



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Aid Society of Hawai'i

January 24-28, 2011
Case Service Report/Case Management System Review

Recipient No. 912000

I. EXECUTIVE SUMMARY

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

Finding 2: LASH's intake procedures and case management system support the program's compliance related requirements. However, some improvements are warranted. These improvements were executed by LASH on March 9, 2011.

Finding 3: LASH maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines ("FPG"). However, there were instances of non-compliance, particularly with the cases in the Hawai'i Immigrant Justice Center ("HIJC").

Finding 4: LASH maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4, with some exceptions.

Finding 5: LASH is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens), However, sample cases evidenced numerous instances of non-compliance with the requirements of 45 CFR § 1626.6.

Finding 6: LASH is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

Finding 7: LASH is in substantial 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: LASH is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided), with a few exceptions.

Finding 10: LASH's application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), with a few exceptions.

Finding 11: LASH is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 (Timely closing of cases).

Finding 12: Sample cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Review of the recipient’s policies and the list of staff attorneys who have engaged in the outside practice of law, revealed that LASH 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 review of LASH accounting and financial records indicate substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). LASH is in compliance with 45 CFR § 1610.5(a) (Written notification of the prohibitions and conditions which apply to the funds).

Finding 17: LASH 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. LASH is not in compliance with 45 CFR § 1614.3(e) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff and support costs related to PAI activities. LASH is also underreporting PAI costs since PAI contract attorneys payments are not being allocated as PAI cost. LASH is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 18: LASH 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.

Finding 19: LASH 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: Bank reconciliations for November and December 2010 were reviewed and found to be performed timely and accurately. However, the general account had two (2) outstanding checks over six (6) months, and bank reconciliations lacked corresponding signatures and dates of their performance and review.

Finding 22: LASH has an Accounting Manual that is adequately documented and generally complies with the requirements of the 2010 Accounting Guide for LSC Recipients (“AGLSCR”).

Finding 23: LASH’s internal control worksheet did not reveal any weaknesses in its segregation of duties.

Finding 24: The limited review of payables disclosed that payments had sufficient supporting documents. However, a majority of the supporting documents have not been stamped as paid or otherwise indicate evidence of payment.

Finding 25: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 26: 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 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 30: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 31: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 32: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 33: 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)).

II. BACKGROUND OF REVIEW

On January 24 through 28, 2011, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Legal Aid Society of Hawai'i ("LASH"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of seven (7) attorneys and one (1) fiscal analyst. Six (6) of the attorneys were OCE staff members; the remaining one (1) attorney was a temporary employee.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that LASH has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LASH for compliance with regulatory requirements of: 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 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' fees²); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LASH's upper and middle management, staff attorneys and support staff. LASH's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through November 15, 2010. Case file review relied upon randomly selected files, pulled files on-site, 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 reviewed 775 case files which

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

² 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. 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.

included 71 targeted files. Five hundred eighty-eight (588) files were closed cases while 116 were open cases.

LASH is a public interest, not-for-profit law firm whose mission is to achieve fairness and justice through legal advocacy, outreach and education for those in need.

Established in 1950, LASH has 11 offices statewide, and over 80 staff members (attorneys, paralegals, and administrative personnel) all dedicated to achieving LASH's vision of "Building a Just Society." LASH responds to inquiries from approximately 20,000 individuals each year, and an estimated annual total 9,500 of those individuals receive legal services ranging from advice and counsel to full representation.

The purpose of the intake Hotline is to provide easy access to services at LASH. Primarily, the applicants can apply for services through the toll-free state-wide phone service, which operates during the following times: Monday – Friday 9:00 a.m. to 11:30 a.m. in the morning and 1:00 p.m. to 3:30 p.m. in the afternoon.

In its 2008 submission to LSC, LASH reported 6,055 closed cases and in 2009 LASH reported 6,865 closed cases. LASH's 2008 self-inspection certification revealed a 7.6 % error rate. There were cases excluded as a result of the case review done prior to the self-inspection. Cases were problematic in the following areas: non-telephone cases which lacked a citizenship attestation or documentation of alien eligibility, cases not timely closed, and duplicate cases.

LASH's 2009 self-inspection certification revealed a 3.6% error rate. There were cases excluded as a result of the case review done prior to the self-inspection. Cases were problematic in the areas of timely closing and duplication.

By letter dated November 22, 2010, OCE requested that LASH provide a list of all cases reported to LSC in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases reported in its 2009 CSR data submission ("closed 2009 cases"), a list of all cases closed between January 1, 2010 and November 15, 2010 ("closed 2010 cases"), and a list of all cases which remained open as of November 15, 2010 ("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 (2) sets of lists be compiled – one (1) for cases handled by LASH staff and the other for cases handled through LASH's PAI component. LASH was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* (January 5, 2004) protocol. LASH was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2008, 2009, 2010 closed cases, and open cases, as well as a proportionate distribution of cases from all of LASH's

offices. 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. Additional cases were pulled on-site.

The case review was conducted through the use of LASH staff as intermediary, matched one-to-one to the members of the CSR/CMS review team. During the review, OCE was afforded access to financial eligibility information, citizenship/alien eligibility documentation, retainer agreements, pleadings, and court orders. As well, LASH engaged OCE in discussing both the nature of the client's legal problem and the level of legal assistance provided. Pursuant to the OCE and LASH agreement of January 4, 2011, LASH 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 LASH's management and staff cooperated fully in the course of the review process. As discussed more fully below, LASH was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as Managing Attorneys in the branch offices and the Executive Director in the main office. All documents were provided to OCE in a timely manner.

At the conclusion of the visit, OCE conducted an exit conference during which LASH 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 45 CFR Part 1611 (Financial eligibility), CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided), and 45 CFR § 1626.6 (Verification of citizenship). LASH was informed that they would receive a Draft Report ("DR") that would include all of OCE's findings and they would have 30 days to submit comments.

LASH was provided a DR and given an opportunity to comment. Comments to the DR were received on April 29, 2011. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an appendix.

LASH cited several file numbers which were incorrectly recorded in the DR. All files have been located, file numbers corrected, offices corrected and case files removed from this Final Report, where appropriate.

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.

III. FINDINGS

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

Recipients are required to utilize ACMS and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2001 Ed.), ¶ 3.1 and 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, LASH’s ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

With some exceptions, the information contained in the case lists provided by LASH prior to the visit was consistent with the information disclosed during the visit. *See* (Kona) Closed 2010 Case Nos. 09-10-07006089, 09-10-07005923, 09-10-07004662, and 08-10-07002436 (closing code stated in file inconsistent with closing code stated in case lists); and (Hilo) Closed 2010 Case No. 09-10-03005077 (closing date stated in file inconsistent with closing date stated in case lists).

Comments to the DR stated that LASH agrees with this finding.

Finding 2: LASH’s intake procedures and case management system support the program’s compliance related requirements. However, some improvements are warranted. These improvements were executed by LASH on March 9, 2011.

Honolulu Office (Main)

Centralized Intake Unit: A large percentage of LASH’s applicants are screened through LASH’s Centralized Intake Unit (“CIU”) in its Honolulu Office. The CIU, also called the “intake Hotline,” is open for calls Monday through Friday, from 9:30 a.m. to 11:30 a.m. and from 1:00 p.m. to 3:30 p.m. A Managing Attorney supervises the CIU’s operations. CIU staff is comprised of a mixture of LASH attorneys, paralegals, contract attorneys, and AmeriCorps volunteers.

All new LASH staff members receive orientation training at the Honolulu office when they first start, which includes training on LASH’s Case Management Manual (“CMM”). All legal staff is also provided with additional training on intake and eligibility. CIU staff receives three (3) to four (4) days of training on LASH’s policies and procedures and are required to observe at least two (2) intake shifts and work two (2) shifts with an intake trainer who listens in on the trainee’s calls. LASH staff is well trained and screen applicants in a manner consistent with LASH’s CMM and ACMS intake screens.

After introducing themselves to a caller, CIU staff asks a series of questions to conduct a pre-screen before they decide whether to open a "docket" (*i.e.*, a case file in the ACMS). They inquire as to financial and citizenship/alien eligibility and the type of legal problem the applicants bring forth. If the CIU staff member believes the applicant may qualify for LASH's services, they conduct a full intake screening interview. In doing so, they first input the applicant's name and check for conflicts or duplicate case files. If they find a conflict, they inform the caller that LASH cannot provide them with legal assistance and do not save any of the caller's information in the ACMS system.

If there are no conflicts, they proceed to the main "Client" screen and collect the applicant's address, phone number(s), social security number (if the client is comfortable with providing it), date of birth, and sex. CIU staff then makes inquiries concerning the applicant's citizenship or eligible alien status, and documents the applicant's response by selecting one (1) of the following from a drop-down on the "Citizenship" line in LASH's ACMS: 1) "not specified" (the default); 2) "not qualified," 3) "Qualified Alien"; or 4) "US Citizen." CIU intake staff then selects one (1) of the following from the "Attestation" field drop-down: 1) "not specified" (the default); 2) "on file"; 3) "NOT on file"; or 4) "not applicable." Before CIU staff leaves the "Client" ACMS screen, they also ask the applicant their ethnicity, language, marital status, and how they learned about LASH.

CIU staff then proceeds to the "Family" ACMS screen where they note the size and makeup of the applicant's household. CIU staff then move to the "Income Screen" and uses the categories of income in the drop-down boxes to inquire about different sources of income. LASH's ACMS automatically calculates the applicant's income amount as a percentage of the applicable Federal Poverty Income Guidelines. If an applicant's income is over 125%, staff will first determine whether they can provide the applicant with non-LSC funded services. If this is not possible, staff then evaluate whether LASH could represent the applicant with LSC funds under an LSC exception, and if so, the staff would complete LASH's "Income Eligibility Exception" form for approval by LASH's Executive Director or designee in accordance with LASH's CMM.

CIU staff then inquires about an applicant's assets. LASH's asset limit is \$8,000 for an individual, and increases by \$3,000 for each additional member of the applicant's family. LASH's CMM lists a number of assets that should not be included when calculating an applicant's assets.⁴ CIU staff is knowledgeable as to LASH's definition of "assets" and LASH's asset ceiling.

If the applicant is financially eligible, CIU staff then moves to the "Conflict Screen" in LASH's ACMS to determine whether the adverse party in the applicant's case has been, or is, a LASH client. They also recheck the applicant's name for conflicts at this time.

⁴ OCE provided LASH with additional guidance regarding those exceptions under separate cover and they were executed on March 9, 2011. OCE provided LASH with both general and specific recommendations to help ensure that the policy LASH's Board approves is in full compliance with 45 CFR Part 1611. LASH revised their Financial eligibility policy addressing annual income ceiling, income exceptions, determination of income, asset eligibility, asset ceiling, asset exemptions, determining assets and group eligibility.

Once it is determined that the applicant is financially eligible and no conflicts exists, LASH intake staff move to the "Notes" field of the ACMS, where they note information concerning the applicant's legal problem that will be helpful to the advocate handling the case. Staff also documents any advice they provide the applicant. Staff uses "brochures" or "scripts" provided by LASH's substantive units to determine the information they should collect from the applicant about their legal issue to advise them.

If CIU staff is able to handle the applicant's request for assistance, they assign themselves as the "case handler," provide the client with the applicable advice, and close the case. Otherwise, they will refer the case to the appropriate LASH advocate in accordance with LASH's Case Acceptance Policy and "advocate assignment sheets." If a CIU staff member closes a case at intake, they will complete the "CSR Screen" in LASH's ACMS and note: 1) whether the intake was by telephone; 2) whether the case is "LSC Eligible" (*i.e.*, LSC reportable); 3) whether a retainer is needed, and on file; 4) the funding source; 5) the dates of intake, acceptance, and closure; 6) the case handler; and 7) the problem and closing codes.

At the end of each shift, CIU staff members print each "docket" they have opened and file each either in a bin designated for the cases CIU staff close, a bin designated for dockets yet to be referred, or the bin for the LASH office to which the case has been referred. The Managing Attorney for the CIU then reviews all of the "dockets" opened that day to ensure that they were opened and, if closed, closed properly. The Managing Attorney is also available for questions from staff and there is an attorney in the CIU room at all times who is also available for questions. CIU staff seeks advice when they have questions and CIU staff, including non-lawyer staff, is sufficiently supervised.

CIU staff also keeps track of information they provide to applicants who do not qualify for LASH's services and the reason they are denied services. Although LASH's CIU is well-managed, staff, in both the CIU and in other offices, are not consistently making inquiries concerning the applicants' income and asset prospects as required pursuant to 45 CFR § 1611.7(a). LASH's ACMS also does not contain a line or box to document either an applicant's income prospects, or to document that intake staff has inquired about same.

LASH must also ensure that LASH staff is asking applicants about any assets they have that meet the definition of "assets" (*e.g.*, any cash they have on hand, items of value that they can readily convert into cash) to ensure they have determined the true level of the applicants assets. LASH staff consistently makes inquiries of applicants concerning cash in their bank accounts and the value of any second home. Staff also understood that they were not to count the equity value of cars used for transportation or the equity value in an applicant's principle residence. LASH's ACMS does not have a drop-down to prompt intake staff to inquire about various types of assets. The ACMS contains lines for "Bank Account," "Automobile," "Second Home," and a line for intake staff to input any other assets.

LASH's Honolulu office conducts walk-in intake on Monday through Friday, from 9:00 a.m. to 11:30 a.m. The receptionist meets the walk-in applicant and records the initial information

regarding the applicant, including the date and time of their visit, their full name, and the area of law in which they seek assistance. Intake staff then meets with the applicant and conducts a full intake interview using LASH's ACMS. They also require the applicant to complete a citizenship attestation or provide the appropriate eligible alien documentation.

The Honolulu office operates an Uncontested Divorce Clinic, a Custody Clinic, and a Bankruptcy Clinic. Clinic clients are referred to the clinic after they have been screened by the CIU. Intake staff provides legal advice that an eligible client might need in advance of the clinic. For example, assume an applicant calls with questions relating to a custody issue for which they need advice that same day (*e.g.*, "my child's mother has refused to let me visit the child today, what can I do?"). The intake staff would try to provide the client with any advice they could if they had relevant advice in their advice scripts or could otherwise confer with a supervisor/attorney to obtain the relevant advice. The intake staff member handling the call might then also refer them to a custody clinic (*e.g.*, if the father is seeking joint custody in light of the mother's unwillingness to allow him to see the child).

The Honolulu office conducts outreach. At most outreach events, LASH staff will provide participants with LASH's brochure which details how they can contact the CIU. Two (2) intake attorneys and one (1) paralegal conduct intake for the U.S. Department of Housing and Urban Development Project ("HUD Project"). HUD Project intake is conducted utilizing the same procedure as walk-in applicants.

Kauai Office

LASH's Kauai office's operating hours are Monday through Friday, from 8:00 a.m. to 4:30 p.m. There are four (4) staff members in the office, a Managing Attorney, a staff attorney, a part-time paralegal, and one (1) AmeriCorps Volunteer. The office receives approximately 70-80% of their cases as referrals from the CIU. The remaining 20-30% of applicants come in through walk-in intake, outreach, or are General Assistance-Supplemental Security Income ("GA-SSI") cases which are directly referred to LASH's advocates. The Kauai office also operates an Uncontested Divorce Clinic and a Custody Clinic. Similar to the Honolulu office, clinic clients are referred to the clinic after they have been screened by the CIU.

The Managing Attorney in the Kauai office reviews all cases at the time they are closed. Non-lawyer staff is sufficiently supervised by the Managing Attorney and staff attorney and the legal staff is knowledgeable regarding LASH's intake procedures, as well as LSC eligibility and compliance requirements.

The Kauai office conducts some walk-in intake for those individuals who want to use the Center for Equal Justice and for applicants who do not feel comfortable calling the CIU. They also allow applicants to call the CIU from the Kauai office. On average, the office will see approximately three (3) walk-ins per day. Some walk-in intake is conducted in a similar manner to how it is conducted in Honolulu, using LASH's ACMS system. Other walk-in intake is conducted by an AmeriCorps Volunteer who completes LASH's "Center for Justice Intake" form and enters the information from the form into the ACMS, which is then reviewed by the Managing Attorney.

The Kauai office needs to improve its efforts to obtain signed citizenship attestations from applicants whom use the office's phone to call CIU. Case review also indicated that walk-in applicants do not always sign a citizenship attestation or provide proper alien eligibility information at the time of intake.

Starting in January 2011, the Kauai office's Managing Attorney and staff attorney have conducted outreach at the Hanalei Neighborhood Center and Waimea Nana's House. Most of the time staff simply provides participants with LASH's brochure or legal information. Accordingly, most of the work done during outreach is not reportable. When intake is completed, it is typically conducted via a laptop that is remotely connected to LASH's ACMS. On rare occasions, staff will conduct the intake using a paper "Intake Sheet." Staff will also require that applicants attest to their citizenship or provide the appropriate eligible alien documentation.

Maui Office

The Maui office is open Monday through Friday, from 8:00 a.m. to 4:30 p.m. The office has a Managing Attorney, who also serves as the Managing Attorney for the Lanai and Molokai offices. Intakes for approximately 75-85% of the Maui office's cases are referred from the CIU. The Maui office also conducts some walk-in intake and receives direct referrals for GA-SSI cases, Title II cases, and court appointed cases. The Managing Attorney reviews all cases that are closed in the Maui office to ensure they were properly opened, handled, and closed.

The Maui office may handle three (3) to four (4) walk-in applicants per day. Some walk-in applicants are advised to call the CIU to determine whether they are eligible for LASH's services. On occasion, the office will allow an applicant to call from the office, in which case they also obtain a citizenship attestation or the appropriate alien eligibility information from the applicant. LASH staffs handling these walk-in applicants are knowledgeable concerning LASH's intake procedures.

The Maui office's Managing Attorney and staff attorney handle court appointment referrals. Once they receive a referral, they conduct an eligibility screening and conflicts check before agreeing to represent the client.

One (1) paralegal in the Maui office also handles a significant number of Title III cases. Although they are not LSC-funded, many are LSC eligible and the cases are CSR reportable. Many of these cases are referred to the paralegal from the CIU, but around 40% are referred directly from care or senior centers in Maui. The Maui office has provided these centers with a referral form to send the office by mail or email. The form requests basic information concerning the applicant, including whether they are a US citizen or a registered alien, their monthly income, and bank account and other asset amounts. Although the paralegal will often work directly with the applicant to help them complete the form, she also receives forms directly from applicants or senior centers.

Once a referral is received, LASH will create a "docket" in LASH's ACMS. A conflicts check is conducted and a notation is made in the ACMS if the case is "LSC Eligible." A call will then be placed to the applicant to arrange a time to meet with them to discuss their legal needs. LASH's intake workers take great time to ensure that a proper retainer agreement is entered into and that the client is lucid and aware of what they are signing. Once LASH has helped the client create a Durable Power of Attorneys, Advance Health Care Directives, or Will, the case will be closed and submitted to the Managing Attorney for review.

Although the paralegals are very experienced with working with seniors to help create Durable Power of Attorneys, Advance Health Care Directives, and Wills, they do not always conduct a full eligibility screening before accepting clients, but instead heavily rely on information contained in the referral forms. The referral form does not contain the same degree of detail that LASH's full intake form or ACMS sheet include. As such, there is no assurance that these clients are screened in a manner consistent with other LASH applicants, or of the source of the information on the form. LASH's staff was not sufficiently knowledgeable about LSC's financial eligibility requirements to determine whether a case is LSC eligible. However, they were very knowledgeable as to the need to have applicants sign citizenship attestations or provide identification showing they are an eligible alien.

Lanai Office

LASH's Lanai office is staffed by one (1) paralegal, who serves as the only legal aid service provider on the island of Lanai. The office does almost all of its' own intake. Approximately 50% of the office's work is from walk-in applicants. The paralegal in Lanai typically conducts walk-in intake interviews using an "Intake Sheet" and requires all applicants to sign citizenship attestations or provide alien eligibility documentation. If it appears that an applicant is eligible for services based on the information the paralegal has recorded, the paralegal will assist them. She then transfers information from the form into LASH's ACMS system to create an open "docket."

Although the paralegal staffing the Lanai office is relatively familiar with LASH's eligibility policies, she may not always check the ACMS for conflicts before collecting and documenting facts relating to the applicant's legal problem or before giving them advice. Notably, although it is possible to know whether LASH has a conflict based on personal knowledge of the residents of the island and whether the Lanai office has handled a case that poses a conflict, it is not possible to know whether a conflict exists for a case that is being handled by an advocate in another of LASH's offices without first checking the ACMS.

The Lanai office also receives a very small number of cases through the CIU and direct referrals from the Hawai'i Department of Human Services ("DHS") for GA-SSI cases. The Managing Attorney in the Maui office has oversight responsibility for Lanai's cases and reviews Lanai's cases at least every other month.

GA-SSI Cases

All of LASH's offices handle a number of non-LSC funded General Assistance ("GA") to Supplemental Security Income ("SSI") ("GA-SSI") cases, which are directly referred to staff within these offices from Hawai'i's DHS. DHS refers clients whom qualify for GA to LASH for assistance in applying for SSI. Staff in Honolulu, Kauai, Maui, and Lanai who receive the case referrals from DHS conducts the intake and eligibility screening for these cases.

LASH staff handling these cases are not conducting or documenting intake in a standardized manner. For example, while some staff verifies income and assets amounts with the applicants, others rely on the amounts provided by DHS in order to determine whether a case is "LSC Eligible." Not all staff handling these cases seem to be aware of the provision in LASH's CMM providing that applicant's on GA are automatically financially eligible, or that they (LASH staff) need to document their use of this exception in order for the case to be "LSC Eligible." Although these cases are not LSC funded, clients for these cases must be properly screened if LASH would like to report them and to ensure LASH's compliance with 45 CFR Part 1626.⁵

Case review and LASH's 2009 CSR reporting indicate that LASH handles a significant number of GA-SSI cases. As such, LASH should seek to ensure that intake on these cases is compliant so not to risk under-reporting, or to ensure it is not reporting cases for which intake was not properly conducted or documented.

Molokai Office

Most intakes at the Molokai office are conducted by in-person interview (walk-ins). This office also conducts telephone intake. Eligibility screening questions are asked of every applicant, whether they are in the office or telephone the program. Applicants are asked about their employment, type of income, and if minor children residing in the home. Questions concerning income and asset prospects are asked during the intake process.

If an applicant is a walk-in, the intake process is initiated immediately by LASH's intake staff. The applicant is given an intake application to complete. The intake sheet consists of questions regarding the applicant's income, citizenship status, household composition, and the nature of their legal problem. A program-wide conflicts check is conducted at this time. The intake staff reviews the information provided by the applicant on the intake sheet. If the applicant is determined to be financially eligible and the nature of their legal problem is within program priorities, intake staff opens a case in TIME, LASH's ACMS. Intake staff enters the information from the applicant's intake sheet directly into TIME. If the case is not an emergency, an appointment is made for the client to return to the office. If the case is an emergency, the Managing Attorney in the Maui office is contacted.

If the intake is conducted by telephone, the applicant is asked the same questions as a walk-in applicant. If the applicant is determined to be financially eligible and the case is within program's priorities, an appointment is made for the client to return to the office.

⁵ The requirements of 45 CFR Part 1626 apply to all of LASH's cases, regardless of whether they are LSC-funded. See 45 CFR §§ 1610.2(b)(7) and 1610.4(d).

A fictitious case was opened in TIME and a dummy intake was created. The required eligibility questions were asked. There were no defaults observed in the ACMS. LASH utilizes a separate sheet to document citizenship/alien status, the client retainer agreement, opening checklist and closing memoranda.

The intake staff assigns case closing codes for all closed cases. Oversight is conducted by the Managing Attorney in the Maui office on a monthly basis. The Managing Attorney signs off on all closed cases.

Leeward Office

The Leeward office is open Monday through Friday, from 8:00 a.m. to 4:30 p.m. The office has a Managing Attorney and two (2) paralegals. The Leeward office also conducts some walk-in intake and applicants are allowed to use the telephone to contact the CIU for a full intake. Applicants are required to sign a citizenship attestation or produce alien eligibility documentation when they visit the office.

Walk-in applicants are advised to call the CIU to determine whether they are eligible for LASH's services. The paralegals staffing the Leeward office are familiar with LASH's eligibility policies and always check the ACMS for conflicts before collecting and documenting facts relating to the applicant's legal problem or before giving them advice. Income prospects are also asked of the applicants.

The Managing Attorney in the Leeward office has oversight responsibility for the cases and makes a review of cases every other month.

While LASH has a very comprehensive collection of pre-made forms, it does not seem to have one standardized paper intake form. Although LSC does not require a program to use the exact same form for paper intakes, it is recommended in order for the program to ensure consistency in the manner in which intake is conducted, and to reduce compliance and reporting errors.

LASH's intake procedures and case management system generally support the program's compliance related requirements. However, some improvements are warranted, and have been executed by LASH.

OCE provided LASH with both general and specific recommendations to help ensure that the policy LASH's Board approves is in full compliance with 45 CFR Part 1611. LASH revised their financial eligibility policy by addressing annual income, income ceiling, income exceptions, determination of income, asset eligibility, asset ceiling, asset exemptions, determining assets, and group eligibility issues.

Comments to the DR stated that LASH agrees with this finding. Further comments to the DR stated that the LASH Board of Directors adopted the Financial Eligibility Policy at its March 23, 2011 Board meeting.

Hilo, Kona, Windward, and Hawaii Justice Center intake processes were all similar to the CIU in the Main office.

Finding 3: LASH maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines (“FPG”). However, there were instances of non-compliance, particularly with the cases in the Hawai’i Immigrant Justice Center (“HIJC”).

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.⁶ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, 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 (2001 Ed.), ¶ 5.2 and 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 FPG and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2001 Ed.), ¶ 5.3, 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 (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

Pursuant to 45 CFR § 1611.3(a), “[t]he governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups.” LASH’s Board of Directors (“Board”) approved new “Income Eligibility Guidelines,” on February 9, 2009, however, the Board has not yet approved LASH’s full financial eligibility policy as required under 45 CFR § 1611.3(a).⁷ OCE has provided LASH with additional guidance on how to ensure that the income and asset eligibility policy LASH’s Board approves is in compliance with 45 CFR Part 1611 under separate cover.

LASH’s eligibility policy includes authorized exceptions to the annual income ceiling. The annual income ceiling for individuals and household served by LASH using LSC funds is 125%

⁶ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

⁷ A recipient’s income and asset ceilings are only a part of a recipient’s financial eligibility policy. *See* 45 CFR § 1611.3(c)(1) (“as part of its financial eligibility policies, every recipient shall establish annual income ceilings...”).

of the Federal Poverty Guidelines (“FPG”) as published annually in the Federal Register by LSC in Appendix A to 45 CFR Part 1611. LASH’s policy requires that if an applicant’s income is above 125% of the FPG, but does not exceed 200% of the FPG, LASH must record the basis of its decision to provide assistance and shall record the specific 45 CFR Part 1611 exceptions or factors relied on to make the determination.

The Hawai’i Immigrant Justice Center (“HIJC”) office cases revealed several instances of non-compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3. The HIJC was acquired by LASH on January 1, 2010, after the organization experienced significant cuts in its traditional state funding. Prior to being acquired by LASH, it was HIJC’s policy to provide legal advice and/or service to anyone with an immigration problem. Consistent with this policy, HIJC did not apply any citizenship or alien eligibility criteria as a condition before receiving legal services. Similarly, no asset or income eligibility requirements were applied to prospective clients. According to LASH’s Deputy Director, after LASH’s acquisition of HIJC, HIJC continued to provide its own intake for a transition period utilizing LASH’s dockets and computer system. In addition, as part of the transition, LASH worked with the HIJC staff to educate them on LSC eligibility and reporting requirements. Presently, all telephone calls are routed to LASH’s CIU for intake.

The integration of HIJC’s activities into LASH’s operating and reporting procedures has been complicated by at least two (2) factors: (1) HIJC’s loss of funding was sudden leaving virtually no lead time to plan and execute an orderly transition, and (2) HIJC’s historical policy of accepting all clients regardless of immigration or financial status. As a result, the sample HIJC cases reviewed had a high level of non-compliance with LSC eligibility criteria.

Most sampled cases reviewed evidenced that the applicants were screened for income eligibility, with a few exceptions. *See* (HIJC) Closed 2009 Case Nos. 09-10-07006773 and 09-10-07006073, (HIJC) Closed 2010 Case Nos. 10-10-07002587, 10-10-07000723, 10-10-07004405, 10-10-07001263, 10-10-07000584, 10-10-07004777, 10-10-07009333, 10-10-07005976, and 10-10-07009368, and (Maui) Closed 2009 Case No. 09-10-01003635, all cases cited were lacking income eligibility screening. Accordingly, these case files should be, or should have been, excluded from LASH’s CSR data submission to LSC.

Sampled cases reviewed for applicants whose income exceeded 125% of the FPG evidenced that in most instances the applicant had authorized exceptions; however, there were a few exceptions. *See* (Windward) Closed 2010 Case No. 10-10-06008990, and (Hilo) Closed 2010 Case No. 08-10-07003642. *See also*, Open (Main) Case Nos. 09-10-07001621, 08-10-06006272, 09-10-06003059, and 10-0-06001985, and (Molokai) Closed 2009 Case Nos. 09-10-03007973, 09-10-03000267, and 09-10-03000268. Accordingly, these case files should be, or should have been, excluded from LASH’s CSR data submission to LSC.

Comments to the DR stated that LASH agrees with this finding. Further comments to the DR stated that LASH will be revising their Case Management Manual and providing training for staff around income eligibility documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on income eligibility documentation, according to comments to the DR. Additional comments to the DR stated that the HIJC cases were excluded

from LASH's most recent CSR data submission to LSC due to these and other concerns noted in the DR. All cases cited as lacking eligibility screening and cases cited having income which exceeds 125% of the FPG have been reviewed and LASH has made the required corrective actions, according to the comments to the DR.

Finding 4: LASH maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4, with some exceptions.

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.⁸ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d) (2).

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

The policy approved by the LASH Board of Directors in 2009 establishes the asset ceiling at \$8,000. Exempt from consideration is the applicant's principal residence; vehicles used by the applicant or household members for transportation; assets used in producing income; and all other assets which are exempt from attachment under state or federal law.

Sampled cases reviewed revealed that LASH maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by the revised 45 CFR §§ 1611.3(c) and (d),⁹ CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4, with some exceptions. *See* (HIJC) Closed 2010 Case Nos. 10-10-07002587, 10-10-07000723, 10-10-07004405, 10-10-07001263, 10-10-07000584, 10-10-07004777, 10-10-07009333, 10-10-07005976, 10-10-070009368, 10-10-07002402, and 10-10-07007591. *See also*, (Hilo) Closed 2009 Case No. 09-

⁸ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

⁹ The revised 45 CFR § 1611.2 defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms "liquid" and "non-liquid" have been eliminated.

10-07006773 and (HIJC) Closed 2009 Case No. 09- 10-07006073. These case files, and all that are similar to them, are not CSR reportable.

Comments to the DR stated that LASH agrees with this finding. Further comments to the DR stated that LASH will be revising their Case Management Manual and providing training for staff around asset eligibility documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on asset eligibility documentation, according to comments to the DR. Additional comments to the DR stated that the HIJC cases were excluded from LASH's most recent CSR data submission to LSC due to these and other concerns noted in the DR. All cases cited as lacking asset eligibility documentation have been reviewed and LASH has made the required corrective actions, according to the comments to the DR.

Finding 5: LASH is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens), However, sample cases evidenced numerous instances of non-compliance with the requirements of 45 CFR § 1626.6.

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 (2001 Ed.), ¶ 5.5 and 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 (2001 Ed.), ¶ 5.5 and 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.¹⁰ 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.

LASH is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens), however, sample cases evidenced numerous instances of non-compliance with the requirements

¹⁰ *See* Kennedy Amendment at 45 CFR § 1626.4.

of 45 CFR § 1626.6. The below cited cases reveals that a significant majority of the cases determined to be non-compliant with the citizenship and alien eligibility requirements were HIJC files, similar to the circumstances related to asset and income eligibility. A majority of these HIJC cases found to be non-complaint were opened in the year immediately following LASH's acquisition of HIJC or were inherited by LASH. *See* (HIJC) Closed 2010 Case Nos., 10-10-07002587, 10-10-07000723, 10-10-07001263, 10-10-07000584, 10-10-7004777, 10-10-07009333, 10-10-07005976, 10-10-07002402, 10-10-07007591, Closed 2009 Case Nos. 09-10-07001959 and 09-10-01006540, (Lanai) Closed 2008 Case No. 08-10-07003872, and (GA-SSI) Closed 2010 Case No. 10-10-01001004. Absent the requisite 45 CFR § 1626.6 documentation, these cases should be, or should have been, excluded from LASH's CSR data submission to LSC.

In addition, there were 15 other sample cases reviewed evidencing non-compliance with 45 CFR § 1626.6 and the CSR Handbook. Ten (10) of the exceptions lacked the citizenship/alien eligibility documentation required by LSC regulations and the CSR Handbook. *See* (Hilo) Closed 2010 Case Nos. 09-10-07006829, 08-10-07003407, 09-10-03005077, 09-10-07005073, (Main) Case Nos. 09-10-07006582 and 10-10-01001859, (Maui) Closed 2009 Case No. 09-10-01000308, (Kauai) Closed 2009 Case No. 09-10-03004866, (Leeward) Closed 2009 Case No. 07-10-07004740, and (Main) Open Case No. 08-10-06001985. Absent the requisite 45 CFR § 1626.6 documentation, these files should be, or should have been, excluded from LASH's CSR data submission to LSC.

Regarding the remaining four (4) exceptions, the CSR Handbook (2008 Ed.), § 5.5 requires that, beginning January 1, 2009, all reported cases must comply fully with the 2008 CSR Handbook, regardless of when they were opened. *See* (Maui) Closed 2010 Case Nos. 10-10-07000450, 10-10-07000038, 10-10-07006599, and 10-10-07004303 where the citizenship attestations were contained in the retainer agreement, but lacked a separate signature line tied only to the attestation, which is not in compliance with the CSR Handbook (2008 Ed.), § 5.5.

LASH must take corrective action to ensure that 45 CFR § 1626.6 documentation is contained in all required cases. Further, ensure that all cases identified in this DR that were not in compliance with 45 CFR § 1626.6 be de-selected from future CSR submission and comply with the CSR Handbook (2008 Ed.), § 5.5.

Comments to the DR stated that LASH agrees with this overall finding, however disputes two determinations as follows: (Windward) Closed 2010 Case No. 10-10-01007194, a review of the docket showed that there was no in person contact, so no documentation was required and (Maui) Closed 2010 Case No. 10-10-03001690, where a review of the docket showed that there was no in person contact, so no documentation was required.

These two (2) case file numbers have been removed from this Final Report.

Further comments to the DR stated that LASH will be revising their Case Management Manual and providing training for staff around eligible alien and citizenship documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on alien eligibility documentation, according to comments to the DR. Additional comments to the DR stated that the HIJC cases were excluded from LASH's most recent CSR data submission to LSC due to these and other concerns noted in the DR. All cases cited as lacking citizenship or alien eligibility documentation have been reviewed and LASH has made the required corrective actions, according to the comments to the DR.

Finding 6: LASH is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

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.¹¹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LASH is in substantial compliance with the requirements of 45 CFR § 1611.9. However, two (2) of the sample cases reviewed lacked the required retainer agreement. *See* (HIJC) Closed Case No. 10-10-07000723 and (Hilo) Open Case No. 10-10-07005165.

In addition, some branch offices, particularly Maui, Kona and Hilo are under the impression that cases lacking retainer agreements are not reportable.

Comments to the DR stated that LASH agrees to the overall finding, however disputes three (3) of the five (5) instances cited to in which it was noted that cases lacked the required retainer. (Kona) Closed 2010 Case No. 08-10-03004214 and (Main) Closed 2010 Case No. 07-10-0300653. Comments to the DR stated that both these cases are guardian ad litem cases for which court orders are acceptable and retainers are not required, citing LSC's CSR Frequently Asked Questions. Further comments to the DR stated that (Main) Closed 2009 Case No. 09-10-07004597 was closed as "counsel and advice" and as such no retainer was required. The remaining two (2) cases were reviewed and recommended changes were made, according to the comments to the DR.

The three (3) referenced cases cited in the comments to the DR have been removed this Final Report.

¹¹ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

Finding 7: LASH is in substantial 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).

LASH is in substantial compliance with the requirements of 45 CFR Part 1636, with one (1) exception. The one (1) exception was (Maui) Open Case No. 10-10-06003799.

LASH is reminded that the client identity and statement of facts is required when a recipient initiates *or* participates in litigation, even when the recipient enters an appearance in litigation initiated by the client. OCE generally regards a verified petition, or a signed copy of a *pro se* petition as sufficient. LASH is further reminded that 45 CFR Part 1636 does not apply to defendants represented by a recipient for counterclaims filed against a plaintiff. Nor does it apply to a recipient's delivery of advice and brief services, attempts to resolve matters for a client through negotiations in which there is no contemplation of litigation, or legal assistance cognizable by an administrative agency.

Comments to the DR stated that LASH agrees with this finding. Further comments to the DR stated that LASH appreciates the information and clarification provided by LSC regarding when a statement of facts is required and will be editing their Case Management Manual to add clarification for when it is needed.

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, LASH provided LSC with a list of its priorities. The priorities are stated as “preserving families, maintaining, enhancing and protecting income and economic stability, providing housing and meeting related housing needs, low-income neighborhood preservation, providing safety, security and well-being, improving outcomes for children, assisting populations

with special vulnerabilities, protecting individuals rights, delivering legal services and providing advice, brief service and referral.”

LASH is in compliance with 45 CFR Part 1620. None of the sampled cases reviewed revealed cases that were outside of LASH’s priorities.

Comments to the DR stated that LASH agrees with this finding.

Finding 9: LASH is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided), with a few exceptions.

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 (2001 Ed.), ¶ 7.2 and 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 (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

LASH is in substantial compliance with the CSR Handbook (2001 Ed.), ¶ 5.1(c) and the CSR Handbook (2008 Ed.), § 5.6, with a few exceptions. *See* (Hilo) Closed 2010 Case Nos. 09-10-03008792, 09-10-07009730, 10-10-01005582, 10-10-07000022, and 09-10-07009053, (Maui) Closed 2010 Case Nos. 10-10-03003845 and 09-10-07008757, (Leeward) Closed 2010 Case No.10-10-07005974, (HIJC) Closed 2010 Case No.10-10-07007591, (Windward) Closed 2010 Case No.10-10-01002033, and (Molokai) Closed 2010 Case No.10-10-03006806.

See also, (GA-SSI) Closed 2009 Case No. 09-10-01002845, (Main) Closed 2009 Case Nos. 09-10-07002426, 09-10-01005987, (Main) Closed 2008 Case No. 07-10-06007896, (Molokai) Closed 2008 Case No. 08-10-03003916, and (Windward) Closed 2009 Case No.08-10-01006290.

Accordingly, these case files should be, or should have been, excluded from LASH’s CSR data submission to LSC.

LASH must take corrective action and ensure that the legal assistance provided is documented in the cases and that those cases identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, a review of all cases at the time of closing is necessary.

Comments to the DR stated that LASH agrees with this finding, however disputes two (2) of the determinations as follows: (Main) Closed 2009 Case No. 09-10-01005987. comments to the DR stated that the docket indicated that LASH did represent the client in court and the closing code reflected this and (Molokai) Closed 2008 Case No. 08-10-03003916. comments to the DR stated that the file indicated that the case should be closed as “counsel and advice” and it was closed as such.

OCE is not persuaded by these arguments. LASH was in possession of the case files at all times and any information recorded was a result of the information in the file relayed by LASH’s staff. With respect to (Main) Closed 2009 Case No 09-10-01005987, this case closed with a closing code of “counsel and advice”, however, there was no description of legal assistance provided, and only legal information was recorded. And (Molokai) Closed 2008 Case No.08-10-03003916 was indeed closed with a closing code of “counsel and advice,” however, there was no description of legal assistance provided. Accordingly, these two (2) cases should have been excluded from LASH’s CSR data submission to LSC.

Further comments to the DR stated that based on this finding, LASH will be re-emphasizing with staff through training the need to document the legal assistance provided in both the docket and in the file. LASH will also be working with their supervisors to ensure timely case review at case closing to ensure that the appropriate legal assistance is documented, according to the comments in the DR. Additional comments to the DR stated that LASH reviewed all cases cited as lacking documentation of service provided and made all necessary corrections.

Finding 10: LASH’s application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), with a few exceptions.

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 (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1.

The files reviewed demonstrated that LASH’s application of the CSR case closing categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), with a few exceptions.

See (Hilo) Closed 2010 Case Nos. 10-10-01009100 and 09-10-03005077 (closed as “counsel and advice”, but files indicated a level of assistance more consistent with “limited action”); (Hilo) Closed 2010 File No. 10-10-07005005 (closed as “limited action”, but file indicated a level of assistance more consistent with “negotiated settlement without litigation”); (Hilo)

Closed 2010 Case No. 10-10-01001549 (closed as “other”, but file indicated a level of assistance more consistent with “extensive service”); (Leeward) Closed 2010 Case Nos. 09-10-01005478 (closed with a closing code of “other”, but the more appropriate closing code would have been “extensive services”); 09-10-07006064 (closed with a closing code of “counsel and advice”, when the more appropriate closing code would have been “limited action”); (Molokai) 09-10-03002902, (with a closing code of “court decision”, but the more appropriate closing code would have been “limited action”); (Molokai) 09-10-03005622 (with a closing code of “court decision”, when the more appropriate closing code would have been “limited action”); 10-10-07002810 (with a closing code of “extensive service”, when the more appropriate closing code would have been “counsel and advice”); and (Windward) Closed 2010 Case No. 10-10-07005423 (closing with a closing code of “administrative agency”, when the more appropriate closing code would have been “limited action”).

See also, (Main) Closed 2009 Case Nos. 09-10-07002659 (with a closing code of “court decision”, when the more appropriate closing code would have been “counsel and advice”); 07-10-02000812 (with a closing code of “other”, when the more appropriate closing code would have been “counsel and advice”); and (Leeward) 09-10-07003762 (with a closing code of “other”, when the more appropriate closing code would have been “counsel and advice”).

Comments to the DR stated that LASH agrees with this finding, but disputes one (1) of the determinations, which was PAI Closed 2009 Case No. 09-10-07002659. The recommendation by LSC is that this case be closed as “counsel and advice”, rather than “court decision”, according to comments to the DR. Further comments to the DR stated that LASH feel that “limited action” was provided as a will was drafted by a pro bono attorney.

Additional comments to the DR stated that based on the finding in the DR, LASH will be training staff on case closure codes and work with their supervisors to ensure timely case review at case closing to ensure that the appropriate case closure codes are used.

Finding 11: LASH is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. (Timely closing of cases)

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).¹² There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001

¹² 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).

CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the 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 (2001 Ed.), ¶ 3.3(b) and 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).

LASH is in substantial compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a), however there were three (3) staff cases that were dormant.

Those cases closed in 2010 or remaining open with no recent activity should be closed administratively. The following case files, and those similar to them, should not have been or should not be reported to LSC in LASH's CSR data submission and should be closed administratively. Examples include: (Main) Open Case No. 05-10-07002112 (which was opened on March 21, 2005 and remains open. All activity ceased in this case file in the year 2005 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed); (Main) Open Case No. 09-10-06008283 (which opened on October 19, 2009 and remains open. All activity ceased in this case file in the year 2009 with no recent legal activity and no documented activity in the file regarding future legal assistance pending or needed); and (Windward) Closed 2007 Case No 06-10-07006158 (which appeared on the Open case list and opened on September 11, 2006 with a close date of February 6, 2013. This case was erroneously left open).

LASH must take corrective action and review all open cases to identify those that cannot be timely closed. Those cases identified as dormant should be closed in such a manner that they are not reported to LSC in a current or future CSR submission.

Comments to the DR stated that LASH agrees with this finding and has made requisite changes to exceptions as noted by LSC.

Finding 12: Sample cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and 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 (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

When a recipient provides more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.2 and 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 (2001 Ed.), ¶ 6.3 and 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 (2001 Ed.), ¶ 6.4. and CSR Handbook (2008 Ed.), § 6.4.

LASH is in substantial compliance with the requirements of the CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. One (1) set of duplicates was identified among the files reviewed. (Hilo) Closed 2010 Case Nos. 09-10-07005073 and 09-10-03005077 were duplicates. LASH had already identified Case No. 09-10-07005073 as a duplicate and had taken measures to exclude it from CSR reporting.

Comments to the DR stated that LASH agrees with this finding.

Finding 13: Review of the recipient's policies and the list of staff attorneys who have engaged in the outside practice of law, revealed that LASH 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 recipient's 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.

45 CFR § 1604.4-Permissible outside practice.

A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

- (a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;
- (b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and
- (c) The attorney is---
 - (1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or
 - (2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or
 - (3) Acting on behalf of a religious, community, or charitable group; or
 - (4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by bar association, other legal organization or religious, community or charitable group.

Prior to the visit, LASH provided OCE with their policies related to 45 CFR Part 1604 and a list of all attorneys who have, or have had, an outside practice between January 1, 2008 and November 15, 2010. The list included the attorney's full name, the office within which the attorney work or worked, the condition under which the attorney conducted an outside practice of law, and the approval executed by the Executive Director.

LASH is in compliance with 45 CFR Part 1604 and all outside practice of law disclosed is permissible pursuant to 45 CFR § 1604.4. Discussions with the Executive Director also indicated that LASH's attorneys are not involved in any unauthorized outside practice of law. In addition, LASH's resources are not utilized and time spent on the permissible outside practice of law is not during the time the attorneys are engaged in practice of law for LASH.

Comments to the DR stated that LASH agrees with 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, and interviews with staff indicate, that LASH is not involved in such activity. Discussions with the Executive Director also indicated that LASH is not involved in these prohibited activities.

In addition to the case review, because LASH has an attorney on staff who is also an elected member of the state legislature, a review of her employment and her status was conducted. This was done following the prior review of LASH in 2005, accordingly, this was a follow-up review and it confirmed that the program and the attorney are in compliance with the law. Specifically, the law provides that no staff attorney may be a candidate for partisan elective office. *See* 45 CFR § 1608.5(c). The LSC regulations specifically define "staff attorney" as "an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act." *See* 45 CFR § 1600.1. Based on documents provided to LSC by both the elected member and LASH, it is clear that this attorney is not a staff attorney and therefore not covered by 45 CFR § 1608.5(c). Moreover, a review of documents and websites, including campaign materials, blogs, and newspapers show that this attorney has made every effort to avoid identifying LASH with her campaign. Last, there is no evidence that any program resources have been used for the campaign or conduct of legislative activities.

Attorney Maile Shimabukuro is on staff in the Waianae office where she works part of the year providing legal assistance to LASH clients. Prior to 2011, she was an elected member of the State House of Representatives and was recently elevated to the State Senate by Governor Neil

Abercrombie.¹³ As a Hawai'i state legislator, Senator Shimabukuro derives most of her income from her employment as Senator. Accordingly, she does not meet the definition of staff attorney and is not covered by 45 CFR § 1608.5(c).

A review of accounting records and documentation for the period of January 2009 through December 2010 and interviews with staff disclosed that LASH has not expended any grant funds, or used personnel or equipment in prohibited activities in violation of 45 CFR § 1608.3(b).

Comments to the DR stated that LASH agrees with 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).

None of the sampled cases reviewed involved legal assistance with respect to a fee-generating case. Discussions with the Executive Director also indicated that LASH is not involved in any fee-generating case.

Comments to the DR stated that LASH agrees with this finding.

¹³ *See* <http://hawaii.gov/gov/newsroom/in-the-news/2010/december/governor-abercrombie-announces-appointment-of-shimabukuroand-solomon-to-state-senate> (December 21, 2010).

Finding 16: A review of LASH accounting and financial records indicate substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). LASH is in compliance with 45 CFR § 1610.5(a) (Written notification of the prohibitions and conditions which apply to the funds).

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).

From a limited review of the chart of accounts and detailed general ledger (“G/L”) for specific G/L accounts for January 2009 through December 2010, observations of the physical locations of all offices, and interviews with staff and management, LASH does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

A review of the “donor notification” letter utilized by LASH reveals the letter conforms to the requirements of 45 CFR § 1610.5(a) which 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. A recipient is not required to provide such notification for receipt of contributions of less than \$250.

Comments to the DR stated that LASH agrees with this finding.

Finding 17: LASH 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. LASH is not in compliance with 45 CFR § 1614.3(e) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff and support costs related to PAI activities. LASH is also underreporting PAI costs since PAI contract attorneys payments are not being allocated as PAI cost. LASH is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

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.

The Audited Financial Statement (“AFS”) for Fiscal Year Ending June 30, 2010, reported the expenditures dedicated to the PAI effort separately, as required by 45 CFR § 1614.4(e)(2). The AFS reported \$200,264, as the total PAI expenditures in 2010, which translates to 12.5% of the total basic field grant (\$1,602,112). However, the AFS reflects the 2010 calendar year basic field grant amount, instead of calculating the average value of the 2009 and 2010 grants. LASH is on a fiscal year ending in June, therefore the auditors should have added the 2009 calendar year’s basic field amount of \$1,483,801 and the 2010 calendar year’s basic field amount of \$1,602,118 and calculated the average value which equals \$1,542,959. Based on the average value, the 12.5% PAI requirements comes to \$192,870 instead of \$200,264 as reported in the audit. LASH should take corrective action and inform the auditors to make the necessary corrections to the 2010 audit regarding PAI calculations.

A review of the spread sheet and costs of the G/L report allocating PAI staff salary for the fiscal year ending June 30, 2010 disclosed that LASH incorrectly allocates the salaries of attorneys and paralegals. LASH must utilize staffs hourly rates by dividing their annual salary by total workable hours. The PAI salaries of attorneys and paralegals should be determined by multiplying actual hours worked by the hourly rate supported by time records. Non-personnel costs are being allocated on the basis of reasonable operating data in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i).

Several costs allocated to PAI including payments to private contract attorneys were reviewed and were found to be related to PAI activities, fully documented and approved. However, payments totaling an estimated \$88,000 were not reported as a PAI cost, because of a misunderstanding by LASH. LASH would only report 12.5% exactly. The review of contracts for the private contract attorneys indicates compliance with the requirements of 45 CFR § 1614.3(e)(1)(ii) which requires programs to maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. LASH should allocate as a PAI cost all payments to contract attorneys providing PAI related work, regardless of the funds utilized. LSC recommends that LASH revise their private contracts and include the following language:

- 45 CFR § 1627.2(b)(1); This contract is on the condition that if Corporation funds utilized exceeds \$25,000 in a year, attorneys or law firm will engage in a subgrant agreement that will need LSC’s prior approval.
- 45 CFR § 1614.3 (4); Attorney fees paid may not exceed 50% of the local prevailing market rate for that type of service.

A review of 20 payments to private contract attorneys disclosed that they were well documented with corresponding approvals.

LASH began its Partnership in Pro Bono in 2003, the purpose being to involve pro bono attorneys in meeting the needs of low income residents of Hawai’i who are eligible for legal

services. The primary focus of the Partnership in Pro Bono is to provide full representation in eight particular areas of law and disaster relief, which are guardian ad litem and custody guardian ad litem, adoption and guardianship, divorce advocacy, post-decree modification, compassionate care wills and estate planning, economic self-sufficiency advocacy, social security advocacy, and predatory lending.

LASH works closely with the Hawai'i State Bar Association, Volunteer Legal Services of Hawai'i, the Access to Justice Hui and the Hawai'i Access to Justice Commission to implement the pro bono provisions of the Community Wide Action Plan.¹⁴

LASH has a Pro Bono Coordinator who attends meetings with selected law firms and makes presentations to recruit attorneys for pro bono and guardian ad litem work. In addition, the Pro Bono Coordinator meets with the President of the Hawai'i State Bar Association and Young Lawyers Division and persuades them to support LASH's project by helping them to recruit attorneys; work with the Pro Bono Committee of the Access to Justice Commission to develop policies and participates in recruitment efforts for attorneys; and contacts new attorneys to register with the project and accept cases that need full pro bono representation.

LASH's intake screening ensures that each case is carefully screened for case merit and conflicts check. Intake and case acceptance procedures for PAI cases are consistent with LASH practices because all PAI cases are first screened by LASH staff and determined to be within stated priorities before being referred to a volunteer or contract attorney.

All intake eligibility screening is conducted by LASH's intake workers. LASH puts together a Case Referral Packet, which provide all pertinent forms and materials to the volunteer attorney when a case is accepted by LASH. The Pro Bono Coordinator will double check each case for merit and reasonable time commitment. Oversight and follow-ups are conducted once a month by the Pro Bono Coordinator by telephone. All PAI cases are closed by the Pro Bono Coordinator once the case has been completed.

Most PAI cases reviewed were in compliance with 45 CFR Part 1614, the CSR Handbook, and other regulatory requirements and there was adequate oversight and follow-up provided. However, *See* Closed PAI 2008 Case Nos. 07-10-03008505 (lacking documented legal assistance) and 07-10-07004141 (lacking 45 CFR § 1626.6 documentation); and PAI Closed 2009 Case No. 08-10-03004268 (lacking documented legal assistance). These case files, and those that are similar to them, are not CSR reportable.

Comments to the DR stated that LASH agrees with this finding and is making most of the adjustments recommended by LSC. However, LASH disagrees that all of their private attorney contracts require LSC's prior approval if payments exceed \$25,000.

45 CFR § 1627.2(b)(1) provides, in pertinent part, that subrecipient **shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.** (Emphasis added).

¹⁴ Ten action steps to increase access to Justice in Hawai'i by 2010, a plan developed by the Access to Justice Hui.

Accordingly, 45 CFR § 1627.2 (b)(1) pertains to the receipt of LSC funds and further states that any arrangement between a recipient and a private law firm or attorney which exceeds \$25,000 is included in the definition of subrecipient.

Finding 18: LASH 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.

LSC regulation 45 CFR § 1627.4(a) requires that:

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

The review of accounting records and detailed G/L for the years 2009 and 2010 through December disclosed that LASH is in compliance with 45 CFR § 1627.4(a). All non-mandatory dues and fees are being paid with non-LSC funds.

Comments to the DR stated that LASH agrees with this finding.

Finding 19: LASH 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.

The review of three (3) advocates' timekeeping records selected from all of the LASH offices for the pay period ending January 15, 2010 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

The review of 15 case files against the time reported by the attorneys verified that the time claimed appeared to be fully consistent with the nature and extent of the legal services provided. LASH does not have any attorneys or paralegals who work part time for other organizations.

Comments to the DR stated that LASH agrees with 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 § 1642.3.¹⁵ 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.¹⁶

Except as provided by LSC regulations, recipients may 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. 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).

¹⁵ 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).

¹⁶ LSC further determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. As well, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action. *See* LSC Program Letter10-1 (February 18, 2010).

None of the sampled cases reviewed contained a prayer for attorneys' fees. Discussions with the Executive Director and fiscal review also indicated that LASH is not involved in this prohibited activity.

A review of the LASH fiscal records, the 2009 and 2010 Audited Financial Statements, and interviews with the Controller evidenced that there were no attorneys' fees awarded, collected, and retained for cases serviced directly by LASH that would violate 45 CFR Part 1642.

Comments to the DR stated that LASH agrees with this finding.

Finding 21: Bank reconciliations for November and December 2010 were reviewed and found to be performed timely and accurately. However, the general account had two (2) outstanding checks over six (6) months, and bank reconciliations lacked corresponding signatures and dates of their performance and review.

The bank reconciliations for the operating and client trust accounts for November and December 2010 were reviewed and found to be reconciled timely, with bank statement balances to the G/L. However, the general account had two (2) outstanding checks over six (6) months old. In addition, bank reconciliations lacked the corresponding signatures, and dates of their performance and review. The Executive Director should sign and date the bank statements when received.

- LASH should take corrective action related to bank reconciliations as follows:
 - Establish a policy and practice to investigate outstanding checks over a set period of time and investigate current outstanding checks in accordance with the new policy;
 - Have the performer and the reviewer of the bank reconciliations sign and date when such tasks were completed; and
 - Have the Executive Director sign and date the bank statements when received.

Comments to the DR stated that LASH agrees with this finding and will be taking corrective action as recommended by LSC.

Finding 22: LASH has an Accounting Manual that is adequately documented and generally complies with the requirements of the 2010 Accounting Guide for LSC Recipients ("AGLSCR").

A cursory review of LASH's Accounting Manual disclosed that it complies with the requirements of the new AGLSCR issued in August 2010.

Comments to the DR stated that LASH agrees with this finding.

Finding 23: LASH's internal control worksheet did not reveal any weaknesses in its segregation of duties.

A review of the internal controls and the review of payments disclosed that LASH has good segregation of duties, good internal controls, and well-defined procedures contained in their Accounting Manual.

Comments to the DR stated that LASH agrees with this finding.

Finding 24: The limited review of payables disclosed that payments had sufficient supporting documents. However, a majority of the supporting documents have not been stamped as paid or otherwise indicate evidence of payment.

A limited review of payables, including usage of credit cards and payments of expenses for 2009 and through December 2010, disclosed adequate supporting documentation and corresponding approvals. However, LASH does not stamp as paid all supporting documents. LASH should take corrective action and stamp as paid all supporting documents to avoid duplicate payments.

Comments to the DR stated that LASH agrees with this finding and will be stamping as paid all supporting documents to avoid duplicate payments.

Finding 25: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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, 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 cases and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also indicated that LASH is not involved in this prohibited activity.

Comments to the DR stated that LASH agrees with this finding.

Finding 26: 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 cases reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also indicated that LASH is not involved in this prohibited activity.

Comments to the DR stated that LASH agrees with this finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁷

None of the sampled cases reviewed involved initiation or participation in a class action. Discussions with the Executive Director also indicated that LASH is not involved in this prohibited activity.

Comments to the DR stated that LASH agrees with this finding.

Finding 28: 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.

¹⁷ 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).

None of the sampled cases reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also indicated that LASH is not involved in this prohibited activity.

Comments to the DR stated that LASH agrees with this finding.

Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens the health or safety or other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled cases reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also indicated that LASH is not involved in this prohibited activity.

Comments to the DR stated that LASH agrees with this finding.

Finding 30: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

None of the sampled cases reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also indicated that LASH is not involved in this prohibited activity.

Comments to the DR stated that LASH agrees with this finding.

Finding 31: 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.¹⁸ This restriction has been contained in all subsequent appropriations acts.¹⁹ 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 cases, including documentation such as community education materials and program literature, indicated program involvement in such activity. Discussions with the Executive Director also indicated that LASH is not involved in this prohibited activity.

Comments to the DR stated that LASH agrees with this finding.

Finding 32: 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 LSC funds may be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

None of the sampled cases reviewed involved such activity. Discussions with the Executive Director also indicated that LASH is not involved in these prohibited activities.

Comments to the DR stated that LASH agrees with this finding.

Finding 33: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

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

¹⁸ *See* Section 504(a)(18).

¹⁹ *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).

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 cases reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that LASH 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.

Comments to the DR stated that LASH agrees with this finding.

IV. RECOMMENDATIONS²⁰

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

1. Provide staff training on the CSR case closing codes;

Comments to the DR stated that based on the finding in the DR, LASH will be training staff on case closure codes and will work with their supervisors to ensure timely case review at case closing to ensure that the appropriate case closure codes are used.

2. Revise their private contracts with attorneys by including the following two (2) paragraphs;
 - 45 CFR § 1627.2(b)(1): This contract is on the condition that if Corporation funds used exceeds \$25,000 in a year, attorneys or law firm will engage in a subgrant agreement that will need LSC's prior approval; and
 - 45 CFR § 1614.3 (4): Attorney fees paid may not exceed 50% of the local prevailing market rate for that type of service.

²⁰ Items appearing in the "Recommendations" section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

By contrast, the items listed in "Required Corrective Actions" must be addressed by the program, and will be enforced by LSC.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that cases are closed in a timely manner in compliance with CSR Handbook (2008 Ed.), § 5.6 and make sure open cases are not dormant by providing follow-up and oversight. Further, ensure that all cases identified in this DR that were not timely closed or dormant be de-selected from future CSR submissions;

Comments to the DR stated that LASH has made requisite changes to exceptions as noted by LSC. Further comments to the DR stated that LASH will provide training to all staff to ensure on-going compliance emphasizing when cases need to be closed.

2. Ensure that the legal assistance provided is documented in the cases and that those cases identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, a review of all cases at the time of closing is necessary;

Comments to the DR stated that based on this finding, LASH will be re-emphasizing with staff, through training, the need to document the legal assistance provided in both the docket and in the file. LASH will also be working with their supervisors to ensure timely case review at case closing to ensure that the appropriate legal assistance is documented, according to the comments in the DR. Additional comments to the DR stated that LASH reviewed all cases cited as lacking documentation of service provided and made all necessary corrections.

3. Ensure that 45 CFR § 1626.6 documentation is contained in all required cases. Further, ensure that all cases identified in this DR that were not in compliance with 45 CFR § 1626.6 be de-selected from future CSR submission. In addition, LASH must improve efforts to obtain 45 CFR § 1626.6 documentation for all walk-in applicants;

Comments to the DR stated that LASH will be revising their Case Management Manual and providing training for staff around eligible alien and citizenship documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on alien eligibility documentation, according to comments to the DR. Additional comments to the DR stated that the HIJC cases were excluded from LASH's most recent CSR data submission to LSC due to these and other concerns noted in the DR. All cases cited as lacking citizenship or alien eligibility documentation have been reviewed and LASH has made the required corrective actions, according to the comments to the DR. Additional comments to the DR stated that all walk-in applicants will be required to sign citizenship attestation forms or provide eligible alien documentation.

4. Ensure revision of its financial eligibility policy in accordance with the guidance provided by OCE in the letter dated February 16, 2011 and submit the full revised policy to LASH's Board of Directors for approval pursuant to 45 CFR § 1611.3(a);

Comments to the DR stated that revisions reflecting the approved Financial Eligibility Policy were approved by the Board of Directors on March 25, 2011. OCE received these revisions on March 9, 2011.

5. Ensure that the CSR Handbook (2008 Ed.), § 5.5 instructions are complied with which requires a separate signature line tied only to the citizenship attestation;

Comments to the DR stated that LASH will provide training to all staff that older retainers which contain citizenship attestations must not be used.

6. Ensure compliance with the required documentation to comply with LSC's income and assets eligibility requirements pursuant to 45 CFR § 1611.4 and 45 CFR §§ 1611.3 (c) and (d);

Comments to the DR stated that LASH will be revising their Case Management Manual and providing training for staff around income eligibility documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on income eligibility documentation, according to comments to the DR. Additional comments to the DR stated that the HIJC cases were excluded from LASH's most recent CSR data submission to LSC due to these and other concerns noted in the DR. All cases cited as lacking eligibility screening and cases cited having income which exceeds 125% of the FPG have been reviewed and LASH has made the required corrective actions, according to the comments to the DR.

Further comments to the DR stated that LASH will be revising their Case Management Manual and providing training for staff around asset eligibility documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on asset eligibility documentation, according to comments to the DR. Additional comments to the DR stated that the HIJC cases were excluded from LASH's most recent CSR data submission to LSC due to these and other concerns noted in the DR. All cases cited as lacking asset eligibility documentation have been reviewed and LASH has made the required corrective actions, according to the comments to the DR.

7. Ensure that applicants are screened concerning their income prospects and assets consistently as part of eligibility screening pursuant to 45 CFR § 1611.7 (a)(1);

Comments to the DR stated that LASH will provide training to all staff to ensure on-going compliance emphasizing applicant screening regarding income prospects and assets as part of their eligibility screening process.

8. Ensure consistency in the intake process for all walk-in applicants, including conflicts check;

Comments to the DR stated that LASH will provide training to all staff emphasizing that the intake procedures for walk-in applicants, in all offices, must be consistent with that done through the CIU.

9. Ensure that LASH stamps as paid all supporting documents to avoid duplicate payments;

Comments to the DR stated that LASH will use a paid stamp for all supporting documents to avoid duplicate payments.

10. Ensure that PAI staff salaries are calculated based upon the hourly rates derived by dividing their annual salary by total workable hours;

Comments to the DR stated that LASH will calculate PAI staff salaries based on hourly rates derived by dividing their annual salary by total workable hours.

11. Ensure allocation as PAI cost all payments to contract attorneys providing PAI related work, regardless of the funds utilized;

Comments to the DR stated that LASH will ensure that all payments to contract attorneys regardless of funds utilized are allocated to PAI.

12. Ensure that the auditors make the necessary corrections to the 2010 audit; the AFS reflects the 2010 calendar year basic field grant amount, instead of calculating the average value of the 2009 and 2010 grants; LASH is on a fiscal year ending in June, therefore the auditors should have added the 2009 calendar year's basic field amount of \$1,483,801 and the 2010 calendar year's basic field amount of \$1,602,118 and calculated the average value which equals \$1,542,959; and based on the average value, the 12.5% PAI requirements comes to \$192,870 instead of \$200,264 as reported in the audit. LASH should take corrective action and inform the auditors to make the necessary corrections to the 2010 audit regarding PAI calculations;

Comments to the DR stated that LASH will ensure that the necessary corrections are made to the audit as noted in this corrective action.

13. Ensure that a policy and practice to investigate outstanding checks is established and that current outstanding checks are investigated;

Comments to the DR stated that LASH will create and implement a policy and practice to investigate outstanding checks.

14. Ensure that the Executive Director sign and date the bank statements when received; and

Comments to the DR stated that LASH will have the Executive Director sign and date bank statements when received.

15. Ensure that the performer and the reviewer of bank reconciliations sign and date when such tasks were conducted.

Comments to the DR stated that LASH will have the performer and the reviewer of bank reconciliations sign and date when such tasks were conducted.



**LEGAL AID
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George J. Zweibel, Esq.
President Board of Directors
M. Nalani Fujimori Kaina, Esq.
Executive Director
OFFICE OF COMPLIANCE
AND ENFORCEMENT
2011 MAY -6 A 8:47

April 29, 2011

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

LEGAL SERVICES CORP
RECEIVED

Re: CSR/CMS Visit, Recipient No. 912000

Dear Mr. Cardona:

We are in receipt of the Legal Services Corporation's Draft Report for your on-site Case Service Report/Case Management System review of the Legal Aid Society of Hawai'i (LASH) on January 24-28, 2011. We have reviewed the report and have provided our response below:

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

We agree with this finding.

Finding 2: LASH's intake procedures and case management system support the program's compliance related requirements. However, some improvements are warranted. These improvements were executed by LASH on March 9, 2011.

We agree with this finding, but as a matter of clarification, the LASH Board of Directors adopted the Financial Eligibility Policy at its March 23, 2011 Board meeting.

We also have three technical changes:

- The Kauai Office's center is called the "Center for Equal Justice" not the "Equal Justice Center" (page 10, last full paragraph).
- Maui's senior cases are Title III not Title II cases (page 11, last full paragraph).
- All of LASH's offices not just Honolulu, Kauai, Maui, and Lanai handle GA-SSI cases (pages 12-13).

We also noticed that there was no mention of the Hilo, Kona, Windward or Hawai'i Immigrant Justice Center at Legal Aid offices. We are not sure if this was an oversight or if these were deliberately left out.

Finding 3: LASH maintains the income eligibility documentation required by 45 CFR §1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), §5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines (“FPG”). However, there were instances of non-compliance, particularly with the cases in the Hawai’i Immigrant Justice Center (“HIJC”).

We agree with this finding. Based on the findings in this report we will be revising our Case Management Manual and providing additional training for staff around income eligibility documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on income eligibility documentation. HIJC cases were excluded from LASH’s most recent CSR data submission to LSC due to these and other concerns noted in this report.

We reviewed all cases listed as lacking income eligibility screening and have made the required corrections. However, there were two cases in which we made an assumption on the correct case number and one that we were not able to find:

- Hilo Closed 2009 #09-10-077006773: we could not find any case with this number, however did find #09-10-07006773 and have assumed that this was the case that should have been noted.
- Hilo Closed 2009 #09-10-07006073: we were unable to locate this case
- HIJC Closed 2010 #10-10-070009368: we could not find any case with this number, however did find #10-10-07009368 and have assumed that this was the case that should have been noted.

We also reviewed all cases listed as having incomes which exceed 125% of the FPG, but did not have documentation and made necessary changes. However, we did find a few errors in the listing of the cases in the report:

- Hilo Closed 2010 #10-10-06008990: should have been listed as a Windward case.
- Open Main #10-06001985: could not find any case with this number, however did find #10-10-06001985 and have assumed that this was the case that should have been noted
- Main Closed 2009 #09-10-03007973, #09-10-03000267, and #09-10-03000268: these cases should have been listed as Molokai cases not Honolulu cases.

Finding 4: LASH maintains asset eligibility documentation as required by 45 CFR §§1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), §5.4, with some exceptions.

We agree with this finding. Based on the findings in this report we will be revising our Case Management Manual and providing additional training for staff around asset eligibility documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on asset eligibility documentation. HIJC cases were excluded from LASH’s most recent CSR data submission to LSC due to these and other concerns noted in this report.

We reviewed all cases listed as missing asset eligibility documentation and have made necessary changes. However, there was one case in which we made an assumption on the correct case number and a second that we were not able to find:

- Hilo Closed 2009 #09-10-077006773: we could not find any case with this number, however did find #09-10-07006773 and have assumed that this was the case that should have been noted.
- Hilo Closed 2009 #09-10-07006073: we were unable to locate this case

Finding 5: LASH is in compliance with 45 CFR 1626 (Restrictions on legal assistance to aliens), however, sample cases evidenced numerous instances of non-compliance with the requirements of 45 CFR §1626.6.

We agree with this overall finding, however dispute two determinations as follows:

- HIJC Closed 2010 #10-10-01007194: a review of the docket showed that there was no in person contact, so no documentation was required. This case was also noted as an HIJC case, however our records indicate that it is a Windward case.
- Maui Closed 2010 #10-10-03001690: a review of the docket showed that there was no in person contact, so no documentation was required.

Based on the findings in this report we will be revising our Case Management Manual and providing additional training for staff around eligible alien and citizenship documentation. Special training will also be provided to HIJC to ensure compliance with LSC regulations on alien eligibility documentation. HIJC cases were excluded from LASH's most recent CSR data submission to LSC due to these and other concerns noted in this report.

We reviewed all cases listed as missing citizenship or alien eligibility documentation and have made required changes. However, we found a number of errors with respect to the listing of these cases in the report:

- Closed 2008 #08-10-07003872: No office was listed. This was a Lanai case.
- Molokai Closed 2009 #09-10-03004866: This was listed as a Molokai case, however this was a Kauai case.
- Honolulu closed 2009 #07-10-07004740: This was listed as a Main case, however this was a Leeward case.
- Closed 2009 #09-10-01006540 and #09-10-07001959: No office was listed for these cases. Both cases were GA-SSI cases.
- HIJC Closed 10-10-01001004: This was listed as an HIJC case, however this is a GA-SSI case.

Finding 6: LASH is in substantial compliance with the retainer requirements of 45 CFR §1611.9

We agree with this overall finding, however dispute three of the five instances cited to in which it was noted that cases lacked the required retainer agreements:

- Kona Closed 2010 #08-10-03004214 and Main Closed 2010 #07-10-03006531: Both of these cases are guardian ad litem cases for which court orders are acceptable and retainers are not required. LSC's CSR Frequently Asked Questions September 2010 states on page 17 (emphasis added):

“**Question 8** – I have two questions about treatment of Guardian ad Litem cases:

Question a -- Are Guardian ad Litem situations cases, since the court appoints the program and it is not clear there is an attorney-client relationship.

Answer a – LSC considers these appointments to be cases. For minors, cases closed in 2008 or thereafter should be coded under the new Case Closing Code 44, Minor Guardian/Conservatorship; for cases closed in 2007, they should be coded under 33 Guardian/Conservatorship. LSC accepts the court appointment in lieu of a retainer agreement for such cases.”

- Main Closed 2009 #04-10-07004597: we could not find any case with this number, however did find #09-10-07004597 and have assumed that this was the case that should have been noted. In reviewing this case, it was closed as counsel and advice and as such no retainer was required.

The remaining two cases were reviewed and recommended changes were made.

Finding 7: LASH is in substantial compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

We agree with this finding. We appreciate the information and clarification provided by LSC regarding when a statement of facts is required and will be editing our Case Management Manual to add clarification for when it is needed.

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

We agree with this finding.

Finding 9: LASH is in substantial compliance with CSR Handbook (2001 Ed.), ¶5.1 and CSR Handbook (2008 Ed.), §5.6 (Description of legal assistance provided), with a few exceptions.

We agree with this finding, however dispute two of the determinations as follows:

- Main Closed 2009 #09-10-01005987: the docket indicated that we did represent the client in court and the closing code reflected this.
- Molokai Closed 2008 #08-10-03003916: the notes in the file indicated that the case should be closed as counsel and advice and it was closed as such.

Based on the findings in this report we will be re-emphasizing with staff through training the need to document the legal assistance provided in both the docket and in the file. We will also be working with our supervisors to ensure timely case review at case closing to ensure that the appropriate legal assistance is documented.

We reviewed all cases listed as lacking documentation of service provided and made all necessary corrections. However, we did find one case which was listed in the wrong office:

- Main Closed 2009 #08-10-01006290: this was actually a Windward case.

Finding 10: LASH's application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.), with a few exceptions.

We agree with this finding, but dispute one of the determinations:

- PAI Closed 2009 #09-10-07002659: the recommendation by LSC is that this case be closed as Counsel and Advice rather than as a Court Decision. However, in this case we feel that we provided Limited Action as a will was drafted for the client by a pro bono attorney and it was documented as such.

Based on the findings in this report we will be training staff on case closure codes. We will also work with our supervisors to ensure timely case review at case closing to ensure that the appropriate case closure codes are used.

We also reviewed all cases listed as not having case closure categories consistent with LSC rules and made all necessary corrections. However, we did find four cases which were listed in the wrong office and two cases where the level of service documented by LSC was different from the level actually documented:

- Main Closed 2010 #09-10-03002902 and #09-10-03005622: listed as Main cases, but were actually Molokai cases. These two cases were also listed as being closed as Court Decisions, but they were actually closed as Extensive Services.
- Main Closed 2009 #09-10-07003762 and Main Closed 2010 #09-10-01005478: listed as Main cases, but were actually Leeward cases.

Finding 11: LASH is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶3.3 and CSR Handbook (2008 Ed.), §3.3 (Timely closing of cases).

We agree with this finding and have made requisite changes to exceptions as noted by LSC.

Finding 12: Sample cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶3.2 and CSR Handbook (2008 Ed.), §3.2 regarding duplicate cases.

We agree with this finding.

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

We agree with this finding.

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

We agree with this finding.

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

We agree with this finding.

Finding 16: A review of LASH accounting and financial records indicate substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). LASH is in compliance with 45 CFR §1610.5(a) (Written notification of the prohibitions and conditions which apply to the funds).

We agree with this finding.

Finding 17: LASH 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. LASH is not in compliance with 45 CFR §1614.3(e) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff and support costs related to PAI activities. LASH is also underreporting PAI costs since PAI contract attorney payments are not being allocated as PAI cost. LASH is in compliance with 45 CFR §1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

We agree with the findings and are making most of the adjustments recommended by LSC.

We disagree, however, that all of our private attorney contracts require LSC's prior approval if payments exceed \$25,000. The private attorney contracts which we have to provide conflict services in guardian ad litem cases are paid for through a grant with the Hawai'i State Judiciary. It is our understanding that LSC regulations do not require that allocated costs related to PAI activities be paid out of LSC funds exclusively. As such, we do not believe that those private attorney contracts with conflict guardian ad litem which exceed \$25,000 must be approved by LSC and in this situation will not allocate any funds paid above the \$25,000 to PAI rather than seeking approval from LSC.

Finding 18: LASH 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.

We agree with this finding.

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

We agree with this finding.

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

We agree with this finding.

Finding 21: Bank reconciliations for November and December 2010 were reviewed and found to be performed timely and accurately. However, the general account had two (2) outstanding checks over six (6) months, and bank reconciliations lacked corresponding signatures and dates of their performance and review.

We agree with this finding and will be taking corrective action as recommended by LSC.

Finding 22: LASH has an Accounting Manual that is adequately documented and generally complies with the requirements of the 2010 Accounting Guide for LSC Recipients ("AGLSCR").

We agree with this finding.

Finding 23: LASH's internal control worksheet did not reveal any weaknesses in its segregation of duties.

We agree with this finding.

Finding 24: The limited review of payables disclosed that payments had sufficient supporting documents. However, a majority of the supporting documents have not been stamped as paid or otherwise indicate evidence of payment.

We agree with this finding and will be stamping as paid all supporting documents to avoid duplicate payments.

Finding 25: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

We agree with this finding.

Finding 26: 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).

We agree with this finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

We agree with this finding.

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

We agree with this finding.

Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

We agree with this finding.

Finding 30: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

We agree with this finding.

Finding 31: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

We agree with this finding.

Finding 32: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

We agree with this finding.

Finding 33: 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)).

We agree with this finding.

We appreciate the time the members of the LSC Office of Compliance and Enforcement spent with us in January. Their visit helped clarify some of the LSC requirements and to alert us to some potential issues.

We have taken action on all cases noted in the report (except those that we were unable to locate based on case number provided and those which we dispute) to correct problems and where noted to ensure that cases are not included in future CSR submissions.

In light of this report and the noted corrective actions, we will be modifying our Case Management Manual. Changes include:

- Revisions reflecting the approved Financial Eligibility Policy approved by the Board of Directors on March 25, 2011 (Corrective Action #4 - Completed).
- Clarifying when a statement of facts is required.
- Modifying and re-issuing a program-wide Intake Form.

In addition, we will be providing training to all of our staff to ensure on-going compliance. Training will emphasize:

- When a statement of facts is required.
- Utilization a program-wide Intake Form.
- When cases need to be closed (Corrective Action #1).
- That cases need to be reviewed at time of closing (Corrective Action #2).
- That all walk-in clients must sign citizenship attestation forms or provide eligible alien documentation (Corrective Action #3).
- The approved Financial Eligibility Policy approved by the Board of Directors on March 25, 2011 (Corrective Action #4).
- That older retainers which contain citizenship attestations must not be used (Corrective Action #5).
- Documentation requirements for income and asset eligibility are complied with (Corrective Action #6).
- That applicants are screened on their income prospects and assets as part of the eligibility screening process (Corrective Action #7).
- Procedures for walk-in applicants must be consistent with that done through the CIU (Corrective Action #8).

We will also be working with HIJC to ensure a better understanding of the requirements under LSC and to ensure that their cases contain the proper documentation to be reported as LSC eligible cases in future reporting.

With regard to the corrective actions relating to our accounting procedures, we plan to implement all of the corrective actions required by LSC under this report, including

- Using a paid stamp for all supporting documents to avoid duplicate payments (Corrective Action #9).

- Calculation of PAI staff salaries based on hourly rates derived by dividing their annual salary by total workable hours (Corrective Action #10).
- Ensuring that all payments to contract attorneys regardless of funds utilized are allocated to PAI. However as discussed above, we will limit allocation for those with total payments exceeding \$25,000 (Corrective Action #11).
- Ensuring that necessary corrections are made to the audit as noted in Corrective Action #12.
- Creation and implementation of a policy and practice to investigate outstanding checks (Corrective Action #13).
- Having the Executive Director sign and date the bank statements when received (Corrective Action #14).
- Having the performer and the reviewer of bank reconciliations sign and date when such tasks were conducted (Corrective Action #15).

We thank you for this opportunity to comment. Please feel free to contact me at (808) 527-8014 or via e-mail at nafujim@lashaw.org with any questions or clarifications.

Mahalo.

Sincerely,



M. Nalani Fujimori Kaina
Executive Director