



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

Coast to Coast Legal Aid of South Florida, Inc.
Follow-Up to Program Integrity Review
March 2-6, 2009

Recipient No. 610090

I. EXECUTIVE SUMMARY

Finding 1: Coast to Coast Legal Aid of South Florida (CCLA) has taken substantial corrective action to address many of the deficiencies with regard to the program integrity requirements of 45 CFR § 1610.8 identified in the Final Report from the October 2007 review. At the time of the follow-up review, however, further steps needed to be taken to ensure compliance.

A. Legal Separation of Organizations

CCLA is in substantial compliance with 45 CFR § 1610.8(a)(1), which requires that the recipient and the other organization engaged in LSC-restricted activities be legally separate entities. CCLA appears to be legally separate from Legal Aid Services of Broward County's (LASBC).

B. Transfer and Subsidization

CCLA is in compliance with 45 CFR § 1610.8(a)(2), which requires that there be no transfer of LSC funds from the recipient to the other organization engaged in LSC-restricted activities and that LSC funds cannot subsidize restricted activities.

C. Physical and Financial Separation

CCLA is not in compliance with the requirements of 45 CFR § 1610.8(a)(3). CCLA has increased its separation from LASBC as per some of the suggestions in the Final Report from the October 2007 review, which had questioned the sufficiency of the physical and financial separation between CCLA and LASBC. Nonetheless, overall physical and financial separation is not sufficient.

Finding 2: CCLA is in compliance with the requirements of 45 CFR §§ 1620.3 and 1620.5 which states that the governing body of a recipient must establish written priorities for LSC and non-LSC cases and the priorities must be reviewed by the governing body at least on an annual basis.

Finding 3: CCLA is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

II. BACKGROUND

General Background

CCLA was formed in January 2004 as the LSC provider to serve Broward and Collier Counties. Previously, LASBC and Florida Rural Legal Services (FRLS), respectively, served these counties as LSC grantees. As part of a state reconfiguration, LASBC became a non-LSC provider and expanded its service area to encompass both counties. Subsequently, the Florida Immigrant Advocacy Center's Immokalee office merged with LASBC, expanding and consolidating representation to immigrants in the region, and the bar-sponsored Collier County Legal Aid Society merged with LASBC to provide services in Collier County, d/b/a Legal Aid Service of Collier County (LASCC). According to the LASBC Executive Director, in 2003 three units were split from LASBC to become CCLA: Public Benefits, Senior Law, and Family Law. The Managing Attorney for the Senior Unit was hired as the CCLA Executive Director. Interviews reveal that staff from these three units signed a form which set forth the terms of the transfer of their employment from LASBC to CCLA. Based on the regional plan for delivery of legal services, CCLA handles senior law, family law and public benefits work in Broward County. LASBC is responsible for providing services in all other substantive law areas in Broward County, for all substantive law areas in Collier County, and to groups not eligible for representation with LSC funds.

The restricted activities that LASBC engages in include: class actions; legislative and administrative advocacy; representation of undocumented persons on a full-range of legal issues; and participation in cases where attorneys' fees are requested.¹

Background of Review

The Legal Services Corporation's (LSC) Office of Compliance and Enforcement (OCE) conducted an onsite Program Integrity Review (PIR) of CCLA on October 1-5, 2007. The purpose of the visit was to review CCLA's compliance with 45 CFR Part 1610. A Draft Report was issued on January 11, 2008, and CCLA was provided an opportunity to respond within 30 days. LSC received CCLA's response on February 11, 2008. CCLA's comments were incorporated into the Draft Report. A Final Report was issued on February 28, 2008, which found that CCLA was not in compliance with the requirements of 45 CFR Part 1610. The Final Report set forth 11 corrective actions. One of the corrective actions was that CCLA must develop a Corrective Action Plan (CAP) to address the issues identified in the Final Report and submit the CAP to LSC for review by June 3, 2008.

On June 11, 2008, LSC informed CCLA's Executive Director that the CAP submitted by CCLA, dated June 2, 2008, did not fully address the concerns expressed in the Final Report. CCLA's Executive Director was invited to meet with the Director of OCE, the team leader of the PIR, and an Assistant General Counsel from the Office of Legal Affairs, to discuss the CAP and the outstanding concerns in the Final Report. This meeting was followed up by a letter, dated August

¹ Based on information obtained during an interview with LASBC's Executive Director during the October 1-5, 2007 review.

27, 2008, which requested that CCLA inform LSC of any actions taken by the program regarding the matter since the meeting.

LSC received CCLA's Implementation Plan, dated September 5, 2008, addressing the corrective actions set out in the Final Report. By letter dated November 10, 2008, LSC informed CCLA that, preliminarily, the Implementation Plan appeared to address a majority of the recommendations and the corrective action in the Final Report. However, a final determination could not be made at the time based on the general nature of the information provided in the Implementation Plan. CCLA was further informed that LSC would need to review the new Administrative Services Contract (ASC) and lease agreement with LASBC, the new signage and many of the other items listed under section six of the Implementation Plan before such a determination could be made.

LSC's follow-up review was confirmed by letter dated January 12, 2009, which included an initial document request. An additional document request was made via letter dated February 11, 2009. On February 20, 2009, CCLA provided some of the documents requested in response to LSC's February 11, 2009 document request. On February 23, 2009, CCLA was informed that the provided documents were not fully responsive to the February 11, 2009 document request. CCLA was further informed that both the attachments provided by CCLA lacked the necessary detail required per request nos. 2 and 3. CCLA was asked to assure that a representative from the program was available during the onsite visit who could provide the review team with the required details in full.

On March 2-6, 2009, LSC conducted a follow-up review to CCLA in order to determine the status of the 11 corrective actions in the Final Report and the progress of the Implementation Plan.

III. APPLICABLE LAW

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

a payment of LSC funds to support, in whole or part, a restricted activity conducted by another entity, or payment to another entity to cover overhead, in whole or in part, relating to a restricted activity. A recipient will be considered to be subsidizing the restricted activities of another organization if it provides the use of its LSC-funded resources to the organization without receiving a “fair-market price” for such use.

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

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

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

45 CFR § 1610.8(a)(3).

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

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

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

62 Fed. Reg. at 27698.

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

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

IV. FINDINGS²

Finding 1: CCLA has taken substantial corrective action to address many of the deficiencies with regard to the program integrity requirements of 45 CFR § 1610.8 identified in the Final Report of the October 2007 review. At the time of the follow-up review, however, further steps needed to be taken to ensure compliance.

A. Legal Separation of Organizations

CCLA is in substantial compliance with 45 CFR § 1610.8(a)(1), which requires that the recipient and the other organization engaged in LSC-restricted activities be legally separate entities. CCLA appears to be legally separate from LASBC.

Many of LSC's concerns raised in the Final Report from the October 2007 review, which had questioned the adequacy of the separation between CCLA and LASBC, have been addressed. Five of the 11 corrective actions dealt with the concerns regarding CCLA's compliance with the requirements of 45 CFR § 1610.8(a)(1); Corrective action No. 1 required that CCLA assure that its Board minutes book is an accurate reflection of the occurrences at the CCLA Board meetings; Corrective action No. 2 required that CCLA educate the Board Members as to the differences between the cases handled by CCLA and those handled by LASBC; Corrective action No. 3 required that CCLA provide a copy of the LSC program letter issued on October 30, 1997, with "Guidance in Applying the Program Integrity Standards," to the Board Chair prior to the Board's certification of program integrity; Corrective action No. 10 required that the CCLA adopt a plan for future 1610 certifications that includes educating the Board about the distinctions between the entities and specifically reviewing the ways in which the entities collaborate and share resources; and Corrective action No. 5 required that CCLA implement necessary changes to comply with the requirements of 45 CFR § 1610.8 (a)(1).

1. Board Minutes

Corrective action No. 1 required that CCLA assure that its Board minutes book is an accurate reflection of the occurrences at the CCLA Board meetings.

The review of the minutes revealed that CCLA has taken several steps in an effort to comply with this corrective action. In response to the document request for the follow-up review, CCLA provided CCLA and LASBC Board minutes for meetings held on October 24, 2007, December 12, 2007, February 13, 2008, April 16, 2008, June 18, 2008, September 5, 2008, October 29, 2008, and December 10, 2008. The Board minutes document when staff presentations occurred, and presentations are referenced in the minutes of the program for which the employee works. Additionally, beginning with the April 16, 2008 minutes, both the call to order and adjournment times are reflected in the minutes, which helped in further clarifying the separation of the meetings.³

² The findings, recommendations, and corrective actions in this report are based on the facts and history of this specific program; they do not necessarily apply to other programs in different situations.

³ The minutes for the first three meetings did not record a start and stop time.

The Board minutes reflected that the LASBC Board predominately met first. CCLA's Executive Director stated that the Boards decide which meeting should be held first depending upon which program's staff will make a presentation.⁴ Since LASBC has more units than CCLA, LASBC holds its meeting first more often. She further stated that the LASBC Board meetings are usually longer.

Review of the minutes also revealed that a few actions, relevant to both programs, were noted in both minutes in such a manner that it appears that the same explanations occurred at both meetings. CCLA's Executive Director stated that identical explanations are not provided at both meetings. She stated that for issues involving both programs, the Executive Director of the program with the first meeting has a lengthier explanation of the issue and Board discussion occurs at that time. During the second meeting, the remaining program's Executive Director refers to the action and the discussion of the first meeting and the vote is taken again. The Team Leader advised CCLA's Executive Director that the minutes should reflect the actual discussion during each meeting. A reference can be made in the other minutes to state that the same discussion was taken under advisement. The LSC Team Leader offered to work with the CCLA Executive Director on this issue.

2. Board Education

Corrective action No. 2 required that CCLA educate its Board Members as to the differences between the cases handled by CCLA and those handled by LASBC. The review team's assessment of CCLA's efforts to comply with this corrective action is as follows:

CCLA and LASBC provide each new member to their Boards with an informational packet for each program. Each program's packet is presented in a three-ring notebook with the same informational tabs, though the materials within the tabs vary by program.⁵ For example, the notebooks of each program included its own Articles of Incorporation, By-Laws, committee lists, budgets, etc., information which will not change in 2009. Program integrity information is included in the CCLA packet. Timely information is inserted as a new member joins the Boards. Current board minutes for the most recent meeting of their respective Boards and other timely information is added when the member joins.

The Board's minutes confirm that CCLA staff continues to make presentations to both of the Boards, alternating with LASBC. LASBC has more units and accordingly presents more often throughout the year, though these presentations will continue to educate the two Boards on the differences between the two programs. CCLA's Executive Director stated that review and consideration of the Annual Report on Priorities, which included priorities for LSC and non-LSC

⁴ This is to accommodate the staff member so that they present at the first meeting and do not have to wait until the second meeting.

⁵ The inside cover pocket of each program's notebook included a list of the six Board meetings scheduled for 2009 and the 2009 program budget for the respective program. Each notebook had eight tabs: Current Board Materials, Board of Directors, Articles of Incorporation, By-Laws, Mission Statement and Priorities (except that the LASBC tab only lists Mission Statement), Board Minutes, Past Board Materials, and Miscellaneous. The materials provided to the review team were a shell of the packet, with basic information included.

cases, emergencies and the pro bono program, was also an educational opportunity for the Boards.

The Chair of the CCLA Program Integrity Committee was interviewed onsite. The CCLA Board member initiated the contact with the team, demonstrated an enthusiasm and interest in the program integrity issues, and has been very engaged in CCLA's Board activities. These Board member qualities indicate that the CCLA Board participation and therefore education in program integrity issues is increasing. However, during the interview, the Board member could not specifically articulate the differences in priorities and/or cases handled by each program, nor the regulatory requirements of 45 CFR Part 1610, though he could discuss several of the regulatory restrictions that CCLA is subject to as an LSC grantee.

While it is clear that CCLA has taken steps to educate its Board members and improve distinctions between the programs in its Board interactions, it is unclear whether their Board fully understands the differences between the two programs. CCLA must continue Board education regarding these issues.

3. Program Integrity Standards

Corrective action No. 3 required CCLA to provide a copy of the LSC program letter issued on October 30, 1997, with "Guidance in Applying the Program Integrity Standards," to the Board Chair prior to the Board's certification of program integrity.

CCLA provided the review team a December 1, 2008 Report on Certification of Program Integrity that was provided to the entire CCLA Board of Directors. The report contained a memorandum, LSC's "Guidance in Applying the Program Integrity Standards," a copy of CCLA's June 2, 2008 CAP, and a copy of CCLA's September 5, 2008 implementation plan with time frames for each action. The minutes from the December 10, 2008 Board meeting reflect that the Certification of Program Integrity, the ASC and the Lease Agreement were approved. Accordingly, CCLA has taken sufficient corrective action in this regard.

4. Plan for Future 1610 Certifications

Corrective action No. 10 required that CCLA adopt a plan for future 1610 certifications that includes educating the CCLA Board about the distinctions between the entities and specifically reviewing the ways in which the entities collaborate and share resources.

In response to this corrective action, CCLA created the Program Integrity Committee to review ongoing related issues and, on an annual basis, review the memorandum prepared by the CCLA Executive Director regarding compliance with 45 CFR Part 1610.⁶ Document review and interviews reveal the Program Integrity Committee was established by the CCLA Board on April 16, 2008. The current roster list shows that the committee is composed of three Board members. Interviews confirm that the CCLA Program Integrity Committee reviewed the proposed CAP

⁶ CCLA had stated that LASBC would also establish a Program Integrity Committee in their Implementation Plan. However, at the time of the March 2009 onsite visit, the review team was informed that LASBC has reconsidered adopting a Program Integrity Committee for its Board.

prior to submittal to LSC and the CCLA's report certifying compliance with 45 CFR Part 1610 prior to consideration by the full Board. Furthermore, two of the three committee members met with the CCLA Executive Director on December 8, 2008 to review the 2009 ASC and 2009 Lease Agreement with LASBC.

The review team, in advance of the onsite visit, had requested a copy of all committee minutes but had not received any minutes for the Program Integrity Committee. CCLA's Executive Director advised the review team that minutes are not kept for the Program Integrity Committee meetings. The review team recommended that program integrity actions, such as committee member review of documentation, recommendations, or suggested changes be documented either in committee minutes, if appropriate or as a report to the Board during the Board meeting, much the same as the Nominating Committee reports on their activities.

5. Other Changes to comply with 45 CFR § 1610.8(a)(1).

Corrective action No. 5 required that, CCLA implement necessary changes to comply with the requirements of 45 CFR § 1610.8(a)(1).

A review of the current committee configuration as documented on the committee rosters of both programs reveals that the officers remain the same for each Board, as does the membership composition of the Executive Committee and the Audit & Finance Committee. However, the membership of the Eligibility Committee, Personnel Committee, and Affirmative Action Committee are now different for each program.

CCLA addressed many of the issues through the creation of a Program Integrity Committee, changing the Board membership of several committees, making improvements in the recordation of Board meetings, and improving board education. However, as previously noted, additional improvements are needed in drafting the Board minutes and ongoing attention to Board education is necessary.

B. Transfer and Subsidization

CCLA is in compliance with 45 CFR § 1610.8(a)(2), which requires that there be no transfer of LSC funds from the recipient to the other organization engaged in LSC-restricted activities and that LSC funds cannot subsidize restricted activities.

The Final Report from the October 2007 found that CCLA was in general compliance with the requirements of 45 CFR § 1610.8(a)(2), and stated that while a recipient may receive contract services from any other organization, the contract should provide the recipient reasonable assurance as to the process for determining that fair value is exchanged for the services. The Final Report further stated that based on the information obtained from the program by the review team, the annual space/equipment lease, and the Administrative Services contracts, as constructed, give the appearance of being less than arm's length transactions, and do not contain information sufficient to ensure that no recipient funds are used to subsidize restricted activities.

Two of the corrective actions dealt with the concerns regarding CCLA's compliance with the requirements of 45 CFR § 1610.8(a)(2). Corrective action No. 4 required that CCLA implement necessary changes in the ASC and the lease so that the contract assures that no CCLA funds are used to subsidize restricted activities. Corrective action No. 6 required that CCLA implement necessary changes to comply with the requirements of 45 CFR § 1610.8(a)(2). In response to these corrective actions, CCLA reworked the methodology used to calculate the percentage of time spent by LASBC administrative staff in providing services to CCLA. The documentation provided to the March 2009 review team to demonstrate this new methodology was sufficient to ensure that no recipient funds are used to subsidize restricted activities. Additionally, the documentation provided to demonstrate the calculation of the square footage occupied by CCLA in the 2009 lease agreement was also sufficient to ensure that no recipient funds are used to subsidize restricted activities.⁷ Lastly, CCLA and LASBC conducted an assessment of the actual cost of services included in the \$5.00 per square foot charge in the lease agreement to determine whether the \$5.00 is a reasonable cost. While LSC questioned the inclusion of some of the services included in the assessment, the analysis clearly reveals that the \$5.00 per square foot charge is low compared to the actual costs of such services and that CCLA funds are not being used to subsidize LASBC in this regard. To the contrary, LSC found that LASBC funds are used to subsidize CCLA.

1. Administrative Services Contract

During the follow-up review, most of the LASBC staff that provides services to CCLA pursuant to the ASC were interviewed in an effort to compare their job duties with the allocation method utilized by the CCLA and LASBC Executive Directors to determine the accuracy of the amount CCLA is paying for their services in 2009. The allocation method for each employee varies according to position, as some positions involve functions that more easily lend themselves to a quantification of responsibilities performed for CCLA. Some staff positions perform the same functions to the benefit of all staff for both programs and therefore a methodology of the ratio of staff is used. Other functions, for example those of the data entry clerk, are based upon the number of cases closed and therefore a methodology based on case closure is used. A unique methodology was created for other positions. The CCLA Executive Director stated that she believed the Final Report from the October 2007 visit was critical of the staff ratio methodology and therefore attempted to develop different methods to allocate salary costs for the LASBC staff covered under the ASC.

The methodology that CCLA and LASBC devised for each position is briefly described in the ASC. In some instances additional detail as to the methodology and analysis of the costs of the services was provided in CCLA's response to LSC's document request in advance of the review. As requested by LSC in its February 23, 2009 e-mail, the CCLA Executive Director was available onsite to provide additional details regarding the allocation. Copies of such documentations were requested onsite, however the CCLA Executive Director stated that she was uncomfortable providing copies of the documentation utilized in this regard.⁸ CCLA's Executive Director was advised that it was necessary to review the documentation of the

⁷ LSC identified an error in this calculation and, accordingly, an amendment is required so that CCLA is only paying for space which it occupies plus its fair share of common space.

⁸ CCLA's Executive Director stated that she told LASBC that she would not provide it to LSC.

methodology and details of the analysis to evidence that a methodology was documented and that the conclusions are reasonable. An agreement was made that CCLA Executive Director would verbally review each step of the methodology and provide the details necessary to support the allocations with a review team member.

In summary, the method of allocating salaries and benefits of LASBC employees performing services to CCLA, as documented in the ASC, is sufficient to ensure that no recipient funds are used to subsidize restricted activities. Interviews and documentation reveal that CCLA spent time developing thoughtful methodology tailored to each position. Other methodologies were considered by the review team in an effort to determine the accuracy of the methodologies utilized in the 2009 ASC, and after careful consideration it was determined that none of these other methods would impact the percentages currently reflected in the ASC. The staffing levels of CCLA have been steady and budget adjustments are considered prior to the development of the ASC. The majority of the methodologies as described above appear to be reasonable and demonstrate that CCLA is not subsidizing LASBC. The exceptions are that the methodology and documentation of the Fiscal Administrator's time is weak and it is unclear why the staff ratio for only LASBC staff in Broward County is used in allocation for the Director of Development. Under current practice it appears that the expenses of these two positions are appropriately apportioned between the entities. Nonetheless, given the nature of these positions, there is a concern that, over time, the actual work balance may change without an appropriate adjustment to the apportionment of expenses. As discussed more fully below under physical and financial separation, CCLA should implement an improved timekeeping and apportionment methodology for accounting for the split duties of these positions, including annual review of the expenses charged to each organization. By doing so they will better delineate the functions of these two positions between the separate entities and will help ensure that CCLA does not accidentally find itself subsidizing LASBC through either of these positions in the future

As described above, CCLA time for some staff positions is allocated according to staffing ratio, depending upon whether the position serves staff only in Broward County (i.e., receptionists) or if it serves staff throughout LASBC (i.e., the Program Administrator). The budget pages set forth the number of staff and associated salary amount in each of the Lawyer, Non-Lawyer and Paralegal categories. The number of staff positions, upon which the ratios are based, does not take into consideration whether the staff person is a full-time or part-time employee. At the time of the review, CCLA only had one part-time employee. It is known that LASBC also had at least one part-time employee, which equalized each other in the ratio calculation and therefore have no effect on the subsidization issue.⁹ Generally speaking, the greater the number of employees

⁹ The number of actual CCLA employees compared to the number of budgeted positions was confirmed onsite. The CCLA budget reflects 13 attorneys, nine paralegals and five non-lawyer positions. The current CCLA staffing list reveals 13 attorneys, nine paralegals and six non-lawyers though it is noted that two secretaries are listed on the staffing list though only one person occupies the position. This is because the Senior Law Secretary is on extended medical leave and another employee was hired to fill in during this time. A similar comparison could not be done for LASBC. While onsite, a LASBC roster was requested but the CCLA Executive Director stated that it is difficult to produce such a list because of the turnover. Accordingly, for purposes of assessing the methodology used in the ASC, it is assumed that the number of LASBC budgeted positions compare favorably with actual staffing numbers. To lend validity to this assumption, the CCLA Executive Director stated that while LASBC has suffered funding cutbacks due to the state of the economy and that this was known and considered during the preparation of the 2009 budget.

CCLA has, the greater its percentage of staff and the higher the ratio of time it pays for; and the greater the number of employees that LASBC has, the lesser CCLA's percentage will be. CCLA is cautioned, however, that if it finds itself with more part-time employees, the staff ratio would favor LASBC and could result in subsidization.

It is further noted that the 2009 ASC does not require CCLA to pay for services provided by the Assistant to the LASBC Executive Director, which was the case in past ASCs. During the October 2007 visit, the team interviewed the Assistant to LASBC's Executive Director, and learned that she was responsible for drafting the Board minutes for both programs as well as other activities to support both Boards. During the 2009 visit the Assistant to LASBC's Executive Director was out on medical leave and a temporary replacement was hired to fulfill her duties which continued to include drafting the minutes for both programs. It could also be argued that some of the above methodologies favor CCLA. Because CCLA is prohibited from subsidizing LASBC, CCLA and LASBC made a conscious decision to err on the side of caution when developing the methodologies. While reverse subsidization does not violate LSC requirements, and is perhaps the prudent and cautious position, CCLA must be aware that in the future LASBC could require it to pay more for services.

CCLA has taken sufficient corrective action to ensure that CCLA does not subsidize LASBC with respect to services provided by LASBC under the ASC.

2. Space and Equipment Rental Contracts

The 2009 Lease for Commercial Building Space was adopted by the CCLA Board of Directors on December 10, 2008. It states that the lessor (LASBC) leases to the lessee (CCLA) office space consisting of 26 individual offices, conference rooms, lounges, file storage, a library, a reception area, a community room, an intern room and copy rooms. The lessor also provides for use by the lessee two fax machines on the second floor, a copy machine on the second floor, a sufficient number of printers to accommodate the number of offices, local telephone services and library and subscription services. Total annual rent is in the sum of \$204,250.00 based on 9,500 square feet at \$16.50 per square foot plus utilities and items included in the lease calculated at \$5.00 per square foot for a total of \$21.50 per square foot. The lease states that the \$5.00 per square foot rental amount includes the cost of furniture, equipment and all services specified in Section II (fax machines, printers, copiers, telephones, and library services). The rental amount also includes janitorial services.

Calculation of Square Footage

With respect to the number of square feet referenced in the lease agreement, the CCLA Executive Director stated that the LASBC Executive Director calculated square footage based upon measurements of each office from the building blue prints. The team was provided onsite a floor plan with the measurements of each office indicated. To determine the square footage for which CCLA is responsible for, the square footage occupied solely by each program was calculated and subtracted from the total building square footage to determine the amount of space shared by the two programs. The common area was allocated to the programs in proportion to the square footage occupied solely by each program. That number was then

multiplied by the base amount of \$16.50 per square foot. The team cross-checked the measurements on this attachment with the floor plan and performed the calculations. Several errors were identified which changed the calculation of the square footage to CCLA's benefit.¹⁰ As stated above, the lease agreement charges CCLA for 9,500 square feet while the methodology provided by CCLA/LASBC for calculation of the square footage supports CCLA's share to be 9,012, a difference of 488 feet or, multiplied by the cost per square foot, \$8,052. The difference also affects the calculation of costs with respect to the additional \$5.00 per square foot, discussed below.

Calculation of \$5.00 Per Square Foot

In response to corrective action No. 4, CCLA stated that prior to the preparation of the 2009 lease agreement LASBC shall determine the costs of the services which are captured by the additional \$5.00 per square foot for equipment. To calculate the non-space portion of the rent for the 2009 ASC, it would determine the actual costs of the services and determine CCLA's proportionate share of the costs based upon the ratio of CCLA staff to the total number of CCLA and LASBC staff. CCLA further stated that it would pay either the \$5.00 per square foot or its proportionate share of the costs, whichever is less and, if the payment is based upon CCLA's proportionate share, the Board Program Integrity Committee will review the methodology used to calculate such proportionate share. In a December 23, 2008 letter to LSC, CCLA stated that such calculations were performed and the \$5.00 per square foot cost for services was significantly less than the actual cost of the services provided. Accordingly, the \$5.00 amount was utilized in the 2009 lease agreement.

Attachment 3 to CCLA's February 20, 2009 letter to LSC provides the documentation of the comparison of the \$5.00 per square footage in the lease agreement to the actual costs of the services provided by LASBC. As requested, the CCLA Executive Director provided the team with additional detail. She stated that LASBC's Executive Director calculated the costs included in the \$5.00 fee based upon LASBC's line items in the budget and that the total expenses were \$387,840. This includes the following: Building Maintenance, Janitorial, Utilities, Landscape Maintenance, Elevator, Postage, Telephone, Library, Equipment Rental/Maintenance, Furniture, and Technology. The percentage of CCLA's occupancy in the building derived from the square footage calculation above at 37%, resulted in CCLA's share. As described above, CCLA's share was determined by the team to be 36% after the additional LASBC square footage was included. Further, it is questionable whether several of these items should be included in the additional rent calculation as they should already be included in the base square footage cost of \$16.50, for example janitorial services, landscaping, elevator expenses, and building maintenance. Also, during the meeting regarding these costs, the CCLA Executive Director also questioned whether certain CCLA postage and library expenses should be shared by CCLA because CCLA pays for

¹⁰ The documentation provided by CCLA in support of the lease agreement did not include three LASBC spaces on the third floor. After obtaining this square footage, the total amount of square footage occupied solely by CCLA is 4,497.55 and the area occupied solely by LASBC is 7,962.36. Together, CCLA and LASBC occupy 12,460 square feet for their respective exclusive use, 36% attributable to CCLA and 64% attributable to LASBC. The total square footage of the building is 25,000 square feet. Accordingly, common space totals 12,540 square feet (25,000-12,460). CCLA's above-mentioned sole use percentage (36%) is then applied to the common space total of 12,540. CCLA's share of the common space becomes 4,514.40 added to CCLA's sole use office space of 4,497.55 becomes a total of 9,012 square feet.

LexisNexis for its staff pursuant to a Florida Bar Foundation grant and publications ordered specifically for CCLA staff are deducted from a CCLA line item budgeted at \$15,000. She further questioned whether certain postage amounts should be shared by CCLA because CCLA has a line item budgeted for postage and express mail. The inclusion or exclusion of these services affect the calculation and comparison to the \$5.00 amount charged in the lease. Several calculations were performed in this regard and indisputably the total costs of the services provided exceed \$5.00 per square foot.¹¹ Accordingly, the \$5.00 per square foot amount for additional services provided by LASBC is not a subsidy of LASBC by CCLA.

Accordingly, CCLA has taken corrective action in that it has documented the method for calculating the square footage and the additional services covered under the lease agreement. With respect to the additional services, CCLA/LASBC performed the comparison of the cost of actual expenses vs. the \$5.00 cost of the services captured in the lease agreement. Although the methodology could be disputed with respect to which services should be included, the result remains the same the \$5.00 per square footage is considerably less than the actual costs.

CCLA has taken sufficient corrective action to ensure that CCLA does not subsidize LASBC with respect to services provided by LASBC under the Space and Equipment Rental Contracts. The 2009 Lease for Commercial Building Space needs to be amended to ensure that CCLA pays only for the square footage it occupies and its fair share of the common space.

3. Other Issues

Corrective action No. 6 required that CCLA implement necessary changes to comply with the requirements of 45 CFR § 1610.8(a)(2). The Final Report found that the temporary hiring/creation of three employment positions by CCLA, until LASBC recovered from its funding problems, could be a form of subsidization. In response to this finding CCLA Executive Director stated, during the 2009 onsite visit, that CCLA has not, nor does it intend, to temporarily hire LASBC staff under these circumstances in the future. CCLA informed the review team that the only hire from LASBC that has occurred since the October 2007 review was a Family Law secretarial position. According to the CCLA Executive Director, when the former Family Law Secretary left CCLA, the position was posted and a LASBC receptionist applied. The CCLA Executive Director stated that the LASBC receptionist was the best candidate and accordingly she was hired as a regular employee. This is not the same situation as described in the previous Final Report.

¹¹ According to the revised method of calculation presented by the CCLA Executive Director in which building maintenance, landscape maintenance, elevator services, postage, and \$15,000 of the library costs is subtracted from total expenses, CCLA's percentage of the expenses would be \$303,640 as compared to the \$5.00 per square foot calculation in the lease, or \$45,060 (9,012 square feet x \$5.00 per square foot). As stated above, additional expenses should arguably not be included in this calculation, for example janitorial services and building maintenance. Excluding these expenses would reduce the amount attributable to CCLA but would not reduce the actual costs to \$45,060. If the calculation included only technology, furniture, and equipment rental/maintenance, which are certainly legitimate expenses for this exercise, total expenses would equal \$154,700 and 36% would equal \$55,692 which is still more than the \$45,060 CCLA is currently paying, after adjusting for the square footage as discussed above.

C. Physical and Financial Separation

CCLA is not in compliance with the requirements of 45 CFR § 1610.8(a)(3). CCLA has increased its separation from LASBC as per some of the suggestions in the Final Report, which had questioned the sufficiency of the physical and financial separation between CCLA and LASBC. Nonetheless, overall physical and financial separation is not sufficient.

The Final Report from the October 2007 review found that CCLA is not in compliance with the requirements of 45 CFR § 1610.8(a)(3) because the recipient is not sufficiently separate, physically and financially, from LASBC. CCLA has increased its separation from LASBC as per some of the suggestions in the Final Report. Corrective action No. 7 required that CCLA implement necessary changes to comply with the requirements of 45 CFR § 1610.8(a)(3). As the determination of failure of such separation is based on a totality of the circumstances, no single factor is determinative. Absolute separation is not required. The Final Report stated that the general framework of CCLA and LASBC operating with a shared administrative staff and operating out of co-located offices is not prohibited. Therefore, if CCLA chooses to maintain the same framework, then it can come into compliance by improving and strengthening the delineations between the two entities. Some examples of the ways in which this corrective action could be achieved were addressed in the recommendations. The examples provided were illustrative and non-exhaustive.

The changes implemented by CCLA thus far are not sufficient. In total, the weight of the factors against physical separation from LASBC is still heavier than those that indicate physical separation.

1. Separate personnel

Many of the suggestions raised by LSC regarding this section have been implemented. However, further separation can be obtained through improving the methodology used in deriving the salary and benefits for the Director of Development and the Fiscal Administrator under the ASC.

a. The Director of Development is responsible for activities related to development for both CCLA and LASBC. Activities performed for both programs include development and printing of brochures; preparation of outreach materials for staff presentations; oversight of grants; maintenance of website; publication of newsletters; issuance of press releases; official communication with community and press; and attendance at public events, meetings and luncheons. For LASBC, the Director of Development is responsible for its major annual fundraiser: For Public Good. For CCLA only, the Director of Development is responsible for the oversight of the PAI component in Broward County: Broward Lawyers Care.¹² Since its creation, CCLA has not sponsored any fundraisers although the CCLA Executive Director and Director of Development have been working toward the first one tentatively scheduled for the Fall of 2009. Furthermore, the Director of Development supervises the Grants Specialist, secretary for the Director of Development, and the Pro Bono Coordinator in the LASBC Broward office for both programs.

¹² CCLA's PAI requirement is met through a subgrant agreement with LASBC. Cases in Broward County are served by Broward Lawyers Care (BLC).

The ASC states that the percentage of the Director of Development's salary and benefits paid by CCLA is:

"... calculated by dividing the number of staff in CCLA by the number of staff in LAS Broward as of January 1, 2009, based upon the board approved budgets for each program. The proportionate split between the two programs should be based on 75 percent of salary and benefits for this position." *See* CCLA 2009 ASC.

The ASC does not state the actual percentage of salary and benefits.

CCLA's Executive Director stated that the methodology excludes 25% of the Director of Development's salary. The rationale is that 5% of the Director of Development's time is devoted to the oversight of the PAI Coordinator in Broward County. This time is covered under the subgrant agreement. The Director of Development is unsure how this percentage is derived but she believes it is accurate. Further, 20% of the Director of Development's time, per year, is assumed to be devoted to the annual LASBC fundraiser, For the Public Good. Development and Planning for this event is a large part of the Director of Development's responsibilities. Though she does not keep time, and she characterizes her work as very fluid between activities, she believes 20% is an accurate representation of time she spends on the fundraiser.

After excluding 25% of the Director of Development's salary, the remaining 75% is allocated based on the ratio of the number of employees in CCLA to the total number of CCLA and LASBC in the Broward office (32.5%).¹³ Accordingly, CCLA is responsible for 24.3% of Director of Development's salary. It is unclear, however, why the staff ratio only considers LASBC staff in the Broward office. The Director of Development's job responsibilities, as described by herself and the CCLA Executive Director, benefit all employees. With the exception of preparing materials for outreach presentations, the Director of Development's job responsibilities are not limited to staff only in the Broward County office, which is the case for other staff positions such as the receptionists. The staff ratio including the LASBC staff of both counties is 28.1 in 2009. Accordingly, it could be argued that CCLA should be responsible for less of the Director of Development's salary. It is a significant concern that neither the Director of Development nor CCLA's Executive Director were able to provide specific justification for the percentages used in calculating this position's allocated salary and benefits under the ASC nor the reason for excluding LAS non-Broward staff from the calculations.

b. The Fiscal Administrator was out on leave during the week of the follow-up review and accordingly could not be interviewed.¹⁴ The materials submitted in response to LSC's document request states that the Fiscal Administrator is responsible for all CCLA and

¹³ In 2009, 27 positions are included in the CCLA budget and 69 in the LASBC budget. Of the 69 LASBC employees, 56 are based in Broward County and 13 in Collier County (3 in the Immokalee office and ten in Naples). Accordingly, the ratio of CCLA staff (27) to the LASBC staff based in Broward County (56) is 32.5%.

¹⁴ The two Fiscal Assistants and the CCLA Executive Director were interviewed regarding the Fiscal Administrator's responsibilities.

LASBC financial operations including oversight of bookkeeping and accounting functions, preparation of monthly reports to the Board of Directors, oversight of cash flow, monthly and quarterly reports to funding agencies, preparation of quarterly IRS and state unemployment reports, preparation of program budgets, responsibility for all savings and checking accounts, and coordination of insurance programs. She also supervises the two Fiscal Assistants.

The ASC states that CCLA shall be responsible for 33% of the salary and benefits for the Fiscal Administrator, five percent of the salary of one of the Fiscal Assistant and 33% of the salary of the second Fiscal Assistant. The CCLA Executive Director stated that she met with all three LASBC fiscal staff at once to determine the appropriate salary allocation.

One of the Fiscal Assistants is responsible primarily for LASBC's fiscal tasks, specifically payroll and direct deposits, invoices/approvals, special accounts, and LAS tax deposits. She is also responsible for the reconciliation of CCLA bank accounts, pursuant to internal control practices. The CCLA Executive Director stated and the Fiscal Assistant confirmed in an interview that she spends an estimated one day per-month on CCLA bank reconciliations. Assuming 21 work days per month, one day represents 4.76%, or 5% rounded to the next whole number.

The second Fiscal Assistant is responsible for CCLA payroll, direct deposits, invoices/approvals, accounts payable, special accounts, checks, monthly reports, income statement and tax deposits. She is also responsible for reconciliation of LAS bank accounts. She estimates that she spends three days on CCLA payroll, tax deposits and direct deposits, three days on CCLA invoices and accounts payable, one half-day on special CCLA accounts, and one half-day on CCLA monthly reports and income statements. These activities total seven of the 21 work days of the month, or 33%.

CCLA's Executive Director stated that the Fiscal Administrator's time is more fluid, moving back and forth between programs and therefore not amenable to the same analysis. She stated that LASBC is a more complex program due to a greater number of employees, a higher rate of turnover, and more funding sources. She further stated that the Fiscal Administrator firmly believes that 33% of her time is best devoted to CCLA activities, largely because this tracks the percentage of time spent by the second Fiscal Assistant on CCLA fiscal tasks. Apart from the analysis of the second Fiscal Assistant's time spent on CCLA activities, there is no documentation or written analysis to support this allocation.

The analysis of Fiscal Administrator's time is the weakest methodology presented by CCLA. It is a significant concern that neither the Fiscal Administrator nor CCLA's Executive Director are able to provide specific justification for the percentages used in calculating this position's allocated salary and benefits under the ASC.

2. Separate accounting and timekeeping records

The Final Report found that CCLA and LASBC maintain separate accounting systems and file separate tax returns. No changes were noted during the follow-up review.

3. Degree of separation from facilities in which restricted activities occur¹⁵

Following the June 11, 2008 meeting between the CCLA Executive Director and LSC staff, CCLA stated that while it is not feasible for all CCLA staff to be located on one floor, it would make modifications to the space to create the feel of separate programs. Specifically, CCLA stated that it would paint “neutral” space between the two programs and provide signage reflecting the name of the program at either end of the neutral space on the first and second floors. This will also allow for placement of limited shared equipment in the neutral space.

During the follow-up review, the CCLA Executive Director gave the review team a tour of the building. The same staffing arrangement was in place except that the intern room on the 2nd floor is solely occupied by CCLA interns. LASBC interns are located on the 3rd floor. Unfortunately the signs in the 2nd floor CCLA intern room referring to LASBC units are still in place. The CCLA Executive Director stated that they are exploring methods to remove the signage without damaging the walls. The signs could also be covered with new signs or decorations.

The tour revealed that CCLA implemented several changes to better indicate the separation of the two programs. Generally, signage in the shared reception area identifying that two programs are housed in the same building has improved. Neutral space on the 1st and 2nd floors was painted and signage at the beginning and end of the neutral spaces was appropriately placed. The shared equipment is located in the neutral space.

The above-mentioned changes improve the feel of separate programs. According to CCLA’s Executive Director, under the current building floor plan and staffing configuration of the two programs, these changes may be the best that can be done absent more substantial renovation.

The follow-up review revealed that CCLA and LASBC continue to share the following:

a. Case management system.

The only change noted by the review team was that CCLA and LASBC transitioned to Legal Server in October 2008.

b. Administration.

The shared administration includes human resource policies, procedures and forms. At the time of the follow-up review the administrative documents were better labeled.

c. Website.

The Final Report from the October 2007 review found that LASBC, CCLA, and LASCC have a shared website that distinguishes the entities but has an overall uniform look, feel, and layout that can blur their distinction from one another.

¹⁵ LASBC engages in the following activities restricted by the LSC statutes and regulations: class actions; legislative and administrative advocacy; representation of undocumented persons on a full-range of legal issues; and participation in cases where attorneys’ fees are requested. In general LASBC conducts restricted activities throughout their offices.

The website has been changed in an attempt to distinguish the three programs. The home page still has three columns, one for each program. They are now color-coded to set them apart. The LASBC column has a gray tint, the CCLA column is white, and the LASCC column has a blue tint. When selecting each program, the detailed information pages are also color-coded.

d. Network, internet and e-mail.

No changes were noted during the follow-up review.

e. Insurance and other benefits.

No changes were noted during the follow-up review.

f. Parking lot and employee entrance.

No changes were noted during the follow-up review.

g. Supplies

The Final Report found that supplies are kept in a cabinet in the mail room, which is staffed by an LASBC employee whom also provides services to CCLA in accordance with the ASC.

It was noted during the follow-up review that there is also a supply cabinet on the second and third floors. An interview with the Assistant to the Program Administrator reveals that she periodically checks the supply cabinets and reorders standard items, as necessary, for both programs. For special order items, staff from each program e-mails her and she keeps track of who ordered the item. When the bill comes in she attaches the special order e-mail to it and forwards it to the finance department for payment. The CCLA Executive Director stated that when finance receives a bill, items specially ordered for a staff member are funded by a supply line item in the budget of the program ordering the item. LASCC supplies are also subtracted out and paid for LASBC. The remaining shared supplies are allocated between the programs according to the ratio of CCLA employees to the number of CCLA and LASBC employees in Broward County.¹⁶

h. Published mailing address

The Final Report found that the mailing address for both programs is P.O. Box 120910, Ft. Lauderdale, Florida. Mail is collected and sorted by a LASBC staff member/CCLA contract.

The follow-up review revealed that Post Office and physical addresses for the two programs remains the same, but CCLA had added "Second Floor" to the physical address on it's letterhead to distinguish itself from LASBC. The business cards and pamphlets of both programs have the same physical address without the second floor designation on the CCLA cards. CCLA can further improve this form of separation by updating its business cards and other pamphlets to add "second floor" to its physical address. The P.O. Box is discussed below.

¹⁶ For 2009 this ratio is 32.5%.

I. Intercom

The Final Report found that a single intercom system is used throughout the building.

During the follow-up review, a single intercom system was still being used. The CCLA Executive Director stated that the intercom system has a zone paging system that could be implemented but that it would defeat the purpose of the intercom because an LASBC staff person could be on the second floor in the fiscal department.

J. Common space

The Final Report found that CCLA and LASBC share common space pursuant to the lease agreement. Such space includes the reception area, kitchens, mail room, break room/lounges, conference rooms, the library, and an intern room.

The follow-up review found that CCLA and LASBC no longer share the intern room on the second floor. CCLA interns solely occupy such space and LASBC interns are housed on the third floor.

K. Telephone system

The Final Report found that although the program publishes different phone numbers, they are both answered by two receptionists who are LASBC/CCLA contract employees, and who answer the phone “Legal Aid.”

The follow-up review found that the programs still publish different phone numbers which are now answered by automated phone system.¹⁷ During office hours, the automated telephone system will guide the caller through a menu designed to route them to the correct program and unit. The message begins with the following language, “Hello, this is Legal Aid” After Spanish and Creole language options, the caller is advised they can dial their party’s extension or access a staff directory. The message goes on to state, “There are two legal aid programs in our offices, Legal Aid Service of Broward County and Coast to Coast Legal Aid. We do not handle criminal” A menu of services offered by both program lists the following selection options: the office address/hours, the Senior Citizen Law Project, the Family Law Unit, the Housing Unit, the Consumer Law and Foreclosure Unit and “other units.” Depending upon the unit, the caller is either transferred to the unit or to a sub-menu with other options. If the caller selects the Senior Citizen Law Project or Family Law Units, the caller is transferred to the unit. The Public Benefits Unit is accessed by selecting the “other” option, then selecting the Public Benefits Unit from a sub-menu of other units, most of which are LASBC (the Homeless Unit, the Ryan White Unit or the Broward Human Rights Initiative, the Immigration Unit, the Child Advocacy Unit, Special Projects and the Environmental Justice Unit, the Low-Income Tax Unit and “additional departments”). Several menu options were tested and revealed that when selecting from the menu options, the message states the unit name and the program. For example, for the senior citizen unit the caller will hear, “You have reached the Senior Citizen Law Center of Coast to Coast Legal Aid. . . .” Callers have an option to access the Receptionists at any time. During

¹⁷ These are the main numbers published for the programs on their respective letterhead. For CCLA the number is (954) 736-2400 and for LASBC the number is (954) 765-8950.

interviews the Receptionists stated they answer the phone, “Good Morning/Good Afternoon, how may I help you.” The greeting was confirmed during a test.

Both of the numbers were also called after hours. The message is the same for both, “Welcome to legal aid. Our office is now closed . . .” Direct dial numbers are published on business cards. Several CCLA intake staff messages were tested. During business hours the phone is answered identifying the intake unit and program. During non-business hours the message also identifies the intake unit and program. Other tests were performed dialing directly into the unit from telephone numbers published on pamphlets. In at least one to the Senior Citizens Law Project, the paralegal answering the phone identified the unit but not CCLA.

CCLA had indicated that it wanted to increase separation for this factor in response to the Final Report. The team raised concerns with the CCLA Executive Director that the automated message is not clear as to which units are in which program until the selection is made. The CCLA Executive Director stated that the telephone consultant hired to record the message emphasized that too many words in the introduction will lose callers. Accordingly, the menu options list the names of the units and not the associated programs.

The first sentence of the message informs the caller that they have reached legal aid. This is a generic use of the term; however staff of both programs also routinely refers to LASBC as “legal aid.” Further, the message uses the pronoun “we” when describing case types that the programs do not handle. While technically correct since both programs do not handle those cases, the use of the “we” pronoun may negate the effect of explaining that there are two different programs in the offices. This message does not address LSC’s concerns identified in the Final Report regarding the use of this term. The CCLA Executive Director agreed to furnish the team leader with a script of the message and to work with LSC on language that could further increase separation for this factor.

l. Waiting area.

The Final Report found that two doors lead from the shared waiting area. CCLA and LASBC continue to share the waiting area. The changes made to waiting area are discussed further in section four of the Physical and Financial Separation section of this report.

m. Reception

The Final Report found that the receptionists distribute problem specific questionnaires for both programs. Some, such as the CCLA Family Law Questionnaire, clearly identified CCLA. Others, such as the Housing or Wages/Special Project Questionnaire, did not identify either program. The Final Report found that after the questionnaires were completed a receptionist conducted a conflict check for the appropriate program and placed a cover sheet on top of the questionnaire. The same cover sheet was used for both programs. The cover/questionnaire was placed in a bin sorted by problem type rather than by program, and a receptionist called the appropriate intake person to advise them there was an applicant ready. In the CAP, CCLA stated that it would ensure that all questionnaires and other administrative forms provided to applicants for services for CCLA or LASBC will identify the name of the respective program. CCLA also stated that it would separate the bins used by the

receptionists to sort questionnaires by program first and then by the unit within each program. Lastly, CCLA stated that the cover sheet would identify the name of the program rather than just the name of the unit.

The follow-up review found that the same procedures are still in place but changes in the forms better distinguish the units by program. The forms now have the appropriate program name. The bin labels, file labels, and other cover documents, such as the conflict check form, are now color coded, LASBC is blue and CCLA is pink. The bins have also been separated by unit.

Additionally, staff from both programs continues to have unimpeded access to all parts of the building. No changes were noted during the follow-up review, and in an interview during the follow-up review the Data Entry and File Specialist stated that the file rooms are not locked and that program staff are free to remove closed files as needed if they put an out-card in the file drawer.

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

a. Outside of the building.

The Final Report found that the sign on the outside of the building says Center for Law and Social Justice. In CCLA's September 8, 2009 letter regarding the CAP, CCLA stated that while it is not able to change the large sign on the outside of the building, LASBC has agreed to place the name of both programs on the front door of the program.

The follow-up review revealed that the program names and logos have been placed on the outside glass doors leading into reception.

b. Parking lot.

No change was noted during the follow-up review.

c. Waiting area.

The follow-up review revealed several changes in the waiting area. The full names and logos of both programs are on the entrance doors. The doors from reception to the respective intake hallways still have the respective LASBC or CCLA signage. Because the elevator is inside the doorway from reception marked CCLA, and this elevator must be accessed by LASBC staff and clients going to the third floor, CCLA had agreed to remove this sign and place it on the hallway door inside, next to the elevator. That door now has CCLA signage but the door from reception still also has the CCLA sign. The CCLA Executive Director stated that they needed to further explore how to remove the sign without damaging the door. The review team stated that CCLA could also place another sign over the existing sign or cover it with artwork.

The one page sheet listing the case types handled by each program is also hung up. It does not, however, state that CCLA does not engage in restricted activities prohibited by LSC regulations. CCLA could add this language to the sign to increase separation.

The mission statements are framed and hung on the center wall between the reception windows, as they were during the October 2007 visit. They have not been moved as originally stated in the CAP, largely because CCLA and LSC agreed not to identify the reception door nearest the elevators as exclusively CCLA.

The brochures for both programs are still maintained on a table between the reception windows and the door to the elevator. They are now, however, separated by program. They are still placed close together. CCLA could further separate its brochures from those of LASBC.

The improvements made in the reception area better clarify that there are two programs in the building and further improvements could increase that apparent separation.

d. Telephone greeting.

As discussed above, calls to the programs' different published telephone numbers are answered by an automated telephone line. While the automated message states that there are two legal aid programs in the offices, it does not specify which units are associated with which program until a unit is selected from the menu. Further, the message uses the pronoun "we" when listing the types of cases that are not handled by the programs. While this is technically correct, use of the pronoun may confuse the public. The CCLA Executive Director agreed to work with LSC on this issue. Also *see* above discussion.

e. Mailing address.

CCLA and LASBC still share the Post Office box. CCLA is resistant to obtaining its own Post Office box because it believes the change would be confusing to attorneys with whom it practices and also due to the additional cost of \$510, annually, to have its own box. As discussed above, CCLA added "Second Floor" to the physical address on the letterhead. It has not been added to business cards and pamphlets which include the physical address though it is noted that the Post Office address is not listed on the business cards. The CCLA Executive Director agreed to add "Second Floor" to business cards and pamphlets as they are reordered.

f. Fax numbers.

The Final Report found that while the program published different fax numbers, the CCLA intake staff housed on the first floor utilizes the published LASBC fax number. The CCLA Executive Director stated during the follow-up review that all CCLA employees now use the second floor fax machine. A review of business cards for the intake staff housed on the first floor reveal that they list the number for the second floor fax machine.

5. *Other factors:*

a. Board Minutes.

The Final Report found that the Board minutes raised concerns that either a single meeting was held for both programs or that business for both program was discussed interchangeably in separate meetings.

As discussed above, improvements have been made in this area though additional action is needed to clarify the actions occurring at CCLA Board meetings.

b. 45 CFR § 1610.8 certification.

The Final Report found that the Board minutes reflect little discussion of issues related to 45 CFR § 1610.8, even when certifying compliance.

As discussed above, the CCLA Board of Directors created a Program Integrity Committee to review these issues.

c. ASC.

The Final Report found that the ASC authorized the two Executive Director to make adjustments to the percentages for individual personnel after the Board approved the contract.

As discussed above, CCLA and LASBC developed new methodologies for determining the percentages of salary for which CCLA is responsible. The two Executive Directors no longer make adjustments as described in the Final Report.

d. Co-counseled cases.

In response to the document requests for the follow-up review, CCLA stated that it had one co-counseled case and it provided a co-counseling agreement. The agreement is signed by the Executive Directors of both programs. CCLA stated that while a co-counseling agreement has been drafted for this case, in actuality CCLA represents one party and LASBC represents the other two parties. An interview with the LASBC attorney, Janet Riley, the Affordable Housing Project Attorney (a regional position funded by a Florida Bar Foundation grant), stated that the three clients are friends who came together to intake. The clients were divided between the programs due to priorities. CCLA is handling the client who is a senior citizen. The other two clients are not seniors and CCLA does not handle housing issues for non-citizens and accordingly called LASBC to become involved in the case. The case is about to settle and the LASBC attorney does not anticipate fees to be awarded by the court. Ms. Riley and the CCLA Executive Director stated that in the future potential co-counsel cases will be informally discussed between the attorneys for the two programs then discussed with the Executive Directors of the two programs. If the proposed arrangement is approved, the programs will then execute a co-counseling agreement.

LSC was not provided with any formal policy or instruction to staff regarding the procedures for co-counseled cases. CCLA can reinforce the separation of the programs by drafting such a policy, including the format for the agreement, distributing it to staff, and incorporating it into standard procedures.

In accordance with corrective action No. 3, CCLA is required to increase the physical and financial separation between itself and LASBC in order to comply with the requirements of 45 CFR § 1610.8(a)(3). As the determination of a failure of such separation is based on a totality of the circumstances, no single factor is determinative. Absolute separation is not required. The general framework of these two entities operating with a shared administrative staff and operating out of co-located offices is not prohibited. If CCLA chooses to maintain this

framework, then it can come into compliance by improving and strengthening the delineation of the two entities.

Given the totality of the circumstances CCLA has not taken sufficient corrective action to comply with corrective action No. 7.

Finding 2: CCLA is in compliance with the requirements of 45 CFR §§ 1620.3 and 1620.5 which states that the governing body of a recipient must establish written priorities for LSC and non-LSC cases and the priorities must be reviewed by the governing body at least on an annual basis.

Corrective action No. 8 required that CCLA establish written priorities for LSC and non-LSC cases and provide assurance that said priorities will be reviewed by the Board on an annual basis in order to comply with the requirement of 45 CFR Part 1620. Per LSC request, CCLA provided an Annual Report on Priorities, dated December 10, 2008, in advance of the onsite visit. Board minutes reflect that the priorities were adopted on the same date.

The Annual Report reflects the results of a joint CCLA/LASBC assessment and based upon those results CCLA priorities were established as: 1) Housing Issues for persons 60 and older, 2) Health/Mental Health, 3) Family Law, 4) Public Benefits, 5) Rights of the Disabled, 6) Consumer Services for persons 60 and older, and 7) Naturalization for persons 60 and older. The report states that LSC funds are used to provide services in all of these priority areas. Non-LSC resources are used when the client's income exceeds LSC's financial guidelines to provide services to Title III and Ryan White Act eligible clients, and to obtain injunctions for protection against domestic violence. The Annual Report also states the limited circumstances in which CCLA staff may handle cases or matters which do not fall within program priorities. Lastly, the Annual Report lists priorities for cases referred to private attorneys through CCLA's pro bono component.

CCLA has taken sufficient corrective action to comply with the requirements of 45 CFR §§ 1620.3 and 1620.5.

Finding 3: CCLA is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

Corrective action No. 9 required that CCLA comply with the requirements of 45 CFR § 1620.6. Copies of signed revised Advocate Agreements were requested and provided to LSC in advance of the visit. The 23 documents provided were cross-referenced with a list of current CCLA staff. It was determined that 12 staff attorneys/Supervising Attorneys, nine paralegals and one Administrative Assistant signed the revised agreement in February 2009. A statement for one

attorney was missing.¹⁸ It was determined that this attorney works two days from home and failing to obtain an executed agreement was an oversight. An agreement signed by this attorney, dated March 3, 2009, was provided to the team during the onsite review. The agreements were signed following the adoption of the revised priorities which eliminate the confusion as to which priorities relate to CCLA.

CCLA has taken sufficient corrective action to comply with the requirements of 45 CFR § 1620.6.

¹⁸ The team requested a current CCLA staff list onsite. The list reveals that CCLA employs 13 attorneys.

V. RECOMMENDATIONS¹⁹

In view of the foregoing, LSC recommends that CCLA take the following steps to increase separation, or otherwise take alternative steps to do so:

1. Improve documentation in CCLA Board minutes of activities occurring in CCLA Board meetings specifically with regard to actions and discussions relating to both meetings.
2. Improve documentation in CCLA Board minutes of actions related to the business of the Program Integrity Committee, such as committee member review of documentation, recommendations, or suggested changes be documented, much the same as the Nominating Committee reports on their activities.

¹⁹ Items appearing in the “Recommendations” section are not enforced by LSC. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the recipient with items addressed in the report. Often recommendations address potential issues and may assist a recipient in avoiding future compliance errors. By contrast, the items listed in the “Required Corrective Actions” section must be addressed by the recipient, and will be enforced by LSC.

VI. REQUIRED CORRECTIVE ACTIONS

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

1. Assure that the CCLA's Board minutes book is an accurate reflection of the occurrences at the CCLA Board meetings.
2. Continue to develop strategies to educate Board members as to the types of cases handled by CCLA case handlers.
3. Amend the 2009 Lease for Commercial Building Space to ensure that CCLA pays only for the square footage it occupies and its fair share of the common space.
4. Implement necessary changes to comply with the requirements of 45 CFR § 1610.8 (a)(3). This corrective action can be achieved by implementing the following changes:²⁰
 - a. Increase the physical separation between the two programs. This can be achieved by implementing any of the following alternatives:
 - i. Relocate CCLA to a different building; or
 - ii. Relocate all CCLA offices and staff to one specific floor within the current building and establish a P.O. Box address for CCLA; or
 - iii. Remove or alter the CCLA sign on the reception door nearest the elevators; remove or alter the signage for LASBC units in the intern room; add "Second Floor" to CCLA's physical address when reordering pamphlets and business cards; and, establish a separate P.O. Box address for CCLA.
 - b. Implement an improved methodology to calculate CCLA's share of the salary and benefits for the Fiscal Administrator and the Director of Development to address the concerns noted — timekeeping for these positions to track time spent for each organization would address most of those concerns.
 - c. Ensure that the automated telephone system clearly identifies the program names for each unit throughout the recording and/or clearly indicates to the caller that they have entered the CCLA or the LASBC portion of the phone system.
 - d. Draft and implement policy and procedures for co-counseled cases between CCLA and LASBC.
 - e. Add language to the signage in the reception area to indicate that CCLA does not engage in restricted activities prohibited by LSC regulations.

²⁰ These changes will bring CCLA into compliance based on the other facts and circumstances described herein.

- f. Further separate the CCLA program brochures in the shared reception area in a way designed to make it easy to ensure that future brochures are also kept clearly separate.
5. Develop a corrective action plan to address the issues identified in this report. The plan must identify each area to be addressed and the steps CCLA intends to take. The plan must include both immediate changes and structural improvements to prevent future violations. That plan must be submitted to LSC by October 2, 2009 for review and must have an expected date for full implementation of no later than January 2, 2010.