



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

Legal Services of Eastern Michigan
Case Service Report/Case Management System Review
June 6-9, 2011

Recipient No. 423060

I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that LSEM's automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were a limited number of instances of inconsistent information in the ACMS and the case files.

Finding 2: LSEM's intake procedures do not fully support the program's compliance related requirements.

Finding 3: With a few exceptions, sampled cases evidenced that LSEM maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG). Additionally, LSEM's financial eligibility policy does not comply with 45 CFR §§ 1611.5 and 1611.6.

Finding 4: With a few exceptions, sampled cases evidenced that LSEM maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4. However, LSEM's financial eligibility policy does not comply with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e).

Finding 5: LSEM is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens), as one (1) case file reviewed failed to contain a required written citizenship attestation. Additionally, LSEM is in non-compliance with the documentation 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).

Finding 7: Sampled cases evidenced compliance with the requirements of 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 § 1620.6(c) (Priorities in use of resources).

Finding 9: Sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were numerous case files which contained no description of the legal assistance provided.

Finding 10: Sampled cases evidenced that LSEM's application of the CSR case closure categories is inconsistent with Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3 (Dormancy and untimely closure of cases).

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

Finding 13: Review of LSEM's policies and the list of attorneys who have engaged in the outside practice of law revealed that LSEM is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Finding 16: A limited review of LSEM's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities. However, LSEM's donation acceptance letter does not comply with 45 CFR § 1610.5(a).

Finding 17: LSEM is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases. In addition, LSEM is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

Finding 18: LSEM 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. Documents reviewed evidenced substantial compliance with 45 CFR § 1627.4(a).

Finding 19: LSEM is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

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

Finding 21: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). Documents reviewed evidenced substantial compliance with the requirements of 45 CFR Part 1612.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

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

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

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

Finding 26: Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners). Documents reviewed evidenced substantial compliance with 45 CFR Part 1637.

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

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

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 30: LSEM is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decision, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

Finding 31: Documents reviewed evidenced the absence of a policy consistent with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).

Finding 32: A limited review of LSEM's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2. The review revealed minor weaknesses in the following areas: cash (check) receipts and petty cash.

Finding 33: A review of the use of LSEM credit cards disclosed no internal control deficiencies and all charges, with one (1) exception, were proper and supported by adequate documentation.

Finding 34: A review of LSEM payments to vendors disclosed certain supporting documentation was withheld on the grounds of HIPAA concerns.

II. BACKGROUND OF REVIEW

During the week of June 6 - 9, 2011, staff of the Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) review at the Legal Services of Eastern Michigan (LSEM). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team of four (4) attorneys and one (1) fiscal analyst.

The on-site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that LSEM has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LSEM 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); 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 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 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 LSEM's upper and middle management, staff attorneys, and support staff. LSEM's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, case file review was conducted. The sample case review period was from January 1, 2009 through April 15, 2011. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team selected 474 cases to review on site, which included 45 targeted files. All of the selected cases were reviewed.

LSEM currently provides legal services to eligible clients in the following counties in eastern Michigan: Arenac, Bay, Clare, Genesee, Gladwin, Gratiot, Huron, Isabella, Lapeer, Midland,

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.

Saginaw, St. Clair, Sanilac, and Tuscola. LSEM provides client services at four (4) offices located in the cities of Flint, Saginaw, Midland, and Port Huron. The administrative office of the program is in Flint.

LSEM received grant awards from LSC in the amounts of \$1,461,076.00 for 2009, \$1,577,580.00 for 2010, and \$1,512,366.00 for 2011. In its 2010 submission to LSC, the program reported 5,795 closed cases; in its 2009 submission to LSC, the program reported 5,891 closed cases. LSEM's 2010 self-inspection certification revealed a 0% error rate in CSR reporting. However, the self-inspection summary indicated that five (5) cases were identified during the self-inspection process where case closure was untimely.

By letter dated March 30, 2011, OCE requested that LSEM provide a list of all cases reported to LSC in its 2009 CSR data submission (closed 2009 cases), a list of all cases reported in its 2010 CSR data submission (closed 2010 cases), a list of all cases closed between January 1, 2011 and April 15, 2011 (closed 2011 cases), and a list of all cases which remained open as of April 15, 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 LSEM staff and the other for cases handled through LSEM's PAI component. LSEM 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* protocol (January 5, 2004). LSEM was requested to notify OCE promptly, 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 LSEM agreement of April 11, 2011, LSEM 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 discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.³

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

³ 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.

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

At the conclusion of the visit, on June 9, 2011, OCE conducted an exit conference during which LSEM was provided with OCE's initial findings and was made aware of the areas in which a pattern of non-compliance was found. OCE cited instances of non-compliance in the areas of LSEM's intake procedures, 45 CFR Part 1611 (Financial eligibility policies), CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided), CSR Handbook (2008 Ed.), Chapter VIII (Case closure categories), CSR Handbook (2008 Ed.), § 5.5 (Citizenship and alien eligibility documentation requirements), and 45 CFR § 1626.6 (Verification of citizenship).

By letter dated August 15, 2011, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. LSEM was asked to review the DR and provide written comments. On September 2, 2011, LSEM requested, and received, a two week extension for their response to the DR. By letter dated September 30, 2011, LSEM submitted its comments to the DR. LSEM has taken several corrective measures in response to the DR, which have been detailed in their comments to the DR. OCE has carefully considered LSEM's comments and has either accepted and incorporated them within the body of the report, or responded accordingly. LSEM's comments, in their entirety, are attached to this Final Report.

III. FINDINGS

Finding 1: Sampled cases evidenced that LSEM's automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were a limited number of instances of inconsistent information in the ACMS and the case files.

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, LSEM's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

There were a limited number of cases reviewed from the sample where the information in the file was inconsistent with that in the ACMS. Specifically, there were sampled cases reviewed that were reported in the CSR data submission as PAI cases but should have been reported as staff cases, as the clients were only provided assistance by LSEM staff. *See* Case No. 50-09-09391, which is a closed 2010 Saginaw PAI case where the LSEM staff provided legal advice to the client. LSEM attempted to refer the case to a PAI attorney but lost contact with the client. This case should have been closed as a staff case since the client was only provided assistance by an

LSEM staff attorney. *See also* Case No. 70-09-07196, which is a closed 2009 Midland PAI case where the LSEM staff provided legal advice to the client. This case was never referred to a PAI attorney and assistance was only provided by an LSEM staff attorney. Therefore, the case should have been closed as a staff case. *See also* Case No. 30-09-02028, which is a closed 2009 Port Huron PAI case where assistance was only provided by the LSEM staff. No legal assistance was provided by the PAI attorney to the client; as such, this case should have been closed as a staff case. *See also* Case No. 30-09-02475, which is a closed 2009 Port Huron PAI case where assistance was only provided by the LSEM staff. No legal assistance was provided by the PAI attorney to the client; as such, this case should have been closed as a staff case. *See also* Case No. 30-10-03607, which is a closed 2010 Port Huron PAI case where assistance was only provided by the LSEM staff. No legal assistance was provided by the PAI attorney to the client. Therefore, this case should have been closed as a staff case.

Additionally, there were a limited number of cases where the information included on the computer generated case list did not match the information in the case file. *See* Case No. 10-08-07046, a closed 2009 case. The ACMS indicates that this case was opened October 15, 2008 and closed December 14, 2009 utilizing closing code “K,” Other; however, a review of the case file indicates that the case file was closed utilizing closing code “B,” Limited Action. *See also* Case No. 10-08-05718, a closed 2009 case. The ACMS indicates that this case was opened August 25, 2008 and closed December 21, 2009 utilizing closing code “K,” Other; however a review of the case file indicates that the case file was closed utilizing closing code “B,” Limited Action. *See also* Case No. 70-10-06601, a closed 2010 case. The ACMS indicates that this case is open; however, a review of the case file indicates that this case was closed November 2, 2010 utilizing closing code “B,” Limited Action. *See also* Case No. 70-10-05618, a closed 2010 case. The ACMS indicates that this case is open; however, a review of the case file indicates that this case was closed September 16, 2010 utilizing closing code “A,” Counsel and Advice.

The DR recommended that LSEM review PAI and staff cases upon case closure to ensure that the proper case designation is selected in the automated case management system. The DR further recommended that LSEM, upon case closure, ensure that the case information contained in the case file corresponds with the information in the ACMS.

In its response to the DR, LSEM did not offer any comment on this recommendation.

Finding 2: LSEM’s intake procedures do not fully support the program’s compliance related requirements.

The intake procedures of all offices were assessed by interviewing the primary intake staff persons responsible for conducting intake screenings and Managing Attorneys, and observing intake activities on site. The interviews revealed that the intake procedures performed by the intake staff do not fully support the program’s compliance related requirements with respect to obtaining written citizenship attestations for walk-in clients, performing conflict checks during the intake process, and screening for prospective income. Additionally, none of the intake staff interviewed was fully aware of the program’s income and asset policy. A description of each intake model is provided below, followed by a description of specific findings.

Walk-in or In-Person Intake Procedures

LSEM uses Pika, a web-based case management system, as its ACMS. The standard walk-in or in-person intake procedure is as follows: initially, the intake staff establishes that the applicant's legal services requirement is within LSEM's priorities. Once this determination is made, the applicant's eligibility information is input directly into the ACMS. One office uses a manual intake form for walk-in applicants and then inputs the information obtained into the ACMS after reviewing its content with the applicant. The remaining offices input the eligibility information directly into the ACMS during the intake screening. During this process, the applicant's income/asset eligibility, citizenship status, and legal issue(s) are verified. The system does not have any defaults in fields which are critical to eligibility determination. A few of the intake staff persons interviewed stated that they do not obtain a signed citizenship attestation from a walk-in applicant at this point. If the applicant appears to be ineligible based on the reported income or assets, most the intake staff persons stated that they would inform the applicant that they are not eligible for services. Others indicated that they would still complete the intake interview and would have the attorney make the decision to accept or reject the case. Many of the branch intake staff was unaware of the authorized exceptions to the income/asset guidelines, or that waivers are statutorily permitted for applicants whose income does not exceed 200% of the Federal Poverty Guidelines (FPG). The program uses a spend-down policy for its exception to general income guidelines. The exceptions listed in the ACMS are employment related expenses, fixed debts and obligations, medical expenses, age and health expenses, and other. In order for an applicant to be income eligible, the exception factors are applied to reduce the applicant's income. In all but one office, only the applicant's net income (their gross income minus the applicable deductions) is documented in the ACMS.

If the applicant appears to be eligible for services, and the case is an emergency, the intake staff person accepts the case, schedules a meeting between the applicant and an available attorney, and creates a physical case file with the corresponding ACMS case number. The applicant then meets with the attorney, who provides legal assistance.

If the applicant appears eligible for services, and their case is not an emergency, then the applicant is informed that their case will need to be accepted for representation and they will be notified whether the program declines or agrees to accept the applicant's case. The attorneys at each branch office meet with their Managing Attorney weekly to determine which cases will be accepted and rejected. At the conclusion of the meeting, applicants are informed, via a telephone call from the intake worker and/or a letter, as to whether their case will be accepted or rejected.

Once the staff attorney has ceased work on a client's case, the case is closed and, if appropriate, a closing letter is sent out to the client. A compliance checklist is completed for each case that is closed. Once the attorney has closed the case, the Managing Attorney reviews the closed file, verifies that the case closure code is accurate, and evaluates the compliance checklist.

Telephone Intake Procedures

Branch offices are open to accept telephone and walk-in intake from 9:00 a.m. to 7:00 p.m. on Mondays and from 9:00 a.m. to 5:00 p.m. Tuesday to Thursday. The office remains open all day by allowing staff to take breaks on a staggered time frame. The intake procedure for telephone applicants is virtually identical to the walk-in intake procedure, with respect to the eligibility screening. Intake staff persons stated that they rarely need to do call-backs.

The simulated ACMS intake screenings for all offices revealed that program-wide duplicate checks were performed in the ACMS system during the intake screening, after the applicant provided their name and all relevant party information. Some offices conduct conflict checks at the onset of the intake process and others conduct a conflict check after financial eligibility has been determined. Every intake staff person interviewed indicated that they only conduct a conflict check in cases such as divorce, custody, or landlord tenant dispute.

Reasonable Income Prospects Screening: During intake, most intake staff interviewed reported that they rarely inquire into the reasonable income prospects of applicants, even though there is a specific question for reasonable income prospects screening in the ACMS system.

Citizenship and Eligible Alien Status Screening: Intake staff demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. Intake staff persons verify citizenship status during the intake screening; however, most do not obtain a citizenship attestation from walk-in applicants.

Most of the intake staff interviewed in the branch offices did not demonstrate an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien, and exclusion of all assets, other than those of the victim, from consideration during the financial eligibility screening.

Income Screenings: Interviews with intake staff revealed that intake staff is aware of the income ceilings set by LSEM. The intake staff expressed an understanding that an applicant will be considered eligible if their income is under 125% of the FPG. If the applicant's income is between 125% and 200% of the FPG, then the intake staff determines if any exceptions can be applied to reduce the client's net income so that it is below 125% of FPG. Intake staff in most branch offices were unaware of the authorized exceptions to the income guidelines, as enumerated in 45 CFR § 1611.5(a)(4).

Asset Screenings: Interviews revealed that intake staff is not familiar with LSEM's asset limits and does not have an understanding of the categories of assets that should be included and excluded from asset eligibility determination.

Group Eligibility: Intake staff indicated they do not receive group applicants. One attorney in a branch office conducts group eligibility determination for that specific branch office only. No

other offices conduct group eligibility screening. The interview with that attorney revealed that groups are screened in accordance with the requirements of 45 CFR § 1611.6.

Outreach: Some of the branch offices conduct outreach at various locations. All offices that participate in outreach pre-screen the applicants through the regular intake process.

Case Acceptance and Oversight: Once intake is completed and the applicant is determined to be eligible to receive services, they are either scheduled to attend a pro se clinic or their case is reviewed during case acceptance meetings. If the case is rejected, the applicant is sent a rejection letter. If the case is accepted, it is assigned to an attorney and the client is contacted by that attorney. When a case is ready to be closed, the attorney handling the case will close the case. The Managing Attorney reviews all closed cases.

Based on the above stated findings, the DR indicated that LSEM should ensure that every walk-in applicant is appropriately screened in accordance with the requirements of 45 CFR Part 1626 and a written citizenship attestation is obtained from all walk-in applicants when applicable.

The DR further indicated that LSEM should ensure that an applicant's gross income is recorded in the ACMS in all cases and ensure that intake staff screen for reasonable income prospects as required by 45 CFR § 1611.5(a)(4)(i), which mandates that LSEM inquire into every applicant's reasonable income prospects during intake.

The DR also indicated that LSEM should ensure that all intake staff accurately apply the elements of 45 CFR § 1626.4, Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, to otherwise ineligible aliens seeking legal assistance.

Additionally, the DR stated that LSEM should ensure that all intake staff accurately apply the elements of 45 CFR § 1611.5 and the procedures enumerated therein for applying authorized exceptions when an applicant is over-income.

Finally, the DR stated that LSEM should ensure that all intake staff accurately applies LSEM's asset policy and the procedures associated with determining whether the asset ceiling has been reached.

In its response to the DR, LSEM stated that all 5 of the above-mentioned required actions will be addressed through training sessions to be conducted in each office.

Finding 3: With a few exceptions, sampled cases evidenced that LSEM maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG). Additionally, LSEM's financial eligibility policy does not comply with 45 CFR §§ 1611.5 and 1611.6.

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.⁴ See 45 CFR § 1611.3(c)(1) and 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) and 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.

LSEM maintains 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 poverty guidelines. There were two (2) cases reported to LSC where the income eligibility documentation was not obtained from the client. See Case No. 10-08-05183, and Case No. 10-10-00895, which are closed 2009 and 2010 Flint cases that were funded with non-LSC funds and reported to LSC in LSEM's CSR data submission. Income and asset eligibility information was not obtained from the clients in either of these cases; however, both cases were erroneously reported to LSC.

At the time of the on-site review, LSEM did not comply with 45 CFR §§ 1611.5 and 1611.6. With respect to 45 CFR § 1611.5(a), LSEM's financial eligibility policy indicated that if a potential client has income in excess of 125%, but less than 200% of the FPG, that client shall be eligible if the following factor is present:

"The Executive Director or designee finds that a potential client has a case of sufficient significance to the client community or the individual client..."

45 CFR Part 1611 does not authorize financial eligibility pursuant to a finding that the applicant has a significant case. The DR advised that this clause should be removed, and may be replaced with one of the enumerated factors detailed in 45 CFR § 1611.5.

⁴ A numerical amount must be recorded, even if it is zero. See CSR Handbook (2008 Ed.), § 5.3.

Similarly, LSEM's financial eligibility policy indicated that if a potential client has income in excess of 125%, but less than 200% of the FPG, that client shall be eligible if any of the following factors is present:

"If a potential client or family has an income in excess of 200% of the Federal Poverty Level but almost all of that money goes to pay medical or nursing home expenses..."
"Notwithstanding, the absolute income limit of 200% of the Federal Poverty Income Guidelines the Executive Director shall have the discretion to accept a potential client for service if the potential client's gross income is primarily committed to medical or nursing home expenses."

45 CFR Part 1611.5(a)(2) provides that an applicant will be deemed financially eligible if "...the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for services." (Emphasis added) The above-referenced clauses in LSEM's financial eligibility policy must be revised to incorporate the underlined language.

LSEM's financial eligibility policy did not comply with 45 CFR § 1611.6, which requires a demonstration that the following has been accomplished prior to providing representation to a group client:

1. The group must provide information showing that it lacks and has no practical means of obtaining funds to retain private counsel.
2. The group is primarily comprised of individuals who would be financially eligible for LSC-funded assistance *or* the group's principal activity is delivery of services to persons in the community who would be financially eligible for LSC-funded legal assistance.
3. The program must consider all of the resources available to the group, such as the group's income, income prospects, assets and obligations, prior to making a decision to represent the group.
 - i. In determining whether to accept a group that is composed of individuals who would be financially eligible, the program must determine that the financial and/or socioeconomic characteristics of the group members are consistent with those persons who are financially eligible for LSC-funded assistance.
 - ii. In determining whether to accept a group whose principal activity is delivery of services to financially eligible members of the community, the program must determine that the financial and/or socioeconomic characteristics of the members of the community are consistent with those persons who are financially eligible for LSC-funded assistance.

4. If, after completing the above steps, the program decides to represent the group, the program must collect information that reasonably demonstrates that the group meets the financial eligibility criteria.

At the time of the on-site review, LSEM's financial eligibility policy did not contain a recitation that indicates that group clients will be deemed financially eligible if 45 CFR §§ 1611.6 and 1611.7 have been complied with. The DR directed that LSEM's policy should be revised to reflect a group financial eligibility policy that is consistent with the requirements of 45 CFR §§ 1611.6 and 1611.7.

Based on the discussion above, LSEM was directed to:

- Ensure that LSEM's financial eligibility policy is revised to reflect that in those cases where an applicant has income in excess of eligibility guidelines, that applicant shall be eligible only if one or more of the factors enumerated in 45 CFR Part 1611.5 are present.
- Ensure that LSEM's financial eligibility policy is revised to reflect that in those cases where an applicant has an income that is primarily committed to nursing home or medical expenses, the applicant shall be deemed financially eligible if excluding such portion of the applicant's income which is committed to medical or nursing home expenses would render the applicant financially eligible for services.

In its response to the DR, LSEM indicated that the Board adopted a new income eligibility policy at its September meeting. LSEM included a copy of its new income eligibility policy as an attachment to its comments to the DR. However, the revised policy is still not compliant with 45 CFR § 1611.5(a). Section C-8 of LSEM's financial eligibility policy indicates that if a potential client has income in excess of 125%, but less than 200% of the FPG, the applicant shall be eligible if the following factor is present:

“The Executive Director or designee finds that an applicant has a case of sufficient significance to the client community or the individual client...”

45 CFR Part 1611 does not authorize financial eligibility pursuant to a finding that the applicant has a significant case. This clause should be removed, and may be replaced with one of the enumerated factors detailed in 45 CFR § 1611.5.

Section C-9 of LSEM's financial eligibility policy indicates that if a potential client has an income between 125% and 200%, or exceeds 200% of the FPG, that client shall be eligible if the following factor is present:

“If an applicant or family has an income in excess of 200% of the Federal Poverty Level but almost all of that money goes to pay medical or nursing home expenses...”

Similarly, Section F of LSEM's financial eligibility policy indicates that if a potential client has an income that exceeds 200% of the FPG, the client shall be eligible if the following factor is present:

Notwithstanding the absolute income limit of 200% of the Federal Poverty Guidelines the Executive Director shall have discretion to accept a potential client for service if the potential client's gross income is primarily committed to medical or nursing home expenses.

45 CFR Part 1611.5(a)(2) provides that an applicant will be deemed financially eligible if “...the applicant’s income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant’s income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for services.” (Emphasis added) The above-referenced clauses in LSEM’s financial edibility policy must be revised to incorporate the underlined language.

As such, LSEM is directed to ensure that Required Corrective Action Nos. 6 and 7 are completed and to provide this office of evidence of that fact when the actions are completed.

Required Corrective Action No. 8 directed LSEM to ensure that its financial eligibility policy is revised to include a group financial eligibility policy that is consistent with the requirements of 45 CFR §§ 1611.6 and 1611.7.

In its response to the DR, LSEM included a copy of its newly adopted group eligibility policy. This policy is in compliance with 45 CFR §§ 1611.6 and 1611.7.

Finding 4: With a few exceptions, sampled cases evidenced that LSEM maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4. However, LSEM’s financial eligibility policy does not comply with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e).

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.⁵ *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

⁵ 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.

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.

Sampled case files reviewed evidenced two (2) cases that were reported to LSC in LSEM's CSR data submission; where the asset eligibility documentation was not obtained from the client and input into the case file in these cases. *See* Case Nos. 10-08-05183 and 10-10-00895, which are closed 2009 and 2010 Flint cases that were funded with non-LSC funds and reported to LSC in LSEM's CSR data submission. These are the same two (2) case files that were noted in the previous finding, where income eligibility information was not included in the case file. Asset eligibility information was also not obtained from the clients in these cases; however, both cases were reported to LSC, as stated above.

At the time of the on-site review, LSEM continued to utilize the terms "liquid asset" and "non-liquid asset" in its determination of financial eligibility. While LSEM's policy definition of "liquid asset" conformed with the definition of asset, as defined in 45 CFR § 1611.2(d), "non-liquid assets" are considered assets and are counted towards the asset ceiling. The DR directed LSEM that the policy should be revised to ensure that, pursuant to 45 CFR §§ 1611.3(d)(1) and 1611.2(d), only non-excludable assets that are both readily convertible to cash and available to the applicant are considered when determining whether the asset ceiling has been reached.

With respect to 45 CFR § 1611.3(d)(1) and (e), LSEM's financial eligibility policy indicated that the following will not be considered assets and will be exempt from all asset calculations:

An individual's first car.
Personal and household effects.
Assets excluded under the Food Stamp, FIP or SSI programs.
Individual Development Accounts.

The list of excludable assets found in 45 CFR § 1611.3(d)(1) is an exhaustive list and cannot be added to. As such, the DR directed that the exempt asset list in LSEM's financial eligibility policy must be revised to include only those items listed in 45 CFR § 1611.3(d)(1). If an asset is deemed excludable pursuant to it being exempt from attachment per a State and/or Federal law, the policy should reflect the specific assets that are exempt, along with a recitation of whether State and/or Federal law authorizes the exemption.

At the time of the on-site review, LSEM's financial eligibility policy did not comply with 45 CFR § 1611.3(e), which requires the adoption of an asset policy that excludes assets of a perpetrator of domestic violence from being included in the asset total of a client who is the victim of domestic violence. An asset policy should include a statement that, pursuant to 45 CFR § 1611.3(e), when assessing the assets of a victim of domestic violence, only the assets of the applicant's household, other than those of the alleged perpetrator, shall be considered and that jointly held assets between the victim/household member and the alleged perpetrator shall not be considered.

Based on the discussion above, the DR required LSEM to:

- Ensure that LSEM’s asset policy is revised to reflect that only assets, as defined in 45 CFR § 1611.2(d), are considered when determining whether the asset ceiling has been reached.

In its response to the DR, LSEM submitted a copy of its newly adopted asset eligibility policy. The newly adopted policy is in compliance with 45 CFR § 1611.2(d).

- Ensure that LSEM’s financial eligibility policy is revised so that the exempt asset list includes only those items listed in 45 CFR § 1611.3(d)(1).

LSEM’s newly adopted asset policy lists “personal and household effects” and “individual development accounts” as assets that are exempt from calculation. However, these assets are not listed 45 CFR § 1611.3(d)(1), which contains the exhaustible list of excludable assets. If an asset is deemed excludable pursuant to it being exempt from attachment per a State and/or Federal law, the policy should reflect the specific assets that are exempt, along with a recitation of whether State and/or Federal law authorizes the exemption. As such, LSEM is directed to ensure that Required Corrective Action No. 10 is completed and to provide this office of evidence of such completion.

- Ensure that LSEM’s financial eligibility policy is revised to reflect that, pursuant to 45 CFR § 1611.3(e), when assessing the assets of a victim of domestic violence, only the assets of the applicant’s household, other than those of the alleged perpetrator, shall be considered and that jointly held assets between the victim/household member and the alleged perpetrator shall not be considered.

In its response to the DR, LSEM submitted a copy of its newly adopted asset eligibility policy. The newly adopted policy is in compliance with 45 CFR § 1611.3(e).

Finding 5: LSEM is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens), as one (1) case file reviewed failed to contain a required written citizenship attestation. Additionally, LSEM is in non-compliance with the documentation requirements of CSR Handbook (2008 Ed.), § 5.5.

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.⁶ 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.

Sampled cases evidenced non-compliance with the requirements of 45 CFR § 1626.6. There was one (1) sampled case file that failed to contain a citizen attestation when required. *See* Case No. 70-11-01722, which is a closed 2011 Midland case where the attorney met with the client in person. However, the file did not contain a signed citizenship attestation.

Additionally, there were a significant number of sampled case files reviewed where the citizenship attestation form contained in the file did not comply with the requirements of the CSR Handbook (2008 Ed.), § 5.5. *See* Case Nos. 50-10-05745, an open case; 50-09-04235, an open case; 50-11-02017, an open case; 70-10-04093, an open case; 70-10-06260, an open case; 70-10-00357, an open case; 30-11-02215, an open case; 30-08-08342, an open case; 30-11-02166, an open case; 30-10-08705, an open case; 50-09-06669, a closed 2009 case; 50-09-05485, a closed 2009 case; 50-10-08214, a closed 2010 case; 50-10-08106, a closed 2011 case; 50-10-08121, an open case; 50-10-05737, an open case; 70-10-02218, a closed 2010 case; 70-11-00983, a closed 2011 case; 30-09-07110, a closed 2009 case; 10-10-07528, a closed 2011 case; 10-10-03330, a closed 2011 case; 50-11-01329, a closed 2011 case; 50-10-07930, a closed 2011 case; 50-09-08858, a closed 2011 case; 50-10-01314, a closed 2011 case; and 70-08-07324, a closed 2011 case.

The case notes in all of these cases indicate that the cases were opened after January 1, 2008, and that there has been in person contact between the client and an LSEM staff worker and/or staff attorney. The citizenship attestations contained in these case files did not conform to the requirements of the CSR Handbook (2008 Ed.), § 5.5, which requires that the citizenship attestation contain the following statement on a separate document or a separate signature line: "I am a citizen of the United States: Signature of applicant Date: _____." With respect to the aforementioned cases, the citizenship attestation was not on a separate line or in a separate document, but was included in the retainer agreement. Therefore, LSEM is in non-compliance with the documentation requirements of CSR Handbook (2010 Ed.), § 5.5.

⁶ *See* Kennedy Amendment at 45 CFR § 1626.4.

While on-site, the Executive Director indicated that LSEM will cease using the citizenship attestation included in the retainer agreement and would ensure that the citizenship attestation utilized subsequent to the visit would comply with the documentation requirements of CSR Handbook (2008 Ed.), § 5.5.

Lastly, sampled cases reviewed evidenced one (1) case that contained an undated citizenship attestation. *See* Case No. 50-09-04235, which is an open case that was opened June 3, 2009. The case notes indicate that there has been in person contact between the client and an LSEM staff worker and/or staff attorney. While there was a signed citizenship attestation included in the file, the attestation was not dated.

The DR directed LSEM to ensure that all case files contain written citizenship attestations pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.), § 5.5, where appropriate. OCE recommended that LSEM provide staff with training concerning these policies.

In its response to the DR, LSEM stated that this required action will be addressed through training sessions to be conducted in each office. Additionally, LSEM submitted a copy of its newly revised citizenship attestation, which is compliant with the documentation 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).

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).

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.⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LSEM is in substantial compliance with the requirements of 45 CFR § 1611.9. There were a limited number of cases reviewed from the sample that contained an insufficient retainer agreement. *See* Case No. 10-10-02154, which is a closed 2010 Flint case in which the retainer agreement states the subject matter of the case is divorce; however, the retainer agreement did not identify the scope of services that LSEM was to provide to the client. *See also* Case No. 10-09-05737, which is a closed 2010 Flint case in which the retainer agreement states the subject matter of the case is divorce; however, the retainer agreement did not identify the scope of services that LSEM was to provide to the client. *See also* Case No. 50-09-06912, which is a

⁷ 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.

closed 2009 Saginaw case in which the retainer agreement states that the scope of services to be provided by LSEM is to investigate social security issue. However, the attorney actually represented the client at an administrative hearing. *See also* Case No. 50-10-01401, which is an open Saginaw case in which the retainer agreement states the subject matter of the case is bankruptcy and foreclosure. However, the retainer agreement did not identify the scope of services that LSEM was to provide to the client. *See also* Case No. 50-11-00007, which is an open Saginaw case in which the retainer agreement states the subject matter of the case is bankruptcy. However, the retainer agreement did not identify the scope of services that LSEM was to provide to the client. *See also* Case No. 50-10-01457, which is an open Saginaw case in which the retainer agreement states that the scope of services to be provided by LSEM is to investigate Supplemental Security Income issue; however, the attorney actually represented the client at an administrative hearing.

The DR recommended that LSEM review all case files required to have a retainer agreement to verify that all agreements contain a detailed scope and subject matter of the representation.

In its response to the DR, LSEM did not offer any comment on this recommendation.

Finding 7: 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).

Case files reviewed indicated that LSEM is in compliance with the requirements of 45 CFR Part 1636.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

Prior to the visit, OCE was provided a list of LSEM’s priorities. None of the case sample files reviewed revealed legal issues that were outside of LSEM’s priorities. As such LSEM is in compliance with 45 CFR Part 1620.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 9: Sampled cases evidenced non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were numerous case files which contained no description of the 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.

LSEM has several form letters and informational packets for different legal issues (e.g., divorce, wills, and bankruptcy). In many instances, once eligibility has been determined, LSEM staff will send a form letter to the client containing general information about the client’s legal issue, along with questionnaires to be completed by the client prior to the client’s meeting with the attorney. The letter and questionnaires do not contain a legal analysis that is tailored to the client’s factual situation, but are standard forms wherein the only information that is altered is the client’s name, address, and the “return by” date. LSEM considers the content of the letter and questionnaires

legal advice and has a policy of reporting these cases to LSC with a closing code “A,” Counsel and Advice, even if no additional action is taken in the case after the standard forms are sent out.

Similarly, LSEM has a form letter that is sent to clients once their case has been accepted for *pro bono* referral. Once eligibility has been determined, the form letter is sent, along with *pro bono* forms to be completed by the client. The form letter and forms to be completed do not contain a legal analysis that is tailored to the client’s factual situation, but are standard letters where the only information that is altered is the client’s name and address.

Pursuant to the CSR Handbook (2008 Ed.), § 2.1(d), a case, for the purpose of reporting it in the CSR submission, must include documentation of the provision of legal assistance. Section 2.2 of the CSR Handbook (2008 Ed.) states that legal assistance is “...specific to the client’s unique circumstances and involves a legal analysis that is tailored to the client’s factual situation.” It further provides that legal assistance “...involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented.” Conversely, CSR Handbook (2008 Ed.), § 2.3 defines legal information as “the provision of substantive information not tailored to address a person’s specific legal problem. As such, it is general and does not involve applying legal judgment and does not recommend a specific course of action.”

In applying the CSR definitions of legal advice and legal information, it appears that the initial client letter and the questionnaires/forms to be completed constitute legal information, not legal advice. The information being presented to the client is substantive and is not tailored to the client’s specific legal issue.

Therefore, LSEM is not in compliance with CSR Handbook (2008 Ed.), § 5.6 as there were several cases reviewed from the sample that were closed with the closing code “A,” Counsel and Advice where the clients were sent questionnaires that were to be completed prior to attending a clinic, but failed to attend the clinic; in these cases, no further advice was given, nor was any additional contact made with the client. *See* Case Nos. 10-09-04227, 10-09-02296, 10-10-05647, 10-10-01188, 10-10-07651, 10-10-08631, 50-09-03512, 50-10-06388, 70-09-06906, and 70-10-02160.

Additionally, there was a significant number of case files reviewed from the sample with no documentation of legal advice or insufficient legal advice provided in the case file. *See* Case No. 10-10-04545, a closed 2010 Flint case that contained no documentation of legal advice given. *See also* Case No. 10-08-07087, a closed 2009 Flint case that was referred to a PAI attorney. In this case, the client never met with, nor was advised by, the attorney. Additionally, no advice was provided to the client prior to the referral to the PAI attorney. *See also* Case No. 70-09-02353, a closed 2009 Midland case where the documented legal advice was, “advised on claim and delivery.” Additional detail is required in the case notes specifying the nature of the legal advice provided in order to consider this sufficient legal advice. *See also* Case No. 70-09-09311, a closed 2010 Midland case where the client’s bank refused to adjust the client’s mortgage to avoid foreclosure. LSEM advised client to contact a mortgage counselor. No additional notes were in the file. Solely referring a client to an outside agency does not rise to the level of legal advice. *See also* Case No. 70-09-06497, a closed 2009 Midland case where the LSEM attorney

referred client to the Michigan Department of Civil Rights. No additional notes were in the file. Solely referring a client to an outside agency does not rise to the level of legal advice.

See also Case No. 10-08-05718, a closed 2009 Flint case. A review of the case file indicated that this case was opened August 25, 2008 and closed December 21, 2009 utilizing closing code “K,” Other . The case file indicates the applicant was provided a standard letter regarding obtaining a divorce in Michigan. The letter did not contain any advice, as it was a template provided to individuals seeking a divorce. The file also indicated the applicant failed to attend several scheduled divorce clinics. There were no other notations in the file regarding other action taken on behalf of this applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 10-10-05211, a closed 2010 Flint Case. A review of the case file indicated that this case was opened July 23, 2010 and closed September 27, 2010 utilizing closing code “K,” Other. The case notes indicate that the applicant was provided a general letter regarding obtaining a divorce while maintaining custody of a minor child. The letter did not contain any advice, as it was a template that was provided to individuals seeking a divorce with a minor child. There were no other notations in the file regarding other action taken on behalf of the applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 10-10-07680, a closed 2010 Flint case. A review of the case file indicated that this case was opened November 3, 2010 and closed December 28, 2010 utilizing closing code “A,” Counsel and Advice. The case notes indicated that the applicant was provided a general letter regarding obtaining a divorce with children and the statutory waiting period in Michigan. The letter did not contain any advice, as it was a template provided to individuals seeking a divorce. There were no other notations in the file regarding other action taken on behalf of the applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 50-10-04806, a closed 2010 Saginaw case. A review of the case file indicated this case was opened July 8, 2010 and closed August 18, 2010 utilizing closing code “A,” Counsel and Advice. The case notes indicate that a divorce questionnaire was sent to the applicant, but the applicant never returned the completed questionnaire. There were no other notations in the file regarding other action taken on behalf of the applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 50-11-00177, a closed 2011 Saginaw case. A review of the case file indicated this case was opened on January 7, 2011 and closed February 23, 2011 utilizing closing code “A,” Counsel and Advice. The case notes indicate that a divorce questionnaire was sent to the applicant, but the applicant never returned the completed questionnaire. There were no other notations in the file regarding other action taken on behalf of the applicant. The case review intermediary stated that the file did not sufficiently document the legal advice provided and therefore was not a case. *See also* Case No. 50-11-00547, a closed 2011 Saginaw case. A review of the case file indicated this case was opened January 24, 2011 and closed March 24, 2011 utilizing closing code “A,” Counsel and Advice. The case notes indicate that the applicant completed a divorce questionnaire. There were no other notations in the file regarding other action taken on behalf of the applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 50-10-06759, a closed 2011 Saginaw case. A review of the case file indicated this case was opened September 21, 2010 and closed January 12, 2011 utilizing closing code “A,” Counsel and Advice. The case notes indicate that the applicant was provided a divorce questionnaire. There were no other notations in the file regarding other action taken on behalf of the applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 50-11-00038, a closed 2011 Saginaw case. A review of the case file indicated this case was

opened January 4, 2011 and closed February 22, 2011 utilizing closing code “A,” Counsel and Advice. The case notes indicate that the applicant was provided a *pro se* divorce packet. There were no other notations in the file regarding other action taken on behalf of the applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 50-11-01151, a closed 2011 Saginaw case. A review of the case file indicated this case was opened February 23, 2011 and closed April 6, 2011 utilizing closing code “A,” Counsel and Advice. The case notes indicate the applicant was provided a divorce packet and subsequently ceased communication with the program office. There were no other notations in the file regarding other action taken on behalf of the applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 70-09-02596, a closed 2009 Midland case. A review of the case file indicated this case was opened April 6, 2009 and closed the same day utilizing closing code “B,” Limited Action. The case notes indicate that the client was sent a standard divorce letter. The letter did not contain any advice, as it was a template provided to individuals seeking a divorce. There were no other notations in the file regarding other action taken on behalf of the applicant. As such, the file did not contain documentation of legal advice. *See also* Case No. 30-09-00817, a closed 2009 Port Huron case. A review of the case file indicated this case was opened February 3, 2009 and closed February 26, 2009 utilizing closing code “A,” Counsel and Advice. The case notes indicate that the client was sent a standard letter explaining custody procedures. There were no other notations in the file regarding other actions taken on behalf of the applicant. As such, the file does not contain sufficient document of the provision of legal advice. *See also* Case No. 30-07-01342, a closed 2010 Port Huron case. A review of the case file indicated this case was opened February 16, 2007 and closed March 23, 2010 utilizing closing code “K,” Other. There were no notations in the file regarding any actions taken on behalf of the applicant. As such, the file does not document the legal advice and/or legal service provided to the applicant. None of these case files, nor other case files absent documentation of legal advice, should have been reported to LSC in CSR reports.

LSEM was directed to ensure that each case reported to LSC contains a description of the legal assistance provided to the client. Cases lacking documentation of legal assistance should be deselected from future CSR reports.

In its response to the DR, LSEM stated that this will be addressed through training sessions conducted in each office; however, LSEM further noted that it disagreed with this required action. LSEM noted that there are a total of 364 variations of the aforementioned divorce packet that can be tailored to fit the circumstances of a client’s case. For instance, there are divorce packets that are designed to be filled out when the client has children, lives in a specific county, has a spouse who has been incarcerated, etc. LSC considered LSEM’s argument and has concluded that simply picking a variation of a specific packet for the client to complete does not constitute the provision of legal advice. In order for the delivery of a divorce packet to constitute legal assistance, it must be specific to the client’s circumstances and involve a legal analysis that is tailored to the client’s factual situation. In the above-referenced cases where no legal assistance was noted, clients were sent a packet that may have been tailored to their circumstances, but there was no provision of legal analysis tailored to their factual situation. As such, the requirements of CSR Handbook (2008 Ed.), § 5.6 were not met because the file notes indicated that the clients were only provided with a packet to complete, and did not receive legal

assistance. LSEM must ensure that all cases reported in the CSR contain an adequate description of the legal advice provided,

Finding 10: Sampled cases evidenced that LSEM’s application of the CSR case closure categories is inconsistent with Chapters VIII and IX, CSR Handbook (2008 Ed.).

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2008 Ed.), § 6.1.

The files reviewed demonstrated LSEM’s application of the CSR case closing categories was inconsistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). There were a significant number of cases reviewed that contained incorrect closing codes.

See Case No. 10-08-05835, which is a closed 2009 Flint case. A review of the case file indicated this case was opened August 28, 2008 and closed December 30, 2009, utilizing closing code “L,” Extensive Service. The case notes indicate that the client attended a *pro se* divorce clinic and, with the assistance of a program staff attorney, completed the necessary paperwork in order to obtain a divorce. Pursuant to the requirements of the funding used, the case was held open so that the staff attorney could monitor it and notify the client of any additional needed actions. The case notes did not indicate any other interaction between the client and the program after the *pro-se* clinic. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code “L” is reserved for cases where the program undertook extensive research, preparation of complex legal documents, or extensive on-going assistance to clients who are proceeding *pro-se*. *See also* Case No. 10-08-07729, which is a closed 2009 Flint case. A review of the case file indicated this case was opened November 12, 2008 and closed July 13, 2009, utilizing closing code “K,” Other. The case notes indicate that the client attended a *pro se* divorce clinic and, with the assistance of a program staff attorney, completed the necessary paperwork in order to obtain a divorce. Pursuant to the requirements of the funding used, the case was held open so that the staff attorney could monitor it and notify the client of any additional needed actions. The case notes did not indicate any other interaction between the client and the program after the *pro-se* clinic. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code “K” is reserved for cases that do not fit any of the other CSR case closure categories. *See also* Case No. 10-09-07632, a closed 2010 Flint case. A review of the case file indicated this case was opened September 29, 2009 and closed March 18, 2010 utilizing closing code “L,” Extensive Service. The case notes indicate that the client attended a *pro se* divorce clinic and, with the assistance of a program staff attorney, completed the necessary paperwork in order to obtain a divorce. Pursuant to the requirements of the funding used, the case was held open so that the staff attorney could monitor it and notify the client of any additional needed actions. The case notes did not indicate any other interaction between the client and the program after the *pro-se* clinic. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code “L” is reserved for cases where the program undertook extensive research, preparation of complex legal documents or extensive on-going assistance to clients who are proceeding *pro-se*. *See also* Case No. 10-10-01175, a closed 2010 Flint case. A review of the case file indicated this case

was opened February 17, 2010 and closed December 28, 2010 utilizing closing code “L,” Extensive Service. The case notes indicated the client attended a *pro se* divorce clinic and, with the assistance of a program staff attorney, completed the necessary paperwork in order to obtain a divorce. Pursuant to the requirements of the funding used, the case was held open so that the staff attorney could monitor it and notify the client of any additional needed actions. The case notes did not indicate any other interaction between the client and the program after the *pro-se* clinic. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code “L” is reserved for cases where the program undertook extensive research, preparation of complex legal documents, or extensive on-going assistance to clients who are proceeding *pro-se*. See also Case No. 10-10-02354, a closed 2011 Flint case. A review of the case file indicated this case was opened April 5, 2010 and closed March 28, 2011 utilizing closing code “L,” Extensive Service. The case notes indicate that the client attended a *pro se* divorce clinic and, with the assistance of a program staff attorney, completed the necessary paperwork in order to obtain a divorce. Pursuant to the requirements of the funding used, the case was held open so that the staff attorney could monitor it and notify the client of any additional needed action. As a result, the client was sent a 10-day letter explaining that their case would be closed by the court for inactivity. The case notes did not indicate any other interaction between the client and the program. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code “L” is reserved for cases where the program undertook extensive research, preparation of complex legal documents, or extensive on-going assistance to clients who are proceeding *pro-se*. See also Case No. 10-10-01752, a closed 2011 Flint case. A review of the case file indicated this case was opened March 11, 2010 and closed March 29, 2011 utilizing closing code “L,” Extensive Service. The case notes indicate that the client attended a *pro se* divorce clinic and, with the assistance of a program staff attorney, completed the necessary paperwork in order to obtain a divorce. Pursuant to the requirements of the funding used, the case was held open so that the staff attorney could monitor it and notify the client of any additional needed actions. The case notes did not indicate any other interaction between the client and the program after the *pro-se* clinic. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code “L” is reserved for cases where the program undertook extensive research, preparation of complex legal documents, or extensive on-going assistance to clients who are proceeding *pro-se*. See also Case No. 10-09-01859, which is a closed 2009 Flint case where the client attended the *pro se* divorce clinic on May 20, 2009; this case was closed utilizing closing code “L,” Extensive Service. The program staff attorney assisted the client in completing divorce pleadings. Case review revealed that next action taken by the attorney was on November 24, 2009, when the attorney checked the status of the case through the online service provided by the court. According to the court website, the case had been dismissed sometime prior to that date and no additional work was done for the client. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code “L” is reserved for cases where the program undertook extensive research, preparation of complex legal documents, or extensive on-going assistance to clients who are proceeding *pro-se*. See also Case No. 10-10-00437, which is a closed 2011 Flint case where the client attended a *pro se* divorce clinic on March 30, 2010; this case was closed utilizing closing code “L,” Extensive Service. The program staff attorney assisted the client in completing divorce pleadings. Case review revealed that the case had been reviewed by the court on May 24, 2010. The next notation in the case file indicates that the attorney checked the status of the case and determined it had been dismissed on February 2, 2011. No further action was taken in this case. Therefore, the more appropriate closing code is “B,” Limited Action, as

closing code “L” is reserved for cases where the program undertook extensive research, preparation of complex legal documents or extensive on-going assistance to clients who are proceeding *pro-se*. See also Case No. 10-10-07198, which is a closed 2011 Flint case where the client attended the pro se divorce clinic on December 1, 2010; this case was closed utilizing closing code “L,” Extensive Service. The program staff attorney assisted the client in completing divorce pleadings. Case review revealed that the program staff attorney reviewed the court online system and determined that a divorce was granted on March 8, 2011, at which time the case was closed. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code “L” is reserved for cases where the program undertook extensive research, preparation of complex legal documents or extensive on-going assistance to clients who are proceeding *pro-se*.

See also Case No. 50-10-01362, a closed 2010 Saginaw case. A review of the case file indicated this case was opened February 24, 2010 and closed March 25, 2010, utilizing closing code “K,” Other. The case notes indicate that the client’s legal issue involved a landlord tenant complaint. The staff attorney drafted and sent a letter to the client explaining that the landlord needed access into the apartment in order to complete the repairs. The letter went unanswered, so the case was subsequently closed. Therefore, the more appropriate closing code is “B,” Limited Action, as closing code as closing code “K” is reserved for cases that do not fit into any of the other case closure categories. See also Case No. 50-09-09448, which is a closed 2009 Saginaw case that was closed utilizing the closing code “A,” Counsel and Advice. According to the notes in the case file, the attorney sent a letter to the landlord on the client’s behalf in addition to providing advice to the client; therefore, closing code “B,” Limited Action, is the applicable closing code. See also Case No. 50-11-00679, which is a closed 2011 Saginaw case that was closed utilizing the closing code “A,” Counsel and Advice. The program staff attorney provided legal advice and contacted the City Inspector on the client’s behalf; therefore, closing code “B,” Limited Action, is the applicable closing code. See also Case No. 50-09-04254, which is a closed 2010 Saginaw case that was closed utilizing the closing code “K,” Other. The program staff attorney provided the client advice on the lemon law in Michigan; therefore, the applicable closing code is “A,” Counsel and Advice. See also Case No. 50-09-09011, which is a closed 2010 Saginaw case that was closed with the closing code “K,” Other. The program staff attorney represented the client in court in probate proceedings; therefore, closing code “I(a),” Court Decision: Uncontested, is the applicable closing code. See also Case No. 50-90-02012, which is a 2010 Saginaw case that was closed utilizing the closing code “K,” Other. The program staff attorney provided advice to the client and drafted divorce pleadings; however, the client never returned to receive the documents. As such, the applicable closing code in this case is “A,” Counsel and Advice. See also Case No. 50-09-04802, which is a 2010 Saginaw case that was closed utilizing the closing code “K,” Other. Case review revealed that the client received advice on the Michigan’s lemon law. The case notes did not indicate any other interaction between the client and the program. As such, closing code “A,” Counsel and Advice, is the applicable closing code. See also Case No. 30-07-09060, which is a 2010 Port Huron case that was closed using the closing code “K,” Other. Case review revealed that the program staff attorney provided paternity advice to the client; therefore, closing code “A,” Counsel and Advice, is the applicable closing code.

The DR directed LSEM to ensure proper application of the CSR closing code categories. It was recommended that LSEM provide staff with training regarding the proper usage of CSR closing codes.

In its response to the DR, LSEM stated that this required action will be addressed through training sessions to be conducted in each office.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.) § 3.3 (dormancy and untimely closure of cases).

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases 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).⁸ 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).

Sampled cases reviewed evidenced that LSEM is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3. There were a limited number of cases reviewed from the sample that were either dormant or not timely closed. *See* Case No. X-06-05221, which is a closed 2009 Flint case that was opened on July 13, 2006 and closed on May 20, 2009, under the closing code “B,” Limited Action. The notes in the case file indicate that the last contact with the client was on December 11, 2006; there was no notation as to why the file was kept open after December 11, 2006. As such, this case should have been closed on or before December 31, 2006. *See also* Case No. 10-07-08219, which is a closed 2010 Flint case that was opened on October 25, 2007 and closed on December 17, 2010, under the closing code “A,” Counsel and Advice. The last activity was documented in the case file on October 29, 2007; there was no notation as to why the file was kept open after October 29, 2007. As such, this case should have been closed on or before December 31, 2008. *See also* Case No. 10-10-02037, which is a closed Flint case that was opened on March 23, 2010 and closed utilizing a closing code of “B,” Limited Action, on March 8, 2011. The last activity documented in the case file was on April 19, 2010 and there is no indication in the file as to why the case remained opened into the 2011 reporting year. This case should have been closed on or before December 31,

⁸ 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).

2010. *See also* Case No. 30-06-01107, which is a closed 2009 Port Huron PAI case that was opened on February 10, 2006 and closed on July 9, 2009, under the closing code “I(b),” Court Decision: Contested. According to the notes in the file, there was a court decision entered in the case on June 26, 2006. Subsequently, several status updates were sent to the PAI attorney however, there was never a response until the case was closed in 2009. There is no indication in the file whether any additional work was done for the client after the court decision on June 26, 2006. This case should have been closed on or before December 31, 2007. *See also* Case No. 30-07-09060, which is a closed 2010 Port Huron PAI case that was opened on December 5, 2007 and closed on July 22, 2010, under the closing code “K,” Other. The attorney provided advice to the client sometime in 2007 or 2008. There was no additional contact with the client noted in the case file. This case should have been closed on or before December 31, 2009. *See also* Case No. 03E-30009768, which is a closed 2010 Port Huron PAI case that was opened on December 30, 2003 and closed August 30, 2010, under the closing code “H,” Administrative Agency Decision. According to the notes in the file, there was an administrative hearing in December 2007. Subsequently several status updates were sent to the PAI attorney but there was never a response until August 30, 2010. This case should have been closed on or before December 31, 2008.

The DR directed LSEM to only report timely closed cases in CSR data reports.

It was recommended that LSEM ensure that all cases are timely closed by conducting periodic reviews of case management reports on open and closed cases, particularly those limited service files that remained open for an extended period of time. It was further recommended that LSEM review its list of open cases and mark for rejection and exclude from the CSR data submission all dormant and inactive case files.

In its response to the DR, LSEM stated that this issue will be addressed through training sessions to be conducted in each office. LSEM further commented that, with respect to the timely closing of PAI cases, it can only request that the cases be timely closed by the *pro bono* attorney and cannot guarantee compliance by the *pro bono* attorneys. LSEM further noted that notwithstanding training efforts, compliance cannot be guaranteed due to “human fallibility.”

Finding 12: Sample cases evidenced substantial 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.

Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2; as there was only one (1) case reviewed that was a duplicate. *See* Case No. 10-10-04545, which is a closed 2010 Flint case that should have been deselected. During the case review, it was acknowledged that this case involved a client who had another case in the same reporting year with the same legal issue and same opposing party. No legal assistance was provided to the client in this case; it was the intent of the program to deselect the case but it was mistakenly reported to LSC.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 13: Review of the recipient's policies and the list of attorneys who have engaged in the outside practice of law, revealed that LSEM is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

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 this part, 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 interviews with the Executive Director, Deputy Director, and Director of Litigation, review of the recipient's policies, and the list of attorneys who have engaged in the outside practice of law, LSEM is in compliance with the requirements of 45 CFR Part 1604.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 14: Sampled cases 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.

Sampled files reviewed, interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient's policies indicate that LSEM is not involved in such activity.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

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

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

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

LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

Sampled files reviewed, interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient's policies evidenced compliance with the requirements of 45 CFR Part 1609.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 16: A limited review of LSEM's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in

restricted activities. However, the LSEM donation acceptance letter does not comply with 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 LSEM's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity), with respect to sharing physical space with a non-LSC entity engaged in restricted activities.

LSC regulation 45 CFR § 1610.5(a) provides that "...no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds."

Upon request, a list was generated by LSEM showing all contributions received by LSEM in an amount equaling or exceeding \$250.00 for the years 2009, 2010, and 2011. To satisfy the requirements of 45 CFR § 1610.5(a), it was related that it is LSEM's current procedure to send out a thank-you letter to those donors whose contributions meet or exceed \$250.00. Upon review of the currently used thank-you letter to donors, it was determined that the letter lacked the specific language outlining the conditions and prohibitions that govern contributed funds. Specifically, the letter does not mention that the funds may not be used in any manner inconsistent with the Legal Services Corporation Act or § 504 of Public Law 104-134.

At the exit conference, a sample letter was provided to LSEM management that included the specific language required by 45 CFR § 1610.5(a), in an effort to help the program remedy its current letter. The Executive Director indicated that the program's thank-you letters to donors would immediately be revised to include the required language.

The DR directed LSEM to revise their donor thank-you letter to include the language required by 45 CFR Part 1610.5(a), for those contributions that meet or exceed \$250.00.

In its response to the DR, LSEM stated that this required action has been addressed and a copy of the new donor letter was attached to its response. LSEM's new donor thank-you letter is compliant with the requirements of 45 CFR § 1610.5(a).

Finding 17: LSEM is in substantial compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. In addition, LSEM is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.

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.

Recipients are required to develop a PAI Plan and budget. *See* 45 CFR Part 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet legal needs, and the results of consultation with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. *See* 45 CFR §§ 1614.4(a) and (b).

During the on-site review, LSEM's PAI coordinator and the Executive Director were interviewed.

Intake for PAI cases is conducted in the same manner as all other cases for the program. Cases appropriate for referral to private attorneys are identified during routine case acceptance meetings. At the beginning of each year, participating *pro bono* attorneys are requested to identify the types of cases they are willing to accept for service and the coordinator refers cases based on the reported preferences of the *pro bono* attorneys participating in LSEM's PAI effort. Once a decision has been made to refer a case to PAI, the case is provided to the PAI coordinator who changes the funding coding in the ACMS to reflect the change from staff to PAI case. The PAI coordinator sends out an initial packet, which contains a letter and *pro bono* forms that the applicant is required to complete and send back. Once the packet is completed and returned by the applicant, the applicant is matched with a private attorney, based on the reported preferences of the *pro bono* attorney. The private attorney is often notified that a case will be referred to them prior to the initial referral letter being sent. At times, there may be a need to place an applicant on a wait list for PAI services and a wait list letter is sent to the applicant in those instances. Once an applicant has been matched with a private attorney, an initial referral letter is sent to the applicant and the attorney.

If the PAI attorney is unable to assist the client, the case is sent back to the PAI coordinator to be placed again. It is LSEM's goal to place every PAI case; as such, it will continuously attempt to place a case with a PAI attorney until the client's need for legal assistance has been met.

If the PAI case is one that the coordinator deems will be best assisted by one of the PAI clinics, then the client is sent a letter with an initial packet, which contains *pro bono* forms that the client is requested to complete and send back. Once the packet is completed and returned by the applicant, the coordinator informs the client of the date and time of the clinic, and schedules the applicant to attend one of the *pro se* clinics that are conducted by private and staff attorneys. It is at that time that the coordinator informs the private attorney that the client will be attending the *pro se* clinic. Interviews revealed that on occasion, it is necessary for a staff attorney to fill in at *pro se* clinics. In these instances, the cases are not switched back to staff funding and are, erroneously, reported as PAI cases.

The cases that are referred out for services are tracked by the PAI coordinator. In most cases, with the exception of SSI cases, the PAI coordinator sends a quarterly case status report to each attorney, who is requested to complete and return the report in a timely manner. When processing SSI cases, the coordinator sends an annual update letter. In addition to the status report, the PAI coordinator often attempts to communicate with the attorneys via telephone and electronic mail. Attorneys are requested to return the status report indicating whether they have met with the client and the next steps to be taken in the case. Once the case is closed, a closure notification is received by the PAI coordinator. If the private attorney does not provide the coordinator with closure notification, the coordinator will make repeated attempts to obtain the case closure information via telephone calls, electronic mail correspondence, and online case information through the applicable court electronic filing system. Upon obtaining the case closure information, the PAI coordinator sends out a closing letter to the client and the case is closed with the applicable closing code by the coordinator.

LSEM is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases. There were a limited number of PAI cases that were untimely closed. *See* Case No. 30-06-01107, which is a closed 2009 Port Huron PAI case that was opened on February 10, 2006 and closed on July 9, 2009, under the closing code "I(b)," Court Decision: Contested. According to the notes in the file, there was a court decision entered in the case on June 26, 2006. Subsequently, several status updates were sent to the PAI attorney however, there was never a response until the case was closed in 2009. There is no indication in the file whether any additional work was done for the client after the court decision on June 26, 2006. This case should have been closed on or before December 31, 2007. *See also* Case No. 30-07-09060, which is a closed 2010 Port Huron PAI case that was opened on December 5, 2007 and closed on July 22, 2010, under the closing code "K," Other. The attorney provided advice to the client sometime in 2007 or 2008. There was no additional contact with the client noted in the case file. This case should have been closed on or before December 31, 2009. *See also* Case No. 03E-30009768, which is a closed 2010 Port Huron PAI case that was opened on December 30, 2003 and closed August 30, 2010, under the closing code "H," Administrative Agency Decision. According to the notes in the file, there was an administrative hearing in December 2007. Subsequently several status updates were sent to the PAI attorney but there was never a response

until August 30, 2010. This case should have been closed on or before December 31, 2008. These cases were noted in a previous finding relating to dormancy and untimely closed cases.

For those cases where a staff attorney is the only attorney that provides legal advice to a client at a *pro se* clinic, LSEM must designate each such case as a staff case.

The DR recommended that LSEM conduct periodic reviews of case management reports on open and closed PAI cases to ensure that all PAI cases are timely closed.

In its response to the DR, LSEM stated that this will be addressed through training sessions to be conducted in each office. LSEM further commented that, with respect to the timely closing of PAI cases, it can only request that the cases be timely closed by the *pro bono* attorney and cannot guarantee compliance by the *pro bono* attorneys. LSEM further noted that notwithstanding training efforts, compliance cannot be guaranteed due to “human fallibility.”

Furthermore, LSC regulation 45 CFR Part 1614 requires that the recipient 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.

The Audited Financial Statement (AFS) for the year ending December 31, 2010, reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(a)(2). The reported figure of \$248,308.00 of PAI funds in 2010 represents 15.7% of the total basic field grant, which was \$1,577,580.00. LSEM allocates attorneys’ and paralegals’ direct time associated with PAI activities via service code 07 (PBI) in Pika, and costs are calculated based on base salary divided by annual workable hours (2080 hours), as required by 45 CFR § 1614.3(e)(1)(i). The cumulative PAI calculations for January 1, 2011 through April 30, 2011 were reviewed and tested and were found to be allocated and computed correctly. Also, indirect cost rates were tested and found to be allocated on the basis of reasonable operating data.

As a result of the PAI fiscal review, the DR found that no corrective action needed to be taken, nor were recommendations for improvement suggested.

In its response to the DR, LSEM offered no comment on the remainder of this Finding.

Finding 18: LSEM 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. Documents reviewed evidenced substantial compliance with 45 CFR § 1627.4(a).

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.⁹ 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 \$25,000.00 or less for the direct provision of legal assistance to eligible clients. See 45 CFR §§ 1627.2(b)(1) and (b)(2).

All subgrants must be in writing and must be approved by LSC. In requesting approval, recipients are required to disclose the terms and conditions of the subgrant and the amount of funds to be transferred. Additionally, LSC approval is required for a substantial change in the work program of a subgrant, or an increase or decrease in funding of more than 10%. Minor changes of work program, or changes in funding less than 10% do not require LSC approval, but LSC must be notified in writing. See 45 CFR §§ 1627.3(a)(1) and (b)(3).

Subgrants may not be for a period longer than one year, and all funds remaining at the end of the grant period are considered part of the recipient's fund balance. All subgrants must provide for their orderly termination or suspension, and must provide for the same oversight rights for LSC with respect to subrecipients as apply to recipients. Recipients are responsible for ensuring that subrecipients comply with LSC's financial and audit requirements. It is also the responsibility of the recipient to ensure the proper expenditure of, accounting for, and audit of the transferred funds. See 45 CFR §§ 1627.3(b)(1), (b)(2), (c), and (e).

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, except that payment of membership fees or dues mandated by a governmental organization to engage in a profession is permitted. See 45 CFR § 1627.4. Nor may recipients may make contributions or gifts of LSC funds. See 45 CFR § 1627.5. Recipients must have written policies and procedures to guide staff in complying with 45 CFR Part 1627 and shall maintain records sufficient to document the recipient's compliance with 45 CFR Part 1627. See 45 CFR § 1627.8.

Interviews with the LSEM controller and bookkeeper indicated that non-mandatory membership fees or dues are paid with non-LSC funds. This verbal assurance was corroborated with supporting documentation. The review of the vendor list as well as the sub-ledger account entitled "NLADA," showed that the program uses "120 funds" to pay for non-mandatory membership fees or dues to private or non-profit organizations. Per the list of funding codes, "120 funds" are state funds from the Center for Civil Justice.

With regard to subgrants, LSEM has no subgrant relationships using LSC funds. The review of accounting records did not reveal any subgrants.

At the time of the on-site review, LSEM's policy on subgrants, fees and dues indicated that fees and dues may be paid with LSC funds for bar associations for LSEM employees. Pursuant to 45

⁹ 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.

CFR § 1627.4(b), only the payment of membership fees or dues mandated by a governmental organization to engage in a profession may be paid with LSC funds.

LSEM was directed to revise its policy on subgrants, fees and dues to reflect that, pursuant to 45 CFR 1627.4, only the payment of membership fees or dues mandated by a governmental organization to engage in a profession may be paid with LSC funds.

In its response to the DR, LSEM stated that this item has been addressed by drafting new policies that are scheduled to be reviewed by the Board in November.

Finding 19: LSEM is 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.

A review was conducted of 15 actual case files against their corresponding timekeeping records to determine the accuracy of the time reported as compared to the amount of work performed as disclosed in the case file. The review disclosed that both records compared favorably.

A review was conducted of the following documentation: six (6) advocates' timekeeping records for two (2) weeks in 2009; six (6) advocates' timekeeping records for three (3) weeks in 2010, and six (6) advocates' timekeeping records for one (1) week in 2011. The review revealed that the timekeeping records were electronically recorded and contemporaneously kept. The records

properly documented the time spent on each case, the corresponding matter or supporting activity, and were in full compliance with 45 CFR §§ 1635.3(b) and (c).

There are no recommendations or corrective actions required.

In its response to the DR, LSEM offered no comment on this Finding.

Finding 20: Sampled cases 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 collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.¹⁰ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter10-1 (February 18, 2010).¹¹

The sampled files reviewed did not contain a prayer for attorneys' fees, as such LSEM is in compliance with the requirements of 45 CFR Part 1642. Interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient's policies, further collaborated this finding.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM offered no comment on this Finding.

Finding 21: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). Documents reviewed evidenced substantial compliance with the requirements of 45 CFR Part 1612.

The purpose of this part 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,

¹⁰ The regulations define "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).

¹¹ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

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 and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient's policies, further collaborated this finding.

At the time of the on-site review, LSEM's policy on legislative and administrative advocacy authorized the use of non-LSC funds to respond to requests for comments in a federal or state rulemaking proceeding. Pursuant to 45 CFR § 1612.6(a), only responses to written requests for comments may be authorized.

The DR directed LSEM to revise its policy on legislative and administrative advocacy to authorize the use of non-LSC funds to respond only to written requests for comment in a federal or state rulemaking proceeding.

In its response to the DR, LSEM stated that this item has been addressed by drafting new policies that are scheduled to be reviewed by the Board in November 2011.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient's policies, also confirmed that LSEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations 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).¹²

None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient’s policies, also confirmed that LSEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

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

Recipients may not make available any funds , personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting. *See* 45 CFR § 1632.3.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient’s policies, also confirmed that LSEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

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

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens

¹² 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 reviewed involved defense of any such eviction proceeding. Interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient's policies, also confirmed that LSEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners). Documents reviewed evidenced substantial compliance with 45 CFR Part 1637.

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. Interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient's policies, further collaborated this finding.

At the time of the on-site review, LSEM's policy stated, in part, that "In general, we can assist a person who will be incarcerated for 30 days or less." Pursuant to 45 CFR § 1637.4, the policy must reflect that representation of an incarcerated person is permissible if the client became incarcerated after representation commenced, the representation is expected to be brief, and the representation is likely to continue beyond the period of incarceration.

LSEM was directed to ensure that its policy is revised to reflect that representation of an incarcerated person is permissible if the client became incarcerated after representation commenced, the representation is expected to be brief, and the representation is likely to continue beyond the period of incarceration.

In its response to the DR, LSEM stated that this item has been addressed by drafting new policies that are scheduled to be reviewed by the Board in November.

Finding 27: Sampled cases 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.¹³ This restriction has been contained in all subsequent appropriations acts.¹⁴ This new 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, including documentation, such as community education materials and program literature, indicated program involvement in such activity. Interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient’s policies, also confirmed that LSEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

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

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. No may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

None of the sampled files reviewed involved such activity. Interviews with the Executive Director, Deputy Director, and Director of Litigation, and review of the recipient’s policies also confirmed that LSEM is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or

¹³ *See* Section 504(a)(18).

¹⁴ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

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 conducted further evidenced and confirmed that LSEM 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.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 30: LSEM is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

Interviews with the Executive Director evidenced that LSEM is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decision, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency. A physical review confirmed that these forms were being obtained and maintained as required.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

Finding 31: Documents reviewed evidenced the absence of a policy consistent with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).

Except as provided in 45 CFR §§ 1639.4 and 1639.5, recipients may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. 45 CFR § 1639.6 requires recipients to adopt written policies and procedures to guide its staff in complying with 45 CFR § 1639.

At the time of the on-site review, LSEM's policy on welfare reform provided a history of the welfare reform restriction; it did not set forth a policy to which LSEM staff can adhere to with respect to determining whether or not to represent an applicant with a potential welfare reform issue. The DR directed that LSEM's policy should be revised to include the purpose, definitions and restrictions enumerated in 45 CFR §§ 1639.1, 1639.2 and 1639.3, respectively, as well as identify the permitted representation and exceptions outlined in 45 CFR §§ 1639.4 and 1639.5, respectively.

LSEM was directed to ensure that LSEM's policy on welfare reform is revised to include the purpose, definitions and restrictions enumerated in 45 CFR §§ 1639.1, 1639.2 and 1639.3, respectively, as well as identify the permitted representation and exceptions outlined in 45 CFR §§ 1639.4 and 1639.5, respectively.

In its response to the DR, LSEM stated that this item has been addressed by drafting new policies that are scheduled to be reviewed by the Board in November.

Finding 32: A limited review of LSEM's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2. The review revealed minor weaknesses in the following areas: cash (check) receipts and petty cash.

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 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 effected by an entity's governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Edition).

The Accounting Guide for LSC Recipients provides guidance on all aspects of fiscal operations and 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.

Sixteen (16) bank reconciliations for a general account, an IOLTA account, a restricted account, an investment account, a checking account, and a savings account for the months of February, March, and April of 2011 were reviewed. The review disclosed that the reconciliations of these accounts are being performed monthly and timely.

While on-site, LSEM completed LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System checklist; the completed checklist revealed a need for stricter internal controls in the areas of cash (check) receipts and petty cash. These issues appear to stem from the fact that LSEM has two (2) key individuals who are responsible for the entire accounting operation, including the payroll function, which is done in-house for approximately 35 employees.

Cash (check) receipts: The LSEM controller prepares the monthly bank statement reconciliations and also reviews monthly bank statement reconciliations, along with the Deputy Director. The controller should be entirely removed from the reconciliation review process and an individual other than the controller should assist the Deputy Director in the review of the monthly bank statement reconciliations.

Petty cash: LSEM does not conduct surprise accountings and internal audits of petty cash. This should be done at least every six (6) months for each of the petty cash funds in the Midland and Saginaw offices, as there are no petty cash funds in the remaining branch offices.

The DR recommended that, with respect to cash (check) receipts, the controller not perform both tasks of preparing and reviewing the monthly bank statement reconciliations and that an individual other than the controller review the monthly bank statement reconciliations with the Deputy Director. The DR further recommended that LSEM conduct surprise accountings and internal audits of the petty cash funds in the Midland and Saginaw Offices.

In its response to the DR, LSEM did not offer any comment on this recommendation.

Finding 33: A review of the use of LSEM credit cards disclosed no internal control deficiencies and all charges, with one exception, were proper and supported by adequate documentation.

A random sampling of 11 credit card charges that were incurred in 2009, 2010, and the early part of 2011 was reviewed, and all of the charges, with the exception of one (1) charge, were properly documented with original receipts attached and also coded to the appropriate funding source(s).

No exceptions were found for 2010 and 2011. The undocumented charge of \$617.50 occurred in January of 2009; this item may constitute a questionable cost if the supporting documentation is not provided by LSEM to LSC for review.

The DR directed LSEM to provide a duplicate receipt for the credit card charge of \$617.50, with its comments to the Draft Report, to LSC for review.

In its response to the DR, LSEM provided a duplicate receipt for the credit card charge of \$617.50.

Finding 34: A review of LSEM payments to vendors disclosed certain supporting documentation was withheld pursuant compliance with the Health Insurance Portability and Accountability Act (HIPAA).

A comprehensive list of all vendors with whom LSEM engages in various business transactions was requested for the three (3) years of the CSR/CMS review period; this information was provided by the controller for the years 2009, 2010, and 2011. A certain number of sample transactions from each year were selected for a more in-depth review. In totality, the following 37 transactions were reviewed: two (2) from 2011; 14 from 2010; and 21 from 2009. Of the 21 payments from 2009, only seven (7) were adequately documented with the supporting documentation for the incurred expense that was paid with LSC funds. For the remaining 14 payments from 2009, the supporting documents were withheld pursuant to HIPAA privacy regulations. With respect to the 14 payments from 2010, nine (9) were adequately documented with the supporting documentation for the incurred expense. However, the supporting documentation of the remaining five (5) payments from 2010 was withheld pursuant to HIPAA privacy regulations. Consistent with LSC Grant Assurance No. 10, and the guidance provided by the U.S. Department of Health and Human Services that indicates that certain company health plans are entities that must comply with HIPAA regulations¹⁵, it appears that such records may be withheld consistent with HIPAA.

¹⁵See 45 CFR § 160.102, which states that a “health plan” is an entity required to comply with the regulations of HIPAA. See also, 45 CFR § 160.103, which defines “health plan” as,

“An individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg–91(a)(2)). (1) Health plan includes the following, singly or in combination: (i) A group health plan, as defined in this section. (ii) A health insurance issuer, as defined in this section. (iii) An HMO, as defined in this section...”

See also 45 CFR § 160.103, which defines “group health plan” as,

“... an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (ERISA), 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act (PHS Act), 42 U.S.C. 300gg-91(a)(2)), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that: (1) Has 50 or more participants (as defined in section 3(7) of ERISA, 29 U.S.C. 1002(7)); or (2) Is administered by an entity other than the employer that established and maintains the plan.”

IV. RECOMMENDATIONS¹⁶

1. It is recommended that LSEM review PAI and staff cases upon case closure to ensure that the proper case designation is selected in the automated case management system. It is further recommended that LSEM, upon case closure, ensure that the case information contained in the case file corresponds with the information in the ACMS.

In its response to the DR, LSEM did not offer any comment on this recommendation.

2. It is recommended that LSEM provide staff with training concerning 45 CFR Part 1626 and CSR Handbook (2008 Ed.), § 5.5.

In its response to the DR, LSEM did not offer any comment on this recommendation.

3. It is recommended that LSEM review all case files required to have a retainer agreement to verify that all agreements contain a detailed scope and subject matter of the representation.

In its response to the DR, LSEM did not offer any comment on this recommendation.

4. It is recommended that LSEM provide staff with training regarding the proper usage of CSR closing codes.

In its response to the DR, LSEM did not offer any comment on this recommendation.

5. It is recommended that LSEM conduct periodic reviews of case management reports on open and closed staff and PAI cases, particularly those limited service files that remained open for an extended period of time. It is further recommended that LSEM review its list of open cases and mark for rejection and exclude from the CSR data submission all dormant and inactive case files.

In its response to the DR, LSEM stated that the timely closing of both PAI and staff cases will be addressed through training sessions to be conducted in each office. LSEM further commented that, with respect to the timely closing of PAI cases, it can only request that the cases be timely closed by the *pro bono* attorney and cannot guarantee compliance by the *pro bono* attorneys. LSEM further noted that notwithstanding training efforts, compliance cannot be guaranteed due to “human fallibility.”

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.

6. It is recommended that, with respect to cash (check) receipts, the controller not perform both tasks of preparing and reviewing the monthly bank statement reconciliations and that an individual other than the controller review the monthly bank statement reconciliations with the Deputy Director. It is further recommended that LSEM conduct surprise accountings and internal audits of the petty cash funds in the Midland and Saginaw Offices.

In its response to the DR, LSEM did not offer any comment on this recommendation.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that every walk-in applicant is appropriately screened in accordance with the requirements of 45 CFR Part 1626 and a written citizenship attestation, or evidence of review of alien eligibility documentation, is obtained for all walk-in applicants when applicable.

In its response to the DR, LSEM stated that Required Corrective Action Nos. 1 through 5 will be addressed through training sessions to be conducted in each office.

2. Ensure that an applicant's gross income is recorded in the ACMS in all cases and ensure that intake staff screen for reasonable income prospects as required by 45 CFR § 1611.5(a)(4)(i), which mandates that LSEM inquire into every applicant's reasonable income prospects during intake.

In its response to the DR, LSEM stated that Required Corrective Action Nos. 1 through 5 will be addressed through training sessions to be conducted in each office.

3. Ensure that all intake staff accurately apply the elements of 45 CFR § 1626.4, Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, to otherwise ineligible aliens seeking legal assistance.

In its response to the DR, LSEM stated that Required Corrective Action Nos. 1 through 5 will be addressed through training sessions to be conducted in each office.

4. Ensure that all intake staff accurately apply the elements of 45 CFR § 1611.5 and the procedures enumerated therein for applying authorized exceptions when an applicant is over-income.

In its response to the DR, LSEM stated that Required Corrective Action Nos. 1 through 5 will be addressed through training sessions to be conducted in each office.

5. Ensure that all intake staff accurately apply LSEM's asset policy and the procedures associated with determining whether the asset ceiling has been reached.

In its response to the DR, LSEM stated that Required Corrective Action Nos. 1 through 5 will be addressed through training sessions to be conducted in each office.

6. Ensure that LSEM's financial eligibility policy is revised to reflect that in those cases where an applicant has income in excess of eligibility guidelines, that applicant shall be eligible only if one or more of the factors enumerated in 45 CFR § 1611.5 are present.

With respect to Required Corrective Action Nos. 6 and 7, in its response to the DR, LSEM indicated that the Board adopted a new income eligibility policy at its September meeting. LSEM included a copy of its new income eligibility policy as an attachment to its comments to the DR. However, the revised policy is still not compliant with 45 CFR § 1611.5(a). Section C-8 of LSEM's financial eligibility policy indicates that if a potential client has income in excess of 125%, but less than 200% of the FPG, the applicant shall be eligible if the following factor is present:

“The Executive Director or designee finds that an applicant has a case of sufficient significance to the client community or the individual client...”

45 CFR Part 1611 does not authorize financial eligibility pursuant to a finding that the applicant has a significant case. This clause should be removed, and may be replaced with one of the enumerated factors detailed in 45 CFR § 1611.5.

Section C-9 of LSEM's financial eligibility policy indicates that if a potential client has an income between 125% and 200% or exceeds 200% of the FPG, that client shall be eligible if the following factor is present:

“If an applicant or family has an income in excess of 200% of the Federal Poverty Level but almost all of that money goes to pay medical or nursing home expenses...”

Similarly, Section F of LSEM's financial eligibility policy indicates that if a potential client has an income that exceeds 200% of the FPG, the client shall be eligible if the following factor is present:

Notwithstanding the absolute income limit of 200% of the Federal Poverty Guidelines the Executive Director shall have discretion to accept a potential client for service if the potential client's gross income is primarily committed to medical or nursing home expenses.

45 CFR Part 1611.5(a)(2) provides that an applicant will be deemed financially eligible if “...the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for services.” (Emphasis added) The above-referenced clauses in LSEM's financial edibility policy must be revised to incorporate the underlined language.

As such, LSEM is directed to ensure that Required Corrective Action Nos. 6 and 7 are completed and to provide this office of evidence when the actions are completed.

7. Ensure that LSEM's financial eligibility policy is revised to reflect that in those cases where an applicant has an income that is primarily committed to nursing home or medical expenses, the applicant shall be deemed financially eligible if excluding such portion of the applicant's income which is committed to medical or nursing home expenses would render the applicant financially eligible for services.

With respect to Required Corrective Action Nos. 6 and 7, in its response to the DR, LSEM indicated that the Board adopted a new income eligibility policy at its September meeting. LSEM included a copy of its new income eligibility policy as an attachment to its comments to the DR. However, the revised policy is still not compliant with 45 CFR § 1611.5(a). Section C-8 of LSEM's financial eligibility policy indicates that if a potential client has income in excess of 125%, but less than 200% of the FPG, the applicant shall be eligible if the following factor is present:

“The Executive Director or designee finds that an applicant has a case of sufficient significance to the client community or the individual client...”

45 CFR Part 1611 does not authorize financial eligibility pursuant to a finding that the applicant has a significant case. This clause should be removed, and may be replaced with one of the enumerated factors detailed in 45 CFR § 1611.5.

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As such, LSEM is directed to ensure that Required Corrective Action Nos. 6 and 7 are completed and to provide this office of evidence when the actions are completed.

8. Ensure that LSEM's financial eligibility policy is revised to include a group financial eligibility policy that is consistent with the requirements of 45 CFR §§ 1611.6 and 1611.7.

In its response to the DR, LSEM included a copy of its newly adopted group eligibility policy. This policy is in compliance with 45 CFR §§ 1611.6 and 1611.7.

9. Ensure that LSEM's asset policy is revised to reflect that only assets, as defined in 45 CFR § 1611.2(d), are considered when determining whether the asset ceiling has been reached.

In its response to the DR, LSEM submitted a copy of its newly adopted asset eligibility policy. The newly adopted policy is in compliance with 45 CFR § 1611.2(d).

10. Ensure that LSEM's financial eligibility policy is revised so that the exempt asset list includes only those items listed in 45 CFR § 1611.3(d)(1).

LSEM's newly adopted asset policy lists "personal and household effects" and "individual development accounts" as assets that are exempt from calculation. However, these assets are not listed 45 CFR § 1611.3(d)(1), which contains the exhaustible list of excludable assets. If an asset is deemed excludable pursuant to it being exempt from attachment per a State and/or Federal law, the policy should reflect the specific assets that are exempt, along with a recitation of whether State and/or Federal law authorizes the exemption. As such, LSEM is directed to ensure that Required Corrective Action No. 10 is completed and to provide this office of evidence of such completion.

11. Ensure that LSEM's financial eligibility policy is revised to reflect that, pursuant to 45 CFR § 1611.3(e), when assessing the assets of a victim of domestic violence, only the assets of the applicant's household, other than those of the alleged perpetrator, shall be considered and that jointly held assets between the victim/household member and the alleged perpetrator shall not be considered.

In its response to the DR, LSEM submitted a copy of its newly adopted asset eligibility policy. The newly adopted policy is in compliance with 45 CFR § 1611.3(e).

12. Ensure that all case files contain written citizenship attestations pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.), § 5.5, where appropriate. A copy of LSEM's current citizenship attestation form should be submitted with the program's comments to the Draft Report.

In its response to the DR, LSEM stated that this required action will be addressed through training sessions to be conducted in each office. Additionally, LSEM submitted a copy of its newly revised citizenship attestation, which is compliant with the documentation requirements of CSR Handbook (2008 Ed.), § 5.5.

13. Ensure that each case reported to LSC contains a description of the legal assistance provided to the client. Cases lacking documentation of legal assistance should be deselected from future CSR reporting.

In its response to the DR, LSEM stated that this will be addressed through training sessions conducted in each office. LSEM further noted that it disagreed with this required action. LSEM noted that there are a total of 364 variations of the aforementioned divorce packet that can be tailored to fit the circumstances of a client's

case. For instance, there are divorce packets that are designed to be filled out when the client has children, lives in a specific county, has a spouse who has been incarcerated, etc. However, simply picking a variation of a specific packet for the client to complete does not constitute the provision of legal advice. In order for the delivery of a divorce packet to constitute legal assistance, it must be specific to the client's circumstances and involve a legal analysis that is tailored to the client's factual situation. In the above-referenced cases where no legal assistance was noted, clients were sent a packet that may have been tailored to their circumstances, but there was no provision of legal analysis tailored to their factual situation. As such, the requirements of CSR Handbook (2008 Ed.), § 5.6 were not met because the file notes indicated that the clients were only provided with a packet to complete, and did not receive legal assistance.

14. Ensure proper application of the CSR closing code categories.

In its response to the DR, LSEM stated that this required action will be addressed through training sessions to be conducted in each office.

15. Ensure that both staff and PAI cases are timely closed and that only timely closed cases are reported in the CSR data.

In its response to the DR, LSEM stated that this required action will be addressed through training sessions to be conducted in each office. LSEM further commented that, with respect to the timely closing of PAI cases, it can only request that the cases be timely closed by the *pro bono* attorney and cannot guarantee compliance by the *pro bono* attorneys. LSEM further noted that notwithstanding training efforts, compliance cannot be guaranteed due to "human fallibility."

16. Ensure that LSEM's donor thank-you letter is revised to include the language required by 45 CFR § 1610.5(a), for those contributions that meet or exceed \$250.00. A sample copy of LSEM's revised donor letter should be submitted with the program's comments to the Draft Report.

In its response to the DR, LSEM stated that this required action has been addressed and a copy of the new donor letter was attached to its response. LSEM's new donor thank-you letter is compliant with the requirements of 45 CFR § 1610.5(a).

17. Ensure that LSEM's policy on subgrants, fees and dues is revised to reflect that, pursuant to 45 CFR § 1627.4, only the payment of membership fees or dues mandated by a governmental organization to engage in a profession may be paid with LSC funds.

In its response to the DR, LSEM stated that this item has been addressed by drafting new policies that are scheduled to be reviewed by the Board in November.

18. Ensure that LSEM's policy on legislative and administrative advocacy is revised to authorize the use of non-LSC funds to respond only to written requests for comment in a federal or state rulemaking proceeding.

In its response to the DR, LSEM stated that this item has been addressed by drafting new policies that are scheduled to be reviewed by the Board in November.

19. Ensure that LSEM's policy is revised to reflect that representation of an incarcerated person is permissible if the client became incarcerated after representation commenced, the representation is expected to be brief, and the representation is likely to continue beyond the period of incarceration.

In its response to the DR, LSEM stated that this item has been addressed by drafting new policies that are scheduled to be reviewed by the Board in November.

20. Ensure that LSEM's policy on welfare reform is revised to include the purpose, definitions and restrictions enumerated in 45 CFR §§ 1639.1, 1639.2 and 1639.3, respectively, as well as identify the permitted representation and exceptions outlined in 45 CFR §§ 1639.4 and 1639.5, respectively.

In its response to the DR, LSEM stated that this item has been addressed by drafting new policies that are scheduled to be reviewed by the Board in November.

21. Provide a duplicate receipt for the credit card charge of \$617.50 to LSC for review.

In its response to the DR, LSEM provided a duplicate receipt for the credit card charge of \$617.50.



ADMINISTRATIVE OFFICE

LEGAL SERVICES OF EASTERN MICHIGAN

436 S. SAGINAW STREET • FLINT, MICHIGAN 48502

TELEPHONE (810) 234-2621 • (800) 339-9513

FAX (810) 234-9039

September 30, 2011

Ms. Lora Rath, Acting Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW 3rd Floor
Washington, DC 20007-3522

Dear Ms. Rath:

Please accept the following as a response to the Case Service Report/Case Management System Review. The report indicates 21 items where corrective action is required. For items 1, 2, 3, 4, 5, 12, 13, 14, all will be addressed through additional training sessions conducted in each office. (For item 12, a copy is attached.) Item 15 will also be addressed for staff in that training. As for the pro bono cases being closed in a timely fashion, we can only request that this action occur. We have always done so, but cannot guarantee compliance by pro bono attorneys. I would note that despite such training, human fallibility is such that absolute compliance is not guaranteed. For example, in the over 350 cases reviewed, by our count, only 1 did not have a citizenship attestation. Similarly, only 1 case was found with incorrect income.

For items 6-11, the Board adopted a new asset and income policy at its' September meeting.

Item 16 has been addressed. A copy of the new donor letter is attached.

Items 17-20 have been addressed by drafting of new policies. They are scheduled to be reviewed by the Board at their November meeting.

A copy of the receipt mentioned in item 21 is attached. Please note that the vendor issued the receipt in the name of one of it's' subsidiaries, which is what caused the confusion.

I would like to address finding number 9, which suggests that sending a divorce packet does not constitute legal advice. I strongly disagree with that assumption. The divorce kits which are sent to clients are tailored to individual clients. First, each kit is tailored to the county in which the divorce is to be filed. They have all been approved by the Court and the Friend of the Court to comply with local requirements. That equals 14 variables for the 14 counties. There are separate kits for those with children and those without children. That equals 28 variations. The kits are also tailored for those with real property and those without real property. That takes us to 56 variations. There are separate provisions for those where the spouse is in the military. That takes us to 112 variations. There are also separate provisions for those who need substituted service. We are now at 168 variations. There are separate provisions for the spouse who is incarcerated. That now takes us to 224 variables. Separate provisions are included where there has been domestic violence. We are now at 280 versions. A variable exists where paternity is at issue. If the client is pregnant, another variable is added. We are now at 336 variations. (The last 2 only occur where there are children, so it only adds 28 variations



MIDLAND OFFICE
148 E. MAIN STREET, SUITE 207
MIDLAND, MICHIGAN 48640

PORT HURON OFFICE
511 FORT STREET, SUITE 540
PORT HURON, MICHIGAN 48060

SAGINAW OFFICE
320 S. WASHINGTON AVENUE, THIRD FLOOR
SAGINAW, MICHIGAN 48607

AFFIRMATIVE ACTION • EQUAL OPPORTUNITY EMPLOYER

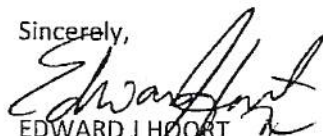


Ms. Lora Rath
Page Two
September 30, 2011

each.) And finally, there is a separate provision for those who are pregnant and wish to marry the natural father and there is a need to waive the 6 month waiting requirement. That adds another 28 variations for a total of 364 variations. I believe this constitutes sufficient tailoring to be called a case. As an aside, some of the polices which the report takes issue with, were copied from the LSC website. I would suggest that LSC review their site for compliance.

I trust that this response will suffice. If not, please feel free to contact me.

Sincerely,



EDWARD J HOORT
Executive Director

To: LSC

From: Lynda Clegg, Controller
Legal Services of Eastern Michigan

Subject: Credit Card Receipt

Attached are the support documents for the Evers Gallery charge of \$617.50. Please note that this charge needs to be combined with the Evers Gallery charge of \$381.68 for a total charge of \$999.18.

Our original order to Successful Events was placed December 30, 2008 for a total of \$780.00. (Debit Card Payment Form 1) The original order was changed/increased on January 7, 2009 for a new total of \$995.77. (Debit Card Payment Form 2)

The final cost was \$999.18.



January 01, 2009 through January 30, 2009

Account Number: 000235001269721

CHECKS PAID (continued)

CHECK NUMBER	DATE PAID	AMOUNT	CHECK NUMBER	DATE PAID	AMOUNT
34136	01/23	1,450.00	34146	01/23	130.00
34138 *	01/26	170.00	34149 *	01/29	207.00
34139	01/27	125.00	34151 *	01/28	77.60
34140	01/27	120.00	34152	01/27	175.55
34141	01/28	233.90	34153	01/28	3,354.00
34142	01/30	26.75	34154	01/27	300.00
34143	01/27	48.00	34155	01/26	386.47
34144	01/28	48.25	34156	01/26	4,027.46
34145	01/27	27.50	34157	01/26	311.00
Total Checks Paid					\$90,277.64



* Checks may not appear on your bank statement because they have not yet cleared or appeared on a previous statement. Checks that cleared as an electronic withdrawal will be listed in the Electronic Withdrawals section of the statement. All checks included in the Checks Paid section are viewable as images on Chase.com.

ATM & DEBIT CARD WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
01/07	Card Purchase 01/05 Churchills Food And Spi Flint MI Card 7973	\$22.65
01/08	Card Purchase 01/06 Office Depot #263 Flint MI Card 2865	423.94
01/20	Card Purchase 01/16 Evers Gallery 800-848-7179 NY Card 2865	617.50 **
01/20	Card Purchase 01/17 Dmi* Dell Bus Online 800-456-335 TX Card 2865	468.50
01/20	Card Purchase 01/18 Web.Com 800-932-4678 GA Card 2865	65.30
01/22	Card Purchase 01/20 I O Software Inc Flint MI Card 2865	1,236.00
01/22	Card Purchase 01/21 Mrs Fields Flint MI Card 7973	28.62
01/26	Card Purchase 01/23 Evers Gallery 800-848-7179 NY Card 2865	381.68 **
01/26	Card Purchase 01/22 Office Depot #263 Flint MI Card 2865	88.98
01/27	Card Purchase 01/27 Dmi* Dell Bus Online 800-456-335 TX Card 2865	253.34
01/27	Card Purchase 01/27 Dmi* Dell Bus Online 800-456-335 TX Card 2865	212.00
01/28	Card Purchase 01/28 Pitney Bowes Rental 800-228-1071 CT Card 2865	25.75
Total ATM & Debit Card Withdrawals		\$3,824.26

ELECTRONIC WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
01/08	Basic Online Payroll Payment 184501322 To #####0715	\$2,111.89
01/08	Basic Online Payroll Payment 184501419 To #####1782	1,775.80
01/08	Basic Online Payroll Payment 184501339 To #####9488	1,698.71
01/08	Basic Online Payroll Payment 184501433 To #####9366	1,542.58
01/08	Basic Online Payroll Payment 184501460 To #####5484	1,407.18
01/08	Basic Online Payroll Payment 184501442 To #####2421	1,381.40
01/08	Basic Online Payroll Payment 184501306 To ####8313	1,320.43
01/08	Basic Online Payroll Payment 184501445 To #####7858	1,283.68
01/08	Basic Online Payroll Payment 184501395 To #####3284	1,220.82
01/08	Basic Online Payroll Payment 184501453 To #####5503	1,209.12
01/08	Basic Online Payroll Payment 184501313 To #####2392	1,140.47
01/08	Basic Online Payroll Payment 184501368 To #####4151	1,073.61

1



LEGAL SERVICES OF EASTERN MICHIGAN

Debit Card Payment Form

DATE : 12/30/2008

EDWARD OR TERESA Teresa

DEBIT CARD AMOUNT PAID: 780.00

DEBIT CARD PAID TO: Successful Events

ITEM PAID FOR: promotional materials

REASON PURCHASED: for litc/hud community presentations

EMPLOYEE SIGNATURE [Handwritten Signature]

DATE 12/30/2008

APPROVED BY

DATE

FOR ACCOUNTING USE ONLY

CHECK #:	DATE PAID:			
GRANT 100 FHF		ACCOUNT 585000	AMOUNT	780.00
GRANT 120 ECU		ACCOUNT 58500	AMOUNT	78.00
GRANT		ACCOUNT	AMOUNT	
GRANT		ACCOUNT	AMOUNT	
GRANT		ACCOUNT	AMOUNT	
TOTAL AMOUNT PAID:				780.00

YES, enter my reorder ticked below — at 2008 prices!

Item #	Description	Quantity	2008 Price	Total
SEU153	Bic Clic Stic	1,000	\$.47	\$470.00
SEU2502	Frosted Die Cut Bags - 12 x 15 x 3	1,000	\$.31	\$310.00
SEU1647B	8 ft. Standard Table Throw - 100	1	\$222.46	\$222.46
SEU1653	Die Cut Bag 16 in. W x 16 in. H x 4	500	\$.37	\$185.00
Total:				780.00

Order information: special imprint requirements, shipping & handling, overruns, art and NY sales tax charges are additional. Minimum quantities apply. Occasionally a previously ordered item is no longer available; we will make every effort to fulfill your order. Cannot be combined with any other offers or applied to orders that have already been placed. Pricing is subject to change without notice. Call toll-free with any questions concerning your order.

Billing Address: (please amend if different from 'Ship To' address below)

Payment Details:

Bill Me Check Enclosed
 MasterCard American Express Visa

Card # 4427322511072865 Expiration 5/10
 Card Holder's Name Legal Services of Eastern MI
 Card Holders Signature Jesse J. Frantham

Ship To: (please amend if incorrect)

TERESA TRANTHAM
 LEGAL SERVICES OF EASTERN MI
 436 S SAGINAW ST
 FLINT MI 48502-1812

Phone 810 234 2621 Fax 234 9039
 E-Mail franatham@sem-mi.org

Providing fax and e-mail information is optional and will be used to contact you on this order and special offers. If you do not wish to be contacted by these means, do not provide that information.

Printed Name Teresa Frantham
 Signature Jesse J. Frantham

Successful Events®
 800-986-9221 Fax 518-770-7026

All Orders Must Be Signed To Process - Thank You L5332
 To take advantage of this promotion, you must reference this code when entering online or by phone

SERVICE CODE: V5556

33364 12.09



2



LEGAL SERVICES OF EASTERN MICHIGAN

Debit Card Payment Form

DATE : 1/7/2009

EDWARD OR TERESA Teresa

DEBIT CARD AMOUNT PAID: 215.77 219.18

DEBIT CARD PAID TO: Successful Events

ITEM PAID FOR: additional fee for set up/ shipping handling of promotional materials

REASON PURCHASED: for litc/hud community presentations

[Handwritten Signature]

EMPLOYEE SIGNATURE

DATE 1/7/2009

APPROVED BY

DATE

FOR ACCOUNTING USE ONLY

CHECK #:		DATE PAID:	1-26-09
GRANT	160 FHF ACCOUNT	585000	AMOUNT 196.38
GRANT	100 MFV ACCOUNT	585000	AMOUNT 22.80
GRANT	ACCOUNT		AMOUNT
GRANT	ACCOUNT		AMOUNT
GRANT	ACCOUNT		AMOUNT
TOTAL AMOUNT PAID:			219.18

SUCCESSFUL EVENTS

ORDER ACKNOWLEDGEMENT

2

CUSTOM IMPRINTED PRODUCTS FOR MEETINGS CONVENTIONS TRADESHOWS BY S.S.C.G.®

NOTE: This is not an invoice. You will be billed after your order ships. Terms: Net 10 days.

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SOLD TO:

TERESA TRANTHAM
LEGAL SERVICES OF EASTERN MI
436 S SAGINAW ST
FLINT MI 48502

SHIP TO:

TERESA TRANTHAM
LEGAL SERVICES OF EASTERN MI
436 S SAGINAW ST
FLINT MI 48502

THANK YOU FOR YOUR ORDER

To ensure the accuracy of your order, please review the information below. If there are any changes required please contact the Customer Service Department immediately.
Please Note: Imprinted copies are subject to a 10% over/under run.

ACK. DATE	ORDER DATE	CUSTOMER P.O.	CUSTOMER NUMBER	ORDER NUMBER	ORDERED BY	CAMPAIGN
1/06/09	1/02/09		07337343	7420268	TERESA TRANTHAM	33364

QUANTITY	ITEM NUMBER	ITEM DESCRIPTION	UNIT COST	AMOUNT
1000.00	SEU153	BIC CLIC STIC	.470	470.00
1.00	SESET UP	SET UP CHARGE	50.000	50.00
1000.00	SEU2502	**12" X 15" X 3" FROSTED BAG	.310	310.00
1.00	SEPLATE	PLATE CHARGE	50.000	50.00

** Your order is on hold for more information, please contact us! **

change to 1500
1/7/09
shipping/packing 58.53
5% off entire order
995.17
Applicable shipping/handling charges and taxes not included.

Pricing in U.S. Dollars

Please review the imprint copy below for spelling and accuracy only, not layout and setup.

Item#.....: SEU153
Description.....: BIC CLIC STIC
FINE POINT BLACK
GREEN BARREL - *blue - navy*
GREEN TRIM - *white*
Imprint Color....: WHITE
Imprint Location.: STANDARD
Imprint.....: Legal Services of Eastern Michigan
1-800-322-4512

correct
46

Spec. Instructions: .

Item#.....: SEU2502
Description.....: **12" X 15" X 3" FROSTED BAG
PRODUCT COLOR BLUE
Artwork.....: CUSTOM ARTWORK REQUIRED
Artwork Position.: STANDARD
Imprint Color....: BLACK
Imprint Location.: STANDARD
Imprint.....: Legal Services of Eastern Michigan
1-800-322-4512

** CONTINUED **

LEGAL SERVICES OF EASTERN MICHIGAN
FINANCIAL ELIGIBILITY GUIDELINES

Legal Services of Eastern Michigan establishes the following guidelines to ensure equal access to the system of justice and to provide high quality legal assistance to those who would otherwise be unable to afford adequate legal counsel. LSEM has established a policy that a client whose income, as defined by Legal Services Corporation Regulation Section 1611, is 125% of the Federal Poverty Income Guidelines shall be eligible for service.

In establishing these guidelines, Legal Services of Eastern Michigan recognizes that not all clients who would be income eligible will receive services and that the program must make decisions regarding service related to the implementation of program priorities and the significance of the as to the individual client or the client community.

A. Definitions

1. Applicant – means an individual who is seeking legal assistance. This term does not include a group, corporation or association.
2. Income – means actual, current annual total cash receipts before taxes of all persons who are resident members of, and contribute to the support of a family unity. Total cash receipts include, but are not limited to:
 - a. wages and salaries before any deductions
 - b. income from self-employment after deductions for business or farm expenses
 - c. regular payments from governmental programs for low income persons or persons with disabilities;
 - d. social security payments;

- e. unemployment and worker's compensation payments;
- f. strike benefits from union funds;
- g. veterans benefits;
- h. training stipends;
- i. alimony;
- j. child support payments;
- k. military family allotments;
- l. public or private employee pension benefits;
- m. regular insurance or annuity payments;
- n. income from dividends, interest, rents, royalties or from estates and trusts;
- o. and other regular or recurring sources of financial support that are currently and actually available to the applicant.

Total cash receipts do not include the following:

- a. value of food or rent received by the applicant in lieu of wages;
- b. money withdrawn from a bank;
- c. tax refunds;
- d. gifts;
- e. compensation and/or one-time insurance payments for injuries sustained;
- f. non-cash benefits;
- g. and up to \$2,000 per year of funds received by individual Native Americans that are derived from Indian trust income or other distributions exempt by statute.

Special Circumstances - Survivors of Domestic Violence: For applicants who are the victim of domestic violence, only the assets and income of the applicant and members of the household other than the alleged perpetrator of the domestic violence shall be considered. Any assets or income held or jointly held between the applicant or a member of the household with the alleged perpetrator shall not be counted. Income of an applicant-battered person who is living as temporary residents, including but not limited to, shelter, safe home, or household of family or friends, because they have fled their usual family unit in order to avoid violence shall not include the income of others in the temporary residence.

3. Household – includes only those people related by blood or by law as relatives for whom legal responsibility attaches.
4. Assets – means cash or other resources of the applicant or members of the applicant’s household that are readily convertible to cash, which are currently and actually available to the applicant.
5. Governmental Program for low income individuals or families – means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.
6. Governmental program for persons with disabilities – means any Federal, State, or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

B. **Financial eligibility for legal assistance** – An applicant may be provided legal assistance supported with LSC funds only if the applicant has been determined to be financially eligible when calculating income and asset levels for assistance. However, nothing in LSC

regulation §1611.4 prohibits LSEM from providing legal assistance to an applicant without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulations.

To be eligible for services

1. An applicant's income must be at or below 125% of the federal poverty income guidelines.
2. If an applicant's income exceeds 125% and is at or below 200% of the federal poverty income guidelines, one or more of the authorized exceptions outlined in Section C must apply.
3. An applicant's income is derived solely from a governmental program for low income individuals or families provided the program has eligibility standards which include an assets test.
4. An applicant's countable assets as defined in A (4) above must not exceed 10% or \$3,000, whichever is greater. The following assets are exempt from counting towards the 10% or \$3,000 level:
 - a. An applicant's principal residence.
 - b. Vehicles used for transportation;
 - c. Personal and household effects.
 - d. Value of farmland essential to employment or self-employment.
 - e. Assets essential to employment or self-employment.
 - f. Assets excluded under the Food Stamp, FIP or SSI programs.
 - g. Individual Development Accounts.

Pursuant to LSC regulation §1611.3(d)(1) the Executive Director may have authority to waive the ceilings on maximum allowable assets in extremely meritorious situations, but this decision must be documented in the client's file and a separate record, not identified as to the client, shall be retained and made available upon request to the Legal Services Corporation.

C. **Authorized Exceptions.** If an applicant has income in excess of 125%, but less than 200% of the Federal Poverty Income Guideline, and whose assets do not exceed LSEM's asset ceiling, that applicant shall be eligible if any of the following factors are present:

1. The applicant is seeking legal assistance to obtain or maintain benefits provided by a governmental program for low income individuals or families; or
2. The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or
3. The applicant's income prospects are such that they are or will in the near future have an income below the general maximum income level; or,
4. The applicant's unreimbursed medical expenses and medical insurance premiums are such that these bills reduce their income below the program general income level; or
5. The applicant has fixed debts and obligations including unpaid taxes, in excess of 25% of their income; or,
6. The applicant has dependent care, transportation and other work-related expenses such as clothing or equipment expenses, which bring their income below LSEM's general poverty income level; or,
7. The applicant has non-medical expenses associated with age or physical infirmity of themselves or resident family member(s) which reduce their income below the general poverty income level; or,
8. The Executive Director or designee finds that an applicant has a case of sufficient significance to the client community or the individual client or the client has other expenses, including educational expenses, which reduce their available income below that of the general poverty guidelines sufficient to justify representation.

9. If an applicant or family has an income in excess of 200% of the Federal Poverty Level but almost all of that money goes to pay medical or nursing home expenses, those clients could be eligible for representation by LSEM subject to the written approval of the Executive Director or designee.

D. **Determining Client Eligibility.** The policy of LSEM shall also be to consider the following factors in determining client eligibility for service:

1. If an applicant's income prospects are such that they will soon make more than the maximum income level established by the program, then any representation will cease pursuant to applicable ethical guidelines and the applicant will be required to retain private counsel.
2. Certain applicants may be able to obtain free legal services to represent them either through a private bar involvement program, employee benefit program, or other lawyer pro bono efforts; or,
3. The consequences to the applicant of legal representation by the local program is denied are insignificant and the issue is not significant under LSEM priorities or to the client community in general; or,
4. There are other significant factors relating to financial inability to afford legal assistance; or,
5. The applicant has assets in excess of the asset policy adopted by the Board.

E. **Documentation.** In the event that the recipient determines to serve a person, whose gross income exceeds 125% of poverty, that decision shall be documented and included in the client's file. The receipt shall keep such other records as will provide non-confidential

information to the Corporation as to the number of client so served and the factual basis for the decisions made.

F. **Executive Director's Discretion.** Notwithstanding, the absolute income limit of 200% of the Federal Poverty Income Guidelines the Executive Director shall have discretion to accept a potential client for service if the potential client's gross income is primarily committed to medical or nursing home expenses.

G. **Representation of Groups.** LSEM may provide legal assistance to a group, corporation, association or other entity if the entity provides information showing that it lacks, and has no practical means of obtaining funds to retain private counsel and:

1. The group, or for a non-membership group, the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or
2. The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by LSC regulation §1611.6, LSEM will consider the resources available to the group, including the group's income and income prospects, assets and obligations and either:

1. For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

2. For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

LSEM shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria above. The eligibility requirements above apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by a recipient, regardless of the source or funds supporting the assistance, must be otherwise permissible under applicable law and regulations.

RETAINER

I, _____, hereby retain Legal Services of Eastern Michigan (LSEM) to represent me concerning:

I understand that LSEM may determine after further investigation that the case is without merit. I also agree to cooperate fully with LSEM to report any changes in address, telephone number or income and to contact the office immediately if requested to do so.

I understand that LSEM requires Federal funds to operate and that if these funds are eliminated, the office may be forced to close. If this happens, and my case has not been resolved, I may have to hire a private attorney to finish working on it.

I understand that I will not be charged any attorney fees for work done by LSEM. If I recover money from this case, LSEM shall be entitled to reimbursement for the full costs that may be paid for me. In some instances, the opposing party can be required to pay attorney fees to LSEM. I agree that LSEM has the right to seek and retain those fees.

I understand and agree that if I become financially ineligible for representation by LSEM, Legal Services of Eastern Michigan may terminate this agreement. I may terminate this agreement any time. I understand that if I am dissatisfied with the services I may file a complaint under the client grievance procedure of LSEM, a copy of which is available to me.

I understand and agree that LSEM must disclose certain information to the Legal Services Corporation, such as, my name and address (unless protected by court order or statute) the nature and disposition of my case, the name and address of the opposing party, retainer agreement, financial records and eligibility records. LSEM has advised me of the types of information that are subject to disclosure.

Dated: _____

Client

Dated: _____

LSEM Advocate

Revised 9/2011

Check either box: I hereby certify that I am a citizen of the United States

I am not a citizen of the United States. My residency status is: _____.

Date

Client