



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

Legal Aid of Southeastern Pennsylvania
June 13-17, 2011
Case Service Report/Case Management System Review

Recipient No. 339141

I. EXECUTIVE SUMMARY

Finding 1: LASP's automated case management system ("ACMS") is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, the manner in which LASP is using its ACMS is not sufficient to ensure accurate CSR reporting.

Finding 2: LASP's intake procedures are substantially sufficient to support LASP's compliance related requirements but applicants must be consistently screened for income prospects. LASP's case management procedures, however, do not generally support the program's compliance related requirements.

Finding 3: Sampled cases evidenced compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Finding 4: Sampled cases evidenced substantial compliance with asset eligibility documentation as required by 45 CFR § 1611.3(c)(d) and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: Sampled cases evidenced compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Sampled cases, however, evidenced only substantial compliance with the documentation requirements of 45 CFR Part 1626 and with the requirements of CSR Handbook (2008 Ed.), § 5.5. Six (6) case files lacked signed citizenship attestations and five (5) included undated citizenship attestations.

Finding 6: Sampled cases evidenced substantial compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements).

Finding 7: With one (1) exception, sampled cases evidenced compliance with 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1 (Priorities in use of resources).

Finding 9: Sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced non-compliance with the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed.) (Case closing codes).

Finding 11: Sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 3.3 (Timely case closing).

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: A review of a list of attorneys who have engaged in the outside practice of law revealed that LASP is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). LASP's written policy relating to the outside practice of law was found to be in substantial compliance with the requirements of 45 CFR Part 1604.

Finding 14: Sampled cases, interviews, and a limited review of fiscal documentation evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 15: Sampled cases, interviews, and a limited review of fiscal documents evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). A review of LASP's policy relating to fee-generating cases evidenced substantial compliance with the requirement in 45 CFR § 1609.6.

Finding 16: A limited review of LASP's chart of accounts, annual 45 CFR § 1610.8(b) notifications, and observations during office visits evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). LASP was not, however, in compliance with the notification requirement in 45 CFR § 1610.5(a).

Finding 17: LASP's oversight and follow-up procedures for its Private Attorney Involvement ("PAI") cases do not sufficiently support its general compliance requirements or compliance with 45 CFR § 1614.3 (d)(3), which requires oversight and follow up of PAI cases. A review of LASP's PAI fiscal activities, however, demonstrated LASP complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement).

Finding 18: LASP is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and in compliance with 45 CFR § 1627.2(b)(1), which requires LSC approval to operate any LSC funded subgrant. LASP was not, however, in compliance with 45 CFR § 1627.8, which requires LASP to have a written policy relating to subgrants.

Finding 19: LASP is not in compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 20: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 21: OCE is evaluating additional information to determine LASP's compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 22: Sampled cases and interviews 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 23: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 24: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 25: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 26: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

Finding 27: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 28: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 29: Sampled cases and interviews 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 30: LASP is not in compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).

Finding 31: A limited review of LASP's internal control policies and procedures, fiscal documentation, and interviews evidenced general compliance with the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed.).

II. BACKGROUND OF REVIEW

On June 13-17, 2011, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Legal Aid of Southeastern Pennsylvania ("LASP"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Ed.), and the Property Acquisition and Management Manual. The visit was conducted by a team of five (5) attorneys and one (1) fiscal analyst. Two (2) of the attorneys were OCE staff members; the remaining attorneys were temporary employees.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that LASP has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LASP for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LASP's upper and middle management, staff attorneys, and support staff. LASP's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2009 through April 30, 2011. In the course of the on-site review, the OCE team reviewed 562 cases, which included both randomly selected and targeted files.

LASP is a non-profit corporation which provides free legal services in a wide variety of civil (non-criminal) legal matters to eligible low income residents of Bucks, Chester, Delaware, and Montgomery counties of Pennsylvania. LASP's main office is located in Norristown, where it

¹ In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

² 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.

also has a centralized telephone intake unit, and LASP has branch offices located in Bristol, West Chester, Chester, Pottstown, Doylestown, and Coatesville.³ The administrative office of the program is in Norristown.

LASP received grant awards from LSC in the amount of \$1,091,931 for 2008, \$1,201,685 for 2009, \$1,297,506 for 2010, and was awarded \$1,243,870 for 2011. In its 2010 submission to LSC, the program reported 8,574 closed cases. LASP's 2010 self-inspection certification revealed a 6% error rate in CSR reporting.

By letter dated April 11, 2011, OCE requested that LASP provide a list of all cases reported in its 2009 CSR data submission (closed 2009 cases), a list of all cases closed between January 1, 2010 and December 31, 2010 (closed 2010 cases), a list of all cases closed between January 1, 2011 and April 30, 2011 (closed 2011 cases), and a list of all cases which remained open as of April 30, 2011 (open cases). OCE requested that the lists 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 closing category assigned to the case, and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LASP staff and the other for cases handled through LASP's PAI component.

LASP was advised that OCE would seek access to such cases 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* (January 5, 2004) protocol. LASP was requested 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.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on-site visit. The sample was developed proportionately among 2009, 2010, and 2011 closed and 2011 open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LASP agreement of May 24, 2011, LASP staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality such discussions, in some instances, were limited to a general discussion of the nature of the problem and the nature of the assistance provided.⁴

LASP's management and staff cooperated fully in the course of the review process. As discussed more fully below, LASP was made aware of compliance issues during the on-site visit.

³ LASP's Coatesville office has one (1) staff member, a Community Impact Coordinator. She was interviewed by phone on Wednesday, June 15, 2011.

⁴ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

This was accomplished by informing intermediaries, as well as Managing Attorneys and the Co-Executive Directors, of any compliance issues uncovered during case review.

At the conclusion of the visit, OCE conducted an exit conference during which LASP was made aware of the areas in which the team found a pattern of non-compliance. No significant distinctions between 2009, 2010, and 2011 cases were found. Some significant distinctions, however, were noted between offices. LASP's intake procedures were found to be generally sufficient to support the program's compliance requirements, except that intake staff should ensure it screens applicants for income prospects as required by 45 CFR § 1611.7 (a)(1). OCE cited areas of non-compliance relating to the documentation requirements of 45 CFR Part 1626, CSR Handbook (2008 Ed.), § 5.6 relating to the description of legal assistance provided, the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed.) relating to case closing codes, and the requirements of 45 CFR § 1620.6. OCE also found that LASP is not using its ACMS in a manner that results in accurate reporting of cases to LSC and its case management procedures are not sufficiently supporting its compliance requirements. LASP was very receptive to OCE's preliminary findings and recommendations and requested assistance from OCE to provide compliance training to assist in its efforts to improve compliance and accuracy in its CSR reporting.

By letter dated August 22, 2011, OCE issued a Draft Report detailing its findings, recommendations, and required corrective actions. LASP was asked to review the Draft Report and provide written comments within 30 days. On September 12, 2011, LASP requested a nine (9) day extension of time for their response to the Draft Report, which OCE approved. By email dated September 29, 2011, LASP submitted its comments to the Draft Report. LASP has taken several corrective measures in response to the Draft Report. OCE has carefully considered LASP's comments and has accepted and incorporated them within the body of the report. LASP's comments, in their entirety, and any additional information received by OCE indicating LASP's work to address the recommendations and corrective actions listed herein, are attached to this Final Report.

III. FINDINGS

Finding 1: LASP's automated case management system ("ACMS") is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, the manner in which LASP is using its ACMS is not sufficient to ensure accurate CSR reporting.

Recipients are required to utilize an automated case management system ("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.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LASP's ACMS system is generally sufficient to ensure that information necessary for the effective management of cases is timely and accurately recorded.

Interviews indicated, however, that LASP is not using its ACMS in a manner sufficient to support its compliance requirements and ensure accurate reporting of CSR eligible cases. There were instances of inconsistent closing codes contained in the case files and the ACMS. *See* Case Nos. 151004294, 121000548, 221001115, and 220900699. There was one instance where the funding code contained in the case files was not the same as that in the ACMS. *See* Case No. 220900650. There were a number of instances where the "CSR eligible" field was incorrectly used (*i.e.*, the case was not CSR eligible but was noted as such in the ACMS and vice versa). *See e.g.*, Case Nos. 151100328, 411000285 150701374, 120700194, 120700461, and 120700049, where cases that appeared to be CSR eligible were not marked as CSR eligible; *see also* Case Nos. 151002264, 150901329, 151101166, 151001327, 151001798, 151000889, 150801434, 150801793, 151003151, 411100076, 150803265, 410800279, 120800325, and 211000057, where cases were not CSR eligible but were marked as such in LASP's ACMS.

Further, LASP reported to LSC that it closed 7,983 cases in 2009 and 8,573 cases in 2010. As a part of the review, LASP ran a report in its ACMS to determine the number of reportable cases for 2009 and 2010 as listed in LASP's ACMS as of the time of the review. The reports indicated that LASP closed 6,613 CSR eligible cases in 2009 and 6,961 CSR eligible cases in 2010, which is over 1,000 less cases than LASP reported to LSC for each of those years. A review of these reports and discussions with the Co-Executive Directors indicate LASP has reported both CSR eligible and some non-eligible cases to LSC for 2009 and 2010. LASP's Co-Executive Directors have determined that this is due to a fault in the Kemps reporting program on which LASP has relied to run the case numbers it reports to LSC. LASP has corrected the error and plans to report only CSR eligible cases to LSC in future years.

In the Draft Report, OCE recommended LASP train its staff on CSR requirements and usage of compliance-related ACMS fields and that LASP ensure it is using its ACMS in a manner that supports its compliance requirements and allows for accurate case reporting. LASP requested OCE's assistance with training on CSR requirements.

In its comments to the Draft Report, LASP acknowledged the issues raised in this finding. It noted it has corrected the error that resulted in the over-reporting of cases to LSC and asserted it will be reporting only CSR eligible cases to LSC in the future. LASP also expressed appreciation for OCE's offer to train LASP staff on CSR requirements when OCE staff is available to do so.

LASP has also informed OCE that LASP's Executive Directors met with the program's Managing Attorneys about the need for staff to follow the guidelines in the CSR handbook in their use of codes. LASP's Managing Attorneys will now check the use of CSR closing codes and other ACMS requirements as they review all case files before cases are closed.

LASP also plans to conduct training on the CSR codes at its next staff meeting, which is tentatively scheduled for the week of November 14, 2011. At that meeting, LASP will direct staff to regularly consult the CSR handbook which has been posted on LASP's WIKI. LASP has informed OCE that it should be able to certify that all staff and paralegals have read the CSR Handbook after the November staff meeting. OCE requests LASP provide OCE with this certification to include in LASP's OCE file.

Finding 2: LASP's intake procedures are substantially sufficient to support LASP's compliance related requirements but applicants must be consistently screened for income prospects. LASP's case management procedures, however, do not generally support the program's compliance related requirements.

Summary

Interviews with intake staff indicate that LASP's intake procedures are generally sufficient to ensure intake staff is making a reasonable inquiry as to financial eligibility and effectively screening for other eligibility requirements. LASP should, however, work to ensure that all applicants are screened for prospective income and undergo a proper conflict check before they are provided legal advice. Details relating to LASP's intake procedures and practices are provided below.

Regarding case management and oversight, interviews with managing attorneys, staff, and the Co-Executive Directors indicated that, although there is some formal oversight of cases by Managing Attorneys, it is not sufficient to support the program's compliance related requirements. Although a certain degree of formal oversight is not strictly required by LSC regulations or the CSR Handbook, in OCE's experience, it is the most effective manner through which to ensure that a program meets its compliance requirements and is accurately reporting eligible cases.

As such, in the Draft Report LASP was required to undertake the following corrective actions relating to intake and case oversight procedures and practices:

- Ensure staff consistently screens applicants for income prospects as required under 45 CSR § 1611.7(a)(1). *See also* LSC External Legal Opinion AO-2009-1006 dated

September 3, 2009. In doing so, it is recommended that LASP amend its intake forms (*i.e.*, "LASP Intake Application" and the "Telephone Advice Sheet") in accordance with LASP's newly revised financial eligibility procedures so the forms capture information relating to applicants income prospects, all spend-down costs allowed under LASP's financial eligibility policy, and LASP's revised asset exceptions. It is also recommended that LASP include a prospective income field or check box in Kemps as a means of demonstrating that appropriate screening was accomplished.

- Ensure all attorneys and paralegals conduct a conflict of interest check prior to providing legal services during outreach events or clinics to avoid the risk of violating ethical obligations. *See* 45 CFR § 1610.2(a)(2).

It was also recommended that LASP devise additional oversight procedures and/or practices for opening, documenting, and closing cases that will ensure the program meets its compliance requirements and accurately reports CSR eligible cases.

Intake Procedures and Practices

OCE staff assessed the intake procedures of all offices by interviewing the primary intake staff persons responsible for conducting intake screening and observing intake activities on-site. Between approximately 50 - 60% of LASP's cases are opened by the Telephone Intake Unit ("TIU") in Norristown. LASP's offices also conduct walk-in intake and intake during some outreach events and clinics.

Telephone Intake

The TIU conducts telephone intake for all of LASP's offices. Centralized intake is open to receive calls from 9:00 am to 1:00 pm Monday through Friday. The intake unit is staffed by six (6) paralegals who handle the calls and are overseen by two (2) staff attorneys and a Managing Attorney. All of the cases handled by the centralized intake unit are counsel and advice or limited action. In many instances, the paralegals provide legal advice under the supervision of one (1) or more of the attorneys. Interviews indicated that the paralegals are well supervised.

Applicants are first asked their name, their legal problem, the name of any adverse parties, and the county of residence. Staff records the information by hand on a Telephone Advice Sheet. Intake staff is familiar with LASP's priorities and usually know whether the legal problem is within the program's priorities. However, if intake staff is uncertain they either consult a hard copy of the priorities (or a copy on the program's online WIKI resource) or ask the Managing Attorney.

Interviews indicated that if the legal problem is within the program's priorities, staff then does a conflict check using the Kemps program utilizing both the applicant's name and the names of all adverse parties. Staff also determines whether the applicant has an existing case or a previous case and, if so, will consult with the Managing Attorney to determine if the case is a potential duplicate. An existing client will be referred to the attorney handling the case.

If there is no conflict, intake staff inquires about financial eligibility. Following the sequence in LASP's Telephone Advice Sheet, paralegals inquire about the number of persons in the household and the monthly income of all household members. Staff then computes the total household income and determines whether the applicant's income is within 125% of the Federal Poverty Guidelines ("FPG") using a calculator, if necessary. If the income amount is reasonably close to the guideline amount, staff will inquire into the applicant's employment costs and medical expenses and spend-down the income amount as appropriate. Interviews disclosed that intake staff is experienced in using the spend-down procedures. However, intake staff does not routinely inquire about prospective income. There is also no space to document prospective income on the Telephone Advice Sheet.

Intake staff next inquires about the applicant's assets. The Telephone Advice Sheet contains boxes for recording amounts for checking accounts, savings accounts, real estate, and personal property. Staff may also inquire about certificates of deposit, stocks, bonds and other assets. The staff then totals the assets using a calculator, if necessary. Staff is experienced in conducting appropriate asset screening but will consult with the Managing Attorney regarding any questions they may have. Staff is also aware of LASP's policy relating to over-asset waivers.

Tracking the Telephone Advice Sheet, intake staff inquires whether the applicant is a U.S. citizen or eligible alien. If the applicant is neither a U.S. citizen nor an eligible alien, staff inquires whether they are a victim of domestic violence. Intake staff notes on the Telephone Advice Sheet whether there was a prior case, a duplicate case, whether the caller is a victim of domestic violence, and whether a spend-down was used. The intake staff then inquires into the legal problem, consults with one of the attorneys where appropriate, and enters notes on the Telephone Advice Sheet describing the legal problem, any other relevant information, and any advice that was provided. Notably, LASP's Telephone Advice Sheet does not have fields that capture information on income prospects or all spend-down costs allowed under LASP's financial eligibility policy.

Once the telephone conversation has been concluded, intake staff enters the information into Kemps and the file is assigned a case number. The computer file becomes the main case file and they collect handwritten notes of calls are shredded within six (6) months. The case may involve further action by the intake unit or it may be referred for service to either Norristown or the appropriate local office. Intake staff reported that they have never conducted an intake for group clients.

Some of LASP's branch offices conduct telephone intake utilizing the LASP Intake Application and follow the same procedure as the TIU, others refer all telephone inquiries to the TIU. LASP's Intake Application, however, does not contain fields to capture prospective income or all spend-down costs allowed under LASP's financial eligibility policy. LASP's Intake Application and LASP's Telephone Advice Sheet differ in that the Telephone Advice Sheet contains much more space to document the facts of an applicant's case and the advice provided but less space to document spend-down amounts and other financial information. LASP should revise its intake forms in accordance with LASP's revised financial eligibility procedures and so the forms will capture information relating to applicants' income prospects, all spend-down costs allowed under LASP's financial eligibility policy, and LASP's revised asset exceptions. LASP's Intake

Application also includes a citizenship attestation whereas the Telephone Advice Sheet only contains a citizenship check box. Those applicants screened by the TIU are asked to sign citizenship attestations when they meet with the attorney handling their case in the branch offices.

Walk-in Intake

With the exception of Coatesville, all of LASP's offices conduct at least some walk-in intake. The percentage of cases that are brought in through walk-in intake varies significantly by office, with Norristown conducting the most walk-in intakes. Interviews indicated that LASP's walk-in intake practices and procedures are generally sufficient to meet LASP's compliance requirements and that intake staff in the program's various offices are sufficiently familiar with LSC eligibility requirements to conduct effective eligibility screenings. Intake staff uses LASP's Intake Application to document eligibility information. However, as with the TIU, staff conducting walk-in intakes does not consistently screen applicants for prospective income.

Outreach and Clinics

LASP's offices conduct outreach at various locations and at legal clinics. Interviews evidenced that LASP's practices and procedures are generally sufficient to effectively screen applicants during outreach events and clinics. As with the TIU and walk-in intake, staff is not, however, consistently asking applicants about prospective income. Interviews also indicated that not all attorneys and paralegals are conducting a complete conflict check before applicants are provided legal advice. LASP should ensure all attorneys and paralegals conduct a conflict of interest check prior to providing legal services during outreach events or clinics to avoid the risk of violating ethical obligations. *See* 45 CFR § 1610.2(a)(2).

Case Management Procedures and Practice

Interviews with Managing Attorneys and the Co-Executive Directors indicated that Managing Attorneys are required to review case lists and open case files with each advocate every six (6) months. Interviews also evidenced that this is done to varying degrees, depending on the amount of time the Managing Attorney has to devote to the review. Most of LASP's Managing Attorneys have full case loads and, as such, do not allocate a significant portion of their time to management duties. Many Managing Attorneys do not review cases before they are closed, but rely on the advocate handling the case to ensure the compliance requirements are in order. The offices/units that appear to have the most consistent oversight procedures and practices are the TIU in Norristown and the Pottstown office.

Although it varies by office, discussions with attorneys indicate that some rely on administrative staff to properly close cases in Kemps with the accurate compliance-related information. Although interviews evidenced that several administrative staff members are knowledgeable with compliance requirements, it may not be the most efficient or effective for them to assume responsibility for selecting those compliance-related fields that relate to the work provided to the client, the substantive outcome, rational for the time of the case closing, etc.

As stated above, LSC does not require a program to have a certain level of formal oversight procedures for staff cases, however, in OCE's experience, it is the most effective manner through

which to ensure that a program meets its compliance requirements and is accurately reporting eligible cases. In view of OCE Findings Nos. 1, 5, 6, 9, and 10 in the Draft Report, OCE recommended LASP devise additional oversight procedures and/or practices for opening, documenting, and closing cases to ensure the program meets its compliance requirements and accurately reports CSR eligible cases.

In its response, LASP agreed with this finding and stated it had already taken steps to remedy the compliance issues addressed:

“Our CMS, Kemps Prime, has been upgraded to address this issue and staff members in all LASP offices are receiving related training. With this upgrade of Kemps and staff training, LASP will be able to ensure that staff consistently screens applicants for income prospects. As for intake related compliance requirements, we are taking steps to ensure that conflict of interest checks are done on all applicants at outreach sites and clinics. We are also checking to make sure that office intake forms are properly capturing information related to income prospects, and the spend-down costs, and asset exceptions contained in our financial eligibility policy. Finally, LASP is committed to implementing additional oversight procedures and practices for the opening, documenting and closing of cases based on the recommendations and assistance of OCE.”

As mentioned under Finding No. 1, LASP stated that its Executive Directors met with the program’s Managing Attorneys about the need for staff to follow the guidelines in the CSR Handbook in their use of codes. LASP’s Managing Attorneys will now check the use of CSR closing codes and other ACMS requirements as they review all case files before cases are closed.

Finding 3: Sampled cases evidenced compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant’s household and the total income before taxes received by all members of such household in order to determine an applicant’s eligibility to receive legal assistance.⁵ *See* CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant’s household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines (“FPG”) and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of

⁵ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient “clients” and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2008 Ed.), § 4.3.

None of the sampled LSC-funded case files evidenced that services were provided to an over-income client without the appropriate exception approval. A limited number of over-income cases, however, were incorrectly designated as CSR eligible. *See* Case Nos. 151003151 and 411100076.

As such, the cases reviewed evidenced compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. An evaluation of the section of LASP’s Board-approved Financial Eligibility Policy relating to income screening indicated that the policy was also generally compliant but ambiguous in some parts. Based on advice LASP received during the review, it has revised its policy to bring it into full compliance with 45 CFR Part 1611. In the Draft Report, OCE requested LASP’s governing body adopt the newly clarified financial eligibility policy to ensure full compliance with 45 CFR Part 1611.

In its response to the Draft Report, LASP stated:

“LASP has recently revised and adopted new financial eligibility guidelines (approved by LASP Board of Directors on 9/21/11).”

The revised guidelines are attached to LASP’s comments, which are attached to this Final Report.

Finding 4: Sampled cases evidenced substantial compliance with asset eligibility documentation as required by 45 CFR § 1611.3(c)(d) and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant’s eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁶ *See* CSR Handbook (2008), § 5.4.

⁶ A numerical total value must be recorded, even if it is zero or below the recipient’s guidelines. *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).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

None of the sampled LSC-funded case files evidenced that services were provided to a client whose assets exceeded LASP's asset ceiling without the appropriate exception approval. A limited number of over-asset cases, however, were incorrectly designated as CSR eligible. *See* Case Nos. 211000057 and 150804251.

An evaluation of LASP's Board-approved Financial Eligibility Policy indicated that it included asset exceptions not provided for under 45 CFR § 1611.3(d)(1) (*e.g.*, personal household effects such as clothing, jewelry, appliances, that should only be exempt to the extent that they are exempt from attachment under Federal or State Law as in accordance with 45 CFR § 1611.3(d)(1)). LASP has revised the policy to bring it into full compliance with 45 CFR Part 1611. In the Draft Report, OCE requested LASP's governing body adopt the new financial eligibility policy to ensure full compliance with 45 CFR Part 1611.

In its response to the Draft Report, LASP referred OCE to its newly adopted financial eligibility policy, which was approved by LASP's Board of Directors on September 21, 2011, and is attached to this Final Report.

Finding 5: Sampled cases evidenced compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Sampled cases, however, evidenced only substantial compliance with the documentation requirements of 45 CFR Part 1626 and with the requirements of CSR Handbook (2008 Ed.), § 5.5. Six (6) case files lacked signed citizenship attestations and five (5) included undated citizenship attestations.

The level of documentation necessary to evidence citizenship or alien eligibility depends 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.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁷ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they 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. LSC recipients are now allowed to include these cases in their CSRs.

None of the sampled files indicated that LASP had provided services to applicants not eligible under 45 CFR Part 1626. Sampled files, however, evidenced only substantial compliance with the documentation requirements of 45 CFR Part 1626. *See* Case Nos. 150803802, 220900538, 410800279, 151000616, 211000063, and 111000484. A citizenship attestation was required and lacking in each of these six (6) cases. Four (4) of the cases were also incorrectly designated as CSR eligible in LASP's ACMS. *See* Case Nos. 150803802, 220900538, 410800279, and 151000616. Absent the requisite Part 1626 documentation, these files should be excluded from LASP's CSR data submission to LSC and the files must not be charged to LSC funds. Furthermore, although LASP usually complies with the requirements of CSR Handbook (2008 Ed.), § 5.5, a number of case files included undated citizenship attestations. *See e.g.*, Case Nos. 210800312, 210900083, 150901617, 150802488, and 150803446.

In the Draft Report, OCE requested that LASP ensure all case files contain citizenship attestations, where appropriate, that are signed and dated pursuant to 45 CFR Part 1626 and the requirements of CSR Handbook (2008 Ed.), § 5.5.

In its response to the Draft Report, LASP stated:

"LASP will continue to stress with staff and train staff to ensure completed citizenship attestations. We are also instituting a more comprehensive policy of file review and closing files to further ensure compliance."

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements), however improvement is warranted.

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in

⁷ *See* Kennedy Amendment at 45 CFR § 1626.4.

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 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 lack of a retainer does not preclude CSR reporting eligibility.⁸ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

With four (4) exceptions, sampled cases evidenced compliance with the retainer requirements of 45 CFR § 1611.9. *See* Case Nos. 210800110, 120900467, 150901617, and 20900538. A number of the retainers in sampled case files also did not contain an adequate statement identifying the legal problem and the nature of the legal services to be provided. *See e.g.*, Case Nos. 110801006, 111100184, 111001081, 111000301, 111000923, 111000241, 111100061, 111100062, 210900083, and 210800380.

As such, sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9. OCE requested, in the Draft Report, that LASP take corrective action to ensure that, where required, retainer agreements are executed in compliance with the requirements of 45 CFR § 1611.9, and that all agreements contain, at a minimum, a statement identifying the legal problem and the nature of the legal services to be provided.

In its response to the Draft Report, LASP stated:

“LASP will review with all current staff and train both current and future staff to ensure retainer agreements comply with LSC regulations. As stated above, we are also instituting a more comprehensive policy of file reviews and closing files to ensure compliance with regard to this issue.”

Finding 7: With one (1) exception, sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

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).

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

⁸ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

With only one (1) exception, sampled cases files evidenced compliance with the requirements of 45 CFR Part 1636. *See* Case No. 220900538. In the Draft Report, OCE directed LASP to ensure it prepares a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint as required by 45 CFR Part 1636.

In response to the Draft Report, LASP stated it will address this corrective action in a timely fashion to ensure future compliance and provide training for staff where necessary.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1 (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 § 1620.1 and 45 CFR § 1620.4.

All of the sampled case files evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1.

Finding 9: Sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

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 applicant’s legal problem is outside the recipient’s priorities, or 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 such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2008 Ed.), § 5.6.

A number of sampled case files lacked a sufficient description of the legal assistance provided to the client. *See e.g.*, Case No. 110900708, where a PAI cases was closed as "L-Extensive Service" but there is no indication in the file of what services were provided to the client; Case Nos. 110900799, 110900034, 110900411, 150901265, 150901329, 151101166, 151003364 and 151101062, where the cases were closed as "A-Counsel and Advice" but the advice was not sufficiently documented; Case No. 150802484, which was closed as "B-Limited Action" after being open for three (3) years and no legal work was documented in the case file; and Case No. 151002264, which was closed as a CSR eligible "K-Other" and no legal work was documented.

As such, sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 5.6. In the Draft Report, OCE required LASP ensure it properly documents the legal assistance provided to clients as required by CSR Handbook (2008 Ed.), § 5.6.

In its response to the Draft Report, LASP stated:

“LASP will review with all current staff and train both current and future staff on the need to include a sufficient description of the legal assistance provided to clients in the files [and] we are also instituting a more comprehensive policy of file reviews and closing files to ensure compliance with regard to this issue.”

Finding 10: Sampled cases evidenced non-compliance with the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed.) (Case closing codes).

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

A significant number of sampled cases evidenced incorrect closing codes. *See e.g.*, Case Nos. 210900176, 211000438, 211000369, and 221000958, where the cases were closed as an "I(a)-Contested Court Decision" or "I(b)-Uncontested Court Decision" but where a negotiated settlement was reached; Case No. 210900131, where the case was closed as a "K-Other" but the file evidenced a contested court decision; Case Nos. 150802458, 150803265, 150903531, and 150903444, where the cases were closed as a "B-Limited Action" but should have been closed as court decisions or negotiated settlements; Case Nos. 110900714, 150902256, and 151001549, where cases were closed as "L-Extensive Service" but the level of assistance was more consistent with "A-Counsel and Advice"; Case No. 110800223, where the case was closed as "L-Extensive Service" but the level of assistance was more consistent with "G-Negotiated Settlement with Litigation"; Case No. 221001115, where the case was closed as "A-Counsel and Advice" but where the attorney appeared in court on behalf of a client and the case was dismissed; Case Nos. 151000323, 220900588, and 220900016, where the cases were closed as "A-Counsel and Advice" but the level of assistance was more consistent with "B-Limited Action"; Case No. 211000299, where the case was closed as "A-Counsel and Advice" but which should have been closed as "B-Limited Action" because staff drafted a Power of Attorney for the client; Case Nos. 111000917, 151100625, and 221000911, where the cases were closed as "B-Limited Action" but

the documented legal service provided to the client indicated the cases should have been closed as "A-Counsel and Advice." One (1) case evidenced the use of closing code "K-Other" as a rejected case code, where the closing code should have reflected the level of service provided to the client, if any, before the case was rejected. *See* Case No. 151002264.

Notably, the closing codes for a limited number of cases were corrected pursuant to error checks conducted months after the case was closed in Kemps and initially assigned an incorrect closing code. *See e.g.*, Case No. 1510000962, where the case was closed as "L-Extensive Service" on May 25, 2010 but the closing code was changed to "A-Counsel and Advice" on May 5, 2011; and Case No. 151004365, where the case was closed as "E-Client Withdrew," a closing code that is no longer valid, on January 18, 2011, but where the closing code was changed to "A-Counsel and Advice" on May 5, 2011.

As such, sampled cases evidenced non-compliance with the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed.). In the Draft Report, OCE required LASP ensure it closes LSC-reportable cases with the correct closing codes as required by Chapters VIII and IX of the CSR Handbook.

In its response to the Draft Report, LASP agreed with the issues raised in this finding and stated it would work with OCE to train staff on these issues as soon as possible.

As mentioned above, LASP has also informed OCE that LASP's Executive Directors met with the program's Managing Attorneys about the need for staff to follow the guidelines in the CSR handbook in their use of codes. LASP's Managing Attorneys will now be checking the use of CSR closing codes and other ACMS requirements as they review all case files before cases are closed. LASP is also planning to conduct training on the CSR codes at its next staff meeting, which is tentatively scheduled for the week of November 14, 2011.

Finding 11: Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3 (Timely case closing).

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed.), § 3.3(a).⁹ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the grant year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and

⁹ The time limitation of the 2001 Handbook that a brief service case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

a closing memorandum or other case-closing notation is prepared. *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).

A significant number of sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3. *See e.g.*, Case No. 210800110, where the last activity in the case was in September 2008 but the case was closed in April 2010; Case No. 210900186, where the client received advice on April 21, 2009 and no further service was provided but the case was not closed until May 10, 2010; Case No. 210800353, where the case was opened on July 17, 2008 and the case was closed as "A - Counsel and Advice" on May 1, 2009; Case No. 110900662, where the case was opened in July 2009 and closed in October 2010 as "A-Counsel and Advice"; Case No. 151001327, where the Telephone Intake Unit provided advice in April 2010 but there appeared to be no reason why the case is still open; Case No. 151001798, where the Telephone Intake Unit provided advice in May 2010 but there appeared to be no reason why the case was still open; Case No. 150801793, where work on a PAI case appears to have been completed in July 2008, but there appeared to be no reason why the case was still open; Case No. 150803265, where the final hearing in a PAI case was in November 2008, but there appeared to be no reason why the case was still open; Case No. 120800325, where work was completed in November 2008 but there appeared to be no reason why the case should have been kept open until January 2011; Case No. 150902256, where a closing letter was sent to the client in October 2009 but the case was not closed until February 2011; Case No. 211000299, where work on a case closed as "A- Counsel and Advice" was completed in July 2010 but there appeared to be no reason why the case was kept open until March 2011; Case No. 150901830, where work was completed in June 2009 but there appeared to be no reason why the case was held open until April 2011; Case No. 150802484, where a case opened in July 2008 and closed as "B - Limited Action" was closed in April 2011 without an explanation as to why it was held open; Case No. 150800859, where the last activity in the file appeared to be in April 2009, but where there was no explanation as to why the case remains open; Case No. 150800237, where work was completed in 2008 and there is no explanation noted in the file explaining why it is still open; Case No. 150800243, where the last activity in the case was in September 2009 and there was no explanation as to why the case is still open; Case No. 150900939, where client failed to return SSI overpayment documents to LASP in 2009 and there is no explanation as to why the case is still open; Case No. 150803219, where no legal assistance is noted in a file open since September 2008; and Case No. 220900538, where the final order in the case was entered on September 3, 2009 and there was no explanation noting why the case should still be open.

As such, LASP was found to be in non-compliance with the requirement to close cases in a timely manner. In the Draft Report, OCE required LASP ensure cases are closed in a timely manner in accordance with the requirements of CSR Handbook (2008 Ed.), § 3.3.

In its response to the Draft Report, LASP stated:

“LASP accepts this finding and will be working with staff and training staff to review the need to close files in a timely fashion and to ensure compliance with LSC regulations.”

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

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 (1) 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.

With one (1) exception, sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2. *See* Case Nos. 310900312 and 311000198.

There are no recommendations or corrective actions required.

Finding 13: A review of a list of attorneys who have engaged in the outside practice of law revealed that LASP is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). LASP's written policy relating to the outside practice of law was found to be in substantial compliance with the requirements of 45 CFR Part 1604.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in 45 CFR Part 1604, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Based on a review of the list of attorneys who have engaged in the outside practice of law, LASP is in compliance with the requirements of 45 CFR Part 1604. At the time of the review, LASP's written policy relating to the outside practice of law was in substantial compliance with the requirements of 45 CFR Part 1604, however, LASP was advised at the exit conference held on June 17, 2011 that it should update its written policy to include the current definition of "outside practice of law" in 45 CFR § 1604.2 and the requirement in 45 CFR § 1604.4(b) to ensure that "except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient" when engaging in permissible outside practice. In

response, LASP updated its written policy related to the outside practice of law, which is now in compliance with the requirements of 45 CFR Part 1604.

In response to the Draft Report, LASP adopted a new outside practice of law policy, which it is implementing and which is attached to this Final Report.

OCE notes that, since the date of the review, LASP has asked OCE to clarify a compliance issue relating to staff's outside service as a court appointed arbitrator. OCE is researching the matter, in consultation with LSC's Office of Legal Affairs, and will provide LASP with an answer under separate cover.

Finding 14: Sampled cases, interviews, and a limited review of fiscal documentation evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grants 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.

The sampled files reviewed indicated compliance with 45 CFR Part 1608. Discussions with LASP's Co-Executive Directors, Fiscal Manager, and Community Impact Coordinator confirmed that LASP is not involved in this prohibited activity. A limited review of fiscal records reflected in LASP's Chart of Accounts, including cash disbursements, also provided no indication that the program was involved in any prohibited political activity during the review period.

There are no recommendations or corrective actions required.

Finding 15: Sampled cases, interviews, and a limited review of fiscal documents evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). A review of LASP's policy relating to fee-generating cases evidenced substantial compliance with the requirement in 45 CFR § 1609.6.

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 may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two (2) private attorneys; neither the referral service nor two (2) 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).

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

Sampled case files, interviews, and a limited review of fiscal documentation indicated that LASP does not accept fee-generating cases and is in compliance with the requirements of 45 CFR Part 1609. In the Draft Report, however, OCE required LASP to update its written policy relating to fee-generating cases to reflect the current 45 CFR Part 1609 in order to meet the requirement in 45 CFR § 1609.6 that recipients adopt written policies and procedures to guide staff in complying with 45 CFR Part 1609.

In response to the Draft Report, LASP revised its written policy relating to fee-generating cases to bring it into full compliance with 45 CFR Part 1609. A copy of that new policy is attached to this Final Report.

Finding 16: A limited review of LASP's chart of accounts, annual 45 CFR § 1610.8(b) notifications, and observations during office visits evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). LASP was not, however, in compliance with the notification requirement in 45 CFR § 1610.5(a).

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees.

Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include:

- i) the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;
- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

See 45 CFR § 1610.8(a); *see also*, OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

A limited review of LASP's chart of accounts and observations during office visits evidenced compliance with 45 CFR Part 1610. A review of LASP's Board of Director's annual

certifications relating to LASP's program integrity for 2009 and 2010 also evidenced compliance with the requirement of 45 CFR § 1610.8(b). A limited review of documents sent to non-LSC funders and discussions with the Co-Executive Directors, however, evidenced that LASP does not provide all non-LSC funders with written notification of the LSC prohibitions and conditions which apply to the funds. In the Draft Report, OCE required LASP ensure it provides notice of LSC prohibitions and conditions to all non-LSC funders as required by 45 CFR § 1610.5.

In its response to the Draft Report, LASP stated:

“We were very pleased to see so many positive comments in OCE’s draft report about our fiscal work, records and practices. As for the notification requirements, LASP has added the necessary language to more templates and is now providing all non-LSC funders with written notification of the LSC prohibitions and conditions which apply to those funds.”

Finding 17: LASP's oversight and follow-up procedures for its Private Attorney Involvement ("PAI") cases do not sufficiently support its general compliance requirements or compliance with 45 CFR § 1614.3 (d)(3), which requires oversight and follow up of PAI cases. A review of LASP's PAI fiscal activities, however, demonstrated LASP complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement).

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" or 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. The regulation 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). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient’s year-end audit. The term “private attorney” is defined as an attorney who is not a staff attorney. *See* 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement 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.

Additionally, 45 CFR Part 1614 requires that recipients utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort, and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

A review of fiscal documents and interviews with management indicated that LASP has met its PAI 12.5% requirements during each year in the review period. LASP allocates PAI expenses based on an expenditure allocation methodology which is consistent with the requirements under 45 CFR § 1614.3(e)(1)(i) as described in the Accounting Guide For LSC Recipients ("Accounting Guide"). A review of LASP's unaudited financial information for March 2011 indicated that the program may experience a PAI shortfall during its 2011 fiscal year. As a result of the OCE review, LASP requested a waiver for the 2011 fiscal year as allowed under 45 CFR § 1614.6.

A review of sampled PAI cases and interviews with PAI coordinators, evidence that more formal oversight of PAI cases is needed to ensure the requirements of 45 CFR § 1614.3(d)(3), which requires programs to implement case oversight and follow-up procedures, and Chapter X of the CSR Handbook (2008 Ed.) are met. Oversight and follow-up procedures for PAI cases varies from office to office, with LASP's Pottstown office evidencing the most routine and effective oversight procedures and practices.

Sampled PAI files evidenced incorrect closing codes. *See* Case Nos. 110900905 and 110900714, where the cases were closed as "L-Extensive Service" but the work was more consistent with "A-Counsel and Advice"; Case Nos. 210900176, 211000438, and 211000369, where the cases were closed as court decisions but where a negotiated settlement was reached; Case No. 220900618, where the case was closed as "B-Limited Services" but the work was more consistent with "L-Extensive Service"; and Case Nos. 150802458 and 150903444, where the cases were closed as "B-Limited Services" but should have been closed as court decisions or negotiated settlements. *See also*, Case No. 221001115

A limited number of reviewed PAI cases had not been closed in a timely manner. *See e.g.*, Case No. 150801793, where work on a PAI case appears to have been completed in July 2008, but no reason was noted in the file explaining why the case should have been kept open until June 2011 and Case No. 150803265, where the final hearing in a PAI case was in November 2008, but there was no reason noted in the file explaining why the case should have been kept open until June 2010. It was also difficult to determine the status of a limited number of PAI cases because the files had not been updated in over 6 months. *See* Case No. 151003759, where the last update in the file was from November 2010, and Case No. 150903291, where the last update in the file was from September 2010 and the recent status of the case was unclear.

One (1) sampled PAI case file lacked the requisite citizenship attestation. *See* Case No. 151000616. Finally, a limited number of sampled case files were incorrectly designated as PAI cases. *See e.g.*, Case No. 211100081, where the case file indicated a staff attorney handled the case; Case No. 211000588, where case was closed as PAI but the referral was not successful and where the client was assisted by staff; Case No. 210900176, where the case was closed as PAI but the case file indicated that the highest level of service was provided by a staff attorney; Case No. 210900531, where the case was closed as a PAI case but was handled by staff. It should be noted that only costs associated with cases where a client is LSC eligible and which are handled by private attorney can be counted towards LASP's PAI requirement. *See* 45 CFR § 1614.3(3). Therefore, LASP should review PAI designated cases to ensure staff cases are not being closed as PAI cases or counted towards LASP's PAI allocation.

As such, sampled cases evidenced that LASP's current oversight and follow up practices are not supporting its compliance requirements. As explained above, 45 CFR § 1614.3(d)(3) requires LASP to implement case oversight and follow-up procedures. The CSR Handbook also provides that "[p]rograms shall create oversight and follow-up procedures sufficient to track the timely referral, follow-up and disposition of PAI cases"¹⁰ and provided hallmarks of effective oversight and follow-up systems. Those hallmarks include, among other things, a specified time period for referral and a policy that articulates a plan to ensure periodic follow-up on all PAI cases and timely closure of cases. In the Draft Report, OCE recommended LASP use these hallmarks to develop program-wide oversight and follow-up procedures to ensure cases are closed and handled in compliance with LSC regulations and the CSR Handbook in all offices.

In its response to the Draft Report, LASP noted it had requested and received a waiver of its PAI requirement for 2011 as allowed under 45 CFR § 1614.6. LASP also stated:

“We will also work with our program’s pro bono coordinators to ensure more oversight of PAI cases. LASP will also adopt hallmarks and develop program-wide oversight and follow up procedures to ensure PAI cases are closed and handled in compliance with LSC regulations and the CSR handbook.”

Finding 18: LASP is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and in compliance with 45 CFR § 1627.2(b)(1), which requires LSC approval to operate any LSC funded subgrant. LASP was not, however, in compliance with 45 CFR § 1627.8, which requires LASP to have a written policy relating to subgrants.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient’s programmatic activities.¹¹ Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

Additionally, 45 CFR § 1627.4(a) states that:

¹⁰ CSR Handbook (2008 Ed.), § 10.4.

¹¹ Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient’s legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient’s clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

- a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.
- b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a government organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

OCE's review of LASP's accounting records, general ledger entries for the period of the review, and discussions with LASP's Fiscal Manager evidenced compliance with 45 CFR § 1627.4(a), that all non-mandatory dues and fees are paid with non-LSC funds. A limited review of fiscal records for the period of the review and discussions with LASP's Fiscal Manager also confirmed that LASP has not had any subgrant relationships using LSC funds during the period of review.

However, although LASP had a compliant policy relating to the payment of fees and dues, it did not have a policy relating to subgrants as required by 45 CFR § 1627.8. Since the review, LASP's Co-Executive Directors have drafted a compliant policy to guide staff in complying with 45 CFR Part 1627. In the Draft Report, OCE required LASP to ensure that it adopts its new policy relating to subgrants as required by 45 CFR § 1627.8.

In response to this finding and the corresponding required corrective action, LASP adopted a written policy relating to subgrants as required by 45 CFR § 1627.8. A copy of the policy is attached to this Final Report.

Finding 19: LASP is not in compliance with 45 CFR Part 1635 (Timekeeping requirement).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which 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. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and

pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

LASP's attorneys and paralegals use Kemps as a timekeeping system. They also complete written Time and Attendance Reports ("TARs"), which are signed by both the attorney or paralegal and their office manager, and used to calculate payroll. A limited review and comparison of LASP's TARs and Kemps timekeeping entries and discussions with LASP's Co-Executive Directors evidenced that some LASP attorneys and paralegals are not contemporaneously recording all time spent on all cases, matters, and supporting activities as required by 45 CFR § 1635.3(b)(1). A review of timekeeping records from LASP's Kemps system compared to case files also evidenced non-compliance with the timekeeping requirement in 45 CFR § 1635.3(b). *See e.g.*, Case No. 111100286, where the attorney assigned to handle the case had not logged any time to a currently closed case; Case Nos. 111000241 and 110900662, where the attorneys who conducted the initial interviews with the clients did not record any time on the case; and Case No. 110800861, where an attorney who did not work on a case recorded time spent on it.

In the Draft Report, OCE required LASP to ensure time spent by attorneys and paralegals is contemporaneously documented by time records as required by 45 CFR Part 1630. OCE also recommended that LASP develop a procedure to flag substantial or repetitive inconsistent TAR and Kemps time entries to reduce any risk of fraudulent timekeeping.

In its response to the Draft Report, LASP stated:

“LASP will work with all staff to ensure that time spent by attorneys and paralegals is contemporaneously documented by required time records and will develop a procedure to flag substantial or repetitive inconsistent TAR and Kemps time records. We do want to note there has been no incident of any fraudulent timekeeping ever found or alleged. We have already reviewed this issue and others with program administrative and management staff.”

Finding 20: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.¹² However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, 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.

¹² 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).

Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.

LSC further determined that it will not take enforcement action 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. As well, the regulatory provisions regarding 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. *See* LSC Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010).

The sampled files reviewed did not contain a prayer for attorneys' fees prior to December 16, 2009. Additionally, a limited review of the LASP's fiscal records and interviews with LASP's management indicated that LASP received no attorneys' fees during the review period. As such, LASP is in compliance with the requirements of 45 CFR Part 1642.

There are no recommendations or corrective actions required.

Finding 21: OCE is evaluating additional information to determine LASP's compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of 45 CFR 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.

None of the sampled files, fiscal documents, or legislative activities reports reviewed indicated non-compliance with this Part. Although, as disclosed in the program's legislative activity report, the program "has, in all likelihood, had discussions with local congressperson's offices and/or other state and local legislators and/or their staffs concerning constitutes legal problems," discussions with LASP's Co-Executive Directors, Community Impact Coordinator, and Fiscal Manager indicated that these discussions do not involve prohibited activity. LASP also has a written policy that is in substantial compliance with the requirement in 45 CFR § 1612.11, which requires recipients adopt written procedures to guide its staff in complying with 45 CFR Part 1612. LASP was advised it should insert the following requirement into section II(A)(2) of its policy: "or the development of strategies to influence litigation or rulemaking." *See* 45 CFR § 1612.8 (a)(2). LASP has revised the policy to bring it into full compliance.

OCE has learned that LASP's Community Impact Coordinator currently serves on the Board of Directors of The Housing Alliance of Pennsylvania ("The Housing Alliance"). The Housing

Alliance is a membership organization that, among other things, serves as a resource to those working on issues relating to low income housing, and does some advocacy and lobbying. LASP's Community Impact Coordinator also serves as the President of the Coatesville Center for Community Health. OCE has received additional information from LASP regarding these roles and is evaluating it to determine LASP's compliance with 45 CFR Part 1612. LASP will be advised of OCE's determination under separate cover.

In response to the Draft Report, LASP noted that it has provided OCE with additional information relating to one (1) staff member, who formerly worked for a non-LSC funded legal aid program. LASP has also adopted a revised policy that is in full compliance with the requirement in 45 CFR § 1612.11, which requires recipients adopt written procedures to guide its staff in complying with 45 CFR Part 1612. A copy of that policy is attached to this Final Report.

Finding 22: Sampled cases and interviews 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 sampled files involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Co-Executive Directors also confirmed LASP is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

Finding 23: Sampled cases and interviews 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).¹³

None of the sampled files involved initiation or participation in a class action. Discussions with the Co-Executive Directors also confirmed LASP is not involved in this prohibited activity.

¹³ 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).

LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1617.4, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1617.

There are no recommendations or corrective actions required.

Finding 24: Sampled cases and interviews 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.

None of the sampled files revealed participation in litigation related to redistricting. Discussions with the Co-Executive Directors also confirmed LASP is not involved in this prohibited activity. LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1632.4, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1632.

There are no recommendations or corrective actions required.

Finding 25: Sampled cases and interviews 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 or other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files evidenced defending a client in any such eviction proceeding. Discussions with the Co-Executive Directors also confirmed LASP is not involved in this prohibited activity. LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1633.4, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1633.

There are no recommendations or corrective actions required.

Finding 26: Sampled cases and interviews 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.

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Co-Executive Directors also confirmed that LASP is not involved in this prohibited activity. LASP also has a compliant written policy relating to the representation of incarcerated persons as required in 45 CFR § 1637.4, which requires recipients to adopt written procedures to guide staff in complying 45 CFR Part 1637.

There are no recommendations or corrective actions required.

Finding 27: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁴ This restriction has been contained in all subsequent appropriations acts. This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files or documentation reviewed, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director also confirmed that LASP is not involved in this prohibited activity. LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1638.5, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1638.

There are no recommendations or corrective actions required.

Finding 28: Sampled cases and interviews 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.

¹⁴ *See* Section 504(a)(18).

None of the sampled files reviewed involved such activity. Discussions with the Co-Executive Directors also confirmed that LASP is not involved in this prohibited activity. LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1643.5, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1643.

There are no recommendations or corrective actions required.

Finding 29: Sampled cases and interviews 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 reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews with the program's Co-Executive Directors also confirmed that LASP was not engaged in any litigation which would be in violation of Section 1007(b)(8) of the LSC Act, Section 1007(b)(9) of the LSC Act, or Section 1007(b)(10) of the LSC Act.

There are no recommendations or corrective actions required.

Finding 30: LASP is not in compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).

Pursuant to 45 CFR § 1620.6, all staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

- a) Has read and is familiar with the priorities of the recipient;
- b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

Interviews and discussions with the Co-Executive Directors and staff indicated that LASP has not required staff who handle cases or matters to sign 45 CFR § 1620.6 certifications. During the review, LASP was advised that it should ensure staff sign the written agreements required by 45 CFR § 1620.6. LASP advised it is in the process of doing so.

In its response to the Draft Report, LASP stated it promptly complied with this finding after OCE's review. On October 11, 2011, OCE received a certification from LASP confirming that all staff members have signed Section 1620.6 Certifications. LASP's certification is attached to this Final Report.

Finding 31: A limited review of LASP's internal control policies and procedures, fiscal documentation, and interviews evidenced general compliance with the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed.).

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended ("Act"), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation ("LSC"), including, but not limited to, LSC Audit Guide for Recipients and Auditors, Accounting Guide For LSC Recipients (2010 Edition), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process put in place, managed and maintained by the recipient's board of directors and management which is designed to provide reasonable assurance of achieving the following objectives: (1) safeguarding of assets against unauthorized use or disposition; (2) reliability of financial information and reporting; and (3) compliance with regulations and laws that have a direct and material effect on the program. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed).

The Accounting Guide for LSC Recipients ("Accounting Guide") provides guidance on all aspects of fiscal operations. The 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur.

OCE's review of LASP's accounting policies and procedures manual, accounting records, and discussions with program management found the program has established an adequate internal control structure. This structure includes adequate accounting records, competent personnel, defined duties and responsibilities, segregation of duties, independent checks and proofs and a written Accounting Manual. Further, LASP's auditor's reports for the review period did not identify any deficiencies or material weaknesses in the internal controls or possible questioned costs.

With respect to LASP's internal fiscal controls, LASP's fiscal staff consists of a Fiscal Manager and an Accounting Assistant/HR Administrator. Additional oversight and review is provided by the program's Co-Executive Directors. A review of LASP's responses to an LSC Internal Control Worksheet prepared during the on-site visit and interviews with LASP's fiscal staff, evidenced that the program has established a sufficient level of segregation of duties based on its overall staffing level.

LASP has also developed Financial Management Policies to establish procedures to adequately account for, report on, and control the expenditure of its financial resources. The manual containing LASP's Financial Management Policies was updated in May 2011 and contains, among other things, policies relating to the following: Responsibilities in the Financial Planning, Management, and Implementation Process; Fiscal Management Planning including Management Reports and Budget Process; and Fiscal Accountability, which includes Cash Receipts, Purchasing Procedures, Cash Disbursements, General Journal, General Ledger, Bank Reconciliation, Accounts Payable, Petty Cash, Credit Card Policy, Payroll, Client Trust Funds, Reporting, Property, Private Attorney Involvement, Consultant and Contract Services, and Purchases of Equipment or Property and Leases.

A limited review of LASP's fiscal policies evidenced they generally support the program's fiscal compliance requirements. However, a comparison of LASP's record retention requirements with the requirements in the Accounting Guide indicated that some of its retention time frames were not as long as those required by LSC. LASP has since revised its Record Retention Policy to ensure that the specified record retention requirements for records relating to billing for services, petty cash, and employee travel and expenses are no less than the LSC guidelines contained in the Accounting Guide.

LASP's Board of Directors ("Board") has approved LASP's Financial Management Policies and has established an Audit Committee which is charged with acting on behalf of the Board to ensure LASP is meeting the standards and objectives governing financial policies and practices as established by the Board or otherwise required by funding sources, auditors, and other governing agencies. The Audit Committee is comprised of seven (7) members of the Board, including a Certified Public Accountant ("CPA").

LASP's Co-Executive Directors are required to provide members of the Audit Committee with monthly expenditure reports for comparison with LASP's budget plan for review. The Audit Committee also reviews all monitoring and audit reports related to LASP's financial management. The full Board reviews and approves LASP's budget on an annual basis and receives reports at regular Board meetings comparing budgeted revenue, expense projections, and actual year-to-date amounts. Discussions with LASP's Fiscal Manager indicated that LASP will also soon provide the Board with reports regarding all money, cash, and cash equivalents in LASP's cash registers or safes (*i.e.*, Cash On Hand).

LASP uses different bank accounts for general operating expenses, payroll, client funds, money market, and a sweep account funds.¹⁵ An outside consultant reconciles LASP's accounts on a monthly basis. LASP's Fiscal Manager reviews the reconciliations. A limited review of LASP's bank reconciliations indicated that its bank statement receipt and reconciliation process is performed timely and in accordance with LASP's policies. The program also has a policy sufficient to ensure stale checks are voided after a reasonable time period and a limited review of fiscal documentation determined that the program has no outstanding stale checks. The program does not regularly grant salary advances and discussions with LASP's Fiscal Manager confirmed that LASP had not issued any salary advances during the review period.

LASP maintains and uses three (3) credit card accounts and limited testing found receipts associated with all charges and supporting documentation that adequately identified the purpose of each expenditure. A limited review of LASP's credit card statements indicated the program pays its credit card bills in a timely manner, however, several statements for the credit card LASP utilizes for business travel showed monthly finance charges associated with late payments. Discussions with LASP's Fiscal Manager indicated that those fees were paid with non-LSC funds. In the Draft Report, OCE recommended LASP identify the reason(s) for the pattern of late payments on this credit card and establish a procedure to ensure its timely payment.

In its response to the Draft Report, LASP stated that it was pleased that a review of its financial matters indicated full compliance with LSC requirements. As noted above, LASP has revised and updated its Record Retention Policy to comport with LSC's retention time frames. LASP's revised Record Retention Policy is attached to this Final Report.

LASP also accepted OCE's recommendations relating to its credit card payment pattern and noted that it has been working to incorporate this recommendation into the program's operations. Specifically, the Executive Directors have met with LASP's fiscal manager, who advised that LASP was never charged a late fee. As explained in an email OCE received from LASP on October 12, 2011:

"The turnaround time from receipt of the invoice for this credit card is/was usually 10 days. On 2 occasions, in the past, it was 23 days. We were charged finance charges on 6 occasions for a total of \$53.31. \$34.59 of the finance charges were reimbursed to LASP from the vendor. This particular vendor had double billed the credit card and charged PA sales tax (we are tax

¹⁵ A sweep account is a bank account that transfers amounts that exceed (or fall short of) a certain level into a higher interest earning investment option at the close of each day.

exempt). After bringing these problems to their attention, they reimbursed us for the double billing, the sales tax and the finance charges. We no longer use the credit card for this vendor. Since April 2011, we have not paid a finance charge on this credit card. LASP fiscal staff have carefully tracked these invoices and staff who use the card, have at our direction, begun sending [LASP's Finance Manager] the backup documentation immediately which allows [LASP's Finance Manager] to promptly forward the invoice to our Board Treasurer to authorize payments. This is often accomplished in less than one day.”

IV. RECOMMENDATIONS¹⁶

Consistent with the findings of this report, it is recommended that LASP:

1. Train its staff on the requirements in the CSR Handbook (Ed. 2008) and usage of compliance-related ACMS fields. Specifically, OCE recommends LASP require all staff and paralegals to read the CSR Handbook and certify to having done so by September 20, 2011;

In its comments to the Draft Report, LASP expressed appreciation for OCE's offer to train LASP staff on CSR requirements when OCE staff is available to do so. LASP has also informed OCE that LASP's Executive Directors met with the program's Managing Attorneys about the need for staff to follow the guidelines in the CSR handbook in their use of codes. LASP noted that Managing Attorneys will now check the use of CSR closing codes and other ACMS requirements as they review all case files before cases are closed.

LASP also plans to conduct a training on the CSR codes at its next scheduled all staff meeting, which is tentatively scheduled for the week of November 14, 2011. At that meeting, LASP will direct staff to regularly consult the CSR handbook which has been posted on LASP's WIKI. LASP has informed OCE that it should be able to certify that all staff and paralegals have read the CSR Handbook after the November staff meeting. OCE requests LASP provide OCE with this certification to include in LASP's OCE file.

2. Train its staff on core Kemps functions, including changing the case handler, entering closing codes, use of the "CSR Eligible" field, and timekeeping functions;

LASP's Managing Attorneys will now be checking the use of CSR closing codes and other ACMS requirements as they review all case files before cases are closed. LASP also plans to conduct a training on the CSR codes at its next scheduled all staff meeting, which is tentatively scheduled for the week of November 14, 2011.

3. Include a prospective income field or check box in Kemps;

In response to the Draft Report, LASP stated:

¹⁶ 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.

“Our CMS, Kemps Prime, has been updated to address this issue and staff members in all LASP offices have received training. With this upgrade of Kemps and staff training, LASP will be able to ensure that staff consistently screens applicant’s for income prospects.”

4. Devise additional oversight procedures and/or practices for opening, documenting, and closing cases that will ensure the program meets its compliance requirements and accurately reports CSR eligible cases;

In response to the Draft Report, LASP stated:

“LASP is committed to implementing additional oversight procedures and practices for the opening, documenting and closing of cases based on the recommendations and assistance of OCE.”

LASP’s Executive Directors met with the program’s Managing Attorneys about the need for staff to follow the guidelines in the CSR handbook in their use of codes. LASP’s Managing Attorneys will now check the use of CSR closing codes and other ACMS requirements as they review all case files before cases are closed.

5. Develop a procedure to flag and review substantial or repetitive inconsistent TAR and Kemps time entries to avoid the risk of fraudulent timekeeping; and

In its response to the Draft Report, LASP stated:

“LASP will work with all staff to ensure that time spent by attorneys and paralegals is contemporaneously documented by required time records and will develop a procedure to flag substantial or repetitive inconsistent TAR and Kemps time records. We do want to note there has been no incident of any fraudulent timekeeping ever found or alleged. We have already reviewed this issue and others with program administrative and management staff.”

6. Identify the reason(s) for the pattern of late payments on LASP's credit card used for travel expenses and establish a procedure to ensure its timely payment.

LASP has been working to incorporate this recommendation into the program’s operations. Specifically, the Executive Directors have met with LASP’s fiscal manager, who advised that LASP was never charged a late fee. As explained in an email OCE received from LASP on October 12, 2011:

“The turnaround time from receipt of the invoice for this credit card is/was usually 10 days. On 2 occasions, in the past, it was 23 days. We were charged finance charges on 6 occasions for a total of \$53.31. \$34.59 of the finance charges were reimbursed

to LASP from the vendor. This particular vendor had double billed the credit card and charged PA sales tax (we are tax exempt). After bringing these problems to their attention, they reimbursed us for the double billing, the sales tax and the finance charges. We no longer use the credit card for this vendor. Since April 2011, we have not paid a finance charge on this credit card. LASP fiscal staff have carefully tracked these invoices and staff who use the card, have at our direction, begun sending [LASP's Finance Manager] the backup documentation immediately which allows [LASP's Finance Manager] to promptly forward the invoice to our Board Treasurer to authorize payments. This is often accomplished in less than one day.”

As a general response to the above listed recommendations, LASP also responded as follows:

“As to the OCE recommendations listed above, we accept them and will be working to incorporate them into program operations.”

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, LASP is required to take the following corrective actions:

1. Ensure it reports to LSC only those cases that meet the requirements of the CSR Handbook (2008 Ed.);

In response to the Draft Report, LASP noted it has corrected the error that resulted in the over-reporting of cases to LSC and asserted it will be reporting only CSR eligible cases to LSC in the future.

2. Ensure its financial eligibility policy is in full compliance with 45 CFR Part 1611;

In its response to the Draft Report, LASP stated:

“LASP has recently revised and adopted new financial eligibility guidelines (approved by LASP Board of Directors on 9/21/11).”

The revised policy is attached to LASP’s comments, which are attached to this Final Report.

3. Ensure staff consistently screens applicants for income prospects as required under 45 CSR § 1611.7(a)(1) and LSC External Legal Opinion AO-2009-1006 dated September 3, 2009;

In response to the Draft Report, LASP stated:

“Our CMS, Kemps Prime, has been updated to address this issue and staff members in all LASP offices have received training. With this upgrade of Kemps and staff training, LASP will be able to ensure that staff consistently screens applicants for income prospects.”

4. Revise its intake forms in accordance with LASP's revised financial eligibility procedures and so the forms will capture information relating to applicants' income prospects, all spend-down costs allowed under LASP's financial eligibility policy, and LASP's revised asset exceptions;

In response to the Draft Report, LASP stated:

“We are [] checking to make sure that office intake forms are properly capturing information related to income prospects, and the spend-down costs, and asset exceptions contained in our financial eligibility policy.”

5. Ensure all attorneys and paralegals conduct a conflict of interest check prior to providing legal services during outreach events or clinics to avoid the risk of violating ethical obligations. *See* 45 CFR § 1610.2(a)(2);

In response to the Draft Report, LASP stated:

“We are taking steps to ensure that conflict of interest checks are done on all applicants at outreach sites and clinics.”

6. Ensure that all case files contain citizenship attestations, where appropriate, that are signed and dated pursuant to 45 CFR Part 1626 and the requirements of CSR Handbook (2008 Ed.), § 5.5;

In its response to the Draft Report, LASP stated:

“LASP will continue to stress with staff and train staff to ensure completed citizenship attestations. We are also instituting a more comprehensive policy of file review and closing files to further ensure compliance.”

7. Ensure that, where required, retainer agreements are executed in compliance with the requirements of 45 CFR § 1611.9, including that all agreements contain, at a minimum, a statement identifying the legal problem and the nature of the legal services to be provided;

In its response to the Draft Report, LASP stated:

“LASP will review with all current staff and train both current and future staff to ensure retainer agreements comply with LSC regulations. As stated above, we are also instituting a more comprehensive policy of file reviews and closing files to ensure compliance with regard to this issue.”

8. Ensure it prepares a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint as required by 45 CFR Part 1636;

In response to the Draft Report, LASP stated it will address this corrective action in a timely fashion to ensure future compliance and provide training for staff where necessary.

9. Ensure it properly documents the legal assistance provided to clients as required by CSR Handbook (2008 Ed.), § 5.6;

In its response to the Draft Report, LASP stated:

“LASP will review with all current staff and train both current and future staff on the need to include a sufficient description of the legal assistance provided to clients in the files [and] we are also instituting a more comprehensive policy of file reviews and closing files to ensure compliance with regard to this issue.”

10. Ensure that it closes LSC-reportable cases with the correct closing codes as required by Chapters VIII and IX of the CSR Handbook (2008 Ed.);

In its response to the Draft Report, LASP accepted this corrective action and stated it would work with OCE to train staff on these issues as soon as possible.

As mentioned above, LASP has also informed OCE that LASP’s Executive Directors met with the program’s Managing Attorneys about the need for staff to follow the guidelines in the CSR handbook in their use of codes. LASP indicated that Managing Attorneys will now be checking the use of CSR closing codes and other ACMS requirements as they review all case files before cases are closed. LASP plans to conduct a training on the CSR codes at its next staff meeting, which is tentatively scheduled for the week of November 14, 2011.

11. Ensure that cases are closed in a timely manner in accordance with the requirements of CSR Handbook (2008 Ed.), § 3.3;

In its response to the Draft Report, LASP stated:

“LASP accepts this finding and will be working with staff and training staff to review the need to close files in a timely fashion and to ensure compliance with LSC regulations.”

12. Ensure PAI cases are handled and closed in compliance with LSC regulations and the CSR handbook and ensure adequate oversight and follow-up procedures of PAI cases as per 45 CFR § 1614.3(d) and Chapter X of the CSR Handbook (2008 Ed.);

In its response to the Draft Report, LASP responded that:

“We will also work with our program’s pro bono coordinators to ensure more oversight of PAI cases. LASP will also adopt hallmarks and develop program-wide oversight and follow up procedures to ensure PAI cases are closed and handled in compliance with LSC regulations and the CSR handbook.”

13. Implement its updated written policy relating to the outside practice of law;

In response to the Draft Report, LASP adopted a new outside practice of law policy, which it is implementing and which is attached to this Final Report.

14. Update its written policy relating to fee generating cases to reflect the current 45 CFR Part 1609 so to meet the requirement in 45 CFR § 1609.6 that recipients adopt written policies and procedures to guide staff in complying with 45 CFR Part 1609;

In response to this corrective action, LASP recently revised its written policy relating to fee-generating cases to bring it into full compliance with 45 CFR Part 1609. A copy of that new policy is attached to this Final Report.

15. Ensure it provides notice of LSC prohibitions and conditions to non-LSC funders as required by 45 CFR § 1610.5;

In its response to this corrective action, LASP stated it is now providing all non-LSC funders with written notification of the LSC prohibitions and conditions which apply to those funds.

16. Implement its new written policy relating to subgrants as required by 45 CFR § 1627.8;

In response to this corrective action, LASP adopted a written policy relating to subgrants as required by 45 CFR § 1627.8. A copy of the policy is attached to this Final Report.

17. Ensure that time spent by attorneys and paralegals is contemporaneously documented by time records as required by 45 CFR Part 1630;

In its response, LASP stated:

“LASP will work with all staff to ensure that time spent by attorneys and paralegals is contemporaneously documented by required time records and will develop a procedure to flag substantial or repetitive inconsistent TAR and Kemps time records. We do want to note there has been no incident of any fraudulent timekeeping ever found or alleged. We have already reviewed this issue and others with program administrative and management staff.”

18. Ensure staff sign the written agreements required by 45 CFR § 1620.6; and

LASP promptly complied with this corrective action after OCE's review. On October 11, 2011, OCE received a certification from LASP confirming that all staff members have signed Section 1620.6 Certifications. The certification is attached to this Final Report.

19. Implement its revised Record Retention Policy to ensure that the specified record retention requirements for records relating to billing for services, petty cash, and employee travel and expenses are no less than the LSC guidelines contained in the Accounting Guide.

In response to this corrective action, LASP revised and updated its Record Retention Policy to bring it into full compliance. LASP's revised Record Retention Policy is attached to this Final Report.

As a general response to the above listed corrective actions, LASP also responded as follows:

“With respect to each of the above required corrective actions, LASP will address them in a timely fashion to ensure future compliance, providing training for staff, where necessary. We are pleased to accept the assistance of OCE staff in conducting this training, whenever possible. As noted in our comments to the findings enumerated in the executive summary, LASP has already addressed and adopted policies/practices/operations relating to corrective actions 2, 13, 14, 15, 16, 18 and 19.”

Attachments



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

Legal Aid of Southeastern Pennsylvania
June 13-17, 2011
Case Service Report/Case Management System Review

Recipient No. 339141

I. EXECUTIVE SUMMARY

Finding 1: LASP's automated case management system ("ACMS") is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, the manner in which LASP is using its ACMS is not sufficient to ensure accurate CSR reporting.

We acknowledge the issues raised in this finding. As noted on page 7 of the draft report, we have now corrected the error made related to reporting only CSR eligible cases to LSC and we will be reporting only CSR eligible cases to LSC in the future. We appreciate and have already accepted OCE's offer to train our staff on CSR requirements and the usage of compliance related ACMS fields and look forward to scheduling this training when OCE staff is available.

Finding 2: LASP's intake procedures are substantially sufficient to support LASP's compliance related requirements but applicants must be consistently screened for income prospects. LASP's case management procedures, however, do not generally support the program's compliance related requirements.

We agree with this finding and have already taken steps to consistently screen for income prospects. Our CMS, Kemps Prime, has been upgraded to address this issue and staff members in all LASP offices are receiving related training. With this upgrade of Kemps and staff training, LASP will be able to ensure that staff consistently screens applicants for income prospects. As for intake related compliance requirements, we are taking steps to ensure that conflict of interest checks are done on all applicants at outreach sites and clinics. We are also checking to make sure that office intake forms are properly capturing information related to income prospects, and the spend-down costs, and asset exceptions contained in our financial eligibility policy. Finally, LASP is committed to implementing additional oversight procedures and practices for the opening, documenting and closing of cases based on the recommendations and assistance of OCE.

Finding 3: Sampled cases evidenced compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

LASP has recently revised and adopted new financial eligibility guidelines (approved by LASP Board of Directors on 9/21/11). – See [attachment](#)

Finding 4: Sampled cases evidenced substantial compliance with asset eligibility documentation as required by 45 CFR § 1611.3(c)(d) and CSR Handbook (2008 Ed.), § 5.4.

See new financial eligibility guidelines attached.

Finding 5: Sampled cases evidenced compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Sampled cases, however, evidenced only substantial compliance with the documentation requirements of 45 CFR Part 1626 and with the requirements of

CSR Handbook (2008 Ed.), § 5.5. Six (6) case files lacked signed citizenship attestations and five (5) included undated citizenship attestations.

LASP will continue to stress with staff and train staff to ensure completed citizenship attestations. We are also instituting a more comprehensive policy of file review and closing files to further ensure compliance.

Finding 6: Sampled cases evidenced substantial compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements).

LASP will review with all current staff and train both current and future staff to ensure retainer agreements comply with LSC regulations. As stated above, we are also instituting a more comprehensive policy of file reviews and closing files to ensure compliance with regard to this issue.

Finding 7: With (1) one exception, sampled cases evidenced compliance with 45 CFR Part 1636 (Client identity and statement of facts).

no comments

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1 (Priorities in use of resources).

no comments

Finding 9: Sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

LASP will review with all current staff and train both current and future staff on the need to include a sufficient description of the legal assistance provided to clients in the files. As stated above, we are also instituting a more comprehensive policy of file reviews and closing files to ensure compliance with regard to this issue.

Finding 10: Sampled cases evidenced non-compliance with the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed.) (Case closing codes).

LASP agrees with the issues raised in this finding and will work with OCE to train staff on these issues as soon as possible.

Finding 11: Sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 3.3 (Timely case closing).

LASP accepts this finding and will be working with staff and training staff to review the need to close files in a timely fashion and to ensure compliance with LSC regulations.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

no comments

Finding 13: A review of a list of attorneys who have engaged in the outside practice of law revealed that LASP is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). LASP's written policy relating to the outside practice of law was found to be in substantial compliance with the requirements of 45 CFR Part 1604.

We have no comment, but it should be noted that our program has recently updated our policy on the outside practice of law – See [attachment](#)

Finding 14: Sampled cases, interviews, and a limited review of fiscal documentation evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

no comments

Finding 15: Sampled cases, interviews, and a limited review of fiscal documents evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). A review of LASP's policy relating to fee-generating cases evidenced substantial compliance with the requirement in 45 CFR § 1609.6.

We have no comments, but it should be noted that our program has recently revised our written policy relating to fee generating cases – See [attachment](#)

Finding 16: A limited review of LASP's chart of accounts, annual 45 CFR § 1610.8(b) notifications, and observations during office visits evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). LASP was not, however, in compliance with the notification requirement in 45 CFR § 1610.5(a).

We were very pleased to see so many positive comments in OCE's draft report about our fiscal work, records and practices. As for the notification requirements, LASP has added the necessary language to more templates and is now providing all non-LSC funders with written notification of the LSC prohibitions and conditions which apply to those funds.

Finding 17: LASP's oversight and follow-up procedures for its Private Attorney Involvement ("PAI") cases do not sufficiently support its general compliance requirements or compliance with 45 CFR § 1614.3 (d)(3), which requires oversight and follow up of PAI cases. A review of LASP's PAI fiscal activities, however, demonstrated LASP complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement).

It should be noted that as a result of the OCE review, LASP has requested and received approval from LSC of a waiver related to the expenditure of LSC PAI funds. We will also work with our

program's pro bono coordinators to ensure more oversight of PAI cases. LASP will also adopt hallmarks and develop program-wide oversight and follow up procedures to ensure PAI cases are closed and handled in compliance with LSC regulations and the CSR handbook.

Finding 18: LASP is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and in compliance with 45 CFR § 1627.2(b)(1), which requires LSC approval to operate any LSC funded subgrant. LASP was not, however, in compliance with 45 CFR § 1627.8, which requires LASP to have a written policy relating to subgrants.

LASP has adopted a written policy relating to sub grants as a result of the OCE review – see [attachment](#)

Finding 19: LASP is not in compliance with 45 CFR Part 1635 (Timekeeping requirement).

LASP will work with all staff to ensure that time spent by attorneys and paralegals is contemporaneously documented by required time records and will develop a procedure to flag substantial or repetitive inconsistent TAR and Kemps time records. We do want to note there has been no incident of any fraudulent timekeeping ever found or alleged. We have already reviewed this issue and others with program administrative and management staff.

Finding 20: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

no comments

Finding 21: OCE is evaluating additional information to determine LASP's compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

We have provided OCE with some additional requested information as it relates to one staff member, who formerly worked for a non-LSC funded legal aid program. We have also adopted a revised policy as a result of the OCE review – See [attachment](#)

Finding 22: Sampled cases and interviews 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).

no comments

Finding 23: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

no comments

Finding 24: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

no comments

Finding 25: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

no comments

Finding 26: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

no comments

Finding 27: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

no comments

Finding 28: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

no comments

Finding 29: Sampled cases and interviews 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)).

no comments

Finding 30: LASP is not in compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).

We promptly complied with this finding since the OCE review in June and have so advised OCE.

Finding 31: A limited review of LASP's internal control policies and procedures, fiscal documentation, and interviews evidenced general compliance with the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed.).

We are pleased that these financial matters indicate full compliance by LASP. LASP has also revised and updated its record retention policy as a result of the OCE review – See attachment

Additional comments are included at the end of the report.

II. BACKGROUND OF REVIEW

On June 13-17, 2011, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Legal Aid of Southeastern Pennsylvania ("LASP"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Ed.), and the Property Acquisition and Management Manual. The visit was conducted by a team of five (5) attorneys and one (1) fiscal analyst. Two (2) of the attorneys were OCE staff members; the remaining attorneys were temporary employees.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that LASP has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LASP for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LASP's upper and middle management, staff attorneys, and support staff. LASP's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2009 through April 30, 2011. In the course of the on-site review, the OCE team reviewed 562 cases, which included both randomly selected and targeted files.

LASP is a non-profit corporation which provides free legal services in a wide variety of civil (non-criminal) legal matters to eligible low income residents of Bucks, Chester, Delaware, and Montgomery counties of Pennsylvania. LASP's main office is located in Norristown, where it

¹ In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

² 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.

also has a centralized telephone intake unit, and LASP has branch offices located in Bristol, West Chester, Chester, Pottstown, Doylestown, and Coatesville.³ The administrative office of the program is in Norristown.

LASP received grant awards from LSC in the amount of \$1,091,931 for 2008, \$1,201,685 for 2009, \$1,297,506 for 2010, and was awarded \$1,243,870 for 2011. In its 2010 submission to LSC, the program reported 8,574 closed cases. LASP's 2010 self-inspection certification revealed a 6% error rate in CSR reporting.

By letter dated April 11, 2011, OCE requested that LASP provide a list of all cases reported in its 2009 CSR data submission (closed 2009 cases), a list of all cases closed between January 1, 2010 and December 31, 2010 (closed 2010 cases), a list of all cases closed between January 1, 2011 and April 30, 2011 (closed 2011 cases), and a list of all cases which remained open as of April 30, 2011 (open cases). OCE requested that the lists 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 closing category assigned to the case, and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LASP staff and the other for cases handled through LASP's PAI component.

LASP was advised that OCE would seek access to such cases 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* (January 5, 2004) protocol. LASP was requested 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.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on-site visit. The sample was developed proportionately among 2009, 2010, and 2011 closed and 2011 open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LASP agreement of May 24, 2011, LASP staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality such discussions, in some instances, were limited to a general discussion of the nature of the problem and the nature of the assistance provided.⁴

LASP's management and staff cooperated fully in the course of the review process. As discussed more fully below, LASP was made aware of compliance issues during the on-site visit.

³ LASP's Coatesville office has one (1) staff member, a Community Impact Coordinator. She was interviewed by phone on Wednesday, June 15, 2011.

⁴ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

This was accomplished by informing intermediaries, as well as Managing Attorneys and the Co-Executive Directors, of any compliance issues uncovered during case review.

At the conclusion of the visit, OCE conducted an exit conference during which LASP was made aware of the areas in which the team found a pattern of non-compliance. No significant distinctions between 2009, 2010, and 2011 cases were found. Some significant distinctions, however, were noted between offices. LASP's intake procedures were found to be generally sufficient to support the program's compliance requirements, except that intake staff should ensure it screens applicants for income prospects as required by 45 CFR § 1611.7 (a)(1). OCE cited areas of non-compliance relating to the documentation requirements of 45 CFR Part 1626, CSR Handbook (2008 Ed.), § 5.6 relating to the description of legal assistance provided, the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed.) relating to case closing codes, and the requirements of 45 CFR § 1620.6. OCE also found that LASP is not using its ACMS in a manner that results in accurate reporting of cases to LSC and its case management procedures are not sufficiently supporting its compliance requirements.

LASP was very receptive to OCE's preliminary findings and recommendations and has requested assistance from OCE to provide compliance training to assist in its efforts to improve compliance and accuracy in its CSR reporting. LASP was advised that they would receive a Draft Report that would include all of OCE's findings, and that they would have 30 days to submit written comments in response. Thereafter, a Final Report would be issued that would include LASP's comments.

III. FINDINGS

Finding 1: LASP's automated case management system ("ACMS") is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, the manner in which LASP is using its ACMS is not sufficient to ensure accurate CSR reporting.

Recipients are required to utilize an automated case management system ("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.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LASP's ACMS system is generally sufficient to ensure that information necessary for the effective management of cases is timely and accurately recorded.

Interviews indicated, however, that LASP is not using its ACMS in a manner sufficient to support its compliance requirements and ensure accurate reporting of CSR eligible cases. There were instances of inconsistent closing codes contained in the case files and the ACMS. *See* Case Nos. 151004294, 121000548, 221001115, and 220900699. There was one instance where the funding code contained in the case files was not the same as that in the ACMS. *See* Case No. 220900650. There were a number of instances where the "CSR eligible" field was incorrectly used (*i.e.*, the case was not CSR eligible but was noted as such in the ACMS and vice versa). *See e.g.*, Case Nos. 151100328, 411000285 150701374, 120700194, 120700461, and 120700049, where cases that appeared to be CSR eligible were not marked as CSR eligible; *see also* Case Nos. 151002264, 150901329, 151101166, 151001327, 151001798, 151000889, 150801434, 150801793, 151003151, 411100076, 150803265, 410800279, 120800325, and 211000057, where cases were not CSR eligible but were marked as such in LASP's ACMS.

Further, LASP reported to LSC that it closed 7,983 cases in 2009 and 8,573 cases in 2010. As a part of the review, LASP ran a report in its ACMS to determine the number of reportable cases for 2009 and 2010 as listed in LASP's ACMS as of the time of the review. The reports indicated that LASP closed 6,613 CSR eligible cases in 2009 and 6,961 CSR eligible cases in 2010, which is over 1,000 less cases than LASP reported to LSC for each of those years. A review of these reports and discussions with the Co-Executive Directors indicate LASP has reported both CSR eligible and some non-eligible cases to LSC for 2009 and 2010. LASP's Co-Executive Directors have determined that this is due to a fault in the Kemps reporting program on which LASP has relied to run the case numbers it reports to LSC. LASP has corrected the error and plans to report only CSR eligible cases to LSC in future years.

OCE recommends LASP train its staff on CSR requirements and usage of compliance-related ACMS fields. LASP also must ensure it is using its ACMS in a manner that supports its compliance requirements and allows for accurate case reporting. LASP has requested OCE's assistance with training on CSR requirements.

Finding 2: LASP's intake procedures are substantially sufficient to support LASP's compliance related requirements but applicants must be consistently screened for income prospects. LASP's case management procedures, however, do not generally support the program's compliance related requirements.

Summary

Interviews with intake staff indicate that LASP's intake procedures are generally sufficient to ensure intake staff is making a reasonable inquiry as to financial eligibility and effectively screening for other eligibility requirements. LASP should, however, work to ensure that all applicants are screened for prospective income and undergo a proper conflict check before they are provided legal advice. Details relating to LASP's intake procedures and practices are provided below.

Regarding case management and oversight, interviews with managing attorneys, staff, and the Co-Executive Directors indicated that, although there is some formal oversight of cases by Managing Attorneys, it is not sufficient to support the program's compliance related requirements. Although a certain degree of formal oversight is not strictly required by LSC regulations or the CSR Handbook, in OCE's experience, it is the most effective manner through which to ensure that a program meets its compliance requirements and is accurately reporting eligible cases.

As such, LASP must undertake the following corrective actions relating to intake and case oversight procedures and practices:

- Ensure staff consistently screens applicants for income prospects as required under 45 CSR § 1611.7(a)(1). *See also* LSC External Legal Opinion AO-2009-1006 dated September 3, 2009. In doing so, it is recommended that LASP amend its intake forms (*i.e.*, "LASP Intake Application" and the "Telephone Advice Sheet") in accordance with LASP's newly revised financial eligibility procedures so the forms capture information relating to applicants income prospects, all spend-down costs allowed under LASP's financial eligibility policy, and LASP's revised asset exceptions. It is also recommended that LASP include a prospective income field or check box in Kemps as a means of demonstrating that appropriate screening was accomplished.
- Ensure all attorneys and paralegals conduct a conflict of interest check prior to providing legal services during outreach events or clinics to avoid the risk of violating ethical obligations. *See* 45 CFR § 1610.2(a)(2).

It is recommended that LASP devise additional oversight procedures and/or practices for opening, documenting, and closing cases that will ensure the program meets its compliance requirements and accurately reports CSR eligible cases.

Intake Procedures and Practices

OCE staff assessed the intake procedures of all offices by interviewing the primary intake staff persons responsible for conducting intake screening and observing intake activities on-site. Between approximately 50 - 60% of LASP's cases are opened by the Telephone Intake Unit ("TIU") in Norristown. LASP's offices also conduct walk-in intake and intake during some outreach events and clinics.

Telephone Intake

The TIU conducts telephone intake for all of LASP's offices. Centralized intake is open to receive calls from 9:00 am to 1:00 pm Monday through Friday. The intake unit is staffed by six (6) paralegals who handle the calls and are overseen by two (2) staff attorneys and a Managing Attorney. All of the cases handled by the centralized intake unit are counsel and advice or limited action. In many instances, the paralegals provide legal advice under the supervision of one (1) or more of the attorneys. Interviews indicated that the paralegals are well supervised.

Applicants are first asked their name, their legal problem, the name of any adverse parties, and the county of residence. Staff records the information by hand on a Telephone Advice Sheet. Intake staff is familiar with LASP's priorities and usually know whether the legal problem is within the program's priorities. However, if intake staff is uncertain they either consult a hard copy of the priorities (or a copy on the program's online WIKI resource) or ask the Managing Attorney.

Interviews indicated that if the legal problem is within the program's priorities, staff then does a conflict check using the Kemps program utilizing both the applicant's name and the names of all adverse parties. Staff also determines whether the applicant has an existing case or a previous case and, if so, will consult with the Managing Attorney to determine if the case is a potential duplicate. An existing client will be referred to the attorney handling the case.

If there is no conflict, intake staff inquires about financial eligibility. Following the sequence in LASP's Telephone Advice Sheet, paralegals inquire about the number of persons in the household and the monthly income of all household members. Staff then computes the total household income and determines whether the applicant's income is within 125% of the Federal Poverty Guidelines ("FPG") using a calculator, if necessary. If the income amount is reasonably close to the guideline amount, staff will inquire into the applicant's employment costs and medical expenses and spend-down the income amount as appropriate. Interviews disclosed that intake staff is experienced in using the spend-down procedures. However, intake staff does not routinely inquire about prospective income. There is also no space to document prospective income on the Telephone Advice Sheet.

Intake staff next inquires about the applicant's assets. The Telephone Advice Sheet contains boxes for recording amounts for checking accounts, savings accounts, real estate, and personal property. Staff may also inquire about certificates of deposit, stocks, bonds and other assets. The staff then totals the assets using a calculator, if necessary. Staff is experienced in conducting

appropriate asset screening but will consult with the Managing Attorney regarding any questions they may have. Staff is also aware of LASP's policy relating to over-asset waivers.

Tracking the Telephone Advice Sheet, intake staff inquires whether the applicant is a U.S. citizen or eligible alien. If the applicant is neither a U.S. citizen nor an eligible alien, staff inquires whether they are a victim of domestic violence. Intake staff notes on the Telephone Advice Sheet whether there was a prior case, a duplicate case, whether the caller is a victim of domestic violence, and whether a spend-down was used. The intake staff then inquires into the legal problem, consults with one of the attorneys where appropriate, and enters notes on the Telephone Advice Sheet describing the legal problem, any other relevant information, and any advice that was provided. Notably, LASP's Telephone Advice Sheet does not have fields that capture information on income prospects or all spend-down costs allowed under LASP's financial eligibility policy.

Once the telephone conversation has been concluded, intake staff enters the information into Kemps and the file is assigned a case number. The computer file becomes the main case file and they collect handwritten notes of calls are shredded within six (6) months. The case may involve further action by the intake unit or it may be referred for service to either Norristown or the appropriate local office. Intake staff reported that they have never conducted an intake for group clients.

Some of LASP's branch offices conduct telephone intake utilizing the LASP Intake Application and follow the same procedure as the TIU, others refer all telephone inquiries to the TIU. LASP's Intake Application, however, does not contain fields to capture prospective income or all spend-down costs allowed under LASP's financial eligibility policy. LASP's Intake Application and LASP's Telephone Advice Sheet differ in that the Telephone Advice Sheet contains much more space to document the facts of an applicant's case and the advice provided but less space to document spend-down amounts and other financial information. LASP should revise its intake forms in accordance with LASP's revised financial eligibility procedures and so the forms will capture information relating to applicants' income prospects, all spend-down costs allowed under LASP's financial eligibility policy, and LASP's revised asset exceptions. LASP's Intake Application also includes a citizenship attestation whereas the Telephone Advice Sheet only contains a citizenship check box. Those applicants screened by the TIU are asked to sign citizenship attestations when they meet with the attorney handling their case in the branch offices.

Walk-in Intake

With the exception of Coatesville, all of LASP's offices conduct at least some walk-in intake. The percentage of cases that are brought in through walk-in intake varies significantly by office, with Norristown conducting the most walk-in intakes. Interviews indicated that LASP's walk-in intake practices and procedures are generally sufficient to meet LASP's compliance requirements and that intake staff in the program's various offices are sufficiently familiar with LSC eligibility requirements to conduct effective eligibility screenings. Intake staff uses LASP's Intake Application to document eligibility information. However, as with the TIU, staff conducting walk-in intakes does not consistently screen applicants for prospective income.

Outreach and Clinics

LASP's offices conduct outreach at various locations and at legal clinics. Interviews evidenced that LASP's practices and procedures are generally sufficient to effectively screen applicants during outreach events and clinics. As with the TIU and walk-in intake, staff is not, however, consistently asking applicants about prospective income. Interviews also indicated that not all attorneys and paralegals are conducting a complete conflict check before applicants are provided legal advice. LASP should ensure all attorneys and paralegals conduct a conflict of interest check prior to providing legal services during outreach events or clinics to avoid the risk of violating ethical obligations. *See* 45 CFR § 1610.2(a)(2).

Case Management Procedures and Practice

Interviews with Managing Attorneys and the Co-Executive Directors indicated that Managing Attorneys are required to review case lists and open case files with each advocate every six (6) months. Interviews also evidenced that this is done to varying degrees, depending on the amount of time the Managing Attorney has to devote to the review. Most of LASP's Managing Attorneys have full case loads and, as such, do not allocate a significant portion of their time to management duties. Many Managing Attorneys do not review cases before they are closed, but rely on the advocate handling the case to ensure the compliance requirements are in order. The offices/units that appear to have the most consistent oversight procedures and practices are the TIU in Norristown and the Pottstown office.

Although it varies by office, discussions with attorneys indicate that some rely on administrative staff to properly close cases in Kemps with the accurate compliance-related information. Although interviews evidenced that several administrative staff members are knowledgeable with compliance requirements, it may not be the most efficient or effective for them to assume responsibility for selecting those compliance-related fields that relate to the work provided to the client, the substantive outcome, rational for the time of the case closing, etc.

As stated above, LSC does not require a program to have a certain level of formal oversight procedures for staff cases, however, in OCE's experience, it is the most effective manner through which to ensure that a program meets its compliance requirements and is accurately reporting eligible cases. In view of OCE Findings Nos. 1, 5, 6, 9, and 10 of this report, OCE recommends LASP devise additional oversight procedures and/or practices for opening, documenting, and closing cases that will ensure the program meets its compliance requirements and accurately reports CSR eligible cases

Finding 3: Sampled cases evidenced compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income

ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.⁵ *See* CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines ("FPG") and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2008 Ed.), § 4.3.

None of the sampled LSC-funded case files evidenced that services were provided to an over-income client without the appropriate exception approval. A limited number of over-income cases, however, were incorrectly designated as CSR eligible. *See* Case Nos. 151003151 and 411100076.

As such, the cases reviewed evidenced compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. An evaluation of the section of LASP's Board-approved Financial Eligibility Policy relating to income screening indicated that the policy was also generally compliant but ambiguous in some parts. Based on advice LASP received during the review, it has revised its policy to bring it into full compliance with 45 CFR Part 1611. LASP's governing body should adopt the newly clarified financial eligibility policy to ensure full compliance with 45 CFR Part 1611.

Finding 4: Sampled cases evidenced substantial compliance with asset eligibility documentation as required by 45 CFR § 1611.3(c)(d) and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets

⁵ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁶ *See* CSR Handbook (2008), § 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).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

None of the sampled LSC-funded case files evidenced that services were provided to a client whose assets exceeded LASP's asset ceiling without the appropriate exception approval. A limited number of over-asset cases, however, were incorrectly designated as CSR eligible. *See* Case Nos. 211000057 and 150804251.

An evaluation of LASP's Board-approved Financial Eligibility Policy indicated that it included asset exceptions not provided for under 45 CFR § 1611.3(d)(1) (e.g., personal household effects such as clothing, jewelry, appliances, that should only be exempt to the extent that they are exempt from attachment under Federal or State Law as in accordance with 45 CFR § 1611.3(d)(1)). LASP has revised the policy to bring it into full compliance with 45 CFR Part 1611. LASP's governing body should adopt the new financial eligibility policy to ensure full compliance with 45 CFR Part 1611.

Finding 5: Sampled cases evidenced compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Sampled cases, however, evidenced only substantial compliance with the documentation requirements of 45 CFR Part 1626 and with the requirements of CSR Handbook (2008 Ed.), § 5.5. Six (6) case files lacked signed citizenship attestations and five (5) included undated citizenship attestations.

The level of documentation necessary to evidence citizenship or alien eligibility depends 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,

⁶ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2008 Ed.), § 5.4.

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.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁷ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they 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. LSC recipients are now allowed to include these cases in their CSRs.

None of the sampled files indicated that LASP had provided services to applicants not eligible under 45 CFR Part 1626. Sampled files, however, evidenced only substantial compliance with the documentation requirements of 45 CFR Part 1626. *See* Case Nos. 150803802, 220900538, 410800279, 151000616, 211000063, and 111000484. A citizenship attestation was required and lacking in each of these six (6) cases. Four (4) of the cases were also incorrectly designated as CSR eligible in LASP's ACMS. *See* Case Nos. 150803802, 220900538, 410800279, and 151000616. Absent the requisite Part 1626 documentation, these files should be excluded from LASP's CSR data submission to LSC and the files must not be charged to LSC funds. Furthermore, although LASP usually complies with the requirements of CSR Handbook (2008 Ed.), § 5.5, a number of case files included undated citizenship attestations. *See e.g.*, Case Nos. 210800312, 210900083, 150901617, 150802488, and 150803446.

LASP must ensure that all case files contain citizenship attestations, where appropriate, that are signed and dated pursuant to 45 CFR Part 1626 and the requirements of CSR Handbook (2008 Ed.), § 5.5.

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements), however improvement is warranted.

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. 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).

⁷ *See* Kennedy Amendment at 45 CFR § 1626.4.

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 lack of a retainer does not preclude CSR reporting eligibility.⁸ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

With four (4) exceptions, sampled cases evidenced compliance with the retainer requirements of 45 CFR § 1611.9. *See* Case Nos. 210800110, 120900467, 150901617, and 20900538. A number of the retainers in sampled case files also did not contain an adequate statement identifying the legal problem and the nature of the legal services to be provided. *See e.g.*, Case Nos. 110801006, 111100184, 111001081, 111000301, 111000923, 111000241, 111100061, 111100062, 210900083, and 210800380.

As such, sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9. However, LASP must take corrective action to ensure that, where required, retainer agreements are executed in compliance with the requirements of 45 CFR § 1611.9, and that all agreements contain, at a minimum, a statement identifying the legal problem and the nature of the legal services to be provided.

Finding 7: With (1) one exception, sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

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).

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).

With only one (1) exception, sampled cases files evidenced compliance with the requirements of 45 CFR Part 1636. *See* Case No. 220900538. LASP should ensure it prepares a dated, written statements signed by each plaintiff it represents, enumerating the particular facts supporting the complaint as required by 45 CFR Part 1636.

⁸ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1 (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 § 1620.1 and 45 CFR § 1620.4.

All of the sampled case files evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1.

Finding 9: Sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

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 applicant’s legal problem is outside the recipient’s priorities, or 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 such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2008 Ed.), § 5.6.

A number of sampled case files lacked a sufficient description of the legal assistance provided to the client. *See e.g.*, Case No. 110900708, where a PAI cases was closed as "L-Extensive Service" but there is no indication in the file of what services were provided to the client; Case Nos. 110900799, 110900034, 110900411, 150901265, 150901329, 151101166, 151003364 and 151101062, where the cases were closed as "A-Counsel and Advice" but the advice was not sufficiently documented; Case No. 150802484, which was closed as "B-Limited Action" after being open for three (3) years and no legal work was documented in the case file; and Case No. 151002264, which was closed as a CSR eligible "K-Other" and no legal work was documented.

As such, sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 5.6. LASP should ensure that it properly documents the legal assistance provided to clients as required by CSR Handbook (2008 Ed.), § 5.6.

Finding 10: Sampled cases evidenced non-compliance with the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed.) (Case closing codes).

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

A significant number of sampled cases evidenced incorrect closing codes. *See e.g.*, Case Nos. 210900176, 211000438, 211000369, and 221000958, where the cases were closed as an "I(a)-Contested Court Decision" or "I(b)-Uncontested Court Decision" but where a negotiated settlement was reached; Case No. 210900131, where the case was closed as a "K-Other" but the file evidenced a contested court decision; Case Nos. 150802458, 150803265, 150903531, and 150903444, where the cases were closed as a "B-Limited Action" but should have been closed as court decisions or negotiated settlements; Case Nos. 110900714, 150902256, and 151001549, where cases were closed as "L-Extensive Service" but the level of assistance was more consistent with "A-Counsel and Advice"; Case No. 110800223, where the case was closed as "L-Extensive Service" but the level of assistance was more consistent with "G-Negotiated Settlement with Litigation"; Case No. 221001115, where the case was closed as "A-Counsel and Advice" but where the attorney appeared in court on behalf of a client and the case was dismissed; Case Nos. 151000323, 220900588, and 220900016, where the cases were closed as "A-Counsel and Advice" but the level of assistance was more consistent with "B-Limited Action"; Case No. 211000299, where the case was closed as "A-Counsel and Advice" but which should have been closed as "B-Limited Action" because staff drafted a Power of Attorney for the client; Case Nos. 111000917, 151100625, and 221000911, where the cases were closed as "B-Limited Action" but the documented legal service provided to the client indicated the cases should have been closed as "A-Counsel and Advice." One (1) case evidenced the use of closing code "K-Other" as a rejected case code, where the closing code should have reflected the level of service provided to the client, if any, before the case was rejected. *See* Case No. 151002264.

Notably, the closing codes for a limited number of cases were corrected pursuant to error checks conducted months after the case was closed in Kemps and initially assigned an incorrect closing code. *See e.g.*, Case No. 1510000962, where the case was closed as "L-Extensive Service" on May 25, 2010 but the closing code was changed to "A-Counsel and Advice" on May 5, 2011; and Case No. 151004365, where the case was closed as "E-Client Withdrew," a closing code that is no longer valid, on January 18, 2011, but where the closing code was changed to "A-Counsel and Advice" on May 5, 2011.

As such, sampled cases evidenced non-compliance with the requirements of Chapters VIII and IX, CSR Handbook (2008 Ed.). LASC should ensure it closes LSC-reportable cases with the correct closing codes as required by Chapters VIII and IX of the CSR Handbook.

Finding 11: Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3 (Timely case closing).

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed.), § 3.3(a).⁹ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the grant year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *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).

A significant number of sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3. *See e.g.*, Case No. 210800110, where the last activity in the case was in September 2008 but the case was closed in April 2010; Case No. 210900186, where the client received advice on April 21, 2009 and no further service was provided but the case was not closed until May 10, 2010; Case No. 210800353, where the case was opened on July 17, 2008 and the case was closed as "A - Counsel and Advice" on May 1, 2009; Case No. 110900662, where the case was opened in July 2009 and closed in October 2010 as "A-Counsel and Advice"; Case No. 151001327, where the Telephone Intake Unit provided advice in April 2010 but there appeared to be no reason why the case is still open; Case No. 151001798, where the Telephone Intake Unit provided advice in May 2010 but there appeared to be no reason why the case was still open; Case No. 150801793, where work on a PAI case appears to have been completed in July 2008, but there appeared to be no reason why the case was still open; Case No. 150803265, where the final hearing in a PAI case was in November 2008, but there appeared to be no reason why the case was still open; Case No. 120800325, where work was completed in November 2008 but there appeared to be no reason why the case should have been kept open until January 2011; Case No. 150902256, where a closing letter was sent to the client in October 2009 but the case was not closed until February 2011; Case No. 211000299, where work on a case closed as "A- Counsel and Advice" was completed in July 2010 but there appeared to be no reason why the case was kept open until March 2011; Case No. 150901830, where work was completed in June 2009 but there appeared to be no reason why the case was held open until April 2011; Case No. 150802484, where a case opened in July 2008 and closed as "B - Limited Action" was closed in April 2011 without an explanation as to why it was held open; Case No. 150800859, where the last activity in the file appeared to be in April 2009, but where there was no explanation as to why the case remains open; Case No. 150800237, where work was completed

⁹ The time limitation of the 2001 Handbook that a brief service case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

in 2008 and there is no explanation noted in the file explaining why it is still open; Case No. 150800243, where the last activity in the case was in September 2009 and there was no explanation as to why the case is still open; Case No. 150900939, where client failed to return SSI overpayment documents to LASP in 2009 and there is no explanation as to why the case is still open; Case No. 150803219, where no legal assistance is noted in a file open since September 2008; and Case No. 220900538, where the final order in the case was entered on September 3, 2009 and there was no explanation noting why the case should still be open.

As such, LASP is in non-compliance with the requirement to close cases in a timely manner. LASP should ensure that cases are closed in a timely manner in accordance with the requirements of CSR Handbook (2008 Ed.), § 3.3.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

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 (1) 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.

With one (1) exception, sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2. *See* Case Nos. 310900312 and 311000198.

There are no recommendations or corrective actions required.

Finding 13: A review of a list of attorneys who have engaged in the outside practice of law revealed that LASP is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). LASP's written policy relating to the outside practice of law was found to be in substantial compliance with the requirements of 45 CFR Part 1604.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in 45 CFR Part 1604, recipients are authorized, but not required, to permit attorneys, to the extent that such

activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Based on a review of the list of attorneys who have engaged in the outside practice of law, LASP is in compliance with the requirements of 45 CFR Part 1604. At the time of the review, LASP's written policy relating to the outside practice of law was in substantial compliance with the requirements of 45 CFR Part 1604, however, LASP was advised at the exit conference held on June 17, 2011 that it should update its written policy to include the current definition of "outside practice of law" in 45 CFR § 1604.2 and the requirement in 45 CFR § 1604.4(b) to ensure that "except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient" when engaging in permissible outside practice. In response, LASP updated its written policy related to the outside practice of law, which is now in compliance with the requirements of 45 CFR Part 1604.

Finding 14: Sampled cases, interviews, and a limited review of fiscal documentation evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grants 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.

The sampled files reviewed indicated compliance with 45 CFR Part 1608. Discussions with LASP's Co-Executive Directors, Fiscal Manager, and Community Impact Coordinator confirmed that LASP is not involved in this prohibited activity. A limited review of fiscal records reflected in LASP's Chart of Accounts, including cash disbursements, also provided no indication that the program was involved in any prohibited political activity during the review period.

There are no recommendations or corrective actions required.

Finding 15: Sampled cases, interviews, and a limited review of fiscal documents evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). A review of LASP's policy relating to fee-generating cases evidenced substantial compliance with the requirement in 45 CFR § 1609.6.

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 may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two (2) private attorneys; neither the referral service nor two (2)

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).

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

Sampled case files, interviews, and a limited review of fiscal documentation indicated that LASP does not accept fee-generating cases and is in compliance with the requirements of 45 CFR Part 1609. LASP, however, should update its written policy relating to fee generating cases to reflect the current 45 CFR Part 1609 so to meet the requirement in 45 CFR § 1609.6 that recipients adopt written policies and procedures to guide staff in complying with 45 CFR Part 1609.

Finding 16: A limited review of LASP's chart of accounts, annual 45 CFR § 1610.8(b) notifications, and observations during office visits evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). LASP was not, however, in compliance with the notification requirement in 45 CFR § 1610.5(a).

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees.

Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include:

- i) the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;
- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

See 45 CFR § 1610.8(a); *see also*, OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

A limited review of LASP's chart of accounts and observations during office visits evidenced compliance with 45 CFR Part 1610. A review of LASP's Board of Director's annual certifications relating to LASP's program integrity for 2009 and 2010 also evidenced compliance with the requirement of 45 CFR § 1610.8(b). A limited review of documents sent to non-LSC funders and discussions with the Co-Executive Directors, however, evidenced that LASP does

not provide all non-LSC funders with written notification of the LSC prohibitions and conditions which apply to the funds. LASP should ensure it provides notice of LSC prohibitions and conditions to all non-LSC funders as required by 45 CFR § 1610.5.

Finding 17: LASP's oversight and follow-up procedures for its Private Attorney Involvement ("PAI") cases do not sufficiently support its general compliance requirements or compliance with 45 CFR § 1614.3 (d)(3), which requires oversight and follow up of PAI cases. A review of LASP's PAI fiscal activities, however, demonstrated LASP complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement).

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" or 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. The regulation 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). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. See 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement 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.

Additionally, 45 CFR Part 1614 requires that recipients utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort, and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

A review of fiscal documents and interviews with management indicated that LASP has met its PAI 12.5% requirements during each year in the review period. LASP allocates PAI expenses based on an expenditure allocation methodology which is consistent with the requirements under 45 CFR § 1614.3(e)(1)(i) as described in the Accounting Guide For LSC Recipients ("Accounting Guide"). A review of LASP's unaudited financial information for March 2011 indicated that the program may experience a PAI shortfall during its 2011 fiscal year. LASP has requested a waiver for the 2011 fiscal year as allowed under 45 CFR § 1614.6.

A review of sampled PAI cases and interviews with PAI coordinators, evidence that more formal oversight of PAI cases is needed to ensure the requirements of 45 CFR § 1614.3(d)(3), which

requires programs to implement case oversight and follow-up procedures, and Chapter X of the CSR Handbook (2008 Ed.) are met. Oversight and follow-up procedures for PAI cases varies from office to office, with LASP's Pottstown office evidencing the most routine and effective oversight procedures and practices.

Sampled PAI files evidenced incorrect closing codes. *See* Case Nos. 110900905 and 110900714, where the cases were closed as "L-Extensive Service" but the work was more consistent with "A-Counsel and Advice"; Case Nos. 210900176, 211000438, and 211000369, where the cases were closed as court decisions but where a negotiated settlement was reached; Case No. 220900618, where the case was closed as "B-Limited Services" but the work was more consistent with "L-Extensive Service"; and Case Nos. 150802458 and 150903444, where the cases were closed as "B-Limited Services" but should have been closed as court decisions or negotiated settlements. *See also*, Case No. 221001115

A limited number of reviewed PAI cases had not been closed in a timely manner. *See e.g.*, Case No. 150801793, where work on a PAI case appears to have been completed in July 2008, but no reason was noted in the file explaining why the case should have been kept open until June 2011 and Case No. 150803265, where the final hearing in a PAI case was in November 2008, but there was no reason noted in the file explaining why the case should have been kept open until June 2010. It was also difficult to determine the status of a limited number of PAI cases because the files had not been updated in over 6 months. *See* Case No. 151003759, where the last update in the file was from November 2010, and Case No. 150903291, where the last update in the file was from September 2010 and the recent status of the case was unclear.

One (1) sampled PAI case file lacked the requisite citizenship attestation. *See* Case No. 151000616. Finally, a limited number of sampled case files were incorrectly designated as PAI cases. *See e.g.*, Case No. 211100081, where the case file indicated a staff attorney handled the case; Case No. 211000588, where case was closed as PAI but the referral was not successful and where the client was assisted by staff; Case No. 210900176, where the case was closed as PAI but the case file indicated that the highest level of service was provided by a staff attorney; Case No. 210900531, where the case was closed as a PAI case but was handled by staff. It should be noted that only costs associated with cases where a client is LSC eligible and which are handled by private attorney can be counted towards LASP's PAI requirement. *See* 45 CFR § 1614.3(3). Therefore, LASP should review PAI designated cases to ensure staff cases are not being closed as PAI cases or counted towards LASP's PAI allocation.

As such, sampled cases evidenced that LASP's current oversight and follow up practices are not supporting its compliance requirements. As explained above, 45 CFR § 1614.3(d)(3) requires LASP to implement case oversight and follow-up procedures. The CSR Handbook also provides that "[p]rograms shall create oversight and follow-up procedures sufficient to track the timely referral, follow-up and disposition of PAI cases"¹⁰ and provided hallmarks of effective oversight and follow-up systems. Those hallmarks include, among other things, a specified time period for referral and a policy that articulates a plan to ensure periodic follow-up on all PAI cases and timely closure of cases. OCE recommends LASP use these hallmarks to develop program-wide

¹⁰ CSR Handbook (2008 Ed.), § 10.4.

oversight and follow-up procedures to ensure cases are closed and handled in compliance with LSC regulations and the CSR Handbook in all offices.

Finding 18: LASP is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization, and in compliance with 45 CFR § 1627.2(b)(1), which requires LSC approval to operate any LSC funded subgrant. LASP was not, however, in compliance with 45 CFR § 1627.8, which requires LASP to have a written policy relating to subgrants.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.¹¹ Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

Additionally, 45 CFR § 1627.4(a) states that:

- a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.
- b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a government organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

OCE's review of LASP's accounting records, general ledger entries for the period of the review, and discussions with LASP's Fiscal Manager evidenced compliance with 45 CFR § 1627.4(a), that all non-mandatory dues and fees are paid with non-LSC funds. A limited review of fiscal records for the period of the review and discussions with LASP's Fiscal Manager also confirmed that LASP has not had any subgrant relationships using LSC funds during the period of review.

However, although LASP has a compliant policy relating to the payment of fees and dues, it does not have a policy relating to subgrants as required by 45 CFR § 1627.8. Since the review, LASP's Co-Executive Directors have drafted a compliant policy to guide staff in complying with

¹¹ Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

45 CFR Part 1627. LASP should ensure that it adopts its new policy relating to subgrants as required by 45 CFR § 1627.8.

Finding 19: LASP is not in compliance with 45 CFR Part 1635 (Timekeeping requirement).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which 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. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

LASP's attorneys and paralegals use Kemps as a timekeeping system. They also complete written Time and Attendance Reports ("TARs"), which are signed by both the attorney or paralegal and their office manager, and used to calculate payroll. A limited review and comparison of LASP's TARs and Kemps timekeeping entries and discussions with LASP's Co-Executive Directors evidenced that some LASP attorneys and paralegals are not contemporaneously recording all time spent on all cases, matters, and supporting activities as required by 45 CFR § 1635.3(b)(1). A review of timekeeping records from LASP's Kemps system compared to case files also evidenced non-compliance with the timekeeping requirement in 45 CFR § 1635.3(b). *See e.g.*, Case No. 111100286, where the attorney assigned to handle the case had not logged any time to a currently closed case; Case Nos. 111000241 and 110900662, where the attorneys who conducted the initial interviews with the clients did not record any time on the case; and Case No. 110800861, where an attorney who did not work on a case recorded time spent on it.

LASP should ensure that time spent by attorneys and paralegals is contemporaneously documented by time records as required by 45 CFR Part 1630. OCE also recommends that LASP develop a procedure to flag substantial or repetitive inconsistent TAR and Kemps time entries to reduce any risk of fraudulent timekeeping.

Finding 20: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.¹² However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, 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.

LSC further determined that it will not take enforcement action 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. As well, the regulatory provisions regarding 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. *See* LSC Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010).

The sampled files reviewed did not contain a prayer for attorneys' fees prior to December 16, 2009. Additionally, a limited review of the LASP's fiscal records and interviews with LASP's management indicated that LASP received no attorneys' fees during the review period. As such, LASP is in compliance with the requirements of 45 CFR Part 1642.

There are no recommendations or corrective actions required.

Finding 21: OCE is evaluating additional information to determine LASP's compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of 45 CFR 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

¹² 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).

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.

None of the sampled files, fiscal documents, or legislative activities reports reviewed indicated non-compliance with this Part. Although, as disclosed in the program's legislative activity report, the program "has, in all likelihood, had discussions with local congressperson's offices and/or other state and local legislators and/or their staffs concerning constitutes legal problems," discussions with LASP's Co-Executive Directors, Community Impact Coordinator, and Fiscal Manager indicated that these discussions do not involve prohibited activity. LASP also has a written policy that is in substantial compliance with the requirement in 45 CFR § 1612.11, which requires recipients adopt written procedures to guide its staff in complying with 45 CFR Part 1612. LASP was advised it should insert the following requirement into section II(A)(2) of its policy: "or the development of strategies to influence litigation or rulemaking." *See* 45 CFR § 1612.8 (a)(2). LASP has revised the policy to bring it into full compliance.

OCE has learned that LASP's Community Impact Coordinator currently serves on the Board of Directors of The Housing Alliance of Pennsylvania ("The Housing Alliance"). The Housing Alliance is a membership organization that, among other things, serves as a resource to those working on issues relating to low income housing, and does some advocacy and lobbying. LASP's Community Impact Coordinator also serves as the President of the Coatesville Center for Community Health. OCE has recently received additional information from LASP regarding these roles and is evaluating it to determine LASP's compliance with 45 CFR Part 1612. LASP will be advised of OCE's determination under separate cover.

Finding 22: Sampled cases and interviews 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 sampled files involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Co-Executive Directors also confirmed LASP is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

Finding 23: Sampled cases and interviews 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).¹³

None of the sampled files involved initiation or participation in a class action. Discussions with the Co-Executive Directors also confirmed LASP is not involved in this prohibited activity. LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1617.4, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1617.

There are no recommendations or corrective actions required.

Finding 24: Sampled cases and interviews 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.

None of the sampled files revealed participation in litigation related to redistricting. Discussions with the Co-Executive Directors also confirmed LASP is not involved in this prohibited activity. LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1632.4, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1632.

There are no recommendations or corrective actions required.

Finding 25: Sampled cases and interviews 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

¹³ 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).

the health or safety or other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files evidenced defending a client in any such eviction proceeding. Discussions with the Co-Executive Directors also confirmed LASP is not involved in this prohibited activity. LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1633.4, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1633.

There are no recommendations or corrective actions required.

Finding 26: Sampled cases and interviews 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.

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Co-Executive Directors also confirmed that LASP is not involved in this prohibited activity. LASP also has a compliant written policy relating to the representation of incarcerated persons as required in 45 CFR § 1637.4, which requires recipients to adopt written procedures to guide staff in complying 45 CFR Part 1637.

There are no recommendations or corrective actions required.

Finding 27: Sampled cases and interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁴ This restriction has been contained in all subsequent appropriations acts. This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files or documentation reviewed, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director also confirmed that LASP is not involved in this prohibited activity. LASP

¹⁴ *See* Section 504(a)(18).

also has a written policy that is in compliance with the requirement in 45 CFR § 1638.5, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1638.

There are no recommendations or corrective actions required.

Finding 28: Sampled cases and interviews 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 LSC funds may 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.

None of the sampled files reviewed involved such activity. Discussions with the Co-Executive Directors also confirmed that LASP is not involved in this prohibited activity. LASP also has a written policy that is in compliance with the requirement in 45 CFR § 1643.5, which requires recipients adopt written procedures to guide staff in complying with 45 CFR Part 1643.

There are no recommendations or corrective actions required.

Finding 29: Sampled cases and interviews 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 reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews with the program's Co-Executive Directors also confirmed that LASP was not engaged in any litigation which would be in violation of Section 1007(b)(8) of the LSC Act, Section 1007(b)(9) of the LSC Act, or Section 1007(b)(10) of the LSC Act.

There are no recommendations or corrective actions required.

Finding 30: LASP is not in compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).

Pursuant to 45 CFR § 1620.6, all staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

- a) Has read and is familiar with the priorities of the recipient;
- b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

Interviews and discussions with the Co-Executive Directors and staff indicate that LASP has not required staff who handle cases or matters to sign 45 CFR § 1620.6 certifications. During the review, LASP was advised that it should ensure staff sign the written agreements required by 45 CFR § 1620.6. LASP advised it is in the process of doing so.

Finding 31: A limited review of LASP's internal control policies and procedures, fiscal documentation, and interviews evidenced general compliance with the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed.).

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended ("Act"), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation ("LSC"), including, but not limited to, LSC Audit Guide for Recipients and Auditors, Accounting Guide For LSC Recipients (2010 Edition), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process put in place, managed and maintained by the recipient's board of directors and management which is designed to provide reasonable assurance of achieving the following objectives: (1) safeguarding of assets against unauthorized use or disposition; (2) reliability of financial information and reporting; and (3) compliance with regulations and laws that have a direct and material effect on the program. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed).

The Accounting Guide for LSC Recipients ("Accounting Guide") provides guidance on all aspects of fiscal operations. The 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur.

OCE's review of LASP's accounting policies and procedures manual, accounting records, and discussions with program management found the program has established an adequate internal control structure. This structure includes adequate accounting records, competent personnel, defined duties and responsibilities, segregation of duties, independent checks and proofs and a written Accounting Manual. Further, LASP's auditor's reports for the review period did not identify any deficiencies or material weaknesses in the internal controls or possible questioned costs.

With respect to LASP's internal fiscal controls, LASP's fiscal staff consists of a Fiscal Manager and an Accounting Assistant/HR Administrator. Additional oversight and review is provided by the program's Co-Executive Directors. A review of LASP's responses to an LSC Internal Control Worksheet prepared during the on-site visit and interviews with LASP's fiscal staff, evidenced that the program has established a sufficient level of segregation of duties based on its overall staffing level.

LASP has also developed Financial Management Policies to establish procedures to adequately account for, report on, and control the expenditure of its financial resources. The manual containing LASP's Financial Management Policies was updated in May 2011 and contains, among other things, policies relating to the following: Responsibilities in the Financial Planning, Management, and Implementation Process; Fiscal Management Planning including Management Reports and Budget Process; and Fiscal Accountability, which includes Cash Receipts, Purchasing Procedures, Cash Disbursements, General Journal, General Ledger, Bank Reconciliation, Accounts Payable, Petty Cash, Credit Card Policy, Payroll, Client Trust Funds, Reporting, Property, Private Attorney Involvement, Consultant and Contract Services, and Purchases of Equipment or Property and Leases.

A limited review of LASP's fiscal policies evidenced they generally support the program's fiscal compliance requirements. However, a comparison of LASP's record retention requirements with the requirements in the Accounting Guide indicated that some of its retention time frames are not as long as those required by LSC. LASP has since revised its Record Retention Policy to ensure that the specified record retention requirements for records relating to billing for services, petty

cash, and employee travel and expenses are no less than the LSC guidelines contained in the Accounting Guide.

LASP's Board of Directors ("Board") has approved LASP's Financial Management Policies and has established an Audit Committee which is charged with acting on behalf of the Board to ensure LASP is meeting the standards and objectives governing financial policies and practices as established by the Board or otherwise required by funding sources, auditors, and other governing agencies. The Audit Committee is comprised of seven (7) members of the Board, including a Certified Public Accountant ("CPA").

LASP's Co-Executive Directors are required to provide members of the Audit Committee with monthly expenditure reports for comparison with LASP's budget plan for review. The Audit Committee also reviews all monitoring and audit reports related to LASP's financial management. The full Board reviews and approves LASP's budget on an annual basis and receives reports at regular Board meetings comparing budgeted revenue, expense projections, and actual year-to-date amounts. Discussions with LASP's Fiscal Manager indicated that LASP will also soon provide the Board with reports regarding all money, cash, and cash equivalents in LASP's cash registers or safes (*i.e.*, Cash On Hand).

LASP uses different bank accounts for general operating expenses, payroll, client funds, money market, and a sweep account funds.¹⁵ An outside consultant reconciles LASP's accounts on a monthly basis. LASP's Fiscal Manager reviews the reconciliations. A limited review of LASP's bank reconciliations indicated that its bank statement receipt and reconciliation process is performed timely and in accordance with LASP's policies. The program also has a policy sufficient to ensure stale checks are voided after a reasonable time period and a limited review of fiscal documentation determined that the program has no outstanding stale checks. The program does not regularly grant salary advances and discussions with LASP's Fiscal Manager confirmed that LASP had not issued any salary advances during the review period.

LASP maintains and uses three (3) credit card accounts and limited testing found receipts associated with all charges and supporting documentation that adequately identified the purpose of each expenditure. A limited review of LASP's credit card statements indicated the program pays its credit card bills in a timely manner, however, several statements for the credit card LASP utilizes for business travel showed monthly finance charges associated with late payments. Discussions with LASP's Fiscal Manager indicated that those fees were paid with non-LSC funds. OCE recommends LASP identify the reason(s) for the pattern of late payments on this credit card and establish a procedure to ensure its timely payment.

¹⁵ A sweep account is a bank account that transfers amounts that exceed (or fall short of) a certain level into a higher interest earning investment option at the close of each day.

IV. RECOMMENDATIONS¹⁶

Consistent with the findings of this report, it is recommended that LASP:

1. Train its staff on the requirements in the CSR Handbook (Ed. 2008) and usage of compliance-related ACMS fields. Specifically, OCE recommends LASP require all staff and paralegals to read the CSR Handbook and certify to having done so by September 20, 2011;
2. Train its staff on core Kemps functions, including changing the case handler, entering closing codes, use of the "CSR Eligible" field, and timekeeping functions;
3. Include a prospective income field or check box in Kemps;
4. Devise additional oversight procedures and/or practices for opening, documenting, and closing cases that will ensure the program meets its compliance requirements and accurately reports CSR eligible cases;
5. Develop a procedure to flag and review substantial or repetitive inconsistent TAR and Kemps time entries to avoid the risk of fraudulent timekeeping; and
6. Identify the reason(s) for the pattern of late payments on LASP's credit card used for travel expenses and establish a procedure to ensure its timely payment.

¹⁶ 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, LASP is required to take the following corrective actions:

1. Ensure it reports to LSC only those cases that meet the requirements of CSR Handbook (2008 Ed.);
2. Ensure its financial eligibility policy is in full compliance with 45 CFR Part 1611;
3. Ensure staff consistently screens applicants for income prospects as required under 45 CSR § 1611.7(a)(1) and LSC External Legal Opinion AO-2009-1006 dated September 3, 2009;
4. Revise its intake forms in accordance with LASP's revised financial eligibility procedures and so the forms will capture information relating to applicants' income prospects, all spend-down costs allowed under LASP's financial eligibility policy, and LASP's revised asset exceptions;
5. Ensure all attorneys and paralegals conduct a conflict of interest check prior to providing legal services during outreach events or clinics to avoid the risk of violating ethical obligations. *See* 45 CFR § 1610.2(a)(2);
6. Ensure that all case files contain citizenship attestations, where appropriate, that are signed and dated pursuant to 45 CFR Part 1626 and the requirements of CSR Handbook (2008 Ed.), § 5.5;
7. Ensure that, where required, retainer agreements are executed in compliance with the requirements of 45 CFR § 1611.9, including that all agreements contain, at a minimum, a statement identifying the legal problem and the nature of the legal services to be provided;
8. Ensure it prepares a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint as required by 45 CFR Part 1636;
9. Ensure it properly documents the legal assistance provided to clients as required by CSR Handbook (2008 Ed.), § 5.6;
10. Ensure that it closes LSC-reportable cases with the correct closing codes as required by Chapters VIII and IX of the CSR Handbook (2008 Ed.);
11. Ensure that cases are closed in a timely manner in accordance with the requirements of CSR Handbook (2008 Ed.), § 3.3;

12. Ensure PAI cases are handled and closed in compliance with LSC regulations and the CSR handbook and ensure adequate oversight and follow-up procedures of PAI cases as per 45 CFR § 1614.3(d) and Chapter X of the CSR Handbook (2008 Ed.);
13. Implement its updated written policy relating to the outside practice of law;
14. Update its written policy relating to fee generating cases to reflect the current 45 CFR Part 1609 so to meet the requirement in 45 CFR § 1609.6 that recipients adopt written policies and procedures to guide staff in complying with 45 CFR Part 1609;
15. Ensure it provides notice of LSC prohibitions and conditions to non-LSC funders as required by 45 CFR § 1610.5;
16. Implement its new written policy relating to subgrants as required by 45 CFR § 1627.8;
17. Ensure that time spent by attorneys and paralegals is contemporaneously documented by time records as required by 45 CFR Part 1630;
18. Ensure staff sign the written agreements required by 45 CFR § 1620.6; and
19. Implement its revised Record Retention Policy to ensure that the specified record retention requirements for records relating to billing for services, petty cash, and employee travel and expenses are no less than the LSC guidelines contained in the Accounting Guide.

As to the OCE recommendations listed above, we accept them and will be working to incorporate them into program operations. With respect to each of the above required corrective actions, LASP will address them in a timely fashion to ensure future compliance, providing training for staff, where necessary. We are pleased to accept the assistance of OCE staff in conducting this training, whenever possible. As noted in our comments to the findings enumerated in the executive summary, LASP has already addressed and adopted policies/practices/operations relating to corrective actions 2, 13, 14, 15, 16, 18 and 19.

A.1.2 FINANCIAL ELIGIBILITY GUIDELINES

I. Purpose

LASP establishes the following financial eligibility guidelines and procedures to ensure that it is determining eligibility according to the criteria set forth by various funding sources. They are meant to afford LASP and its staff sufficient latitude, both in considering individual circumstances and resource limitations. Eligibility must also be determined in a manner conducive to the development and maintenance of an effective attorney-client relationship.

II. Definitions

A. "Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of an applicant's household. For purposes of determining annual income, the program will determine current income for 12 months based upon the client's current monthly income and expected seasonal and other variations. If the applicant is a victim of domestic violence, the income of the alleged perpetrator is not counted towards the household income, even in cases other than Protection from Abuse (PFA).

B. "Total cash receipts" include, but are not limited to money, wages and salaries before any deductions, but do not include food or rent in lieu of wages. The term includes income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; Public Assistance; Supplemental Security Income; Social Security, Unemployment and Worker's Compensation; strike benefits from union funds; veteran's benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trust, and income from other regular or recurring sources of financial support that are currently and actually available to the applicant. The term does not include money withdrawn from a bank, or received from sale of real or personal property, tax refunds, loans, gifts, one-time insurance payments or compensation for injury; nor do they include non-cash benefits, and up to \$2000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

C. "Household unit" includes only those people related by blood or by law as relatives for whom legal responsibility attaches, and who reside in the same household. For purposes of reviewing eligibility of victims of domestic violence, household unit shall not be construed to include a member of the household that is an alleged perpetrator of the domestic violence, or to include assets or resources of persons who provide temporary shelter to such victims. In addition, any assets that are held jointly by the alleged perpetrator of abuse and the applicant who is a victim of domestic violence, or is held jointly by the alleged perpetrator and another person within the household, or is held solely by the alleged perpetrator shall not be considered. A person may choose to count as a household member anyone else residing in the same household who is claimed by the applicant as a tax dependent. If the applicant makes that choice then you will increase the size of the family and include any income of that person in the eligibility determination.

D. "Individual": an emancipated minor; an unemancipated minor living with persons who are not his/her natural or adoptive parents; an adult residing alone; an adult who resides with other related or unrelated adults other than persons who are married or who have children in common. If someone is classified as an individual, they cannot be counted in a family grouping.

E. "Available assets" are those to which the individual seeking assistance can readily convert into cash. This means that the applicant has direct and unfettered access to the asset, without having to obtain the consent or cooperation of another person over whom the individual does not have control and who does not in fact consent or cooperate. The value of the assets that are available should take into account any penalties, fees, and the like that must be paid in order to access the money. For victims of domestic violence, any assets that are held jointly by the alleged perpetrator of abuse and the applicant who is a victim of domestic violence, or is held jointly by the alleged perpetrator and another person within the household, or is held solely by the alleged perpetrator shall not be considered as available assets.

F. Maximum Income Level

a. In order to be financially eligible for LSC services an applicant's household income must be at or below 125% of the federal poverty guidelines in all instances except the following:

i. The applicant's income is derived solely from a governmental program for low-income individuals or families, such as the following, that have been determined by our Board to be acceptable: GA (General Assistance), TANF, and SSI;

ii. The applicant's income is primarily committed to medical or nursing home expenses and, excluding such portion of the applicant's income which is so committed, the applicant would otherwise be eligible, (and this has been confirmed by an Executive Director or his/her designee);

iii. The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families;

iv. The applicant is seeking legal assistance to obtain benefits provided by a governmental program for low income individuals or families and his/her income is not in excess of 200% of the federal poverty guidelines;

iv. The applicant is seeking legal assistance to obtain or maintain benefits provided by a governmental program to persons with disabilities and his/her income is not in excess of 200% of the federal poverty guidelines;

iv. An applicant's income is over 125% but not in excess of 200% of the federal poverty guidelines and through application of the spend down policy set forth below applicants' income is brought down to no more than 125% of the federal poverty guidelines.

b. Applicants may also be financially eligible for non-LSC funded legal services where:

i. The applicant has a currently valid Pennsylvania Medical Assistance card in the following categories: SSI, TANF and GA (General Assistance);

ii. The applicant is requesting representation to obtain protection from abuse. Financial eligibility (income and asset) information will be obtained, however the applicant will be determined eligible irrespective of this information. The income of the abuser will be excluded from the household income;

iii. The applicant is financially eligible for services under the terms of a contract with a County agency, a grant from a foundation, or other private funding coming to LASP to provide legal services. An applicant's eligibility for services will still be contingent upon compliance with all LSC restrictions and no services rendered to non-LSC financially eligible clients under these contracts or grants will be paid for with LSC monies.

SPEND DOWN POLICY

An applicant may be financially eligible for LSC funded services when an his/her household income is above 125% of the federal poverty guidelines, but is not in excess of 200 % of those guidelines, and applicant has special circumstances which, when the factors enumerated below are considered, render the client unable to afford legal representation, and such representation would not be inconsistent with the Priorities of LASP.

The factors that can be considered are as follows:

- Current income prospects, such as seasonal variations. This would include those who work in the agriculture or farming industry, and can only find employment during the growing and harvesting seasons, such as migrant workers. Also, those who experience an unusual amount of overtime because of a specific set of circumstances, that is not likely to be repeated every month, such as overtime for retail workers during the holiday season. The purpose of this is to not punish or reward those who have an unusual pay period at the time of the request for services, when their normal pay can be reasonably ascertained by past pay stubs or other sources.
- Unreimbursed medical expenses. Most typically, this will include the out of pocket costs for health insurance premiums, prescription medicines, and doctors' visits that occur regularly, whether the costs are the co-pays or the actual price if the applicant is uninsured. However, this category may also include more unusual expenses that aren't covered by insurance, such as an air filter for an asthmatic child, or vitamin supplements that are doctor recommended. These expenses can be for anyone in the household, and need not be just for the applicant himself, but they must be tied to a medical condition, the must occur regularly, and are not merely the costs of maintaining normal household supplies (i.e. a box of band-aids, or a bottle of aspirin).
- Fixed debt and obligations. Although most of our clients have debts owing to someone, as indeed we all do, this category is intended to take into account those who are in the midst of paying back a debt, when the failure to do so would render serious consequences to the applicant, such as those contemplated by our priorities (preserve the individual's life, income, health, family or safety). Typical credit card debt would not fall into this category, nor would food costs or utility costs as these are not 'fixed as to time and amount' as contemplated by the regulations. However, a payment plan designed to catch up on arrears could be counted, as could a payment

plan for back taxes, when failure to comply with the plan could lead to losing their home. Support payments, either child or spousal, can also be considered as a fixed debt or obligation. However, this category is intended to only be considered when the client is in fact making the payments to reduce the fixed debt or obligation. At this time, LASP policy is that mortgage and rent payments are NOT to be considered for spend down purposes.

- Expenses, such as dependant care, clothing and equipment expenses and transportation necessary for employment, job training or educational activities in preparation for employment. . This is designed so that we do not “punish” the working poor by putting legal aid out of reach for them, when in fact they still could not afford the typical costs of legal service. Payment of day care, or after school care would meet this criteria. Transportation expenses can include bus fare, cost of gas (taking into consideration how much the vehicle is used for work, how much for personal use), and parking expenses, assuming that none of this is provided or reimbursed by the employer. Car insurance would not normally be considered, nor would maintenance or upkeep of the car.
- Non-Medical Expenses associated with age or physical infirmity. This would include any such expense that cannot be characterized as medical, but that presents a barrier to having the resources available to afford legal representation. The expenses can be incurred on behalf of anyone in the household. Examples of this might include adult day care.
- Current taxes. This can include both current and past unpaid state, local and Federal income and employment taxes. At this time, LASP policy is that the payment of current taxes are NOT to be considered for spend down purposes.
- Other significant factors related to financial inability to afford legal assistance. This is a category designed to apply to those rare situations where someone has a significant and unusual barrier to being able to afford legal assistance that does not fall into any of the other categories.

When there is substantial reason to doubt the accuracy of any of the information supplied by the applicant regarding any of the above factors to be considered, the person making the eligibility determination may ask for further information, including documentation, to verify the accuracy of the information provided, before making a determination of financial eligibility.

Upon reaching the decision that, based on one or more of the above factors, the applicant should be considered for eligibility, the person doing the determination then takes the monetary amount spent by the client or the client’s household and deducts it from the gross income amount to determine whether the

income is now at or below the 125% federal poverty guideline for a household of that size. Documentation of the spend down must be included in the file, so that anyone else can easily determine how and why this person was found to be eligible.

Even if, after consideration of the totality of the circumstances as described above, an applicant is found to be financially eligible, the applicant still must meet all other eligibility requirements (such as immigrant status, sufficient merit of case, the fit of the case within LASP's priorities, no conflict) before a decision to provide any assistance and/or representation can be made.

III Asset Ceilings

A. Assets are required to be considered in the determination of eligibility for LSC cases but not for Title XX cases. Nonetheless, asset information will be obtained for clients being provided representation under the Title XX program.

B. The maximum value of available assets that any individual may possess is \$4500. A household composed of two or more persons may possess assets with a maximum value of \$6500. The following assets shall not be considered in making the eligibility determination:

1. The principal residence of the household;
2. Any vehicle used for transportation by a household member;
3. Reasonable equity value in work-related equipment for self employment of an applicant or member of a family unit, provided that the owner is attempting to produce income consistent with its fair market value.

C. In unusual circumstances the director or designee may grant waivers of this asset ceiling. Recognition shall be given to the special needs of persons with physical or mental impairments, the elderly, (age 60 and over), and persons who are in public institutions. When a waiver is granted, the decision shall be documented and included in the client's file. The program shall also maintain a record, consistent with client confidentiality and the Code of Professional Responsibility, of the number of clients served because of a waiver and the factual basis for the decisions made.

IV. Group Eligibility

A group, corporation or association is eligible for services if:

A.) the group is primarily composed of persons who would be eligible for legal assistance under these guidelines, or the group has as a principal activity the delivery of services to those persons in the community who would be financially eligible under the guidelines, and the legal assistance relates to such activity and:

B.)the group provides information showing that it cannot otherwise obtain private counsel.

A worksheet to determine group eligibility must be completed and submitted to the Managing Attorney in the office and a copy sent to the Co-Executive Directors before accepting the case for representation.

(have link to form)

V. Redetermination/Change of Circumstances

A.) Eligibility for services shall be redetermined when circumstances change but not less than frequently than once each twelve months. See A.9 for Redeterminations required by Title XX

B.) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

C.) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

POLICY ON SUBGRANTS AND TRANSFER OF LSC FUNDING TO OTHER ORGANIZATIONS

In order for there to be accountability for LSC funds and to ensure compliance with all LSC regulations, it is necessary to establish rules governing any transfer of LSC funds from LASP to another organization, including to another LSC recipient organization.

LASP may enter into an agreement (a subcontract) with another organization whereby that organization will receive LSC funding to conduct activities related to LASP's programmatic activities, (such as representation of eligible clients), under the following rules and conditions:

1. All subgrants must be submitted in writing to LSC for prior written approval and shall include the terms of the subgrant and the amount to be transferred. A subgrant may not be for more than one year and shall contain a provision providing for its orderly termination in the event that LSC's funding is terminated or not renewed and for its suspension if LASP's funding is suspended. A subgrant shall also provide for the same oversight rights for LSC with respect to the subgrantee as apply to LASP.
2. LSC shall have 45 days to approve, disapprove or suggest modifications to the subgrant. Any subgrant disapproved or to which modifications are recommended may be resubmitted. In the event that LSC fails to take action within 45 days, LASP shall notify LSC and, unless LSC responds within 7 days, the subgrant shall be deemed to be approved. Any subgrant not approved shall be subject to audit disallowance and recovery of all funds expended pursuant to it.
3. Any substantial change in the work program of the subgrant or an increase or decrease in funding of the subgrant of more than 10% shall require LSC approval. While LSC approval is not required in the case of minor changes in the work program or funding changes of less than 10%, LSC shall be informed in writing of such changes.
4. LASP shall be responsible for ensuring that a subgrantee complies with LSC financial and audit provisions. Any funds remaining at the end of the grant period shall be considered part of LASP's fund balance. LASP shall be responsible for repaying LSC for any disallowed expenditures by a subgrantee irrespective of whether LASP is able to recover these from the subgrantee.

Authority: 45 CFR 1627

**PROHIBITIONS ON ADVOCACY EFFORTS INTENDED
TO INFLUENCE CERTAIN LEGISLATIVE
AND ADMINISTRATIVE ACTIVITIES; PROHIBITED ADVOCACY
TRAINING, PARTICIPATION IN PUBLIC DEMONSTRATIONS
AND RELATED ACTIVITIES, AND ORGANIZING**

I. 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 Legal Aid of Southeastern Pennsylvania ("LASP"), 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.

B. Notwithstanding the prohibitions outlined in A, it is permissible for any individual, while engaged in legal services activities, funded by the LASP 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 prelitigation 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 LASP are used to support prohibited legislative or rulemaking activities and that LASP 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 LASP representative to, or as a member of an organization, task force, consortium, advisory board, or committee, which has as its primary purpose improving service to LASP clients, sharing information about community resources or needs, providing community legal education, or any other nonprohibited purpose.

C. Non-LSC funds of LASP may be used by an employee:

1. to 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 the LASP 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 the LASP.

II. ADVOCACY TRAINING

A. It is impermissible for any individual, while engaged in legal assistance activities funded by LASP, to participate in or conduct a training program for the purpose of:

- (1) advocating a particular public policy;
- (2) encouraging a political activity, a labor or antilabor activity, a boycott, picketing, a strike, or a demonstration or development of strategies to influence legislation or rulemaking;
- (3) disseminating information about such a policy or activity; or
- (4) training participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.

B. 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.

C. Employees of LASP 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.

III. PROHIBITIONS ON DEMONSTRATIONS, BOYCOTTS, STRIKES AND CERTAIN OTHER ACTIVITIES.

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

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

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

1. rioting or civil disturbance;
2. activity determined by a court to be in violation of an outstanding injunction issued by any court of competent jurisdiction; or
3. 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 Pennsylvania.

C. Attorneys for LASP 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 Pennsylvania or Bucks County.

IV. PROHIBITED ORGANIZING ACTIVITIES

A. 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.

B. 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.

C. 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.

RECORDKEEPING¹

LASP 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.

POLICY ON ATTORNEY'S FEES

An individual, while working for Legal Aid of Southeastern Pennsylvania, ("LASP") may not provide legal assistance on behalf of the program or a client in a fee generating case where the case is being funded with Legal Services Corporation funds except as provided below.

- A “fee-generating case”, for purposes of this policy, is any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.
 - A “fee generating” case does not include a case in which LASP or one of its employees is appointed by a court to provide representation pursuant to a statute or court rule or practice that applies to all attorneys in the jurisdiction; nor a case that LASP undertakes under a contract with a government agency or other entity.
- (a) LASP may provide legal assistance in a fee-generating case funded with LSC funds where:
- (1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or
 - (2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.
- (b) Furthermore, LASP may provide legal assistance in a fee-generating case funded with LSC funds without first attempting to refer the case pursuant to paragraph (a) of this section only when:
- (1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, as amended, Supplemental Security Income for Aged, Blind, and Disabled;
 - (2) LASP, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or
 - (3) The co-directors of LASP, or their designee, have determined that referral of the case to the private bar is not possible because:
 - (i) Documented attempts to refer similar cases in the past generally have been futile;
 - (ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or
 - (iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

LASP will maintain records regarding attorneys' fees and reimbursements for out of pocket expenses in accordance with requirements imposed by the Legal Services Corporation.

Pursuant to the ethical standards applicable to all attorneys who are licensed to practice law in Pennsylvania, 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 LASP is prohibited by federal law from claiming or collecting and retaining for itself 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.

LASP policies on the procedures and practices to be followed in fee generating cases are contained in the guidelines following this statement.

N. OUTSIDE PRACTICE OF LAW

Attorneys employed on a full-time basis by LASP are expected to devote their full professional activities to legal services matters and may engage in “outside practice of law” only in a limited circumstances enumerated below and shall not engage in any outside practice of law if the Co-Directors determine that such practice is inconsistent with the attorney’s full-time responsibilities.

“Outside practice of law” means the provision of legal assistance to a client who is not receiving that legal assistance from LASP but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

“Court Appointment” means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

An attorney employed full-time by LASP may engage in compensated outside practice if it would be consistent with full-time responsibilities and then only in the following circumstances:

1. The attorney is newly employed and has a professional responsibility to close cases from a previous law practice and does so on his/her own time as expeditiously as possible; or
2. The attorney has been appointed by the Court or an Administrative Agency, the attorney will receive compensation for the appointment under the same terms and conditions as are applied generally to attorneys practicing in that court, and the attorney agrees to remit to LASP any compensation received.

An attorney employed full-time by LASP may engage in uncompensated outside practice if it would be consistent with full-time responsibilities and then only in the following circumstances:

1. The attorney is acting on behalf of him or herself, a close friend or family member; or another member of LASP’s staff; or
2. The attorney is acting on behalf of a religious, community or charitable group; or
3. The attorney is participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

Any full-time attorney wishing to undertake a matter which would constitute the outside practice of law must obtain the prior approval of the Co-Directors in writing.

REPRESENTATION OF INCARCERATED PERSONS

It is impermissible for any individual, while engaged in legal services activities funded by Legal Aid of Southeastern Pennsylvania, ("LASP"), 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 LASP is representing a client in litigation, it becomes known to the LASP attorney for the client's case 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's file must include¹ (1) documentation indicating the date when LASP was notified of the client's incarceration and the recipient's 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.

¹ A sample documentation form is attached.

**SAMPLE DOCUMENTATION FOR CONTINUED
REPRESENTATION OF INCARCERATED CLIENT
IN CIVIL LITIGATION**

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

STATEMENT 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: _____

**LEGAL AID OF SOUTHEASTERN PENNSYLVANIA
POLICY ON ACTIONS COLLATERALLY
ATTACKING CRIMINAL CONVICTIONS**

The following policy shall be implemented by the program pursuant to 45 C.F.R. 1615:

LSC funds shall not be used for the provision of legal services in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court of a law enforcement official.

Staff is not prohibited from providing legal assistance to challenge a conviction resulting from a criminal proceeding in which the defendant received representation from LASP pursuant to Corporation regulations; or pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the Co-Executive Directors or a designee after a determination that it is consistent with LASP policy with regard to the representation of eligible clients.

The Co-Executive Directors or a designee shall maintain a file of any authorizations made pursuant to the above policy.

Adopted June 29, 2011



Montgomery County Division

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Co-Executive Directors
Harvey F. Strauss, Esq.
Elizabeth Wood Fritsch, Esq.
Managing Attorney
John L. Walder, Esq.

October 11, 2011

M. Megan Smith, Esquire
Program Counsel
Office of Compliance and Enforcement (OCE)
Legal Services Corporation
3333 "K" Street, NW
Washington, DC 2007

Re: 1620 Certifications

Dear Ms. Smith:

This will certify that all LASP staff members have signed Section 1620.6 Certifications and I have collected them as of this date. Attached also please find a template of the certification form.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Aubrie M. Foster".

Aubrie M. Foster
Office Manager
LASP – Montgomery County
Norristown Division

AMF/s
Enclosure

Legal Aid of Southeastern Pennsylvania Legal Services
Case Handler's Agreement

I, _____, a (job title) _____
at Legal Aid of Southeastern Pennsylvania Legal Services, have read and am familiar
with the priorities and emergency policy of Legal Aid of Southeastern Pennsylvania
Legal Services. I agree not to undertake any case or matter other than in accordance with
the specific priorities set by the Board of Directors of Legal Aid of Southeastern
Pennsylvania Legal Services except in emergency situations as defined by the Board and
in accordance with the written procedures as set by the Board in the emergency policy.

Name

Date

M. Megan Smith

From: Harvey Strauss <hstrauss@lasp.org>
Sent: Wednesday, October 12, 2011 11:59 AM
To: M. Megan Smith; efritsch@lasp.org
Cc: Cathy Herman
Subject: RE: Follow-Up on Report Comments

Hi Megan,

Liz and I appreciate your request for clarification or additional information on these 2 items.

With respect to Recommendation No. 1:

LASP has met with our Managing Attorneys about the need for staff to follow the guidelines in the CSR handbook in their use of codes. Our Managing Attorneys will now be checking the use of CSR closing codes and other ACMS requirements as they review all case files before closing. LASP is also planning a training on the CSR codes at its next scheduled all staff meeting (tentatively scheduled for the week of November 14). We will also direct staff to regularly consult the CSR handbook which has been posted on our program WIKI. We also look forward to additional training from OCE staff as soon as they are available. We should be able to certify after our staff meeting that all staff and paralegals have read the CSR Handbook.

Our response to Recommendation No. 2:

Liz and I have reviewed this recommendation with Cathy Herman, our fiscal manager, who advises that LASP was never charged a late fee. The turnaround time from receipt of the invoice for this credit card is/was usually 10 days. On 2 occasions, in the past, it was 23 days. We were charged finance charges on 6 occasions for a total of \$53.31. \$34.59 of the finance charges were reimbursed to LASP from the vendor. This particular vendor had double billed the credit card and charged PA. sales tax (we are tax exempt). After bringing these problems to their attention, they reimbursed us for the double billing, the sales tax and the finance charges. We no longer use the credit card for this vendor.

Since April 2011, we have not paid a finance charge on this credit card. LASP fiscal staff have carefully tracked these invoices and staff who use the card, have at our direction, begun sending Ms. Herman the backup documentation immediately which allows Ms. Herman to promptly forward the invoice to our Board Treasurer to authorize payments. This is often accomplished in less than one day.

We hope this gives you some more detail/explanation on these matter. The last months have been particularly busy for us, with your visit to our program in June and follow-up work, the completion of our annual audit and providing large amounts of material in anticipation of and preparing for our monitoring by OPP next week. We appreciate your support for our program, your willingness to work with us and your patience.

Harvey and Liz

Harvey F. Strauss
Co-Executor Director
Legal Aid of southeastern Pennsylvania (LASP)
625 Swede Street
Norristown, PA 19401
610-275-5400 ext. 117
Fax: 610-275-5406
hstrauss@lasp.org

From: M. Megan Smith [mailto:smithm@lsc.gov]
Sent: Tuesday, October 11, 2011 5:49 PM

To: 'Harvey Strauss' (hstrauss@lasp.org); efritsch@lasp.org
Subject: Follow-Up on Report Comments

Dear Harvey and Liz,

I am at the end of the process of integrating your comments into OCE's Final Report. Your very organized comments were responsive to almost all of the key findings, corrective actions, and recommendations. Before I put the report to rest, however, I wanted to check in with you on a few recommendations in the report:

1. Recommendation No. 1: "Train its staff on the requirements in the CSR Handbook (Ed. 2008) and usage of compliance-related ACMS fields. Specifically, OCE recommends LASP require all staff and paralegals to read the CSR Handbook and certify to having done so by September 20, 2011."

You have generally responded to this recommendation at the end of your version of the report. You also refer to training throughout your response to various findings. I was wondering if you had already completed, or have plans for anything more specific on the training front that I could note in the report. Although OCE is happy to provide CSR training as soon as OCE staff is available to do so, in the meantime, LASP should also be working to train its own staff on CSR issues and proper use of the ACMS. Some of your responses could be read as if LASP is waiting for LSC training before beginning its own effort, where others make it clear that LASP intends to take its own action on the training front. I wanted to give you the chance to clear up any ambiguity on this and also let me know whether there are any other specific efforts you have made on, for example, the CSR Handbook familiarity front.

2. Recommendation No. 6: "Identify the reason(s) for the pattern of late payments on LASP's credit card used for travel expenses and establish a procedure to ensure its timely payment."

Again, I see you have generally responded to the recommendations at the end of your version of the report. However, I wanted to check to see whether you had made any more specific progress, or had any more specific comments, relating to this recommendation. I want to be sure that, if so, it is mentioned in the Final Report.

I hope you both had wonderful long weekends and a good start to your weeks.

Megan

M. Megan Smith

Program Counsel
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