poverty level but under 200% of the poverty guidelines if one or more of the following exceptions exists:
  - a) The applicant is trying to secure obtain or maintain governmental benefits for low income individuals and families.

or

- b) The applicant is trying to obtain or maintain governmental benefits for persons with disabilities.

or

c) The applicant or family expects to lose income in the next 30 days and the expected level of income is within eligibility guidelines.

or

d) The applicant's gross income is primarily committed to medical or nursing home expenses, and excluding that portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would be otherwise financially eligible for services. Written documentation of paid expenses must be provided in case file and written approval of the Managing attorney and subsequent written approval of the Chief Counsel are required.

or

e) LAD has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

- 1) Current income prospects, taking into account seasonal variation in income;
- 2) Unreimbursed medical expenses and medical insurance premiums;
- 3) Fixed debts and obligations;
- 4) Expenses such as dependent care, transportation, clothing and equipment necessary for employment, job training or educational activities in preparation for employment;
- 5) Non-medical expenses associated with age or disability;
- 6) Current taxes; or
- 7) Other significant factors that LAD has determined affect the applicant's ability to afford legal assistance such as work related expenses which reduce the available income to within our income levels.

In the event that LAD determines that an applicant is financially eligible pursuant to this section (where an individual's gross income exceeds 125% of poverty but is less than 200% of the national eligibility guidelines), staff shall document the basis for the financial eligibility determination. LAD shall keep such records as may be necessary to inform the corporation of the specific facts and factors relied upon to make such determination [45 CFR § 1611.5(3)(4)].

#### E. Assets

In determining whether a potential client has assets, defined by 45 CFR 1611 which render him/her ineligible for legal assistance from LAD, the following asset tests shall be applied.

1. The program shall not consider the value of the following assets:

- The principal residence of the client
- One auto
- Liquid assets up to the value of \$10,000
- Non-liquid assets which are actually available to the client in the amount of \$5,000
- Personal and household effects
- Reasonable **equity value** of any tools **or equipment necessary for employment**, including farmland or farm equipment used for employment
- Any assets excluded under the AFDC, FS or SSI programs
- Any assets necessitated by or attributable to a medical condition or handicap

**2. Availability of Assets**

Assets above the asset-limit shall not disqualify a potential client unless the asset is actually available to the client. In no event shall an asset be considered available to the potential client if to cash out the asset, the client would have to undergo delay which would damage his/her legal claim or if to obtain the asset the client would incur a risk of any physical harm. If the disqualifying asset is the cash value of a retirement plan or the cash value of an educational, medical or burial trust, staff shall refer the determination to the Chief Counsel or designee for consideration under Section C of this Policy.

**3. Detailed chart of asset exemptions for applicants whose income is NOT derived solely from SSI, SDA or FIP.**

Asset	Exemption Description	Citations
Homestead / Residence	Household's Principal Residence	45 CFR 1611.3(d)(1)
Vehicles	If used for transportation	45 CFR 1611.3(d)(1)
Personal property	Household furnishings, household goods, clothing, appliances, books, animals, crops, or musical instruments not to exceed \$400 in value per item or \$8000 aggregate value	11 U.S.C. 522(d)(3)

	<p>Health aids professionally prescribed to the debtor or a dependant</p>	<p>11 U.S.C. 522(d)(9)</p>
	<p>Jewelry not to exceed \$1000 in value</p>	<p>11 U.S.C. 522(d)(4)</p>
	<p>Appliances, utensils, books, furniture, and household goods not to exceed \$1000 in value.</p>	<p>M.C.L.A. 600.6023(1)(b)</p>
	<p>Building and loan association shares up to \$1000 par value, in lieu of homestead</p>	<p>M.C.L.A. 600.6023(1)(g)</p>
	<p>Burial plots, cemeteries; church pew, slip, seat</p>	<p>M.C.L.A. 600.6023(1)(c); 11 U.S.C. 522(d)(1)</p>
	<p>Clothing; family pictures</p>	<p>M.C.L.A. 600.6023(1)(a)</p>
	<p>2 cows, 100 hens, 5 roosters, 10 sheep, 5 swine; hay and grain to last 6 months if you're a head of household</p>	<p>M.C.L.A. 600.6023(1)(d)</p>
	<p>Food and fuel to last 6 months if you're a head of household</p>	<p>M.C.L.A. 600.6023(1)(a)</p>

Tools of trade	Assets used in producing income	45 CFR 1611.3(d)(1)
	Arms and accoutrements you're required to keep	M.C.L.A. 600.6023(1)(a)
	Tools, implements, materials, stock, apparatuses, team, motor vehicle, horse and harness to \$1000 total	M.C.L.A. 600.6023(1)(e)
	Implements, professional books, or tools not to exceed \$1500	11 U.S.C. 522(d)(6)

**F. Waiver**

The Chief Counsel or designee may, consistent with the federal regulation, waive LAD's asset limitations of this policy in unusual or meritorious cases.

**G. Non-Financial Criteria**

Program staff shall consider the following criteria and decline to represent income and asset eligible persons if one or more of the following circumstances exists:

- 1) The case is, in the staff's opinion, without merit or is of little consequence to the person or family involved.
- 2) The case is not in LAD's priorities.
- 3) The program lacks resources to handle the case given current case commitments.
- 4) Non-program resources are available which will resolve the case for free or for low cost.
- 5) Because of anticipated income or other considerations, the person is able to afford private counsel.

#### H. **Group Representation**

A group is eligible to receive legal assistance from LAD if that group is primarily composed of persons eligible for assistance and if the group is unable to obtain private counsel.

#### I. **Eligibility Determinations Using Funds Other Than LSC Funds**

LAD receives funding from other sources in addition to LSC. Clients who are ineligible for services under LSC guidelines may be eligible for service using non-LSC funding. In making a decision to provide service, staff shall determine whether the potential client is financially and programmatically within the population targeted by the local funding.

To the greatest extent possible (consistent with the programmatic requirements of the funding source), LAD will target its services under other grants to persons eligible for services under LSC income guidelines. To the greatest extent possible (consistent with the programmatic requirements of the funding source), LAD shall provide services in the case areas set forth in the Statement of Priorities adopted by the LAD Board of Directors. Unless otherwise provided by the funding source, an organization will be considered eligible for services if its primary purpose is to provide services to low-income individuals, and if the organization is unable to retain private counsel.

#### J. **Retainer Agreements**

LAD maintains form retainer agreements for particular projects and types of legal work which are all designed to comply with the applicable rules of professional responsibility. The appropriate LAD form retainer agreement must be executed for each case where "extended services" are undertaken, as defined in the Legal Service Corporation's Case Service Reporting Handbook. The retainer is to be executed when representation commences or as soon thereafter as is practicable. All form retainers must be executed so as to include a description of the legal problem as well as a description of the services to be provided.

## 1612 – RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

### *Legislative and Administrative Rulemaking Prohibitions.*

- A. Except as permitted by Sections B and C below, it is impermissible for any individual, while engaged in legal services activities funded by LAD to initiate or to participate in any effort:
- 1) that attempts to influence the passage or defeat of any legislation or Constitutional amendment; or any initiative, referendum or similar procedure of the Congress, any state legislature or local council, or similar governing body acting in a legislative capacity;
  - 2) that attempts to influence any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of the recipient or the Legal Services Corporation (e.g., self-help lobbying);
  - 3) that attempts to influence the conduct of oversight proceedings of any legislative body concerning the recipient or the Legal Services Corporation;
  - 4) that attempts to participate in or influence any rulemaking or influence the issuance, amendment, or revocation of any executive order-- (rulemaking is defined to include agency processes for formulating, amending, or appealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to federal, state or local rulemaking procedures, including notice and comment rulemaking and adjudicatory proceedings that are formal adversarial proceedings used to formulate or modify an agency policy of general applicability and future effect);
  - 5) that engages in any grassroots lobbying activity;
  - 6) that pays for any personal service, advertisement, telegram, telephone, communication, letter, printed or written matter, administrative expense or related expense, associated with any activity prohibited in the five preceding paragraphs.

Notwithstanding the prohibitions outlined in Section A above, it is permissible for any individual, while engaged in legal services activities, funded by LAD to:

- 1) provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client, or in negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation during the course of litigation;
- 2) initiate or participate in litigation challenging agency rules, regulations, guidelines or policies unless otherwise prohibited by law or the Legal Services Corporation regulations;
- 3) communicate with a government agency for the purpose of obtaining information, clarification, interpretation of the agency's rules, regulations, practices or policies;
- 4) inform clients, other recipients, or attorneys representing eligible clients, about new or proposed statutes, executive orders or administrative regulations;
- 5) communicate directly or indirectly with the Legal Services Corporation for any purpose, including commenting upon existing or proposed Legal Services Corporation rules, regulations, guidelines, instructions and policies;

- 6) participate in meetings or serve on committees of bar associations, provided that no resources of LAD are used to support prohibited legislative or rulemaking activities and that LAD is not identified with those activities of bar associations that include such prohibited activities;
- 7) advise a client of the client's right to communicate directly with an elected official; or
- 8) participate in activity relating to the judiciary, including the promulgation of court rules, rules of professional responsibility and disciplinary rules.
- 9) participate as legal adviser to, as a LAD representative to, or as a member of an organization, task force, consortium, advisory board, or committee, which has its primary purpose improving service to LAD clients, sharing information about community resources or needs, providing community legal education, or any other non-prohibited purpose.

B. Non-LSC funds of LAD may be used by an employee:

- 1) respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee or member thereof, made to an employee or to a recipient to:
  - (a) testify orally or in writing;
  - (b) provide information, which may include analysis of or comment upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation;
  - (c) testify before, or make information available to, commissions, committees or advisory bodies; or
  - (d) participate in negotiated rulemaking.
- 2) Such participation must be made under the following conditions:
  - (a) communications made in response to requests may be distributed by the employee only to the party or parties that made the request or to other persons or entities only to the extent that such distribution is required to comply with the request;
  - (b) no employee of LAD shall solicit or arrange a request from any official to testify or to otherwise provide information in connection with legislation or rulemaking; and,
  - (c) each employee shall maintain copies of all written requests received and any written responses made in response thereto and provide such requests and responses to the executive director (or designated designee).
- 3) Employees may use non-LSC funds to provide oral or written comments to an agency and its staff in a public rulemaking proceeding which includes notice and comment rulemaking and other public proceedings.
- 4) Employees may use non-LSC funds to contact or communicate with, respond to or request from, a state or local governmental agency, a State or local legislative body or committee, or a member thereof, regarding funding for LAD.

C. Advocacy Training

1. It is impermissible for any individual, while engaged in legal assistance activities funded by LAD, to participate in or conduct a training program for the purpose(s) of:

- (a) advocating a particular public policy;
- (b) encouraging a political activity, a labor or anti-labor activity, a boycott, picketing, a strike, or a demonstration;
- (c) disseminating information about such a policy or activity; or
- (d) training participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.

2. Attorneys and paralegals may participate in any training program, including skills, substantive and management training, as well as training programs sponsored by bar associations or continuing legal education institutions, which assists such employees to provide adequate legal assistance to eligible clients or advise eligible clients as to the legal rights of the clients.

3. Employees of LAD may participate in training activities intended to inform staff about what activities are prohibited by the LSC Act, other applicable federal law, or Legal Services Corporation regulations, guidelines or instructions.

D. Prohibitions on Demonstrations, Boycotts, Strikes and Certain Other Activities:

1. It is impermissible for any individual, during working hours, while providing legal assistance or representation to LAD clients or while using resources provided by the Legal Services Corporation or by private entities to:

- a) participate in any public demonstration, picketing, boycott or strike (except as permitted by law in connection with the employee's own employment situation); or,
- b) encourage, direct or coerce others to engage in such activities.

2. It is impermissible for any individual employed by LAD at any time to engage in or encourage others to engage in any:

- a) rioting or civil disturbance;
- b) activity determined by a court to be in violation of an outstanding injunction issued by any court of competent jurisdiction; or
- c) other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Legal Services Corporation regulations, or the Rules of Professional Responsibility of Michigan.

3. Attorneys for LAD may inform and advise a client about legal alternatives to litigation or the lawful conduct thereof and may take such action on behalf of a client as may be required by professional responsibilities or applicable law of Michigan (or local jurisdiction).

E. Prohibited Organizing Activities

1. It is impermissible for any employee, while engaged in legal assistance activities funded by the Legal Services Corporation or private entities, to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.
2. Employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, including preparing articles of incorporation and bylaws for such organizations. Employees may also provide legal advice or assistance to eligible community groups or organizations, on both organizational issues and on substantive legal issues of interest to the organization.
3. Employees may participate in a task force established by the recipient or by other entities, so long as the task force does not engage in any prohibited activity.

F. Recordkeeping

LAD will maintain documentation of expenditures of non-LSC funds for legislative and rulemaking activities permitted under Paragraph I.C. of this policy in accordance with instructions issued by the Legal Services Corporation.

**1614 – PRIVATE ATTORNEY INVOLVEMENT**

LAD will ensure that its Private Attorney Involvement Program (PAI) meets all requirements of CFR §1614 et seq. Pursuant to this policy all LAD activities undertaken will involve direct delivery of legal assistance to eligible clients through programs such as:

1. organized pro bono plans;
2. reduced fee plans;
3. judicare panels;
4. private attorney contracts; or
5. those modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems.

Any PAI delivery system used by LAD will take into account:

1. program priorities;
2. the effective and economic delivery of legal assistance;
3. linguistic and cultural barriers; and
4. actual or potential conflicts of interest, and substantive and practical expertise, skills and willingness of participating attorneys.

No funds received by LAD shall be used to establish or maintain revolving litigation fund systems.

### **1617 - CLASS ACTIONS**

It is impermissible for any individual, while engaged in legal service activities funded by LAD to initiate or participate in a class action suit. For purposes of this policy, "class action suit" refers to any state or federal court proceeding in which the plaintiff(s) or defendant(s) seek to sue or be sued as representative parties of a larger number of individuals, not specifically identified, who are alleged to be similarly situated. This limitation does not preclude the representation of multiple parties; nor does it proscribe the use of other relevant judicial or statutory procedures, including those relating to: third party practice; joinder; interpleader; intervention; consolidation; mandamus; declaratory judgement; or injunctive relief.

To initiate or participate in any class action means that any individual, while engaged in legal assistance activities funded by LAD, may not be involved at any stage of a class action prior to an order granting relief, including acting as an amicus curiae, co-counsel or providing legal assistance to an individual client who seeks to (withdraw from), intervene in, (opt out of), modify, or challenge the adequacy of the representation of a class.

"Participating in a class action" does not include non-adversarial monitoring of an order granting relief or representation of an individual client seeking to obtain the benefit of relief already ordered by a court. Non-adversarial monitoring includes efforts to remain informed about, or to explain, clarify, educate or advise others about, the terms of an order granting relief.

Advocates who believe that they cannot comply with one or more of the requirements imposed by the state bar association unless they initiate or participate in a class action suit, or who are uncertain as to the application of this limitation to particular circumstances, shall not proceed until they have discussed and resolved the matter with the Deputy Chief Counsel, or designee.

### **1618 – ENFORCEMENT PROCEDURES**

LAD shall, through the Chief Counsel or his/her designee, make available to all its employees the Legal Services Corporation Act and shall explain their responsibilities thereunder. Before any suspension or termination occurs under this policy LAD shall consult with the General Counsel of the Legal Services Corporation.

## **1619 – DISCLOSURE OF INFORMATION**

LAD, by and through its Deputy Chief Counsel, shall maintain at all branches, offices and its main office current copies of the Legal Services Corporation Act, the Legal Services Corporation regulations, its grant renewal letter together with any general and special conditions annexed thereto, the Legal Services Corporation Audit and Accounting Guide, its by-laws, its board minutes, its policies required by Legal Services Corporation regulations, its audit report and its most recent Legal Services Corporation monitoring or annual report, if one has been issued. These materials shall be available for public inspection during ordinary business hours. Copies of the same shall be available on request, for the cost of copying.

LAD shall make available to members of the public regulation 1602 of the Legal Services Corporation regulations and shall advise all citizens requesting information beyond that generally available to the public of their right to file a Freedom of Information request with the Corporation regional office. The Deputy Chief Counsel or his/her designee shall have authority to release such requested information directly to the person making that request at his/her discretion.

Nothing in this policy shall require disclosure of:

1. Any information furnished to LAD by a client;
2. The work product of an attorney;
3. Any material used by LAD in providing representation to clients;
4. Any matter that is related solely to the internal personnel rules and practices of LAD; or
5. Personnel, medical or similar files.

## **1620 – PRIORITIES**

### **STATEMENT OF PRIORITIES**

#### **I. Purpose**

The purpose of this statement of priorities is to:

- (1) set forth the types of cases and matters that may be handled by LAD staff;
- (2) set forth the methods of delivery of services that may be utilized to provide services in these cases and matters; and
- (3) establish procedures to assure that these priorities are followed in the delivery of services.

It is the intent of LAD in adopting these priorities that they be liberally construed to permit LAD to meet the most critical legal needs of its client communities in the identified work areas. It is intended that LAD be permitted to utilize the full range of legal remedies available to benefit its clients, consistent with the rules of ethics and the specific restrictions of its funding sources.

In adopting these priorities, LAD recognizes that the type of case or matter alone cannot control the case acceptance decision. In addition to the type of case or matter, staff

should always consider the merits of the particular case or matter; the availability of other advocacy or assistance in the community; the resources required to provide service in the particular case or matter; and the capacity of the program to provide services before accepting a case or matter.

## **II. Types of cases and matters**

1. LAD shall assist clients in obtaining and maintaining basic income and other necessities for household stability. Permissible activities under this priority include cases and matters meant to remove legal barriers to employment, protect a household from the loss of essential income or possessions or to secure essential income from sources such as public assistance programs or child support, etc. LAD also includes in these priority cases and matters intended to prevent the termination of needed utilities. Other examples of permissible activities include cases or matters intended to protect the economic stability of the individual client or where the business practice may have a significant impact on many low-income clients.
2. LAD shall assist clients in securing needed health care. As examples, permissible activities under this priority include cases or matters which seek to secure medical services or coverage for low income persons, such as MA, Medicare, SMA, RCHP, private insurance, etc; medical POA's; and cases or matters which seek payment for services already provided or which seek relief from medical debt.
3. LAD shall assist clients in preventing homelessness. Permissible activities include advocacy activities that establish legal precedent protecting or expanding the rights of tenants and homeowners, as well as those that increase the supply, availability, safety, security, or repair of low income housing.
4. LAD shall assist in obtaining and maintaining access to an education. Permissible activities may include cases and matters pertaining to student loans, school exclusion issues and special education, etc.
5. LAD shall assist clients with legal matters that result in securing accessibility to efficient, reliable and affordable transportation.
6. LAD shall assist clients in securing safety-from violence in their homes. As examples, permissible activities under this priority include cases and matters meant to secure Personal Protection orders for clients. Permissible activities also include advocacy in ancillary family law cases, including, for example, divorce, child support, property distribution, child support, etc. Permissible activities include advocacy activities that establish legal precedent protecting or expanding the rights of victims of domestic violence.
7. LAD shall assist clients in maintaining stable homes for their children. As examples, permissible activities under this priority include cases and matters

meant to prevent the transfer of custody from an established custodial environment with a natural parent.

8. LAD shall advocate for low-income persons within the legal system so that low-income persons have full and fair access to that system.
9. LAD shall make as full use as possible of the resources of the private bar. LAD has had a very active pro bono program for many years. This program has expanded LAD priorities in two ways: (1) in order to fully utilize pro-bono resources, we have referred cases to pro bono attorneys that we would not handle in house; (2) there are case areas which are tremendously important to low income persons where LAD has not had the resources to develop in house expertise (e.g., Title VII, wrongful discharge), LAD refers these cases to pro bono attorneys. Cases or matters referred to pro bono, whether to utilize the specialties of pro bono panel members or to access expertise that is not available in house, are priority cases.
10. LAD shall attempt, through its legal work, to strengthen its local communities. In each of its communities, LAD is part of a network of agencies providing services to the community's poorest citizens. Moreover, in many instances, the quality of life for the community's poorest citizens is affected by more general community initiatives. LAD should engage in work intended to improve services to the low-income community and in work, which strengthens the overall community.
11. LAD shall attempt, through its legal work, to strengthen the families within its communities. Many of LAD's case specific priorities are in areas that support the integrity, safety, and well-being of the family. Because of the importance of the family to our society and to our communities, cases and matters which have the goal of strengthening families are permissible cases under this statement.
12. Providing legal advice or other brief services to individual clients. It is a goal of LAD to provide services to as many client eligible persons as possible. Often brief advice or a referral is all a client needs to resolve a legal problem. Because these services are part of LAD's overall intake system and because these services can be provided very efficiently, these services may be provided in service areas beyond those in the other "case and matter" areas listed above.

*Approved by the LSC Policy Board 4-13-10*

### **III. Services provided in response to local community needs and in response to request from local funding sources**

The general statements or priorities set forth in Section II are program-wide priorities and relate specifically to LAD's use of LSC funds. LAD has long recognized that these general priorities may be tailored to meet the unique needs of the local community. In addition, LAD recognizes that local funding sources frequently provide grants to assure that additional

services are provided in specific types of cases or matters. It is LAD's intent to seek such grants and to the greatest extent possible respond to the requests of local funding sources.

Activities undertaken in response to specific grants by non-LSC funding sources are priority activities. In general, LAD's local grant funded activities that are entirely consistent with the priorities are set out in Section II. However, where a local grant expands client eligibility or requests additional service in certain types of cases or matters, LAD will attempt to provide the services requested by the funding sources.

#### **IV. Delivery of Services**

LAD recognizes that there are many effective ways to provide services to clients. LAD expects its staff to utilize all permissible and appropriate methods to deliver service to clients. These methods include:

1. Direct representation of individual clients in negotiations, in litigation, in document preparation matters, in transaction matters, etc.
2. Providing legal advice or other brief services to individual clients. Because these services are part of LAD's overall intake system and because these services can be provided very efficiently, these services may be provided in service areas beyond those listed in Section II, above.
3. Providing referral services to other community resources. Because these services are part of LAD's overall intake system and because these services can be provided very efficiently, these services may be provided in service areas beyond those listed in Section II, above.
4. Community legal education presentations.
5. Development of pro se materials and other client information and education materials.
6. Tracking statutory, administrative, and legislative developments affecting clients and explaining to clients how these developments would impact their rights.
7. Participating in community advisory groups, work groups, and task forces. Frequently low-income persons are not involved in the discussion of legal changes or service delivery issues that significantly affect their interests. LAD can play an important role as a spokesperson for low-income persons in forums from which they might otherwise be excluded.
8. Activities intended to fully involve the private bar in the delivery of civil legal services to the poor. This work includes the referral of cases or matters to private lawyers; support for lawyer or law student staffed clinics, solicitation of financial support from lawyers, and participation in bar committees and activities. Because private lawyers may wish to provide services in areas that go beyond the case areas listed in Section II and because private lawyers may have special expertise in case areas that significantly impact low income persons, these services may be provided in service areas beyond those listed in Section II, above.

9. Support for community organizations. LAD should work with organizations whose membership consists of or that provide services to low income persons. The services that may be provided to individual clients may also be provided to client eligible organizations.

## **V. Procedures**

1. Emergencies - LAD recognizes that many cases and matters that are clearly permissible under this statement are emergency cases. LAD recognizes that case acceptance decisions in emergency cases must frequently be made by individual casehandlers without prior approval of the Deputy Chief Counsel, or designee. LAD staff are authorized to accept emergency cases in the service areas described in this statement. In addition, there may be circumstances where: (a) there is a need for immediate legal action to protect a client's rights; (b) there is a significant threat to the health or safety of an applicant for which no legal help is available; or (c) issues arise because of new and unforeseen circumstances, (such as natural disasters), changes in the law affecting large numbers of clients or other emerging legal issues not anticipated when priorities were set. These cases and matters may be accepted as cases by LAD. Whenever possible, a Deputy Chief Counsel, or designee should approve the acceptance of an emergency case as defined in this Section before the case or matter is accepted by LAD.
2. Reporting - It may be permissible in some circumstances for LAD to undertake representation in a non-priority case or matter. In this event, the staff person handling the case or matter should prepare a short description of the case or matter (including the LAD case number, a description of the services to be provided, and a short explanation of why representation was undertaken). A summary of any cases or matters accepted outside or priorities will be reported to the LAD Board on a quarterly basis and to LSC as required by LSC.
3. Signed Agreement by Staff - Public Law 104-134 requires that attorney and paralegal staff employed by LSC-funded organizations sign a statement indicating that only priority cases and matters will be undertaken. LAD attorney and paralegal staff will be required to sign LAD's current "Agreement as to LAD Priorities" form.

## **1621 - CLIENT GRIEVANCE PROCEDURE**

In accordance with the Legal Services Corporation Act (42 U.S.C. 2996-2996L), the Code of Federal Regulations (45 C.F.R. 1621) and the intention of this body, the client and applicant for service Grievance Procedure is as follows:

### *APPLICABILITY*

The provisions of this procedure apply to clients who believe that they have been denied full or proper legal assistance and to applicants for service who have been denied such assistance for reasons of ineligibility. Where other remedies are unavailable within this agency for client and applicant complaints on other matters, this procedure may apply.

Copies of this Client Grievance Procedure shall be available in the waiting rooms of every service office of LAD within easy view and accessibility for clients, applicants and the general public. This procedure shall be placed in the permanent records of LAD and issued to all staff Personnel Manuals. In addition, a copy of the Notice, Client Grievance Procedure, which is attached, and made an integral part of this procedure, will be displayed prominently on the wall in each service office waiting room and be available as a handout to any client, applicant or the general public.

### *GRIEVANCE COMMITTEE*

The Chairman shall appoint a Client Grievance Committee of no more than five (5) members of the Board of Directors. The Committee shall have no less than one-third (1/3) client members. In the absence of a full-appointed Client Grievance Committee, the Executive Committee of the Board of Directors shall sit as such Committee.

### COMPLAINT PROCEDURE

Every complainant shall be directed to contact the Chief Counsel, or designee, of the office by telephone or letter as soon as possible. The Chief Counsel, or designee, shall promptly review the complaint. The review shall be with the purpose of resolving the issue or complaint. When the complaint is against the Chief Counsel, the complainant shall have the option of having the matter reviewed by the Executive Director, or designee. Any person, against whom a complaint is being directed, shall be available during the review to provide information or attend the

review Chief Counsel. Should the matter not be resolved, the Chief Counsel shall advise the complainant of his/her right to appeal the matter to the Executive Director. If the client wishes to appeal, the Chief Counsel shall:

1. Provide a copy of this Procedure and Notice to the complainant;
2. Inform the complainant that a written appeal should be made to the Executive Director, or designee, within five (5) working days of the date of the notice of the Chief Counsel's decision. An appeal form will be provided and dictation assistance may be offered to the complainant, if requested or needed. The proper address shall be given the complainant, if needed;
3. Dictate a short memo on the results of their review and send to the Executive Director, or designee, within five (5) working days.

EXECUTIVE DIRECTOR REVIEW.

Every complaint appealed to the Executive Director shall be in writing and mailed within five (5) days after the notice of the Chief Counsel's decision. Exceptions to this may be granted at the discretion of the Executive Director based upon the circumstances at hand. The Executive Director or designee reviews the decision within five (5) working days after receiving the appeal. Should the matter not be resolved, the Executive Director shall ask the complainant whether he/she intends to appeal. If answered in the affirmative, the Executive Director, or designee, shall:

1. Follow steps 1 through 3 in the above paragraph directing such appeal to the Executive Director. The Executive Director shall submit the appeal to the President of LAD's Board of Directors, attention: Client Grievance Committee.
2. Inform the complainant that he/she will be contacted by a member of the Board and a hearing will be set within thirty (30) days after receipt of the appeal.
3. Inform the complainant that he/she may be represented by any person at the hearing.

CLIENT GRIEVANCE COMMITTEE ACTION.

After receipt of said appeal, the Chairman or his designee, shall set a meeting date within five (5) days at the convenience of all appropriate parties. This meeting shall be conducted by the Client Grievance Committee and need not be public. Only those persons who represent the complainant, who can testify for the complainant and appropriate staff, should attend the meeting. Minutes shall be taken at the meeting. (See §1621.2(3) A written memorandum, stating the decision of the Committee and the reasons therefore, shall be prepared within five

(5) working days of the meeting signed by the Committee Chairperson. A copy shall be mailed to the complainant and a copy placed in the Complaint file. The decision of the Committee is final.

#### COMPLAINT FILE

A file shall be kept on every complainant for any appeal, which is reviewed by the Executive Director as well as appeals to the Client Grievance Committee. The file shall be kept alphabetically by complainant last name and shall include a copy of any written documentation submitted for each appeal. Complainant file folders shall be kept for three (3) years, after which time they may be discarded, at the Executive Director's discretion.

## SAMPLE OF POSTING

### CLIENT GRIEVANCE PROCEDURE

**LEGAL AID AND DEFENDER ASSOCIATION, INC. - CIVIL LAW GROUP** provides legal assistance in civil matters to people who cannot afford the assistance of a **privately retained** attorney. LAD does not **charge attorneys'** fees to its clients however, LAD can only assist those people who are within certain financial guidelines that are set by the federal Legal Services Corporation or other LAD funding sources. LAD is also prohibited from handling certain kinds of cases by the legal services corporation or by priorities established by this office.

If you believe that you have been denied legal assistance improperly or if you are dissatisfied with the legal services you have received from LAD, there is a procedure you can use to register your complaint. You will not be penalized or retaliated against in any way for making a complaint. **You can get a copy of our complaint procedures from the office receptionist.** If you have a complaint, telephone or write to:

**Chief Counsel**

**LEGAL AID & DEFENDER ASSOCIATION, INC.**

**Civil Law Group**

**613 Abbott Street, 2nd Floor**

**Detroit, Michigan 48226**

**313.967.5555**

LAD provides its services on an equal opportunity basis and does not discriminate on the basis of race, color, religion, sex, sexual preference, marital status, age, handicap status or any other basis prohibited by law. A person who believes that they have been the subject of

discrimination may file a grievance with LAD or with the Legal Services Corporation, Office of Equal Opportunity, 750 First Street N.E., 11th Floor, Washington, D.C. 20002-4250. The Michigan Department of Civil Rights and Federal civil rights offices are also available to receive complaints alleging unlawful discrimination.

## **1626 - RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS**

With the exception of normal intake and referral services and the indirect incidental benefit of general client and community education activities, it is impermissible for any individual, while engaged in legal services activities funded by the LAD, to provide legal assistance for or on behalf of an ineligible alien. All prospective clients who seek legal services beyond intake and referral or brief advice and consultation by telephone, which does not include continuous representation, and who are citizens of the United States shall complete a written Citizenship Attestation. All prospective clients who seek legal services beyond intake and referral or brief advice and consultation by telephone, which does not include continuous representation, who are not United States citizens shall demonstrate their eligibility for legal services as provided in §1626.7 of the Corporation's regulations.

*"Except as provided below, LAD shall maintain written records in each client's file sufficient to document citizenship or alien eligibility for services in accordance with requirements imposed by the Legal Services Corporation."*

Prospective clients whose initial intake and screening does not occur in person and whose legal problem can be resolved through brief advice or consultation, which does not include continuous representation, shall be asked to orally declare their citizenship and/or eligible alien status. Such clients may also receive emergency assistance pursuant to LAD procedures, but they may not receive any subsequent legal assistance unless they submit a written Citizenship Attestation or documentation of alien eligibility status as soon thereafter as is reasonably practicable.

Prospective clients who are physically present in the office but who cannot produce the required documentation of eligibility may receive emergency assistance pursuant to LAD policies so long as a prospective client makes a written statement identifying the category under which the person claims eligibility and indicates the documents that will be produced to verify such status, but the person may not receive any subsequent legal assistance unless s/he submits documentation of eligibility status as soon thereafter as is a reasonably practicable.

If, to the knowledge of LAD staff, a client who was an eligible alien becomes ineligible through a change in circumstances, consistent with the Rules of Professional Conduct of Michigan, staff must discontinue representation.

These policies do not apply to the use of LAD non-LSC funds to provide legal assistance to an alien (1) who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented to the battery or cruelty; or (2) whose child has been subjected to such battery or cruelty and the alien has not actively participated in the battery or cruelty, provided that the legal assistance will assist the victim(s) of abuse to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, including suspension of deportation and self-petitioning for immigrant status. LAD is not required to maintain records regarding the immigration status of clients who are provided legal assistance because they are victims of abuse under this paragraph.

These policies do not apply to the use of LSC funds provided an otherwise 1626 ineligible alien if the services are "directly related" to the prevention of or obtaining relief from, the battery or cruelty, sexual assault or trafficking or the crimes such as those listed in section 101(2)(15)(u)(iii) of the Immigration and Nationality Act [8 USC 1101(a)(15)(u)(iii)] or whose child has been similarly victimized.

LAD may provide "related legal assistance" to otherwise ineligible aliens who are victims of domestic abuse even if they are not married to (or the child of) their abusers.

LAD may use LSC funds to provide legal assistance authorized by the VAWA 2006 Amendments and those previously covered under the Kennedy Amendment including: Aliens who have been battered, abused or subjected to extreme mental cruelty, sexual assault, trafficking or aliens who qualify for a "u" visa under Section 101(5)(u) of the Immigration Nationality Act.

Pursuant to VAWA 2006, LAD may also use LSC funds to service any alien whose child, without active participation of the alien, has been subjected to cruelty, sexual assault or trafficking in

the United States or meeting the qualifications of Section 101(a)(15)(u) of INA without regard to immigration status of the parents.

LAD shall maintain "records" sufficient to document LAD's compliance with 1626. For clients who are eligible for legal assistance because he or she is the victim of domestic abuse, sexual assault, trafficking or qualifies for a u-visa, LAD shall keep records that demonstrate that the person meets the statutory requirements but does not have to otherwise record the person's immigration status (Program Letter 06-z).

NOTE: "Related legal assistance" is defined as "legal assistance directly related to the prevention of or obtaining relief from, cruelty, sexual assault or trafficking or crimes listed in Section 101(a)(15)(u) of the INA.

## STAFF INSTRUCTIONS

### CITIZENSHIP ATTESTATION

As a part of the intake procedure, every client who is a U.S. citizen whose case has been accepted for representation must fill out a Citizenship Attestation form (or *attestation that appears in another document, e.g., retainer agreement*). For clients who are children or incompetent adults, the Declaration may be filled out by a parent, legal guardian, guardian *ad litem* or other legal representative of the child or incompetent adult. This Declaration must be made a permanent part of the file.

#### **Documentation of Alien/*Citizenship* Eligibility**

Legal Services Corporation regulations (45 CFR 1626) restrict the use of LAD funds for legal assistance to citizens and certain classes of aliens. This is to clarify procedures for determining eligibility of aliens for legal assistance and for documenting that eligibility.

#### **Intake Procedure**

Because of the complexity of the restriction, receptionists should not attempt to make a determination regarding alien status. If the potential client and the nature of the case are such that the office would normally schedule an interview, arrangements should be made for the potential client to see an attorney or paralegal.

During the interview, the attorney/paralegal should review with the potential client the reasons that we must inquire into the matter of alien status. In a manner that promotes the development of trust between the attorney and client, an inquiry should be made to determine the whether and how the alien restrictions apply to the potential client. Inquiries of this nature should be made of all potential clients who are not citizens in all interviews in all offices regardless of race, color, or national origin.

If the client is not a citizen, the attorney/paralegal should request documentation of the client's legal status in the United States. If the client relates that he/she is in the United States legally but cannot produce immediate documentation and the attorney concludes that representation must begin on an emergency basis, a second form entitled Emergency Documentation Form should be filled out and made a permanent part of the file. Subsequent compliance with the documentation process must occur as soon as reasonably possible.

The alien status of a client or an applicant for service shall not be disclosed to any person not employed by LAD in any matter that permits the identification of the client applicant for service without first obtaining the express written consent of the client or applicant. LAD is not required to maintain records regarding the immigration status of clients who are provided legal assistance because they (1) have been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented to the battery or cruelty; or (2) whose child has been subjected to such battery or cruelty and the alien has not actively participate in the battery or cruelty, provided that the legal assistance will assist the victim(s) of abuse to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse. Some persons who are ineligible under the LSC alien restriction may be served by other attorneys or entities providing legal representation within the State. The LAD is permitted to refer those persons to those other attorneys or entities.

#### Verification of Citizenship and LSC-Eligible Alien Status

U.S. citizens represented by LAD must sign the Citizenship Attestation form (or *other document*) attesting to the fact of the client's U.S. citizenship. Additional verification of citizenship shall not be required unless the attorney/paralegal has reason to doubt that a person is a United States citizen. Race, color, appearance, national origin, occupation, accent and ability to speak English may not be considered in evaluating whether there is reason to doubt U.S. citizenship. Where the attorney/paralegal has knowledge of particular facts that call citizenship into doubt, a request for verification should be made. For example, if a client who has stated that he or she is a citizen comes to LAD attorney for help with an unemployment benefit overpayment based on the client's misrepresentation of citizenship status, the attorney should ask for verification of citizenship. The original, a certified copy or a photocopy that appears to be complete, correct and authentic of any of the documents listed in Section 1 of the "Citizen/Eligible Alien Determination Form" shall be accepted as verification of citizenship. In addition, any other authoritative document that is issued by INS, by a court or another government agency that provides evidence of citizenship may also provide verification of citizenship, but such documentation should be reviewed with the executive director (or designee) to determine eligibility.

If the client is an alien seeking representation, he/she will be required to submit appropriate documents to verify eligibility. Acceptable forms of documentation are listed on the "Citizen/Eligible Alien Determination Form." Because of changes in immigration law and immigration forms, the list of documents on the determination form may not be exhaustive. Other authoritative documents issued by INS, by a court or by another governmental agency, may also provide evidence of alien status, but where an alien has documentation that does not fit into the categories listed on the determination form, the documentation should be reviewed with the executive director (or designee) to determine eligibility. If requested by the potential client, staff will provide a copy of the "Citizen/Eligible Alien Determination Form."

In cases where a client is required to provide verification of citizenship or eligible alien status, the attorney/paralegal shall keep in the client file copies of all documents given to them to establish eligibility, except where copying of those documents is impossible or illegal. In such situation, the attorney/paralegal shall include a description of the document. The attorney/paralegal shall also complete a notation as to citizenship in the case management system indicating whether the client is found to be eligible or ineligible for LSC assistance.

If it is not feasible for a citizen or an alien to personally meet with the attorney/paralegal or otherwise physically transmit documentation to LAD before commencement of representation, any required information that can be obtained orally shall be recorded by the attorney/paralegal, and required documentation shall be submitted as soon as possible. No written verification of citizenship or eligible alien status is required when the only service provided is brief advice and consultation by telephone. If a client is physically present and in need of legal assistance on an emergency basis but cannot produce required documentation, the attorney/paralegal shall make a citizenship notation regarding that emergency in the case management system, and arrange for the required documentation to be submitted as soon as possible. The attorney/paralegal shall also explain to the client that only limited, emergency legal assistance may be provided without satisfactory documentation, and that failure or inability to produce the documentation will require LAD withdraw from the case if LAD's professional responsibilities are consistent with withdrawal and the emergency no longer exists.

## CITIZEN/ELIGIBLE ALIEN DETERMINATION

Case No.

Date of Intake

1. U.S. Citizen

### Acceptable Documentation:

U.S. Passport

Baptismal Certificate

Birth Certificate

Notarized statement signed by

31d party citizen that the person

U.S. Naturalization Certificate

seeking legal assistance is a

U.S. Citizen ID Card (1-197)

U.S. citizen

OR

2. Alien lawfully admitted for permanent residency.

### Acceptable Documents:

- 1-151 or 1-551;
- 1-181 (Memorandum of Creation of Record of Lawful Permanent Residence) with approval stamp;
- Passport with immigrant visa or stamp indicating admission for lawful permanent residence in passport;
- Order granting residency, suspension or adjustment of status or 1-327 Reentry Permit;
- 1-94 with stamp indicating admission for lawful permanent residence; or
- Any computerized verification from INS or other authoritative document

3. Alien who is married to an U.S. citizen, parent of an U.S. citizen, or unmarried child

under the age of 21 of a U.S. citizen and has filed an application that has not been rejected for:

- a) adjustment of status; or
- b) permanent residency with INS and application has been approved and forwarded to a U.S. consulate outside the United States; or
- c) permanent residency directly with the American Consulate; or
- d) suspension of deportation

Required Documentation (check one from A and one from B)

A.

- INS fee receipt issued to alien when 1-485 was filed;
- Copy of 1-485, 1-256A or EOIR-40, accompanied by notarized statement, signed by alien, that such form was filed with INS or consulate;
- EOIR-42 and proof of filing;
- OF-230 and proof of filing with consulate;
- 1-360;
- 1-688B or 1766 coded 8 CFR §2274a.12(c)(9) or (c)(16) or (c)(10);
- letter or Form 1-797 from INS acknowledging receipt of 1-485;
- I-94, with stamp indicating entry pursuant to advance;
- Passport with stamp or writing by INS officer indicating pending §245 application;
- 1-130 and proof of filing; or
- any computerized verification from INS or other authoritative document.

AND one of the following:

B.

- Copy of alien's marriage certificate, accompanied by proof of spouse's U.S. citizenship;
- Copy of U.S. birth certificate, baptismal certificate, adoption decree, or other documents demonstrating that alien is the parent of a U.S. citizen under the age of 21;
- Copy of alien's birth certificate, baptismal certificate, adoption decree or other documents demonstrating the alien is the unmarried child under the age of 21 of a U.S. citizen, accompanied by proof that alien's parent is a U.S. citizen;
- Copy of an 1-130 (visa petition) containing information that demonstrates that the alien is the spouse or parent of a U.S. citizen or unmarried child under the age of 21 of a U.S.

citizen, accompanied by a notarized statement that such document was filed either with INS or the American Consulate.

OR

4. Refugees, asylums, those granted withholding of deportation and conditional entrants:

- Arrival/departure record (1-94) or passport marked Section 207, "refugee";
- Arrival/departure record (1-94) or passport marked Section 208 or "asylum or order granting asylum from INS, immigration court, BIA, or federal court;
- Arrival/departure record (1-94) or passport marked Section 243(a)(7), conditional entrant";
- Arrival/departure record (1-94) marked Section 243(h) or order or letter granting withholding of deportation from INS, immigration court, BIA, or federal court;
- 1-688B or 1-766 coded 8CFR §274.12(a)(3) (Refugee), (a)(4) (paroled asylum), (a)(1 0)(Withholding of deportation) or (a)(1 5) (Asylum);
- 1-571 refugee travel document; or
- Any computerized verification from INS or other authoritative document

5. Agricultural Workers:

- 1-688, 688A, or 788 indicating issuance under §210 (or under 8 CFR §274a.12(a)(12), with other evidence indicating eligibility under INA §210;
- I-94 or passport stamped "H-2A" (only for legal assistance relating to wages, housing, transportation, and other employment rights provided in the worker's contract),
- any computerized verification from INS or other authoritative document

6. Other documentation reviewed with the executive director or designee:

Specify

## 1627 – SUBGRANTS AND MEMBERSHIP DUES AND FEES

### SUBGRANTS

*A subgrant shall mean any transfer of Corporation funds from a recipient to a subrecipient. A subrecipient means any entity that accepts Corporation funds under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. All subgrants must:*

1. be submitted in writing to the Corporation for prior, written approval (Corporation has 45 days to approve, disapprove, or suggest modification to the grant);
2. include the terms and conditions of the subgrant and the amount of funds intended to be transferred;
3. not be for a period of longer than one year, and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance;
4. contain a provision providing for their orderly termination in the event that the recipient's funding is terminated or the recipient is not refunded and for suspension of activities if the recipient's funding is suspended.

Any substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of Section 1627.3(a). Minor changes of less than 10% require notification to the Corporation in writing.

All subrecipients must comply with the financial and audit provisions of the Corporation. The recipient is responsible for ensuring the proper expenditure, accounting for, and audit of delegated funds.

Recipient is responsible for the repayment of any disallowed expenditures of a subrecipient to the Corporation.

A. Except as provided in Paragraph B, LAD will not use funds provided by the Legal Services Corporation to pay dues to any private or nonprofit organization, whether on behalf of the program or an individual employed by the program. A dues payment is a payment to an organization on behalf of the program or an individual employed by the program to be a member of the organization, or to acquire voting or participatory rights in the organization.

B. LAD may pay dues to the Michigan State Bar Association on behalf of the attorneys employed by the program with LSC funds. It may use LSC funds to pay such dues because the State of Michigan mandates the payment of such dues as a requirement of the practice of law.

### **1632 - REDISTRICTING**

It is impermissible for any individual, while engaged in legal services activities funded by LAD to advocate or oppose any plan or proposal, or represent any party or participate in any other way in litigation related to redistricting, or to make available any equipment for use in such activities.

"Advocating or opposing any plan" means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

"Redistricting" means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

This policy does not prohibit any litigation brought under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971, et seq., provided such litigation does not involve redistricting.

### **1633 - RESTRICTION ON REPRESENTATION ON CERTAIN EVICTION PROCEEDINGS**

It is impermissible for any individual, while engaged in legal services activities funded by LAD, to defend any person in a proceeding to evict that person from a public housing project if:

- (a) The person has been charged with or has been convicted of the illegal sale, distribution or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and,
- (b) The eviction proceeding is brought by a public housing agency on the basis that such illegal drug activity, for which the person has been charged or for which the person has been convicted, threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

For purposes of this policy, a person is considered to have been "charged with" engaging in illegal drug activities if a criminal proceeding has been instituted against such person by a governmental entity with authority to initiate such proceeding and such proceeding is pending.

LAD will maintain a list of all cases which involve an eviction from public housing and there is an allegation of drug sale, distribution or manufacture of drugs, or possession of drugs with intent to sell or distribute, and each client's file shall include documentation that demonstrates why the representation was permissible.

### **1636 - CLIENT IDENTITY AND STATEMENT OF FACTS**

Any individual, while engaged in legal services activities funded by the LAD may not file a complaint in a court of law or engage in pre-complaint settlement negotiations on behalf of a client represented by the program who is a potential plaintiff in the proposed action and who has authorized LAD to file suit in the event that the settlement negotiations are unsuccessful, unless:

1. Either:

(a) the proposed plaintiff is identified in the complaint or in the pre-litigation settlement negotiations;

(b) the proposed plaintiff is identified in a separate notice provided to the defendant against whom the complaints filed when disclosure in the complaint would be contrary to law or court rules or practice; or

(c) a court of competent jurisdiction has entered an order protecting the proposed plaintiff from such disclosure,

2. And the proposed plaintiff represented by the program has signed a dated, written statement in English and, if necessary, in a language other than English that the client understands, enumerating the particular facts supporting the proposed complaint, insofar as they are known to the client when the statement is signed.

A signed statement prepared for purposes of complying with this policy shall not include any client information that is not otherwise to be disclosed as the basis of the complaint or of a pre-complaint demand letter for relief. The statement shall assert the purpose of its preparation and shall state that it does not operate as a waiver of the attorney-client privilege or work product privilege for any purpose other than compliance with Section 45 CFR 1636.

The prepared statement shall be retained in the client's file and a copy shall be forwarded to the Deputy Chief Counsel or designee, who shall maintain a file of all such statements in a central location. Such statement shall not be disclosed except to the Legal Services Corporation or to a Federal department or agency auditing or monitoring LAD in compliance with Section 509 of Public Law 104-134, 110 Stat. 1321 (1996).

In the event of an emergency, when staff reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, staff may proceed with the proposed litigation or negotiation without a signed statement of facts, provided that the statement is prepared and signed as soon as possible thereafter. For *each case where the statement of facts was delayed because of an emergency, client 13 file shall include a statement of the nature of the emergency.*

A signed statement of facts is not required to be prepared when representation involves a client: who is a defendant; who is involved in an administrative proceeding that responds to an action taken by a government agency, such as an unfavorable disability, welfare, unemployment, or housing authority decision; for whom only brief service, advice, and/or referral activities are provided; or when contact with another party is preliminary to negotiation or is not made in contemplation of litigation, such as to clarify the facts, to gauge the potential for later negotiation, or to resolve a matter on which LAD does not intend to pursue litigation.

**SAMPLE**  
**STATEMENT OF FACTS**  
**REQUIRED BY 45 CFR PART 1636**

Plaintiff, \_\_\_\_\_, signed this statement of facts to comply with the requirements of 45 CFR Part:1636. Plaintiff's attorney in contemplation of litigation wrote this statement. Plaintiff has instructed LAD to prepare a complaint and the facts contained in this statement form the basis of the complaint. Plaintiff intends to assert, and does not, in signing this statement, waive any right to assert, attorney-client privilege or work product privilege. Plaintiff intends that this statement will be retained in the LAD files and that such statement will not be released to any person except for the auditors and monitors described in federal law or pursuant to other applicable court rules or a court order.

**[Set out brief statement of facts or include factual allegations of complaint or factual statement in proposed demand letter.]**

Signed:

Date:

*(Client signature)*

*Alternative Approach*

Advocates may have the client sign a copy of the complaint that will be filed, if the complaint contains "particular facts supporting the complaint, insofar as they are known to the plaintiff when the statement is signed."

## **1637 – REPRESENTATION OF PRISONERS**

It is impermissible for any individual, while engaged in legal services activities funded by the LAD, to participate in any civil litigation on behalf of a person who is incarcerated in a federal, state or local penal facility maintained under governmental authority or to participate in administrative proceedings on behalf of such person challenging the conditions of incarceration. This limitation on representation applies to all persons so incarcerated, regardless of whether they are a plaintiff or defendant in litigation. "Incarcerated" means the involuntary physical restraint of a person who has been arrested for or convicted of a crime.

If during the period when LAD is representing a client in litigation, it becomes known to LAD that the client has become incarcerated, the attorney must use his or her best efforts to withdraw from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

In each such case, the client file must include:

- (1) documentation indicating the date when LAD was notified of the client's incarceration and the recipient, efforts to withdraw from the litigation; or
- (2) a statement detailing the reasons why the recipient anticipates that the period of incarceration is likely to be brief and the litigation is likely to continue beyond the period of incarceration.
- (3) In either case the documentation for continued representation of incarcerated client from must be completed and placed in client's file.

This policy does not apply to cases and matters on behalf of persons who are incarcerated that do not involve litigation in court or administrative proceedings challenging the conditions of incarceration. Nor does this policy apply to persons who are detained in mental health facilities, juvenile facilities or other detention facilities that are not penal facilities.

*DOCUMENTATION FOR CONTINUED  
REPRESENTATION OF INCARCERATED CLIENT  
IN CIVIL LITIGATION (§1637)*

*DATE.*

*CASE FILE NO:*

*TYPE OF CASE:*

*DATE CASE ACCEPTED:*

*DATE WHEN CLIENT BECAME INCARCERATED:*

*DATE CASE HANDLER NOTIFIED OF CLIENT'S INCARCERATION:*

*EFFORTS MADE TO WITHDRAW FROM LITIGATION:*

*OR*

*COMPLETE A STATEMENT IN THE SPACE BELOW DETAILING REASON(S) WHY CASE HANDLER ANTICIPATES THAT THE PERIOD OF INCARCERATION IS LIKELY TO BE BRIEF AND THE LITIGATION IS LIKELY TO CONTINUE BEYOND THE PERIOD OF INCARCERATION.*

EXPECTED DATE OF COMPLETION OF CASE:

EXPECTED END DATE OF PERIOD OF INCARCERATION:

STAFF ATTORNEY \_\_\_\_\_ DATE \_\_\_\_\_

MANAGING ATTORNEY \_\_\_\_\_ DATE \_\_\_\_\_

DEPUTY/CHIEF COUNSEL \_\_\_\_\_ DATE \_\_\_\_\_

## **1638 – RESTRICTION ON SOLICITATION**

It is impermissible for any individual, while engaged in legal services activities funded by LAD, to represent an individual as a result of in-person unsolicited advice provided by an employee of the or other provider of legal services funded by the Legal Services Corporation or to refer any individual to whom they have given in-person unsolicited advice to LAD or to another provider of legal services funded by the Legal Services Corporation.

For purposes of this policy, "in-person" means a face-to-face encounter or a personal encounter through other means of communication such as a personal letter or telephone calls. "Unsolicited advice" means advice to obtain counsel or take legal action given to an individual who did not seek the advice or with whom the recipient does not have an attorney-client relationship.

This policy does not prevent a staff person from providing to an existing client, any advice warranted by professional responsibility to the client; nor does not prevent a staff person from responding to an individual's specific question about whether the individual should consult an attorney or take legal action; and it does not prevent a staff person from responding to an individual who makes a specific request for information about the person's legal rights or who asks for assistance in connection with a specific legal problem.

This policy is not intended to and does not prohibit LAD employees from providing information regarding legal rights and responsibilities or providing information about LAD services and intake procedures through client and community education activities, outreach activities, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publication, or giving presentations to groups that request such information and providing legal representation to individuals who seek such representation as a result of information provided as part of that activity.

This policy is not intended to and does not prohibit LAD employees from representation or referral of clients if the employee is part of, or receives the referral from, an ombudsman program operated by LAD or by another legal services program funded by the Legal Services Corporation, so long as the ombudsman program is a statutory or private program that

provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including, but not limited to, those who are institutionalized or are physically or mentally disabled.

## **1639 - WELFARE REFORM**

### *Impermissible Activities*

It is impermissible for any individual, while engaged in legal services activities funded by LAD, to initiate legal representation or participate in any other way in litigation, lobbying or rulemaking involving efforts to reform a federal or state welfare system, including participation in:

- (a) litigation challenging laws or formal regulations enacted as part of a reform of a federal or state welfare system;
- (b) Rulemaking or lobbying undertaken directly or through grassroots efforts involving proposals that are being considered to implement a reform of a federal or state welfare system.

For purposes of this policy, reform of a federal or state welfare system means:

- (1) the Federal and State Temporary Assistance for Needy Families Block Grant (TANF) programs, including separate State programs as well as programs continued under Federal waiver authority;
- (2) the General Assistance program conducted by a states or county with state funding or under state mandate;
- (3) other provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, except for the child support provisions in Title 111; however, the underlying programs affected by these provisions are not included within the meaning of reform of a Federal or State welfare system;
- (4) new programs or provisions enacted to replace or modify these programs.

In addition, if provisions of a program not subject to the restrictions were included as an integral part of a reform of a federal or state welfare program, then those provisions would be subject to the restrictions on welfare reform advocacy.

## PERMISSIBLE ACTIVITY

Staff may provide advice and representation to individual clients who are seeking specific relief from a welfare agency under a welfare reform law or regulation, so long as such representation does not seek to invalidate an existing federal or state welfare reform statute or a regulation formally adopted pursuant to public notice and comment. Such representation may involve negotiation with agency officials, representation in administrative hearings and representation in court seeking judicial review over agency actions.

Staff may use non-LSC funds to comment in a public rulemaking proceeding involving welfare reform or to respond to a written request from a government agency, or official thereof, elected official, legislative body or committee, or member thereof, to provide information or to testify on welfare reform, so long as such activity is undertaken pursuant to the requirements of 45 CFR §1612.6.

Staff may also obtain information, clarification or interpretation of welfare agency rules and policies and discuss regulatory and legislative developments with others at task force meetings or in other settings.

## **1640 - NOTICE OF APPLICATION OF FEDERAL LAW TO LSC RECIPIENTS**

The activities of LAD and its employees and board members are subject to 13 specified statutes defining federal crimes and penalties. These statutes are listed below. If an employee or board member is convicted and all appeals have been exhausted, and it is found after a hearing that the program knowingly or through gross negligence allowed the offense to occur, the program will have its grant terminated without any further hearing. During the pendency of an employee's or board member's appeal of a conviction, LSC has discretion to "take such steps as it determines are necessary to safeguard its funds".

The following is the list of federal statutes contained in Sec. 1640.2:

18 U.S.C. §201 (Bribery of Public Officials and Witnesses);

18 U.S.C. §286 (Conspiracy to Defraud the Government with Respect to Claims);

18 U.S.C. §287 (False, Fictitious or Fraudulent Claims);

18 U.S.C. §371 (Conspiracy to Commit Offense or Defraud the United States);

18 U.S.C. §641 (Embezzlement, Defalcation or Theft of Public Money, Property of Records);

18 U.S.C. §1001 (Falsification of Specific Documents);

18 U.S.C. §1002 (Possession of False Papers to Defraud the United States);

18 U.S.C. §1516 (Obstruction of Federal Audit);

31 U.S.C. §3729 (False Claims);

31 U.S.C. §3730 (Civil Actions for False Claims), except that qui tam actions that are authorized by §3730(b) of such title to be brought by persons may not be brought against the Corporation, any recipient, subrecipient, grantee, or contractor of the Corporation, or any employee thereof;

31 U.S.C. §3731 (False Claims Procedure);

31 U.S.C. §3732 (False Claims Jurisdiction); and

31 U.S.C. §3733 (Civil Investigative Demands).

Note that the qui tam provisions of the False Claims Act-Section 3730(b)-are not applicable to our program or the board and staff. A qui tam action is one brought under the False Claims Act by a private plaintiff on behalf of the Federal Government (rather than by the Government itself). These actions are often referred to as "whistleblower lawsuits."

Each of the stated crimes requires a showing of knowledge and intent as a prerequisite for conviction. The maximum possible penalties for individuals who are convicted ranged from significant fines to imprisonment for up to 15 years.

Copies of this policy will be given to all employees, temporary and permanent and LAD Board of Directors. Please do not hesitate to contact the Executive Director if you have any questions about the matters addressed.

## 1642 - ATTORNEYS' FEES

Any individual, while engaged in legal services activities funded by LAD may not claim or collect and retain attorneys' fees on behalf of the program or a client as a result of representation of the client in court or administrative litigation, where an award of attorneys' fees is available pursuant to Federal or State law. For purposes of this policy,

"Attorneys' fees" means an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees or a payment to an attorney from a client's retroactive statutory benefits.

"Award" means an order by a court or an administrative agency that the unsuccessful party pay the attorneys' fees of the prevailing party, or an order by a court or administrative agency approving a settlement agreement of the parties which provides for payment of attorneys' fees by the adversarial party.

"Claim" means to include a request for attorneys' fees in any pleading, whether fees are to be paid to the staff attorney, or to the client.

This prohibition applies to private attorneys who undertake representation of eligible clients and who are compensated for their time and effort by LAD for such representation. This restriction *does not* apply to private attorneys who undertake *pro bono* representation of eligible clients who are referred by LAD even if the private attorneys are reimbursed for their out-of-pocket expenses by LAD. This restriction *does not* apply to co-counsel who undertake joint *pro bono* representation of eligible clients with LAD, but *pro bono* co-counsel may only claim and collect attorneys' fees for work performed by co-counsel.

This policy does not apply to the following situations:

(a) cases where litigation was pending on April 26, 1996, except for additional claims (other than a claim for attorneys' fees) made for the client after April 26, 1996;

(b) cases or matters in which a court appoints a staff attorney to provide representation in a case pursuant to a statute or court rule or practice equally applicable to all attorneys in the jurisdiction, and in which the program receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the court in which the appointment is made;

(c) cases or matters which the recipient undertakes pursuant to a grant, contract or other agreement by a governmental agency or other third party, where the third party pays the recipient to undertake the representation of clients;

(d) sanctions imposed by a court for violations of court rules or practices, or statutes relating to court practice, including Rule 11 or discovery rules of the Federal or State Rules of Civil Procedure or statutes;

(e) reimbursement of costs and expenses from an opposing party; or

(f) reimbursement of costs and expenses from a client when a case results in a recovery of damages or statutory benefits if the client has agreed in writing to reimburse the program for such costs and expenses out of such recovery.

LAD will maintain records regarding attorneys' fee and reimbursements for out of pocket expenses in accordance with requirements imposed by the Legal Services Corporation. This policy does not require a prospective client to waive a statutory right to attorneys' fees as a condition of representation. In any case in which there is the potential right to claim an attorneys' fee, the client must be advised that LAD is prohibited by federal law from claiming or collecting and retaining for itself or the client, attorneys' fees that may be awarded by a court as part of the judicially determined remedy, and further advised of the potentially adverse impact of this restriction on the program's ability to resolve the matter through a negotiated settlement.

#### **1643 - RESTRICTION ON ASSISTED SUICIDE, EUTHANSIA, AND MERCY KILLING**

It is impermissible for any individual employed by LAD, while engaged in legal service activities funded by the Legal Services Corporation, to use those funds to assist in, support or fund any activity or service which has the purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

- (a) Securing or funding any item benefit, program, or service furnished for the purpose of causing, or for the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual,

- (b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or
- (c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

Nothing in this policy shall be interpreted to limit or interfere with the operation of any statute or regulation governing activities listed above.

Nothing in this policy shall be interpreted to apply to any of the following:

- (1) The withholding or withdrawing of medical treatment or medical care;
- (2) The withholding or withdrawing of nutrition or hydration,
- (3) Abortion;
- (4) The use of items, goods, benefits, or services furnished for purposes relating to alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or
- (5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing.

This policy does not apply to activities funded from sources other than the Legal Services Corporation.

## 1644 – CASE DISCLOSURE

It shall be the policy of LAD that upon the request of any person, LAD shall disclose to that person the following information for each case filed in court by any full or part-time attorney employed by LAD or by a subrecipient under a sub-grant for direct representation of eligible clients.

- 1) The name and full address of each party to the case, unless:
  - (a) The information is protected by an order or rule of court by State or Federal law, or
  - (b) The attorney handling the case reasonably believes that revealing such information would put his/her client at risk of physical harm;
- 2) The cause of action; i.e. a sufficient description to indicate the type or principal nature of the case;
- 3) The name and full address of the court where the case is filed;
- 4) The case number assigned to the case by the court;

The case disclosure requirements apply:

- 1) Only to an action filed on behalf of a plaintiff or petitioner who is our client or a client of our LSC subrecipient under 45 CFR 1627;
- 2) Only to the original filing of a case, except for an appeal filed in an appellate court where we (or our subrecipient were not the attorney of record in the case below and our client for our subrecipient's client) is the appellant;
- 3) To a request filed on behalf of our client (or our subrecipient's client) in a court of competent jurisdiction for judicial review of an administrative action.

The case disclosure requirements do not apply to any case filed by a private attorney as part of LAD's Private Attorney Involvement Program, including sub-grants for PAI activities under 45 CFR 1627.

In order to make this information readily available upon request, for each case a full or part-time attorney files a case in court, she will complete and send to the appropriate official, a copy of the attached form which will be kept in a central file that will be available for copying when a request is received for the disclosure of case information.

Any person who requests such case disclosure information from LAD will be billed an amount equal to \$0.10 per page for photocopying plus actual costs of postage.

LAD will report semi-annually to the Legal Services Corporation the information required above for every case filed in court. The semi-annual report will be made in a manner specified by the Corporation. LAD understands that information contained in such reports will be made available to the public by the Corporation pursuant to a request under the Freedom of Information Act.

## CASE DISCLOSURE INFORMATION REPORTING FORM REQUIREMENTS

Name(s) and full address(es) of each party to the case:

Cause of Action:

Name of Court where action is filed:

Full Address of Court:

Case Number Assigned by Court:

**The form for each case should be sent to the Deputy Chief Counsel in the Civil Law Group to be kept in a central file that will be available for copying when a request is received for the disclosure of information and will be used to prepare semi-annual reports to the Legal Services Corporation.**

Revision History Table

Section # and Title	Date of Revision	Summary of revision	Person completing revision

## ATTACHMENT 7

### *REVISED ACCOUNTING MANUAL POLICIES FOR TWO SECTIONS:*

- 1. MONTHLY FINANCIAL REPORTS*
- 2. AUDIT WORK PAPERS*

### **Monthly Financial Reports**

Before preparing the monthly reports for distribution to the Board of Director's, Finance Committee and Law Group Chiefs, the following steps are taken:

#### **Journal Entries**

Journal entries are recorded at month-end to balance out the general ledger accounts. Entries can be memorized in MIP and updated on a monthly basis by recalling the entry and updating amounts. The following are entries that are recorded monthly.

Journal entries are generated by any member of the Finance area and reviewed by the Vice President of Finance prior to entering. All entries are entered into MIP by either the Grants Manager or the Accounting Clerk. All entries must have documentation attached to support the entry. For those items that have worksheets created from the payroll registers, amounts can be verified by reviewing payroll worksheets. Exceptions to the supporting documentation requirement are noted below. After entries are made, the "Posted General Ledger Transactions – Journal Voucher" report must be initialed by the person entering the transactions.

#### **Federal Defender Encumbrances**

At month end, the FDO Encumbrance Entry worksheet is used to enter encumbrances into MIP. This entry represents outstanding payables at month end (copies are forwarded to Finance by the Administrative Officer in FDO).

The entry to record encumbrances is as follows:

Expense (5000)	xxxxx
Encumbrance Payable (5000)	xxxxx

(more than one expense code can be listed for this entry)

**Administrative Fees** are determined on an annual basis through the budgeting process for each law group. The amount to be charged per month is calculated by dividing the annual payment by twelve. The entry to record Administrative Fees is as follows:

Administrative Fees (Center Code)	xxxxx
Transfer To Other Funds (Center Code)	xxxxx
Transfer From Other Funds (9000)	xxxxx
Program Income (9000)	xxxxx

Supporting documentation is not required as this entry is one twelfth of the budgeted amount for Administrative Fees.



Supporting documentation is not required as this is the monthly amount deducted from employee checks. This amount can be verified by looking at the employee installment note and the semi-monthly payroll register.

### **Legacy Campaign Payments**

Legacy campaign payments are contributions made by employees through payroll deduction. This income is transferred from the General Fund to FOLA with the following journal entry:

Pledge Receivable (1000)	xxxxx	
Transfer to Other Funds (1000)		xxxxx
Transfer from Other Funds (6000)	xxxxx	
Pledge Income (6000)		xxxxx

Supporting documentation is not required as this is the monthly amount deducted from employee checks. This amount can be verified by looking at the employee pledge form and the semi-monthly payroll register.

### **ASG Facility Salaries/Fringes**

The salary and fringes for staff assigned to facility are allocated to the law groups and ASG using the Rev/Bldg Distribution Code in MIP. This code allocates expenses based on the square footage assigned to each group.

The amount for salary and payroll taxes per month are taken from the semi-monthly payroll worksheets from ADP. Insurance costs are taken from the actual invoices for payments.

The payroll register is used as supporting documentation.

### **Bank Account Interest**

Bank account interest can be recorded by either waiting until bank statements are received from the bank, or by reviewing bank statements online. The following accounts are interest-bearing;

1. Federal Defender Checking
2. Legal Services Corporation Checking
3. Friends of Legal Aid Money Market Account
4. Pension Fund Money Market Account
5. Building Fund Money Market Account

The entry to record bank account interest is as follows:

Bank Account (Center Code)
Interest (Center Code)

Other entries include the following:

- Escrow and Litigation Checking Accounts – entry to record the expense for the month (amount of checks written).
- Legal Services Corporation (LSC) Transfer – entry to record the transfer of grant funds between LSC and the unit funded by LSC, Private Attorney Involvement (PAI). The amount of this transfer is equal to the amount expensed for the month by PAI.
- Petty Cash – this entry is used to record expenses that have incurred for each petty cash account.
- LSC and FDO transfer amounts
- Correcting entries for data entry errors

When a journal entry is made that have accounts for two different funding sources, the “Transfer To” and “Transfer From” accounts are used.

Supporting documentation is not required as this amount can be verified by the bank statement located in the Bank Reconciliation binder.

### **Audit Work Papers**

The following documents are required to be completed before the start of the Corporation’s annual audit and the Federal Defender Office audit:

- 1) **Accounts Payable Worksheet**
- 2) **Accounts Receivable Worksheet**
- 3) **Deferred Revenue Worksheet**
- 4) **Prepaid Expense Worksheet**
- 5) **Accrued Time Worksheet**
- 6) **LRAP Worksheet**
- 7) **Statement of Revenues Worksheet**
- 8) **Civil Law Group Income Breakdown**
- 9) **Management & General Program Expense Percentages**
- 10) **Year End Cash Reconciliation**
- 11) **Equipment & Depreciation Schedules**
- 12) **In-Kind Contribution Schedules**
- 13) **Retirement Payment Schedule**
- 14) **Legal Expense Schedule**
- 15) **Due To/Due From Reconciliation**
- 16) **Transfer To/Transfer From Reconciliation**
- 17) **Payroll Reconciliation Worksheet**
- 18) **Match-In and Match-Out Worksheet**
- 19) **Check Register**
- 20) **Journal Entries**

Each page of the **Center Codes** journal entries are copied for the auditor. Journal entries are obtained from the following worksheets as listed above:

- Accounts Payable
- Accounts Receivable
- Deferred Revenue
- Prepaid Expenses
- Accrued Vacation
- LRAP
- Equipment Capitalization/Disposal
- Depreciation

Journal entries include a reversal for the prior year's entries (except Equipment and Depreciation) and the recording of the current year amounts.

Journal entries are generated by the Vice President of Finance; however, all entries are entered into MIP by either the Grants Manager or the Accounting Clerk. All entries must have documentation attached to support the entry.

**21) Trial Balance**

**22) General Ledger**

**23) Financial Statements**