

# LEGAL SERVICES CORPORATION

## Board of Directors Meeting

April 6 – 8, 2014

**Location:**

Legal Services Corporation  
3333 K Street, NW  
3<sup>rd</sup> Floor  
F. William McCalpin Conference Center  
Washington, DC 20007



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# **Schedule**

**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS  
MEETING SCHEDULE  
APRIL 6-8, 2014**

**Meeting Location:**

**Legal Services Corporation McCalpin Conference Center**

**3333 K Street, NW Washington, DC  
Tel (202) 295-1500**

<b>SUNDAY, APRIL 6, 2014</b>			
<b>Start</b>	<b>End</b>	<b>Meeting/Event</b>	<b>Location</b>
2:00pm	3:00pm	Governance & Performance Review Committee	Legal Services Corporation McCalpin Conference Center 3333 K Street, NW
3:15pm	4:30pm	Institutional Advancement Committee	Legal Services Corporation McCalpin Conference Center 3333 K Street, NW
4:30pm	5:45pm	Finance Committee	Legal Services Corporation McCalpin Conference Center 3333 K Street, NW

**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS  
MEETING SCHEDULE  
APRIL 6-8, 2014**

**Meeting Location:**

**Legal Services Corporation McCalpin Conference Center**

**3333 K Street, NW Washington, DC  
Tel (202) 295-1500**

<b>MONDAY, APRIL 7, 2014</b>			
<b>Start</b>	<b>End</b>	<b>Meeting/Event</b>	<b>Location</b>
8:30am	9:00am	<b>Legislative Briefing</b> <i>Carol Bergman</i> , Director of Government Affairs & Public Relations, Legal Services Corporation	<b>Legal Services Corporation Erlenborn Conf Room 4<sup>th</sup> Floor 3333 K Street, NW</b>
9:00am	10:15am	<b>Audit Committee</b>	<b>Legal Services Corporation McCalpin Conference Center 3333 K Street, NW</b>
10:30am	12:00pm	<b>Delivery of Legal Services Committee</b> <u>Panel Presentation: LSC Performance Criteria, Performance Area Four, Criterion 4. Financial administration—challenges of financial planning and budgeting in the face of unpredictable and fluctuating funding</u> <i>Cesar Torres</i> , Executive Director, Northwest Justice Project <i>Steve Pelletier</i> , Financial Director, Northwest Justice Project <i>Ed Marks</i> , Executive Director, New Mexico Legal Aid <i>Lisa Schatz-Vance</i> , Development Director, New Mexico Legal Aid <i>Calvin Harris Jr.</i> , CPA, President-Change Management, Harvin Consulting LLC <i>Reginald Haley</i> , Program Analyst, Office of Program Performance, LSC ( <i>Moderator</i> )	<b>Legal Services Corporation McCalpin Conference Center 3333 K Street, NW</b>
1:15pm	2:15pm	<b>D.C. Bar Pro Bono Program Presentation</b> <i>Lisa Dewey</i> , Partner, DLA Piper <i>Laura F. Klein</i> , Pro Bono Program Manager, U.S. Department of Justice <i>Jessica T. Rosenbaum</i> , Executive Director, D.C. Access to Justice Commission <i>Monika Varma</i> , Executive Director, D.C. Bar Pro Bono Program <i>Jim Sandman</i> , President, Legal Services Corporation ( <i>Moderator</i> )	<b>Legal Services Corporation McCalpin Conference Center 3333 K Street, NW</b>

**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS  
MEETING SCHEDULE  
APRIL 6-8, 2014**

**Meeting Location:**

**Legal Services Corporation McCalpin Conference Center**

**3333 K Street, NW Washington, DC  
Tel (202) 295-1500**

<b>MONDAY, APRIL 7, 2014</b>			
2:30pm	5:30pm	<b>Operations &amp; Regulations Committee</b>	<b>Legal Services Corporation McCalpin Conference Center 3333 K Street, NW</b>
<b>TUESDAY, APRIL 8, 2014</b>			
Start	End	Meeting/Event	Location
9:30am	11:30am	<b>OPEN Board Meeting</b>	<b>Legal Services Corporation McCalpin Conference Center 3333 K Street, NW</b>
11:30am	12:15pm	<b>CLOSED Board Meeting</b>	<b>Legal Services Corporation McCalpin Conference Center 3333 K Street, NW</b>
2:00pm	4:00pm	<p style="text-align: center;"><b>White House Forum on Increasing Access to Justice</b>  <i>Sylvia A. Aylor</i>, Director, Legal, Merck Office of General Counsel,                      Merck Sharp &amp; Dohme Corporation  <i>Anne Geraghty Helms</i>, Pro Bono Counsel, DLA Piper  <i>Jessie R. Nicholson</i>, Chief Executive Officer, Southern Minnesota                      Regional Legal Services, Inc.  <i>Diane K. Smith</i>, Executive Director, Legal Services of                      Northwest Jersey, Inc.  <i>Brett Strand</i>, Counsel, Office of the General Counsel, 3M                      Company  <i>Catherine Weiss</i>, Partner &amp; Chair, Lowenstein Center for the Public                      Interest at Lowenstein Sandler  <i>Diana C. White</i>, Executive Director, Legal Aid Foundation of                      Chicago  <i>Jim Sandman</i>, President, Legal Services Corporation (<i>Moderator</i>)</p>	<b>Eisenhower Executive Office Building South Court Auditorium</b>



# **Governance & Performance Review Committee**

# Agenda

# GOVERNANCE AND PERFORMANCE REVIEW COMMITTEE

April 6, 2014

## Agenda

### OPEN SESSION

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of January 24, 2014
3. Report on progress in implementing GAO Recommendations
  - Presentation by Carol Bergman, Director of Government Relations & Public Affairs
4. Report on Public Welfare Foundation grant and LSC research agenda
  - Presentation by Jim Sandman, President
5. Report on evaluation of LSC Comptroller, Vice President for Grants Management, and Vice President for Legal Affairs
  - Presentation by Jim Sandman, President
6. Consider and Act on LSC Non-Discrimination & Anti-Harassment Policy
  - Presentation by Ron Flagg, General Counsel
7. Consider and act on other business
8. Public comment
9. Consider and act on motion to adjourn meeting

**Draft Minutes of January 24, 2014 Open  
Session Meeting**

**Legal Services Corporation  
Meeting of the Governance and Performance Review Committee**

**Open Session**

**Friday, January 24, 2014**

**DRAFT**

Committee Chair Martha L. Minow convened an open session meeting of the Legal Services Corporation's ("LSC") Governance and Performance Review Committee ("the Committee") at 4:06 p.m. on Friday, January 24, 2014. The meeting was held at the Hilton Garden Inn Downtown Austin, 500 North Interstate 35, Austin, Texas 78701.

The following Committee members were present:

Martha L. Minow, Chair  
Sharon L. Browne  
Charles N.W. Keckler  
Julie A. Reiskin  
John G. Levi, ex officio

Other Board members present:

Robert J. Grey, Jr.  
Victor B. Maddox  
Laurie I. Mikva  
Father Pius Pietrzyk (by telephone)  
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Lynn Jennings	Vice President for Grants Management
Wendy Rhein	Chief Development Officer
Rebecca Fertig	Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Carol A. Bergman	Director, Office of Government Relations and Public Affairs
Carl Rauscher	Director of Media Relations, Office of Government Relations and Public Affairs
Jeffrey E. Schanz	Inspector General
Ronald "Dutch" Merryman	Assistant Inspector General for Audit, Office of the Inspector General
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General

Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General
Lora M. Rath	Director, Office of Compliance and Enforcement
Janet LaBella	Director, Office of Program Performance
Glenn Rawdon	Program Counsel, Office of Program Performance
Don Saunders	National Legal Aid and Defender Association (NLADA)
Herbert S. Garten	Non-Director Member, LSC's Institutional Advancement Committee
Pamela Brown	Texas RioGrande Legal Aid
David Hall	Texas RioGrande Legal Aid
David Bonbright	Keystone Accountability

The following summarizes actions taken by, and presentations made to, the Committee:

Committee Chair Minow called the meeting to order.

#### **MOTION**

Mr. Keckler moved to approve the agenda. Ms. Browne seconded the motion.

#### **VOTE**

The motion passed by voice vote.

#### **MOTION**

Mr. Levi moved to approve the minutes of the Committee's meeting of October 20, 2013. Mr. Keckler seconded the motion.

#### **VOTE**

The motion passed by voice vote.

President Sandman introduced David Bonbright, a hired consultant from Keystone Accountability, who gave a presentation on LSC's data collection and reporting project, which is being funded by the Public Welfare Foundation grant that LSC received in 2012. Mr. Bonbright first outlined the two goals of the project – (1) to enhance LSC's ability to assess grantee efficiency and effectiveness; and (2) to provide grantees with the tools to achieve efficiency and effectiveness. He then gave an overview of the work that has been accomplished thus far to achieve these goals. President Sandman and Mr. Bonbright answered Committee members' questions.

Committee Chair Minow led the discussion on President Sandman's evaluation for 2013 and renewal of his contract. Committee members commended President Sandman's outstanding achievements and leadership.

**MOTION**

Ms. Reiskin moved to recommend extending President Sandman’s contract to the Board. Ms. Browne seconded the motion.

**VOTE**

The motion passed by voice vote.

Committee Chair Minow next led the discussion on Inspector General Schanz’s evaluation for 2013. Committee members praised the work of the Inspector General and his office. Mr. Schanz answered Committee members’ questions.

Next, Ms. Bergman reported on the process and results of the Board and Committee evaluations, and on LSC’s progress in implementing the 2010 GAO recommendations.

President Sandman next presented proposed revisions to LSC’s performance management system and answered Committee members’ questions.

**MOTION**

Ms. Reiskin moved to recommend adopting the revised performance management policy in the LSC Employee Handbook to the Board. Because the Operations and Regulations Committee voted to eliminate the requirement that the Board approve revisions to the LSC Employee Handbook, Mr. Keckler suggested amending the motion to recommend adopting a resolution supporting management’s revisions to the performance management policy instead. Ms. Reiskin accepted Mr. Keckler’s amendment to the motion. Ms. Browne seconded the motion.

**VOTE**

The motion passed by voice vote.

Mr. Flagg then presented the proposed LSC Whistleblower Policy and corresponding resolution. The Committee members offered amendments to the policy and resolution.

**MOTION**

Ms. Reiskin moved to recommend to the Board the adoption of the LSC Whistleblower Policy and corresponding resolution, as amended. Mr. Levi seconded the motion.

**VOTE**

The motion passed by voice vote.

Next, Mr. Flagg presented the proposed amendment to Section 5.02(a) of the LSC Bylaws, regarding Committee quorums, and the corresponding resolution. The Committee members offered amendments to the LSC Bylaw provision and resolution.

**MOTION**

Mr. Keckler moved to recommend to the Board the adoption of the proposed amendment to Section 5.02(a) of the LSC Bylaws and corresponding resolution, as amended. Ms. Reiskin seconded the motion.

**VOTE**

The motion passed by voice vote.

Committee Chair Minow invited public comment and received none

There was no other business to consider.

**MOTION**

Mr. Keckler moved to adjourn the meeting. Ms. Browne seconded the motion.

**VOTE**

The motion passed by voice vote.

The Committee meeting adjourned at 5:31 p.m.



# **GAO 2010 Report Tracking Document**

**Status of GAO Recommendations from June 2010 Report  
 “Improvements Needed in Controls over Grant Awards & Grantee Program Effectiveness”**

#	Grant Application Processing and Award	Date Document ation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
1	Develop and implement procedures to provide a complete record of all data used, discussions held, and decisions made on grant applications.	June 2010  August 2010  June 2010	Real time observation of LSC Grants  Real time observation of LSC Grants  Real time observation of LSC Grants	Changes to the LSC Grants software program have been implemented and include: <ul style="list-style-type: none"> <li>• The home page of the LSC Grants review module has been revised to include a listing of grant documents that must be reviewed (if applicable). The final page of the review module requires the reviewer to certify, by entering the reviewer’s name, that all applicable grant documents have been reviewed in completing the grant application evaluation.</li> <li>• LSC grants includes a page for OPP management to use in certifying the meeting(s) held with staff reviewers to discuss data used in the evaluation process, the reviewer’s recommendations, and management’s final funding recommendation for the grant applicant.</li> <li>• The evaluation module of LSC grants is modified to designate certain reviewer data fields as required, which prohibits a reviewer from submitting an application evaluation that is incomplete. As an example, the field that reviewers use to certify that all required grant documents have been reviewed is a required field. Also, data fields linked to particular responses provided in other data fields are designated as required fields.</li> </ul>	Closed by GAO on 3.15.13.

#	Grant Application Processing and Award	Date Document ation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
2	Develop and implement procedures to carry out and document management's review and approval of the grant evaluation and award decisions.	December 2010	Real time observation of LSC Grants	<p>The following changes were incorporated for the 2011 grant decision cycle:</p> <p>LSC grants has been revised to include a page for the LSC Vice President for Programs and Compliance and a page for the LSC President to use in certifying the meeting(s) held with OPP and OCE management to discuss the evaluation process, and OPP and OCE management recommendations.</p> <ul style="list-style-type: none"> <li>The Vice President's page includes a funding recommendation for the grant Applicant and the President's page includes a line for certifying the funding decision for each Applicant. Funding decisions were completed in December 2010.</li> </ul>	Closed by GAO on 3.15.13.
3	Conduct and document a risk-based assessment of the adequacy of internal control of the grant evaluation and award and monitoring process from the point that the Request for Proposal is created through award, and grantee selection.	Ongoing.	Documentation of the risk based internal control assessment of the process and any related risk remediation efforts.	<p>LSC has engaged an outside expert to develop and perform a full evaluation and assessment of the competitive grants process.</p> <p>This includes conducting a risk-based assessment of the internal control of the grant evaluation, award, and monitoring process; recommendations of additional internal control options; recommendations for maximizing information reporting capabilities; and a report on internal controls and options implemented.</p>	Closed by GAO on 3.15.13.
4	Conduct and document a cost benefit assessment of improving the effectiveness of application controls in LSC Grants such that the system's information capabilities could be utilized to a greater extent in the grantee application evaluation and decision-making process.	November 2010	<p>Cost benefits assessment.</p> <p>Real time observation of the required fields, certs etc. in LSC Grants</p> <p>Evidence of the continuous internal evaluation by staff.</p>	<p>LSC implemented the use of the required fields, certifications required by reviewers documenting the review process, and certifications by management and the Executive Office documenting the process for reaching final funding recommendations and funding decisions.</p> <p>LSC Grants will undergo a continuous internal evaluation by staff and management to assess the effectiveness of the control features implemented, and consider additional control feature options.</p>	Closed by GAO on 8.12.13.

#	Grant Application Processing and Award	Date Document ation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
<b>Grantee Oversight Activities</b>					
5	Develop and implement procedures to ensure that grantee site visit selection risk criteria are consistently used and to provide for summarizing results by grantee.	August 16, 2010	Evidence of outside labor counsel review and implementation.	LSC policy reflecting risk criteria used by OPP and OCE for selecting grantee site visits has been issued and posted on LSC website. Both offices have prepared summarized results of the selection process by grantee for the 2013 grant cycle.	Closed by GAO on 3.4.14.
6	Establish and implement procedures to monitor OCE grantee site visit report completion against the 120 day time frame provided in the OCE Procedures Manual.	April 2012	Evidence of outside labor counsel review and implementation.	OCE has developed an annual tracking document that includes comprehensive information on grantee site visits, and reporting date and issuance (OCE/OPP combined visit list). Outside labor counsel has reviewed LSC's response.	Closed by GAO on 3.15.13.
7	Execute a study to determine an appropriate standard timeframe for OLA opinions to be developed and issued. Develop and implement procedures to monitor completion of OLA opinions related to OCE site visits against the target time frame for issuing opinions.	August 20, 2010	Copy of study and new OLA Opinions Protocol. Also, evidence of implementation of the new protocol.	Office of Legal Affairs (OLA) issued a new Opinions Protocol that sets forth the procedures and processes to be followed in the development and issuance of both Advisory and Internal Opinions. As part of this effort, OLA implemented appropriate timeframes for response to requests for opinions.	Closed by GAO on 3.15.13.

#	Grant Application Processing and Award	Date Document ation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
8	Develop and implement procedures to provide a centralized tracking system for LSC's recommendations to grantees identified during grantee site visits and the status of grantees' corrective actions.	August 2011	Evidence of procedures and implementation of the centralized tracking system for LSC recommendations.	Both OPP and OCE currently monitor recommendations and corrective actions through separate processes in each office. LSC has implemented a method of monitoring the status of top tier recommendations from OPP program quality visits in LSC Grants. The system requires grantees to discuss the status of the implementation of the report recommendations in their annual competition or renewal applications.	Closed by GAO on 3.15.13.
<b>Performance Management</b>					
9	Develop and implement procedures to link performance measures (1) to specific offices and their core functions and activities, and (2) to LSC's strategic goals and objectives.	Ongoing	Evidence of procedures and sustainable implementation.	<p>The LSC Board of Directors has developed a new strategic plan for the Corporation which includes linking performance measures to LSC's strategic goals and objectives.</p> <p>LSC has drafted procedures to identify performance measures for each office within LSC annually and to link these measures to LSC's strategic goals and objectives.</p>	On 1/17/2014, GAO notified LSC that copies of completed quarterly assessments of the office performance measures are required to close out this recommendation. LSC expects to complete the quarterly reviews in April 2014 and request close-out shortly thereafter.
10	Develop and implement procedures for periodically assessing performance measures to ensure they are up-to-date.	Ongoing	Evidence of implementation.	<p>LSC will develop and implement procedures to periodically assess performance measures after a new strategic plan is finalized.</p> <p>LSC has drafted procedures to identify performance measures that include a schedule for assessing performance measures and ensuring they are up to date.</p>	On 1/17/2014, GAO notified LSC that copies of completed quarterly assessments of the office performance measures are required to close out this recommendation. LSC expects to complete the quarterly reviews in April 2014 and request close-out shortly thereafter.
<b>Staffing Needs Assessment</b>					
11	Develop and implement procedures to provide for assessing all LSC component staffing needs in relation to LSC's strategic and strategic human capital plans.	Ongoing	Evidence of procedures and their sustainable implementation.	<p>LSC will develop and implement a human capital plan consistent with the new strategic goals the Board adopts.</p> <p>LSC has drafted a Strategic Human Capital Plan for use in assessing LSC's staffing needs.</p>	Closed by GAO on 3.4.14.

#	Grant Application Processing and Award	Date Document ation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
12	Develop and implement a mechanism to ensure that all LSC staff receives annual performance assessments.	Ongoing	<p>Evidence of procedures and their sustainable implementation e.g., most recent actual performance assessments for all OPP and OCE employees.</p> <p>Also list of OPP and OCE staff on board at time of performance assessment cycle.</p>	<p>LSC has drafted a performance management system process that will replace the performance management process described in LSC's Employee Handbook.</p> <p>GAO has notified LSC that it does not require a two consecutive years of implementation before close-out. GAO has confirmed that the only remaining requirement needed to close out this recommendation is that LSC submit a performance management system plan.</p>	<p>Since the January Board meeting all LSC staff and managers have been trained on the new individual performance management system. Currently, directors are drafting individual performance plans – tied to the departmental plans – which should be completed by mid-to-late April. LSC plans to discuss the new performance management system and the steps going forward with GAO to determine the possibility of close-out in 2014.</p>
<b>Budget Controls</b>					
13	Develop and implement a process to monitor contract approvals to ensure that all proposed contracts are properly approved before award.	October 2009	Evidence of process design and implementation.	<p>Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance. This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.</p>	Closed by GAO on 10.13.2011.
14	Develop and implement procedures for contracts at or above established policy thresholds, to ensure the LSC President provides written approval in accordance with policy before contract award.	October 2009	Evidence of procedures and their implementation.	<p>Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance.</p> <p>This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.</p>	Closed by GAO on 10.13.2011.

#	Grant Application Processing and Award	Date Document ation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
15	Develop and implement procedures to ensure budget funds are available for all contract proposals before contracts are awarded.	October 2009	Evidence of sustainable implementation.	<p>Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance.</p> <p>This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.</p>	Closed by GAO on 10.13.2011.
<b>Internal Control Environment</b>					
16	Develop and implement procedures for providing and periodically updating training for LSC management and staff on applicable internal controls necessary to effectively carry out LSC's grant award and grantee performance oversight responsibilities.	Ongoing	Evidence demonstrating implementation of procedures for providing and periodically updating training for LSC management and staff on applicable internal controls necessary to effectively carry out LSC's grant award and grantee performance oversight.	<p>LSC developed training procedures for LSC management and staff regarding internal controls to carry out grant award competition and grantee oversight responsibilities.</p> <p>LSC management received first of a 3-part training series on this topic on September 6, 2012. Second session scheduled for October.</p>	Closed by GAO on 10.13.2011.

Updated 3.18.14

#	Grant Application Processing and Award	Date Document ation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	LSC Implementation	Current Status
17	Establish a mechanism to monitor progress in taking corrective actions to address recommendations related to improving LSC grants award, evaluation, and monitoring.	October 2010	Evidence of implementation of the monitoring of corrective actions taken to address recommendations related to improving LSC grant award.	LSC has established a formal process to monitor and track actions taken by LSC in response to recommendations from the Government Accountability Office. This written procedure identifies the Office of Government Relations and Public Affairs as the office responsible for maintaining the tracking system and includes quarterly reporting on the status of any remediation efforts to the Board of Directors.	Closed by GAO on 10.13.2011.

Total Number of Recommendations: 17

Total Number Closed: 14

Total Number of Open Items: 3



# **LSC Non-Discrimination & Anti-Harassment Policy**

## MEMORANDUM

**TO:** Governance & Performance Review Committee

**FROM:** Ronald S. Flagg, Vice President and General Counsel

**DATE:** March 18, 2014

**SUBJ:** Proposed Revised LSC Non-Discrimination and Anti-Harassment Policy

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This memorandum addresses proposed revisions to LSC's Discrimination and Harassment Policy ("Policy").

Management is currently reviewing and updating the Corporation's internal policies and procedures. The purposes of these reviews are at least two-fold:

- First, to evaluate and, where warranted, amend LSC's policies with a goal of putting in place a set of policies that reflects best practices among non-profit and grant-making organizations; and
- Second, to consolidate the numerous sources of internal guidance at LSC to facilitate access to the Corporation's policies by its employees and the public.

On March 24, 2008, the Board of Directors ("Board") adopted the LSC Code of Ethics and Conduct ("Code of Conduct"). The Code of Conduct applies to all Directors, officers, and employees of the Corporation, and includes a provision prohibiting discrimination and harassment. *See* Section XIII, Discrimination and Harassment. LSC's Employee Handbook, which was adopted by the Board on April 28, 2007, also includes provisions prohibiting discrimination and harassment. *See* Section 2.2, Equal Employment Opportunity, and Section 2.3, Policy Prohibiting Harassment, Including but Not Limited to Sexual Harassment. Upon reviewing the current policy prohibiting discrimination and harassment in the Code of Conduct, Management determined that the policy would benefit from substantial revisions to provide greater clarity and guidance to Directors, officers, and employees. Furthermore, because such policy is currently scattered in a number of places, including the Code of Conduct and LSC's Employee Handbook, Management believes it would be best to create a single, comprehensive non-discrimination and anti-harassment policy.

Management, working cooperatively with the Office of Inspector General ("OIG"), proposes adoption of the Non-Discrimination and Anti-Harassment Policy, as reflected in the attachment hereto. The policy includes the following provisions:

- A purpose statement stating that the policy is intended to prohibit and prevent discrimination and harassment in the workplace, to encourage Directors, officers, and employees to report instances of discrimination and harassment without fear of retaliation, and to provide procedures for reporting and investigating such activity;
- A statement of policy prohibiting discrimination and harassment by anyone and in any manner (verbal, non-verbal, or physical) on the basis of protected classes under federal, state, and local law, and prohibiting retaliation against any Director, officer, or employee (including OIG employees) for reporting instances of discrimination and harassment and/or participating in the investigation of such activity;
- A “Definitions” section with detailed definitions of “complainant,” “discrimination,” “harassment,” “respondent,” and “sexual harassment,” and listing examples of prohibited conduct;
- A section that provides detailed reporting and investigation procedures for LSC Directors, officers, and employees, and a separate reporting and investigation process for OIG officers and employees;
- A “Confidentiality” provision for reporting instances of discrimination or harassment, providing that confidentiality will be maintained to the extent possible, but not guaranteed; and
- A provision prohibiting retaliation for reporting incidents of discrimination and harassment of any kind in good faith, or for participating in the investigation of such a report;

Subject to Board approval, the Non-Discrimination and Anti-Harassment Policy will be incorporated into the Code of Conduct and will be made available to LSC employees and the public on the LSC website.

# NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY

## 1. Purpose

The purposes of this policy are to prohibit and prevent discrimination and harassment in the workplace, encourage members of the Board of Directors (“Directors”), officers, and employees of the Legal Services Corporation (“LSC”) to report instances of discrimination and harassment without fear of retaliation, and to provide procedures for reporting and investigating such activity.

## 2. Statement of Policy

LSC is committed to providing a diverse and inclusive work environment free of discrimination and harassment. LSC strictly prohibits and does not tolerate discrimination and harassment by anyone (supervisors, co-workers, or non-employees), regardless of whether it is verbal, non-verbal, or physical, on the basis of race, color, religion, sex, national origin, veteran status, pregnancy, age, disability, marital status, sexual orientation, gender identification or expression, family responsibilities, genetic information, matriculation, political affiliation personal appearance, use of tobacco, or any other characteristic protected under applicable federal, state, or local law (collectively “protected traits”).<sup>1</sup> Discrimination and harassment are prohibited in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings and LSC-sponsored events.

A Director, officer, or employee who believes that s/he has been subjected to, or becomes aware of or witnesses, discrimination or harassment of any type should immediately report the conduct to his or her supervisor or the Director of Human Resources (“HR Director”). Any employee of the Office of Inspector General (“OIG”) who believes s/he has been subjected to, or becomes aware of or witnesses, discrimination and harassment of any type should immediately report the conduct to the Inspector General. Reported incidents will be reviewed and addressed promptly. LSC will not retaliate nor tolerate retaliation against any Director, officer, or employee for reporting or participating in good faith in the investigation of such incident. LSC will take reasonable and appropriate remedial action to prevent discrimination and harassment, eliminate any hostile work environment, prevent its recurrence, and, as necessary, correct its discriminatory effects on the complainant and others.

## 3. Scope

This policy applies to all LSC Directors, officers, and employees. Employees of the OIG are covered by this policy and included within the term “LSC officers and employees,” except as

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<sup>1</sup> See Civil Rights Act of 1964, 42 U.S.C. § 2000e-2000e-17 (2006); Americans with Disabilities Act of 1990, 42 U.S.C. § 12101-12300 (2006 & Supp. V 2011); Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621-634 (2012); Uniformed Services Employment and Reemployment Rights Act of 1994, 38 USC § 4301-4335 (2011); District of Columbia Human Rights Act of 1977, DC CODE § 2-1401.01-2-1404.04 (2012); and Prohibition of Employment Discrimination on the Basis of Tobacco Use Amendment Act of 1992, DC CODE § 7-1703.03 (2012).

otherwise indicated. Any reference to “Directors” in this policy includes non-Director members of committees of the Board of Directors.

#### **4. Definitions**

Complainant: An individual who has alleged a violation(s) of this policy.

Discrimination: Adverse treatment of an individual based on any protected traits under applicable federal, state, or local law, rather than on the basis of his/her individual merit, with respect to the terms, conditions, or privileges of employment including, but not limited to hiring, firing, promoting, disciplining, scheduling, training, or deciding how to compensate that employee.

Gender Identity or Expression: a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.

Genetic Information: information about the presence of any gene, chromosome, protein, or certain metabolites that indicate or confirm that an individual or an individual’s family member has a mutation or other genotype that is scientifically or medically believed to cause a disease, disorder, or syndrome, if the information is obtained from a genetic test.

Harassment: Any unwelcome verbal, non-verbal, or physical conduct that has the purpose or effect of unreasonably interfering with an individual’s work performance and/or creating an intimidating, hostile, or offensive work environment as a result of an individual’s protected traits under applicable federal, state, or local law. Such conduct is prohibited even if a subject of the protected class of the derogatory remarks or offensive conduct is not present. Examples of harassment include, but are not limited to:

- **Verbal** – Epithets, negative or derogatory statements, threats, slurs, comments, stereotyping, or jokes regarding a person’s protected traits.
- **Non-Verbal** – Inappropriate gestures, distribution or display of any written or graphic materials, including calendars photographs, posters, cartoons, or drawings that ridicule, denigrate, insult, belittle, or show hostility or aversion toward an individual or group because of their protected traits.
- **Physical** – Assault, unwanted or inappropriate physical contact, including but not limited to, pushing, slapping, poking, punching, shoving, blocking normal movement, or purposely bumping into an individual.

Marital Status: the state of being married (including same-sex marriage), in a domestic partnership, single, divorced, separated, or widowed and the usual conditions associated therewith, including pregnancy or parenthood.

Personal Appearance: the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for

admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual.

Respondent: An individual alleged to have violated this policy.

Sexual Harassment: Any harassment based on an individual's sex or gender. It includes harassment that is not sexual in nature (for example, offensive remarks about an individual's sex or gender), as well as any unwelcome sexual advances, requests for sexual favors, or any other conduct of a sexual nature, when:

- Submission to the advance, request or conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of the advance, request or conduct is used as a basis for employment decisions; or
- Such advances, requests or conduct have the purpose or effect of substantially or unreasonably interfering with an employee's work performance by creating an intimidating, hostile or offensive work environment.

Sexual harassment applies to males sexually harassing females or other males, and to females who sexually harass males or other females.

Examples of sexual harassment include, but are not limited to:

- **Verbal** - Epithets, derogatory statements, sexually degrading words to describe an individual, slurs, threats, sexually-related or suggestive comments or jokes; unwelcome sexual advances, propositions, suggestions, movement, or physical action; requests for any type of sexual favors; sexual innuendoes; lewd remarks; gossip regarding one's sex life; comments on an individual's body or dress; comments about an individual's sexual activity, deficiencies, or prowess; inquiring into one's sexual experiences; or discussion of one's sexual activities.
- **Non-Verbal**—Distribution or display of any written or graphic material, including calendars, posters, cartoons, or drawings that are sexually suggestive, or that show hostility toward an individual or group because of sex; suggestive or insulting gestures, sounds, leering, staring, and whistling; obscene gestures or content in letters, notes, facsimiles, and e-mail; or knowingly playing music with lyrics of a sexual or offensive nature.
- **Physical** - Unwelcome, unwanted physical contact, including but not limited to, touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling or sexual assault.

Other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work environment that is hostile, offensive, or intimidating to male or female employees may also constitute sexual harassment.

## 5. Reporting Requirements and Procedures

### LSC Officers and Employees

Any officer or employee who believes s/he has been subjected to discrimination or harassment prohibited by this policy, or who witnesses or becomes aware of discrimination or harassing conduct, should promptly report the conduct to his or her supervisor or the HR Director. The individual making the complaint may use the *Discrimination/Harassment Complaint Form*, which is attached to this policy. If the complaint is filed with the individual's supervisor, the supervisor will promptly forward the report to the HR Director. The supervisor, in consultation with the HR Director, will take action to stop any discriminatory or harassing conduct immediately and prevent further discrimination or harassment while the allegations are being investigated.

Upon receiving the complaint, the HR Director will promptly notify the respondent that a complaint has been filed and initiate an investigation to determine whether there is a reasonable basis for believing that the alleged violation of this policy occurred. The HR Director will conduct a prompt, thorough, and impartial investigation of the complaint. (The HR Director may engage external investigators to conduct an investigation of a report.) During the investigation, the HR Director will interview the complainant, the respondent, and witnesses, if any, to determine whether the alleged conduct occurred. LSC expects all officers and employees to fully cooperate with any investigation conducted. The HR Director will conclude the investigation expeditiously and prepare a written summary of his or her findings and, if it is determined that discrimination or harassment occurred, recommendations as to corrective action(s), commensurate with the severity of the offense, up to and including discharge. The complainant's and respondent's supervisor(s) will take corrective action(s) based on the HR Director's findings and recommendations as s/he deems appropriate. If the HR Director's investigation is inconclusive or it is determined that there has been no harassment, but some potentially problematic conduct is revealed, recommendations may be made for preventative or ameliorative action.

After the investigation is concluded, the HR Director will promptly meet with the complainant and respondent separately to notify them of the findings of the investigation and the action being recommended. In the event the complainant or the respondent wish to appeal the HR Director's findings and/or recommendations, s/he may submit a written appeal to the President within ten (10) days after meeting with the HR Director.

If the discriminatory or harassing conduct involves the HR Director, the complainant should promptly report the conduct to the Ethics Officer. The Ethics Officer will conduct a prompt, thorough, and impartial investigation of a report and will render a written summary of his or her findings and, if it is determined that discrimination or harassment occurred, recommend corrective action(s) to be taken.

If the discriminatory or harassing conduct involves the LSC President, the HR Director will conduct a prompt, thorough, and impartial investigation of the complaint and will render a written summary of his or her findings and, if it is determined that discrimination or harassment

occurred, recommend corrective action(s) to be taken to the Board. The LSC President may submit a written appeal to the Board of Directors within ten (10) business days of receiving the HR Director's written decision. The HR Director, will be notified of the Board's decision and any action taken for purposes of record-keeping.

### OIG Officers and Employees

Any OIG employee who believes s/he has been subjected to discrimination or harassment prohibited by this policy, or who witnesses or becomes aware of discrimination or harassing conduct, should promptly report the conduct to the Inspector General. The individual making the report may use the *Discrimination/Harassment Complaint Form*, which is attached to this policy. The Inspector General will take action to stop any discriminatory or harassing conduct immediately and prevent further discrimination or harassment while the allegations are being investigated.

The Inspector General will promptly notify the respondent that a report has been filed and initiate an investigation to determine whether there is a reasonable basis for believing that the alleged violation of this policy occurred. The Inspector General or his/her designee will conduct a prompt, thorough, and impartial investigation of a report. (The Inspector General may engage external investigators to conduct an investigation of a report.) The investigation will include interviews of the complainant, the respondent, and witnesses, if any, to determine whether the alleged conduct occurred. The investigation will be concluded expeditiously and include a written summary of findings. If it is found that discrimination or harassment occurred, the Inspector General will determine the corrective action(s) to be taken. If the Inspector General's investigation is inconclusive or it is determined that there has been no harassment, but some potentially problematic conduct is revealed, preventative action may be taken.

Upon conclusion of the investigation, the Inspector General or his/her designee will meet with the complainant and respondent separately to notify them of the findings of the investigation and the action being recommended.

If the discriminatory or harassing conduct involves the Inspector General, a report will be filed with the Assistant Inspector General Investigations or the OIG Ethics Officer. All such reports will be referred to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE Integrity Committee) for review and investigation (if warranted) in accordance with the provisions of § 11(d) of the Inspector General Act of 1978, as amended ("IG Act"), and the policies and procedures of the CIGIE Integrity Committee promulgated thereunder. Where an investigation is conducted by or under the purview of the Integrity Committee, a report, including recommendations of the CIGIE Integrity Committee, will be forwarded to the Board of Directors for resolution. The CIGIE Integrity Committee is also required to provide a summary of the report and recommendations to designated committees of the Senate and House of Representatives. 5 U.S.C. App. § 11(d).

If the discriminatory or harassing conduct involves a senior employee of the OIG (an Assistant Inspector General or other employee who reports directly to the Inspector General), a report must be filed with the Inspector General, who will make a determination as to referral and



investigation of the allegation(s) in accordance with the provisions of § 11(d) of the IG Act and the policies and procedures of the CIGIE Integrity Committee.

### Directors

Any Director who believes s/he has been subjected to discrimination or harassment prohibited by this policy, or who witnesses or becomes aware of discrimination or harassing conduct, should promptly report the conduct to the attention of the HR Director. The HR Director will conduct a prompt, thorough, and impartial investigation of a report. The HR Director will conclude the investigation expeditiously and prepare a written summary of his or her findings and, if it is determined that discrimination or harassment occurred, recommendations for corrective action(s) for consideration by the full Board. After the investigation is concluded, the HR Director will promptly meet with the complainant and respondent separately to notify them of the findings of the investigation and the action being recommended.

## **6. Confidentiality**

Reports of discrimination and harassment may be submitted on a confidential basis. LSC will maintain confidentiality to the extent possible, consistent with a thorough investigation. Information received and the privacy of the individuals involved will be disclosed only as reasonably necessary for purposes of this policy or when legally required; however, confidentiality is not guaranteed.

## **7. No Retaliation**

Retaliation is prohibited against any person by another employee or by LSC for using this complaint procedure, reporting harassment or discrimination, or for filing, testifying, assisting or participating in any manner in any investigation, proceeding or hearing conducted by a governmental enforcement agency. Prohibited retaliation includes, but is not limited to, termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment decisions, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit.

## **8. Violations of Policy**

Violations of this policy will be treated as serious misconduct. Please report any retaliation to your supervisor or the HR Director. Any reports of retaliatory conduct will be investigated in a thorough and objective manner. If a report of retaliation is substantiated, appropriate disciplinary action will be taken, up to and including discharge.

**DISCRIMINATION/HARASSMENT COMPLAINT FORM**

Legal Services Corporation (LSC) is committed to providing a work environment free from discrimination and harassment. LSC’s Non-Discrimination and Anti-Harassment Policy outlines LSC’s prohibitions against discrimination and harassment. This policy can be found in Section [INSERT] of the LSC Code of Ethics and Conduct, which is available at <http://lsceweb.lsc.gov/sites/default/files/eweb/pdfs/LSCCodeofEthicsandConduct.pdf>.

The policy provides procedures for reporting prohibited conduct. The preferred option for reporting discrimination or harassment is to complete this form and provide it to your supervisor or the HR Director, or the Inspector General for OIG employees. You are encouraged – but are not required - to use this form to report prohibited conduct.

Any LSC director, officer, or employee can report discrimination or harassment, whether as a victim or a witness. Regardless of your experience with the discrimination or harassment, it is important to be as specific and thorough as possible in your report so that LSC can fully investigate the conduct and take prompt corrective action, as necessary. Include all known information about the complaint, including the identity of any witnesses with knowledge of the allegations or offenses and any other known evidence related to the complaint. You are not limited to the space provided. LSC encourages you to attach any additional materials that may assist us in investigating the claim.

**Employee Name:**

**Employee Title:**

**Supervisor or Manager Name:**

**Supervisor or Manager Title:**

**Today's Date:**

1. Identify the individual(s) who participated in discrimination or harassment:

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2. Identify the individual(s) subject to the alleged discrimination or harassment:

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3. Identify (to the best of your knowledge) when the discrimination or harassment occurred. If it occurred over a period of time or continues to occur, identify that period of time:

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4. Identify why you believe the discrimination or harassment occurred (e.g., race, disability, age, sex, marital status, etc.):

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5. Describe in detail the facts that form the basis of this complaint (attach additional sheets of paper if necessary):

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6. Has anyone else witnessed the alleged conduct? To the best of your knowledge, please identify those individuals and describe the scope of their knowledge of the alleged conduct:

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7. Are you aware of any other evidence of the alleged conduct (for example, documents, e-mails, videotapes, audiotapes, or other records or materials that substantiate your complaint)? To the best of your knowledge, please identify and describe any and all existing evidence and attach to this complaint any and all existing evidence in your possession:

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8. Did you take any action to try to stop the alleged conduct? If so, please describe the action you took and what resulted:

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9. Have you previously reported or complained about the alleged conduct or any other discrimination or harassment while employed at LSC? If so, please identify the person to whom you reported the conduct, the date of the report, and the resolution:

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I acknowledge that I have read and understand the above information. I certify that to the best of my knowledge, the information I have provided on this form is accurate and complete. I understand that I should promptly supplement the above information if I become aware of new witnesses or learn new facts that will aid in the investigation of this complaint. I understand and acknowledge that a copy of this complaint and any attachments may be provided to the alleged offender(s). I also understand that this complaint and any attachments may be viewed by appropriate administrators and other witnesses involved in the investigation of this complaint.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Supervisor or Manager  
Reviewing Complaint

\_\_\_\_\_  
Date



BOARD OF DIRECTORS

Legal Services Corporation  
America's Partner For Equal Justice

## RESOLUTION

### ADOPTING A REVISED DISCRIMINATION AND HARASSMENT POLICY

**WHEREAS**, by Resolution #2008-007, the Legal Services Corporation (“LSC” or “Corporation”) Board of Directors (“Board”) adopted the *Code of Ethics and Conduct* (“Code of Conduct”) to provide guidance to Board members, officers, and employees regarding the Corporation’s expectations for standards of ethics and conduct, including prohibitions against discrimination and harassment, Code of Conduct Section XIII;

**WHEREAS**, on April 28, 2007, the Board adopted the LSC Employee Handbook to provide guidance to employees on, among other things, discrimination and harassment and reporting violations thereof; and

**WHEREAS**, Management has determined that the Corporation will benefit from a more comprehensive non-discrimination and anti-harassment policy codified in a single location and that provides greater clarity and guidance to the Directors, officers, and employees, and recommends adoption of the attached Non-Discrimination and Anti-Harassment Policy;

**NOW, THEREFORE, BE IT RESOLVED THAT**, the Board of Directors adopts the attached Non-Discrimination and Anti-Harassment Policy and directs that the new Policy supersede any prior existing policies prohibiting discrimination and harassment policies.

**Adopted by the Board of Directors**  
On April 8, 2013

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**John G. Levi**  
*Chairman*

**Attest:**

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**Ronald S. Flagg**  
*Vice President for Legal Affairs,  
General Counsel & Corporate Secretary*

# **Institutional Advancement Committee**

# **Agenda**

# **INSTITUTIONAL ADVANCEMENT COMMITTEE**

**April 6, 2014**

## **Agenda**

### **OPEN SESSION**

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of  
January 25, 2014
3. Discussion of proposed 40<sup>th</sup> anniversary events
4. Public comment
5. Consider and act on other business

### **CLOSED SESSION**

1. Approval of minutes of the Committee's Closed Session meeting of  
January 24, 2014
2. Briefing on contributions pledged and received
3. Discussion of prospective funders for LSC's 40<sup>th</sup> anniversary celebration  
and development activities
4. Consider and act on recommendation of new prospective funders to the  
Board of Directors
5. Consider and act on adjournment of meeting



**Draft Minutes of January 25, 2014 Open  
Session Meeting**

**Legal Services Corporation  
Meeting Institutional Advancement Committee**

**Open Session**

**Saturday, January 25, 2014**

**DRAFT**

Chairman John G. Levi convened an open session telephonic meeting of the Legal Services Corporation's ("LSC") Institutional Advancement Committee ("the Committee") at 9:40 a.m. on Saturday, January 25, 2014. The meeting was held at the Hilton Garden Inn Downtown Austin, 500 North Interstate 35, Austin, Texas 78701.

The following Committee members were present:

John G. Levi, Chairman  
Martha L. Minow  
Robert J. Grey, Jr.  
Charles N.W. Keckler  
Father Pius Pietrzyk (by telephone)  
Herbert S. Garten (Non-Director Member)  
Frank B. Strickland (Non-Director Member)

Other Board Members Present:

Sharon L. Browne  
Victor B. Maddox  
Laurie Mikva  
Julie A. Reiskin  
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Lynn Jennings	Vice President for Grants Management
Wendy Rhein	Chief Development Officer
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Jeffrey Schanz	Inspector General
Rebecca Fertig	Special Assistant to the President
Carol Bergman	Director, Office of Government Relations and Public Affairs
Carl Rauscher	Director of Media Relations, Office of Government Relations and Public Affairs

Ronald “Dutch” Merryman	Assistant Inspector General for Audit, Office of the Inspector General
Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General
David Maddox	Assistant Inspector General for Management and Evaluations, Office of the Inspector General
Lora M. Rath	Director, Office of Compliance and Enforcement
Don Saunders	National Legal Aid and Defenders Association (NLADA)

The following summarizes actions taken by, and presentations made to, the Committee:

Chairman Levi called the meeting to order.

**MOTION**

Dean Minow moved to approve the agenda. Mr. Strickland seconded the motion.

**VOTE**

The motion passed by voice vote.

**MOTION**

Dean Minow moved to approve the minutes of the Committee’s meetings of November 22, 2013 and December 10, 2013. Mr. Strickland seconded the motion.

**VOTE**

The motion passed by voice vote.

Chairman Levi invited comments from Ms. Rhein and Committee members on the Committee’s evaluation for 2013 and goals for 2014 and received none.

Ms. Rhein provided a demonstration of the new online LSC giving portal and answered Committee members’ questions.

Next, Ms. Rhein reported on the calendar of events planned for the LSC’s 40<sup>th</sup> anniversary. She noted that instead of concluding the 40<sup>th</sup> anniversary year in July 2015, it will now conclude in September 2015 with several events in California. Chairman Levi thanked everyone for their continued work on the 40<sup>th</sup> anniversary, particularly Frank Strickland and Herbert Garten for hosting events in both their local communities and in Austin to help raise funds and awareness about LSC.

Chairman Levi invited public comments and received none.

There was no other business to consider.

**MOTION**

Dean Minow moved to adjourn the meeting. Mr. Strickland seconded the motion.

The Committee meeting adjourned at 9:55 a.m.

# **Finance Committee**

# Agenda

# **FINANCE COMMITTEE**

**April 6, 2014**

## **Agenda**

### **OPEN SESSION**

1. Approval of agenda
2. Approval of the minutes of the Committee's Open Session meeting of January 23, 2014
3. Presentation of LSC's Financial Report for the first five months of FY 2014
  - Presentation by David Richardson, Treasurer/Comptroller
4. Consider and act on LSC's Revised Consolidated Operating Budget for FY 2014, Resolution 2014-0XX
  - Presentation by David Richardson, Treasurer/Comptroller
5. Report on the FY 2015 appropriations process
  - Presentation by Carol Bergman,  
Director of Government Relations & Public Affairs
6. Discussion regarding proposed process and schedule for FY 2016 Budget request
  - Presentation by Jim Sandman, President
  - Carol Bergman, Director of Government Relations & Public Affairs
7. Public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

**Draft Minutes of January 23, 2014**  
**Open Session Meeting**



**Legal Services Corporation  
Meeting of the Finance Committee**

**Open Session**

**Thursday, January 23, 2014**

**DRAFT**

Committee Chairman Robert J. Grey Jr. convened an open session meeting of the Legal Services Corporation's ("LSC") Finance Committee ("the Committee") at 2:05 p.m. on Thursday, January 23, 2014. The meeting was held at the Hilton Garden Inn Downtown Austin Hotel, 500 North Interstate 35, Austin, TX 78701.

The following Committee members were present:

Robert J. Grey Jr., Chairman  
Sharon L. Browne  
Laurie I. Mikva  
Martha L. Minow  
Father Pius Pietrzyk (by telephone)  
Robert E. Henley Jr. (Non-Director Member)  
John G. Levi, *ex officio*

Other Board Members Present:

Victor B. Maddox  
Julie A. Reiskin  
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Lynn Jennings	Vice President for Grants Management
Wendy Rhein	Chief Development Officer
Rebecca Fertig	Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
David L. Richardson	Comptroller and Treasurer, Office of Financial and Administrative Services (OFAS)
Carol Bergman	Director, Office of Government Relations and Public Affairs (GRPA)
Carl Rauscher	Director of Media Relations, GRPA
Jeffrey E. Schanz	Inspector General

Ronald “Dutch” Merryman	Assistant Inspector General for Audit, Office of the Inspector General (OIG)
Thomas Coogan	Assistant Inspector General for Investigations, OIG
David Maddox	Assistant Inspector General for Management and Evaluation, OIG
Lora M. Rath	Director, Office of Compliance and Enforcement (OCE)
Janet LaBella	Director, Office of Program Performance (OPP)
Don Saunders	National Legal Aid and Defenders Association (NLADA)
Frank B. Strickland	Non-Director Member, LSC’s Institutional Advancement Committee

The following summarizes actions taken by, and presentations made to, the Committee:

**MOTION**

Dean Minow moved to approve the agenda. Ms. Browne seconded the motion.

**VOTE**

The motion passed by voice vote.

**MOTION**

Dean Minow moved to approve the minutes of the Committee’s meeting of October 22, 2013. Father Pius seconded the motion.

**VOTE**

The motion passed by voice vote.

Mr. Richardson presented LSC’s financial report for the fiscal year 2013 and the first two months of fiscal year 2014. He reported that LSC’s expenses for the period were under budget and provided a breakdown of the expenses. Mr. Richardson answered Committee members’ questions.

Next, Ms. Bergman reported that Congress passed a final omnibus appropriations bill for fiscal year 2014, approving \$365 million for LSC. She answered questions from the Committee members.

Mr. Richardson presented the revised temporary operating budget for fiscal year 2014 and the accompanying resolution. He answered Committee members’ questions.

**MOTION**

Ms. Brown moved to recommend the revised temporary operating budget for fiscal year 2014 to the Board for approval. Dean Minow seconded the motion.

**VOTE**

The motion passed by voice vote.

Ms. Bergman presented LSC's the process and timeline for submitting the appropriations request for fiscal year 2015, and she answered Committee members' questions.

Committee Chairman Grey led the discussion on the Committee's evaluations for 2013 and goals for 2014.

Committee Chairman Grey invited public comment and received none.

There was no other business to consider.

**MOTION**

Dean Minow moved to adjourn the meeting. Ms. Browne seconded the motion.

**VOTE**

The motion passed by voice vote.

The Committee meeting adjourned at 2:50 p.m.

# **Financial Report for First Five Months of FY 2014**

## FINANCIAL & ADMINISTRATIVE SERVICES

### MEMORANDUM

**TO:** Robert J. Grey, Jr., Finance Committee Chairman

**FROM:** David L. Richardson, Treasurer/Comptroller *dlr*

**DATE:** March 20, 2014

**SUBJECT:** February 2014 Financial Report

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The financial report for the five-month period ending February 28, 2014, is attached for your review. There are four attachments (some with multiple pages) that comprise this report; we are using the fiscal year (FY) 2014 Consolidated Operating Budget (COB) that was approved at the January Austin Board meeting for our comparisons.

The first section of Attachment A presents information for the Delivery of Legal Assistance, ***Roman numeral I***, and the Herbert S. Garten Loan Repayment Assistance Program (LRAP), ***Roman numeral II***. The expenditures are compared to the annual budget, and the report shows the variance for each budget line. The expenditures are also compared to the same period of the prior year.

- I. There are four elements included in the Delivery of Legal Assistance:
  1. The Basic Field Programs budget is \$336,332,991; the grant expenses through February total \$333,685,379. The grant expenses include Basic Field Programs of \$313,161,470, Native American of \$9,445,647, and Migrant of \$11,078,262. The remaining funds are earmarked for Michigan, a grantee that is on short-term funding; Louisiana, for a close-out audit; and for American Samoa, where we do not have a grantee.
  2. The U.S. Court of Veterans Appeals Funds budget totals \$2,506,752, and there are no grant expenses for this period.
  3. The Grants from Other Funds budget totals \$273,366, and no emergency or one-time grants have been awarded.

4. The Technology Initiatives budget totals \$6,875,828, Net grant expenses are \$3,068,495 and are comprised of 32 grant awards totaling \$3,072,477 and 2 grant recoveries of \$3,982. The remaining amount of \$3,807,333 will be used for the support of the FY 2014 competitive awards process.
  5. The Hurricane Sandy Disaster Relief Funds budget totals \$75,959. The full amount remains and will be used to support additional grants for the hurricane area.
  6. The new budget line for Pro Bono Innovation has a budget of \$2,500,000, and we have no expenses as of this report.
- II. The Herbert S. Garten Loan Repayment Assistance Program's budget is \$2,439,193; there are no loan expenses for the period.

The second section of Attachment A presents expenditures for MGO and the OIG. The expenditures are compared to a pro rata allocation of the annual budget based on the number of months of the fiscal year covered by the reporting period, which is five months for this report.

- III. MGO's annual budget totals \$23,329,795. The budget is comprised of the MGO operating budget of \$19,678,000, the MGO Research Initiative of \$200,113, and the MGO Contingency Funds totaling \$3,361,682.

The MGO operating budget allocation for this reporting period is \$8,236,667 compared to the actual expenses of \$6,979,686. LSC is under budget by \$1,256,981 or 15.26%, and the encumbrances are \$327,343. The expenditures are \$398,192 more than the same period in 2013.

The January financial report showed that MGO expenses were \$5,541,127 and we were under budget by \$1,048,206, or 15.91%.

The MGO Research Initiative budget allocation is \$83,380, and there are expenses totaling \$83,333. The project is under budget by \$47. The iScale and Keystone Accountability contract has a balance of \$83,333, which is the amount of the encumbrance.

The MGO Contingency Funds allocation for this period is \$1,400,701, and there are no expenses.

- IV. The OIG's annual budget totals \$5,537,681. The budget consists of the OIG operating budget of \$5,287,700 and Contingency Funds of \$249,981.

The OIG operating budget allocation is \$2,203,208 compared to actual expenses of \$2,103,156. The OIG is \$100,052 or 4.54% under budget, and the encumbrances are \$131,142. The expenditures are \$169,402 more than in 2013.

The January financial report showed the OIG expenses were \$1,740,146 and they were under budget by \$22,421, or 1.27%.

The OIG Contingency Funds budget allocation is \$104,159, and there are no expenses against these funds.

Attachment B, page 1, presents comparative budgets and expenditures for MGO by cost center; all cost centers are under budget. Attachment B, page 2, shows the budgets and expenditures by budget category for the MGO operating budget. The variances show that we are under budget in each category except for temporary employee pay, which is over budget by \$37,526. The amount over budget is attributed to the use of Program Visit Specialists in the offices of Program Performance, and Compliance and Enforcement in the first five months of the fiscal year.

The largest variance under budget, totaling \$645,841, is in the Personnel compensation and benefits category. This amount represents 51.38% (\$645,841 divided by \$1,256,981) of this month's total MGO expenses variance.

The second largest variance is in Consulting in the amount of \$273,085 and is 21.72% of the budget. The variance is largely due to decreased spending on outside counsel. There are projects that will be completed this summer such as the annual update of census, the on-going review of business practices, and updating the grants management system to name a few.

Attachment B, page 3, shows the MGO contingency funds by categories. Attachment B, page 4, provides a summary of the expenditures by office and by budget category. Attachment C, pages 1 and 2, provides a breakdown by office of Other Operating Expenses and we are under budget by \$88,410.

Attachment D, page 1, shows a comparative OIG budget and expenditures by budget category. Two categories are over budget. The over-budget variances are the result of accumulated costs associated with:

- A. Consulting (\$4,438) for work regarding the Quality Control Reviews of grantee audits, audit of LSC's network, LSC's financial audit, and support for the OIG network systems.
- B. Printing and Reproduction Expenses (\$1,085) associated with maintenance of the OIG copiers.

Attachment D, page 2, presents the OIG Contingency funds by budget category.

If you have any questions, please let me know.

Attachments (A – B – C - D)

cc Board of Directors  
President  
Corporate Secretary  
Inspector General



LEGAL SERVICES CORPORATION  
CONSOLIDATED OPERATING BUDGET WORKSHEET  
FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014  
FOR FISCAL YEAR 2014

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	F I S C A L Y E A R 2 0 1 4						C O M P A R A T I V E	
	ANNUAL BUDGET	ACTUAL	ANNUAL BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM- BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
<b>I. DELIVERY OF LEGAL ASSISTANCE</b>								
1. Basic Field Programs	336,332,991	333,685,379	\$336,332,991	\$2,647,612	0.79	\$0	324,538,195	\$9,147,184
2. US Court of Vets Appeals Funds	2,506,752	-	2,506,752	2,506,752	100.00	-	2,506,752	(2,506,752)
3. Grants From Other Funds	273,366	-	273,366	273,366	100.00	-	-	-
4. Technology Initiatives	6,875,828	3,068,495	6,875,828	3,807,333	55.37	-	998,241	2,070,254
5. Hurricane Sandy Disaster Relief Funds	75,959	-	75,959	75,959	100.00	-	-	-
6. Pro Bono Innovation Funds	2,500,000	-	2,500,000	2,500,000	100.00	-	-	-
<b>TOTAL DELIVERY OF LEGAL ASSISTANCE</b>	<b>348,564,896</b>	<b>336,753,874</b>	<b>348,564,896</b>	<b>11,811,022</b>	<b>3.39</b>	<b>-</b>	<b>328,043,188</b>	<b>8,710,686</b>
<b>II. HERBERT S. GARTEN LOAN REPAYMENT ASSISTANCE PROGRAM</b>								
	2,439,193	-	2,439,193 *	2,439,193	100.00	-	-	-
<b>III. MANAGEMENT &amp; GRANTS OVERSIGHT</b>								
1. M & G O Operating Budget	19,768,000	\$6,979,686	8,236,667	1,256,981	15.26	327,343	6,581,494	398,192
2. M & G O Research Initiative	200,113	83,333	83,380	47	0.06	83,333	-	83,333
3. M & G O Contingency Funds	3,361,682	-	1,400,701	1,400,701	100.00	-	-	-
<b>TOTAL MANAGEMENT &amp; GRANTS OVERSIGHT</b>	<b>23,329,795</b>	<b>7,063,019</b>	<b>9,720,748</b>	<b>2,657,729</b>	<b>27.34</b>	<b>410,676</b>	<b>6,581,494</b>	<b>481,525</b>
<b>IV. INSPECTOR GENERAL</b>								
1. I G Operating Budget	5,287,700	2,103,156	2,203,208	100,052	4.54	131,142	1,933,754	169,402
2. I G Contingency Funds	249,981	-	104,159	104,159		-	-	-
<b>TOTAL INSPECTOR GENERAL</b>	<b>5,537,681</b>	<b>2,103,156</b>	<b>2,307,367</b>	<b>204,211</b>	<b>8.85</b>	<b>131,142</b>	<b>1,933,754</b>	<b>169,402</b>
<b>TOTAL</b>	<b>\$379,871,565</b>	<b>\$345,920,049</b>	<b>\$363,032,204</b>	<b>\$17,112,155</b>		<b>\$541,818</b>	<b>\$336,558,436</b>	<b>\$9,361,613</b>

\* \$530,518 LRAP ACCOUNTS RECEIVABLE

LEGAL SERVICES CORPORATION  
CONSOLIDATED OPERATING BUDGET WORKSHEET  
FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014  
FOR FISCAL YEAR 2014

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	F I S C A L Y E A R 2 0 1 4						C O M P A R A T I V E	
	ANNUAL BUDGET	ACTUAL	FIVE - TWELFTHS OF THE FY 2014 COB	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUM- BRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
<b>III. MANAGEMENT &amp; GRANTS OVERSIGHT</b>								
1. Board of Directors	\$393,900	\$108,024	\$164,125	\$56,101	34.18	\$0	\$115,542	(\$7,518)
2. Executive Office	1,204,725	441,932	501,969	60,037	11.96	-	356,903	85,029
3. Legal Affairs	1,306,450	461,792	544,354	82,562	15.17	-	402,009	59,783
4. Government Relations/Public Affairs	1,078,100	385,054	449,208	64,154	14.28	4,363	407,002	(21,948)
5. Human Resources	814,200	269,079	339,250	70,171	20.68	48,925	289,437	(20,358)
6. Financial & Admin Services	3,592,300	1,326,106	1,496,792	170,686	11.40	47,129	1,245,739	80,367
7. Information Technology	1,851,825	544,793	771,594	226,801	29.39	219,586	562,771	(17,978)
8. Program Performance	4,304,050	1,646,252	1,793,354	147,102	8.20	7,340	1,598,569	47,683
9. Information Management	596,100	234,553	248,375	13,822	5.56	-	239,188	(4,635)
10. Compliance & Enforcement	4,626,350	1,562,101	1,927,646	365,545	18.96	-	1,364,334	197,767
<b>MANAGEMENT &amp; GRANTS OVERSIGHT SUBTOTAL</b>	<b>\$19,768,000</b>	<b>\$6,979,686</b>	<b>\$8,236,667</b>	<b>\$1,256,981</b>	<b>15.26</b>	<b>\$327,343</b>	<b>\$6,581,494</b>	<b>\$398,192</b>
11. M & G O Research Initiative	200,113	83,333	83,380	47	0.06	83,333	-	83,333
12. M & G O Contingency Funds	3,361,682	-	1,400,701	1,400,701	100.00	-	-	-
<b>TOTAL MANAGEMENT &amp; GRANTS OVERSIGHT</b>	<b>\$23,329,795</b>	<b>\$7,063,019</b>	<b>\$9,720,748</b>	<b>\$2,657,729</b>	<b>27.34</b>	<b>\$410,676</b>	<b>\$6,581,494</b>	<b>\$481,525</b>

LEGAL SERVICES CORPORATION  
FINANCIAL REPORT BY BUDGET CATEGORY  
FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014  
FOR FISCAL YEAR 2014  
MANAGEMENT AND GRANTS OVERSIGHT

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
	ANNUAL BUDGET	ACTUAL	FIVE - TWELFTHS OF THE FY 2014 BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)	
		F I S C A L Y E A R 2 0 1 4						C O M P A R A T I V E	
TOTAL COMP./BENEFITS	14,021,875	5,196,604	5,842,445	645,841	11.05	-	4,961,076	235,528	
TEMP. EMPLOYEE PAY	685,300	323,068	285,542	(37,526)	(13.14)	-	161,745	161,323	
CONSULTING	837,005	75,667	348,752	273,085	78.30	222,052	149,704	(74,037)	
TRAVEL/TRANSPORTATION EXPS	1,101,445	340,641	458,935	118,294	25.78	-	271,977	68,664	
COMMUNICATIONS	120,700	31,076	50,294	19,218	38.21	-	27,996	3,080	
OCCUPANCY COST	1,800,500	712,500	750,208	37,708	5.03	-	712,630	(130)	
PRINTING & REPRODUCTION	78,550	21,600	32,729	11,129	34.00	34,396	14,095	7,505	
OTHER OPERATING EXPENSES	869,125	273,727	362,137	88,410	24.41	70,895	269,728	3,999	
CAPITAL EXPENDITURES	253,500	4,803	105,625	100,822	95.45	-	12,543	(7,740)	
<b>TOTAL</b>	<b>19,768,000</b>	<b>6,979,686</b>	<b>8,236,667</b>	<b>1,256,981</b>	<b>15.26</b>	<b>\$327,343</b>	<b>6,581,494</b>	<b>398,192</b>	

LEGAL SERVICES CORPORATION  
FINANCIAL REPORT BY BUDGET CATEGORY  
FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014  
FOR FISCAL YEAR 2014  
MANAGEMENT AND GRANTS OVERSIGHT CONTINGENCY FUNDS

(1) BUDGET CATEGORY	FISCAL YEAR 2014					COMPARATIVE	
	(2) ANNUAL BUDGET	(3) FIVE - TWELFTHS OF THE FY 2014 BUDGET	(4) VARIANCE BUD VS ACT UNDER / (OVER)	(5) % OF VARIANCE UNDER / (OVER)	(6) ENCUM- BRANCES	(7) PRIOR Y-T-D ACTUAL	(8) VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
TOTAL COMP./BENEFITS	\$1,722,000	-	717,500	717,500	-	-	-
TEMP. EMPLOYEE PAY	-	-	-	-	-	-	-
CONSULTING	-	-	-	-	-	-	-
TRAVEL/TRANSPORTATION EXPS	-	-	-	-	-	-	-
COMMUNICATIONS	-	-	-	-	-	-	-
OCCUPANCY COST	-	-	-	-	-	-	-
PRINTING & REPRODUCTION	-	-	-	-	-	-	-
OTHER OPERATING EXPENSES	1,639,682	-	683,201	683,201	-	-	-
CAPITAL EXPENDITURES	-	-	-	-	-	-	-
<b>TOTAL</b>	<b>\$3,361,682</b>	<b>-</b>	<b>1,400,701</b>	<b>1,400,701</b>	<b>\$0</b>	<b>-</b>	<b>-</b>

LEGAL SERVICES CORPORATION  
OPERATING EXPENSES FOR FISCAL YEAR 2014  
FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014  
FOR FISCAL YEAR 2014  
MANAGEMENT AND GRANTS OVERSIGHT

BUDGET CATEGORY	BOARD OF DIRECTORS	EXECUTIVE OFFICE	LEGAL AFFAIRS	GOV'T REL PUBLIC AFFS	HUMAN RESOURCES	OFFICE FINANCIAL & ADMIN SRVCS
COMPENSATION & BENEFITS	-	416,954	424,886	354,162	259,197	443,944
TEMPORARY EMPLOYEE PAY	-	2,842	20,208	11,015	-	-
CONSULTING	30,902	390	2,049	-	6,336	-
TRAVEL/TRANSPORTATION EXPS	60,102	18,715	4,408	7,325	100	1,180
COMMUNICATIONS	1,696	1,502	1,187	1,225	833	1,291
OCCUPANCY COST	-	-	-	-	-	712,500
PRINTING & REPRODUCTION	-	-	-	-	-	21,600
OTHER OPERATING EXPENSES	15,324	1,529	9,054	11,327	2,613	145,591
CAPITAL EXPENDITURES	-	-	-	-	-	-
<b>TOTAL</b>	<b>\$108,024</b>	<b>\$441,932</b>	<b>\$461,792</b>	<b>\$385,054</b>	<b>\$269,079</b>	<b>\$1,326,106</b>
BUDGET CATEGORY	INFORMATION TECHNOLOGY	PROGRAM PERFORMANCE	INFORMATION MANAGEMENT	COMPLIANCE & ENFORCEMENT	TOTAL MGT & GRANTS OVERSIGHT	
COMPENSATION & BENEFITS	412,562	1,321,603	228,792	1,334,504	5,196,604	
TEMPORARY EMPLOYEE PAY	-	183,878	-	105,125	323,068	
CONSULTING	23,329	12,661	-	-	75,667	
TRAVEL/TRANSPORTATION EXPS	10,199	120,873	-	117,739	340,641	
COMMUNICATIONS	12,699	6,062	-	4,581	31,076	
OCCUPANCY COST	-	-	-	-	712,500	
PRINTING & REPRODUCTION	-	-	-	-	21,600	
OTHER OPERATING EXPENSES	81,201	1,175	5,761	152	273,727	
CAPITAL EXPENDITURES	4,803	-	-	-	4,803	
<b>TOTAL</b>	<b>\$544,793</b>	<b>\$1,646,252</b>	<b>\$234,553</b>	<b>\$1,562,101</b>	<b>6,979,686</b>	

## OTHER OPERATING EXPENSES FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014

ANNUAL BUDGET	ACTUAL	FIVE -TWELFTHS OF THE FY 2014 BUDGET	UNDER / (OVER) BUD VS ACT VARIANCE
\$869,125.00	273,727.00	362,137.00	88,410.00

ACCOUNT CODES	DESCRIPTION	COST CENTERS	YTD EXPENSE
		BOARD OF DIRECTORS	14,777.34
		GOVERNMENT RELATIONS/PUBLIC AFFAIRS	949.77
		FINANCIAL & ADMIN SERVICES	5,697.69
		INFORMATION TECHNOLOGY	47,198.08
		PROGRAM PERFORMANCE	50.00
5600	<b>EQUIPMENT RENTAL</b>	TOTAL	68,672.88
		BOARD OF DIRECTORS	69.48
		GOVERNMENT RELATIONS/PUBLIC AFFAIRS	0.00
		HUMAN RESOURCES	19.99
		FINANCIAL & ADMIN SERVICES	20,194.76
		INFORMATION TECHNOLOGY	1,903.68
5610	<b>OFFICE SUPPLIES</b>	TOTAL	22,187.91
		HUMAN RESOURCES	19.02
		FINANCIAL & ADMIN SERVICES	1,201.90
		INFORMATION TECHNOLOGY	1,567.38
5611	<b>OFFICE EQUIPMENT</b>	TOTAL	2,788.30
		FINANCIAL & ADMIN SERVICES	79,470.13
5620	<b>COMMERICAL INSURANCE</b>	TOTAL	79,470.13
		LEGAL AFFAIRS	5,584.50
		CHIEF DEVELOPMENT UNIT	1,529.05
		GOVERNMENT RELATIONS/PUBLIC AFFAIRS	10,278.15
		HUMAN RESOURCES	50.00
		FINANCIAL & ADMIN SERVICES	16,236.98
		INFORMATION TECHNOLOGY	30,507.95
		OFFICE OF PROGRAM PERFORMANCE	299.00
5640	<b>DATA PROCESSING</b>	TOTAL	64,485.63

## OTHER OPERATING EXPENSES FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014

ANNUAL BUDGET	ACTUAL	FIVE -TWELFTHS OF THE FY 2014 BUDGET	UNDER / (OVER) BUD VS ACT VARIANCE
\$869,125.00	273,727.00	362,137.00	88,410.00

ACCOUNT CODES	DESCRIPTION	COST CENTERS	YTD EXPENSE
5650	ADVERTISING & CLIPPING SERVICES	BOARD OF DIRECTORS HUMAN RESOURCES TOTAL	477.00 240.00 <hr/> 717.00
5660	DUES & MEMBERSHIPS	FINANCIAL & ADMIN SERVICES TOTAL	50.00 <hr/> 50.00
5670	SUBSCRIPTIONS	LEGAL AFFAIRS HUMAN RESOURCES FINANCIAL & ADMIN SERVICES OFFICE OF PROGRAM PERFORMANCE INFORMATION MANAGEMENT OFFICE OF COMPLIANCE AND ENFORCEMENT TOTAL	2,916.68 32.95 461.00 826.24 2,666.48 152.00 <hr/> 7,055.35
5680	EMPLOYEE LECTURES/OTHER ACT.	HUMAN RESOURCES FINANCIAL & ADMIN SERVICES TOTAL	1,445.35 12,174.72 <hr/> 13,620.07
5690	OFFICE EXPENSES	LEGAL AFFAIRS GOVERNMENT RELATIONS/PUBLIC AFFAIRS HUMAN RESOURCES FINANCIAL & ADMIN SERVICES INFORMATION TECHNOLOGY INFORMATION MANAGEMENT TOTAL	552.50 99.00 805.89 10,103.84 24.03 3,094.26 <hr/> 14,679.52
<b>TOTAL OTHER OPERATING EXPENSES</b>			<hr/> <b>\$273,726.79</b> <hr/>

LEGAL SERVICES CORPORATION  
FINANCIAL REPORT BY BUDGET CATEGORY  
FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014  
FOR FISCAL YEAR 2014  
INSPECTOR GENERAL

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		FISCAL YEAR 2014					COMPARATIVE	
	ANNUAL BUDGET	ACTUAL	FIVE - TWELFTHS OF THE FY 2014 BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
TOTAL COMP./BENEFITS	\$4,265,700	1,735,482	1,777,376	41,894	2.36	-	1,634,746	100,736
TEMP. EMPLOYEE PAY	50,000	6,377	20,833	14,456	69.39	-	-	6,377
CONSULTING	500,000	212,771	208,333	(4,438)	(2.13)	131,142	178,982	33,789
TRAVEL/TRANSPORTATION EXPS	265,000	98,406	110,417	12,011	10.88	-	93,464	4,942
COMMUNICATIONS	37,000	12,439	15,417	2,978	19.32	-	8,760	3,679
OCCUPANCY COST	2,000	-	833	833	100.00	-	-	-
PRINTING & REPRODUCTION	14,000	6,918	5,833	(1,085)	(18.60)	-	1,876	5,042
OTHER OPERATING EXPENSES	74,000	21,824	30,833	9,009	29.22	-	12,480	9,344
CAPITAL EXPENDITURES	80,000	8,939	33,333	24,394	73.18	-	3,446	5,493
<b>TOTAL</b>	<b>\$5,287,700</b>	<b>2,103,156</b>	<b>2,203,208</b>	<b>100,052</b>	<b>4.54</b>	<b>131,142</b>	<b>1,933,754</b>	<b>169,402</b>



LEGAL SERVICES CORPORATION  
FINANCIAL REPORT BY BUDGET CATEGORY  
FOR THE FIVE - MONTH PERIOD ENDING FEBRUARY 28, 2014  
FOR FISCAL YEAR 2014  
INSPECTOR GENERAL CONTINGENCY FUNDS

BUDGET CATEGORY	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	ANNUAL BUDGET	ACTUAL	FIVE - TWELFTHS OF THE FY 2014 BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
TOTAL COMP./BENEFITS	-	-	-	-	-	-	-	-
TEMP. EMPLOYEE PAY	-	-	-	-	-	-	-	-
CONSULTING	-	-	-	-	-	-	-	-
TRAVEL/TRANSPORTATION EXPS	-	-	-	-	-	-	-	-
COMMUNICATIONS	-	-	-	-	-	-	-	-
OCCUPANCY COST	-	-	-	-	-	-	-	-
PRINTING & REPRODUCTION	-	-	-	-	-	-	-	-
OTHER OPERATING EXPENSES	249,981	-	104,159	104,159		-	-	-
CAPITAL EXPENDITURES	-	-	-	-		-	-	-
<b>TOTAL</b>	<b>\$249,981</b>	<b>-</b>	<b>104,159</b>	<b>104,159</b>		<b>\$0</b>	<b>-</b>	<b>\$0</b>

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# **Revised Operating Budget FY 2014**



## FINANCIAL & ADMINISTRATIVE SERVICES

### MEMORANDUM

**TO:** Robert J. Grey, Jr., Finance Committee Chairman

**FROM:** David L. Richardson, Treasurer/Comptroller dlr

**DATE:** April 2, 2014

**SUBJECT:** Revised Consolidated Operating Budget (COB) and Internal Budget Adjustments for Fiscal Year (FY) 2014

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The Board of Directors approved a COB for FY 2014 totaling \$379,871,565 at the January Board Meeting. This budget was adopted with the understanding that Management would come to the April Board meeting with a revised plan of operations.

Because of the uncertainty about our FY 2014 appropriation during the first quarter of the fiscal year, we were conservative in our expenditures. We did limited hiring. Since the FY 2014 appropriations legislation was passed in January, we have assessed our operational needs and revised our budget projections for the current fiscal year.

The FY 2014 appropriation added \$1 million to our Management and Grants Oversight (MGO) budget (the appropriation increased from \$17 million to \$18 million), and we started this fiscal year with an MGO carryover of \$5,129,682 (carryover of \$200,113 is not included because this amount is restricted to the Public Welfare Foundation project). We have developed a spend-down plan for our carryover that considers the sustainability of our operations after the carryover is reduced substantially. In other words, we do not want to spend our carryover to create an infrastructure that we cannot support once the carryover is exhausted.

The revised MGO operating budget is \$19,603,400 for FY 2014. With our appropriation of \$18,000,000, we have budgeted \$1,603,400 of our carryover this year, principally by filling the staff positions and by funding needed one-time projects, identified below, reducing carryover to \$3,526,282. This anticipated carryover amount is shown as the Contingency Funds balance on the attached budget. We propose the following uses of the carryover balance after the end of the current fiscal year:

- We think it prudent to maintain approximately one month's worth of expenses as a reserve to cover contingencies, such as a government shut-down resulting in a loss of access to funding. Our grantees will almost certainly continue operations for some period after any government shutdown, and we would like to be able to maintain a level of oversight activities in that event. We propose reserving \$1,500,000 of the Contingency Funds balance for this purpose.
- We anticipate having to incur a substantial capital expense to replace our aging electronic grants management system in 2015 and 2016. We estimate the cost to be \$800,000. Grants management is at the core of what we do, and we believe that our grant-making and oversight capability will be significantly enhanced with a new system.
- We believe we should do an evaluation of grants made with the Pro Bono Innovation Funds after the first grant cycle is complete. We estimate the cost of the evaluation to be \$75,000.
- If our MGO appropriation for FY 2015 is the same as it is for FY 2014, FY 2015 spending at the staffing level we currently anticipate will further reduce carryover by \$1,921,150.

The staffing in the revised FY 2014 budget is shown in the following table:

	Staffing as of 02/28/2014	Projected Staffing as of 10/01/2014
Executive Office	6	7
Legal Affairs	7	7
Government Relations/Public Affairs	6	7
Human Resources	6	6
Financial and Administrative Services	10	10
Information Technology	8	8
Program Performance	23	27
Information Management/ Data and Analysis	5	5
Compliance and Enforcement	23	26
Totals	94	103

The staffing changes planned are as follows:

- Executive Office (EO) – a Development Coordinator position to support Wendy Rhein, to be filled after April 15;
- Government Relations/Public Affairs (GRPA) – a Communications Manager position to be filled after April 15;
- Office of Program Performance (OPP) – 2 Program Counsel positions to be filled after April 15, and the positions of Deputy Director and another Program Counsel to be filled after May 1; and
- Compliance and Enforcement (OCE) – a Fiscal Compliance Specialist position to be filled after May 1, and a Deputy Director for Fiscal Compliance and a second Fiscal Compliance Specialist to be hired after June 1.

We propose these additional internal budget adjustments:

- Office of Legal Affairs (OLA) – The Vice President for Legal Affairs will be overseeing the migrant census study that is necessary to adjust grantee funding allocations. The costs are expected to be \$45,000 -- \$25,000 for a consultant with the expertise to conduct analyses of data and \$20,000 to obtain necessary migrant census information from the United States Department of Labor. These costs can be absorbed in the OLA budget because of the effective management of outside counsel costs.
- GRPA needs a budget increase of \$38,475. Budget increases are needed for (1) Temporary Employee Pay of \$34,475 to provide funding for two part-time interns during the academic year and two full-time interns during the summer; (2) consulting costs of \$2,000 for videographer and editing services for panel presentations at Board meetings that we post on our website; and (3) supplies of \$2,000 for the production of videos. These funds are available from other offices' unused budgets.
- Human Resources needs an increase of \$48,000. The additional funds are for (1) long-delayed training programs for management and staff at a cost of \$51,000; and (2) additional consulting costs of \$5,000 for the compensation comparability study. These additional costs are offset by projected savings of \$8,000 in personnel benefits. The needed funds are available from other offices' unused budgets.

- The Office of Financial and Administrative Services needs an increase of \$20,175 for Consulting and for Other Operating Expenses. Because of our conversion to the Concur travel management system and an upgrade to our financial systems, we need \$3,500 in consulting services to update reports. We also need \$16,675 to cover increases in anticipated costs of office supplies and paper based on use to date this year.
- The Office of Information Technology's (OIT) projected expenses are increasing by \$181,000. Personnel compensation and benefits need to be increased by \$7,500 to account for increased costs. Consulting funds of \$160,000 are needed for the following projects: (1) a redesign of the LSC website to make information more accessible at a cost of \$100,000; (2) business process analysis consulting costs of \$25,000 are needed above the previous estimate; (3) programming support for our current grants management system at a cost of \$25,000; (4) \$10,000 for our new Human Resources/payroll system. Additional Capital Expenditures of \$24,500 is to upgrade our telephone and communications systems. OIT can reduce travel and training expenses by \$11,000 to offset a part of these increases. The remaining \$181,000 is available from other offices' unused budgets.
- The Office of Program Performance has \$30,500 available to support other offices' needs. This money is available due to a decrease in anticipated travel costs.
- The Office of Compliance and Enforcement has \$421,750 available to assist the budgets of other offices. Because of delayed hiring, unanticipated attrition and a reassessment of new positions that were included in the previous budget, compensation and benefits can be reduced by \$500,000. Temporary Employee Pay needs to be increased by \$25,750 to cover the cost of temporary employees who have been used on grantee visits. We also now anticipate more and longer grantee visits during the current fiscal year, which requires increasing the travel budget by \$60,000. Other Operating Expenses can be reduced \$7,500 based on the revised projections for the year.
- Contingency Funds – While our operations in FY 2014 will reduce our carryover, the adjustments described previously will add \$164,600 to the Contingency Funds approved in the COB at the January meeting.

*FY 2014 Office of Inspector General ("OIG") Budget Review*

The OIG conducted a review of expenses. They made budget adjustments to increase Travel and Transportation by \$11,000, and Printing and Reproduction \$5,000, by reducing the OIG Contingency Funds by \$16,000.

We ask that you approve the attached resolution for the COB with the changes discussed above. Attachment A presents the COB by line item and Attachment B summarizes each office's budget by budget category.

If you have any questions or need additional information, please let me know.

Attachments (3)

Resolution  
Attachment A  
Attachment B

cc Finance Committee



BOARD OF DIRECTORS

## RESOLUTION

### REVISED CONSOLIDATED OPERATING BUDGET FOR FISCAL YEAR 2014

**WHEREAS**, the Legal Services Corporation's ("LSC's") Management and the Inspector General have reviewed their respective operating expenses for the three-month period ending December 31, 2013, prepared projected expenses for the remainder of fiscal year ("FY") 2014 based on revised priorities, and provided information regarding internal budgetary adjustments;

**WHEREAS**, the Board of Directors ("Board") of LSC has reviewed LSC's operating experience for the three-month period ending December 31, 2013, and also reviewed the projected costs of operations for the remainder of fiscal year ("FY") 2014;

**NOW, THEREFORE, BE IT RESOLVED** that the Board hereby adopts a Revised COB for FY 2014 totaling \$379,871,565 of which \$348,564,896 is for the *Delivery of Legal Assistance*; \$2,439,193 is for the *Herbert S. Garten Loan Repayment Assistance Program*; \$23,329,795 is for *Management and Grants Oversight*, of which \$19,603,400 is for operations, \$200,113 is for the Public Welfare Foundation Project, and \$3,526,282 is for the MGO Contingency Funds; and \$5,537,681 is for the *Office of Inspector General*, of which \$5,303,700 is for OIG operations and \$233,981 is for the OIG Contingency Funds, as reflected in the attached documents.



**Adopted by the Board of Directors  
On April 8, 2014**

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**John G. Levi**  
*Chairman*

Attest:

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**Ronald S. Flagg**  
*Vice President for Legal Affairs,  
General Counsel, and  
Corporate Secretary*

LEGAL SERVICES CORPORATION  
 PROPOSED CONSOLIDATED OPERATING BUDGET  
 -----  
 FOR THE FISCAL YEAR 2014

	(1)	(2)	(3)	(4)	(5)	(6)
	FY 2014 FUNDING	FY 2013 CARRYOVER	COURT OF VETS APPEALS & ADJUSTMENTS	FY 2014 CONSOLIDATED OPERATING BUDGET	FY 2014 ADJUSTMENTS	FY 2014 REVISED TEMPORARY OPERATING BUDGET
	-----	-----	-----	-----	-----	-----
<b>I. DELIVERY OF LEGAL ASSISTANCE</b>						
-----						
1. Basic Field Programs	335,700,000	632,991	-	336,332,991	-	336,332,991
2. U.S. Court of Veterans Appeals Funds	-	6,752	2,500,000	2,506,752	-	2,506,752
3. Grants From Other Funds	-	273,366	-	273,366	-	273,366
4. Technology Initiatives	3,450,000	3,425,828	-	6,875,828	-	6,875,828
5. Hurricane Sandy Disaster Relief Funds	-	75,959	-	75,959	-	75,959
6. Pro Bono Innovation Funds	2,500,000	-	-	2,500,000	-	2,500,000
	-----	-----	-----	-----	-----	-----
<b>DELIVERY OF LEGAL ASSISTANCE TOTALS</b>	<b>341,650,000</b>	<b>4,414,896</b>	<b>2,500,000</b>	<b>348,564,896</b>	<b>-</b>	<b>348,564,896</b>
<b>II. HERBERT S. GARTEN</b>						
-----						
<b>LOAN REPAYMENT ASSISTANCE PROGRAM</b>	<b>1,000,000</b>	<b>1,439,193</b>	<b>-</b>	<b>2,439,193</b>	<b>-</b>	<b>2,439,193</b>
<b>III. MANAGEMENT &amp; GRANTS OVERSIGHT</b>						
-----						
1. M & G O Operating Budget	18,000,000	3,975,656	(2,207,656)	19,768,000	(164,600)	19,603,400
2. M & G O Research Initiative	-	200,113	-	200,113	-	200,113
3. M & G O Contingency Funds	-	1,154,026	2,207,656	3,361,682	164,600	3,526,282
	-----	-----	-----	-----	-----	-----
<b>TOTAL - MANAGEMENT &amp; GRANTS OVERSIGHT</b>	<b>18,000,000</b>	<b>5,329,795</b>	<b>-</b>	<b>23,329,795</b>	<b>-</b>	<b>23,329,795</b>
<b>IV. INSPECTOR GENERAL</b>						
-----						
1. OIG Operating Budget	4,350,000	1,187,681	(249,981)	5,287,700	16,000	5,303,700
2. OIG Contingency Funds	-	-	249,981	249,981	(16,000)	233,981
	-----	-----	-----	-----	-----	-----
<b>TOTAL - OFFICE OF INSPECTOR GENERAL</b>	<b>4,350,000</b>	<b>1,187,681</b>	<b>-</b>	<b>5,537,681</b>	<b>-</b>	<b>5,537,681</b>
	-----	-----	-----	-----	-----	-----
<b>TOTAL BUDGET</b>	<b>\$365,000,000</b>	<b>\$12,371,565</b>	<b>2,500,000</b>	<b>\$379,871,565</b>	<b>-</b>	<b>\$379,871,565</b>
	=====	=====	=====	=====	=====	=====

**LEGAL SERVICES CORPORATION  
PROPOSED CONSOLIDATED OPERATING BUDGET  
FOR MANAGEMENT AND GRANTS OVERSIGHT  
AND INSPECTOR GENERAL  
FOR FISCAL YEAR 2014**

<u>BUDGET CATEGORY</u>	<u>BOARD OF DIRECTORS</u>	<u>EXECUTIVE OFFICES</u>	<u>LEGAL AFFAIRS</u>	<u>GOVERNMENT RELATIONS &amp; PUB AFFS</u>	<u>HUMAN RESOURCES</u>	<u>OFFICE FINANCIAL &amp; ADMIN SRVCS</u>
COMPENSATION & BENEFITS	0	1,118,425	998,850	951,600	653,900	1,206,500
TEMP. EMPLOYEE PAY	0	10,500	60,000	51,325	0	10,400
CONSULTING	108,900	0	167,000	40,000	68,300	6,000
TRAVEL & TRANSPORTATION	223,000	63,950	17,900	29,300	98,100	18,300
COMMUNICATIONS	5,400	6,600	5,200	2,850	2,450	14,500
OCCUPANCY COSTS	0	0	0	0	0	1,800,000
PRINTING & REPRODUCTION	0	600	0	6,500	0	71,450
OTHER OPERATING EXPENSES	56,600	4,650	57,500	35,000	39,450	400,325
CAPITAL EXPENDITURES	0	0	0	0	0	85,000
<b>TOTAL</b>	<b>393,900</b>	<b>1,204,725</b>	<b>1,306,450</b>	<b>1,116,575</b>	<b>862,200</b>	<b>3,612,475</b>
<u>BUDGET CATEGORY</u>	<u>INFORMATION TECHNOLOGY</u>	<u>PROGRAM PERFORM</u>	<u>INFORMATION MANGEMENT</u>	<u>COMPLIANCE &amp; ENFORCE</u>	<u>MGT &amp; GRNTS OVERSIGHT</u>	<u>INSPECTOR GENERAL</u>
COMPENSATION & BENEFITS	1,019,950	3,471,800	568,400	3,544,450	13,533,875	4,265,700
TEMP. EMPLOYEE PAY	0	395,550	0	218,750	746,525	50,000
CONSULTING	473,800	67,000	0	50,000	981,000	500,000
TRAVEL & TRANSPORTATION	39,000	300,850	1,000	369,550	1,160,950	276,000
COMMUNICATIONS	40,400	22,600	100	20,200	120,300	37,000
OCCUPANCY COSTS	0	1,500	0	400	1,801,900	2,000
PRINTING & REPRODUCTION	0	0	0	0	78,550	19,000
OTHER OPERATING EXPENSES	266,675	14,250	26,600	1,250	902,300	74,000
CAPITAL EXPENDITURES	193,000	0	0	0	278,000	80,000
<b>TOTAL</b>	<b>2,032,825</b>	<b>4,273,550</b>	<b>596,100</b>	<b>4,204,600</b>	<b>19,603,400</b>	<b>5,303,700</b>

# **FY 2016 Budget Proposed Schedule**

## **(Proposed) LSC Board Schedule re FY 2016 Budget**

- April 7, 2014** Finance Committee Mtg: discussion of FY16 Budget Schedule
- June 10, 2014** Finance Committee Mtg (telephonic): Testimony from ABA, NLADA & others  
(June 11, 2013)
- June 24, 2014** Finance Comm Mtg (telephonic): hear testimony from LSC Management re FY16 budget request; discussion  
(June 24, 2013)
- July 8, 2014** Finance Comm Mtg (telephonic): consider budget recommendations from LSC Management & advocates; Vote on FY16 budget  
(July 21, 2013)
- July 21, 2014** Board Mtg: Finance Comm makes recommendation to Board; discussion & vote on FY16 budget resolution  
(July 21, 2013)
- September 5, 2014** LSC submits FY16 budget proposal to OMB.  
(September 6, 2013)

# **Audit Committee**

# Agenda

# AUDIT COMMITTEE

April 7, 2014

## Agenda

### Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on January 23, 2014
3. Quarterly review of 403(b) plan performance 2014
4. Briefing by Office of Inspector General
  - Jeffrey Schanz, Inspector General
5. Management update regarding risk management
  - Ron Flagg, General Counsel
6. Briefing by the Office of Compliance and Enforcement about follow-up from referrals by the Office of Inspector General regarding audit reports, and annual Independent Public Accountants' audits of grantees
  - Lora M. Rath, Director, Office of Compliance and Enforcement
  - John Seeba, Acting Assistant Inspector General for Audits
7. Public comment
8. Consider and act on other business



## **Closed Session**

9. Approval of minutes of the Committee's Closed Session meeting on January 23, 2014
10. Briefing by Office of Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from OIG
  - Lora M. Rath, Director, Office of Compliance and Enforcement
11. Consider and act on adjournment of meeting

**Draft Minutes of January 23, 2014**  
**Open Session Meeting**

**Legal Services Corporation  
Meeting of the Audit Committee**

**Open Session**

**Thursday, January 23, 2014**

**DRAFT**

Chairman Victor B. Maddox convened an open session meeting of the Legal Services Corporation's ("LSC") Audit Committee ("the Committee") at 2:57p.m. on Thursday, January 23, 2014. The meeting was held at the Hilton Garden Inn Downtown Austin, 500 North Interstate 35, Austin, Texas 78701.

The following Committee members were in attendance:

Victor B. Maddox, Chairman  
Harry J. F. Korrell, III  
Gloria Valencia-Weber  
David Hoffman, Non-Director Member (by telephone)  
Paul L. Snyder, Non-Director Member (by telephone)  
John G. Levi, ex officio

Other Board members present:

Sharon L. Browne  
Robert J. Grey, Jr.  
Charles N.W. Keckler  
Laurie Mikva  
Martha L. Minow  
Julie A. Reiskin

Also in attendance were:

James Sandman	President
Lynn Jennings	Vice President for Grants Management
Rebecca Fertig	Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel & Corporate Secretary
David L. Richardson	Treasurer and Comptroller
Wendy Rhein	Chief Development Officer
Jeffrey E. Schanz	Inspector General
Ronald "Dutch" Merryman	Assistant Inspector General for Audits, Office of the Inspector General

Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
Carol Bergman	Director, Office of Government Relations and Public Affairs
Carol Rauscher	Director of Media Relations, Office of Government Relations and Public Affairs
Janet LaBella	Director, Office of Program Performance
Lora M. Rath	Director, Office of Compliance and Enforcement
Frank B. Strickland	Non-Director Member, LSC's Institutional Advancement Committee
Robert E. Henley, Jr.	Non- Director Member, LSC's Finance Committee
Paul Furrh	CEO, Lone State Legal Aid
David Hall	Executive Director, Texas RioGrande Legal Aid
Stacie Jones	Texas RioGrande Legal Aid
Nancy Davis	WithumSmith+Brown (by telephone)
Don Saunders	National Legal Aid and Defender Association (NLADA)

The following summarizes actions taken by and presentations made to the Committee:

Chairman Maddox called the meeting to order.

**MOTION**

Professor Valencia-Weber moved to approve the agenda. Mr. Levi seconded the motion.

**VOTE**

The motion was approved by voice vote.

**MOTION**

Professor Valencia-Weber moved to approve the minutes of the Committee's meeting of October 20, 2013. Mr. Hoffman seconded the motion.

**VOTE**

The motion passed by voice vote.

Mr. Merryman and Ms. Davis, WithumSmith+Brown, presented the financial audit findings for fiscal year 2013, they and answered Committee member's questions.

Mr. Richardson next reported that the auditors, WithumSmith+Brown, will be filing an extension with the IRS for submitting LSC's Form 990 for fiscal year 2013 because Mr. Richardson is still in the process of reviewing and reconciling expenses on the draft form. He answered questions from the Committee members.

In the interest of time, Inspector General Schanz deferred his briefing to the full Board meeting.

Mr. Flagg presented the revised LSC Risk Management Plan and answered Committee members' questions.

Committee Chairman Maddox summarized the Committee's evaluation for 2013 and its goals for 2014. He invited comments from Committee members and received none.

Next, Ms. Rath gave a briefing on the Office of Compliance and Enforcement's (OCE) follow-up of referrals provided by the Office of Inspector General (OIG) regarding audit and investigation reports and annual independent public accountants' audits of grantees. Ms. Rath and Mr. Merryman answered Committee members' questions.

Committee Chairman Maddox invited public comment and received none.

There was no new business to consider.

| [AP1][KW2]

The Committee meeting adjourned for briefings in closed session at 3:46 p.m.

# **403(b) Plan Performance Memo**



OFFICE OF HUMAN RESOURCES

## MEMORANDUM

**TO:** The Audit Committee

**FROM:** Traci L. Higgins

**DATE:** March 14, 2014

**SUBJECT:** LSC 403(b) Thrift Plan – 1st Quarter 2014 Update

### 403 (b) Plan Performance

Through the first two months of 2014, twenty-three of our twenty-five funds have showed continued growth and positive gains. The two under-performing funds, T. Rowe Price Equity Income and Oppenheimer Developing Markets, registered negative returns of -.046% and -3.57%, respectively. Our advisor reported in early March that overall LSC’s funds are in “good shape.”

As reported in the January Audit Committee 403(b) Update, three of our funds (Goldman Sachs and Lord Abbett, both mid-cap blend funds, and American Century, a bond fund) had category rankings that were below our preferred levels for one-, three-, and five-year returns. The two mid-cap blend funds continue to improve, while the performance of the bond fund remains sluggish. Our adviser will continue to monitor these funds, but at this time, Mesirow Financial, our Plan Fiduciary, has not placed these funds on a watch list and is not recommending any changes.

Overall, the 2013 Annual Return for the LSC portfolio was very strong. With the exception of two bond funds (PIMCO and American Century), which registered negative returns of -2.17% and -9.31%, respectively, and Nuveen Real Estate Securities, which registered an anemic 1.04% return, the remaining twenty-three funds each had returns of 7% or more:

2013 Annual Return	Number of Funds
Negative return	2
0 – 5%	1
7 – 12%	6
14 – 19%	4
20 – 24%	4
29 – 36	6
40 – 42	2

A report detailing performance through February 28th is attached.

### **403 (b) Plan Distributions**

There was a total of \$67,220 in distributions during the first quarter of 2014 (through March 14, 2014), with cash-outs and minimum distributions to former employees accounting for approximately \$32,220 of the distributions. An additional \$35,000 was for the in-service withdrawals of two (2) employees.

Please let me know if you have any questions or require additional information.



Fund Name	Morningstar Category	Ticker	Prospectu Net Exp Ratio	Tot Ret 1 Mo	Tot Ret 3 Mo	Primary Rank: $\bar{O}$ Morningstar Category		Tot Ret YTD	Tot Ret 12 Mo	Tot Ret Annlzd 3 Yr	Tot Ret Annlzd 5 Yr	Tot Ret Annlzd 10 Yr	Tot Ret Annlzd 15 Yr	% Rank Cat 3 Mo
						Secondary Rank:								
1 American Funds Capital World G/I R4	World Stock	RWIEX	0.80	5.30	3.95			1.88	22.40	10.68	19.08	8.71	9.25	37
2 American Century One Choice 2050 Inv	Target Date 2046-2050	ARFVX	0.98	4.42	3.21			1.62	18.12	10.77	19.41	-	-	55
3 American Century One Choice 2045 Inv	Target Date 2041-2045	AROIX	0.97	4.29	3.27			1.67	17.78	10.64	19.06	-	-	50
4 American Century One Choice 2040 Inv	Target Date 2036-2040	ARDVX	0.93	3.97	3.12			1.62	16.59	10.23	18.47	-	-	56
5 American Century One Choice 2035 Inv	Target Date 2031-2035	ARYIX	0.90	3.74	3.03			1.67	15.32	9.73	17.41	-	-	61
6 American Century One Choice 2030 Inv	Target Date 2026-2030	ARCVX	0.87	3.40	2.80			1.67	13.83	9.14	16.21	-	-	62
7 American Century One Choice 2025 Inv	Target Date 2021-2025	ARWIX	0.85	3.11	2.64			1.64	12.45	8.67	15.19	-	-	69
8 American Century One Choice 2020 Inv	Target Date 2016-2020	ARBVX	0.82	2.92	2.51			1.61	11.40	8.29	14.27	-	-	55
9 American Century One Choice 2015 Inv	Target Date 2011-2015	ARFIX	0.79	2.58	2.35			1.50	10.43	7.90	13.35	-	-	57
10 BMO Small-Cap Growth Y	Small Growth	MRS CX	1.42	6.21	8.98			6.31	37.69	14.82	29.89	11.74	10.79	10
11 Columbia Small Cap Index A	Small Blend	NMSAX	0.48	4.44	1.80			0.38	31.63	16.34	27.50	9.77	10.09	74
12 American Century One Choice In Ret Inv	Retirement Income	ARTOX	0.77	2.56	2.24			1.50	10.15	7.78	12.51	-	-	43
13 Nuveen Real Estate Securities A	Real Estate	FREAX	1.28	5.14	9.79			9.40	6.10	9.16	28.61	10.10	12.43	26
14 Prudential Jennison Natural Resources Z	Natural Resources	PNRZX	0.87	8.02	4.87			3.95	11.95	-4.82	16.44	12.29	16.67	37
15 <b>Goldman Sachs Mid Cap Value Instl</b>	<b>Mid-Cap Value</b>	GSMCX	0.74	5.69	6.09			3.24	26.53	13.04	24.61	9.99	11.71	15
16 <b>Lord Abbett Value Opportunities A</b>	<b>Mid-Cap Blend</b>	LVOAX	1.31	6.86	7.83			4.32	29.89	12.44	23.28	-	-	11
17 T. Rowe Price Equity Income Adv	Large Value	PAFDX	0.94	3.65	1.67			-0.46	20.33	12.14	22.66	6.88	6.86	88
18 TIAA-CREF Growth & Income Retire	Large Growth	TRGIX	0.71	5.34	5.00			2.39	29.45	15.47	22.35	9.03	-	64
19 Alger Capital Appreciation Instl I	Large Growth	ALARX	1.19	5.54	6.61			3.27	31.77	15.21	24.89	11.12	7.01	33
20 State Street Equity 500 Index Adm	Large Blend	STFAX	0.25	4.57	3.47			0.93	25.02	14.08	22.70	6.96	-	47
21 PIMCO Total Return Admin	Intermediate-Term Bond	PTRAX	0.71	0.50	0.84			1.84	-0.60	4.18	7.09	5.77	6.42	88
22 <b>American Century Infl Adj Bond A</b>	<b>Inflation-Protected Bond</b>	AIAVX	0.72	0.26	0.81			2.26	-6.68	3.31	5.36	4.13	5.76	53
23 Prudential High-Yield Z	High Yield Bond	PHYZX	0.58	1.89	3.23			2.68	8.15	8.55	16.71	8.34	6.82	31
24 American Funds EuroPacific Gr R4	Foreign Large Blend	REREX	0.85	5.71	3.29			1.41	19.10	6.80	17.37	8.50	7.68	30
25 Oppenheimer Developing Markets Y	Diversified Emerging Mkts	ODVYX	1.05	4.65	-2.73			-3.57	3.85	3.36	22.65	14.47	17.54	33

Fund Name	Primary Rank:  Morningstar Category Secondary Rank:						Annual Return 2013	Annual Return 2012	Annual Return 2011	Annual Return 2010	Annual Return 2009	Annual Return 2008	Sharpe Ratio	Alpha 3 Yr
	% Rank Cat YTD	% Rank Cat 12 Mo	% Rank Cat 3 Yr	% Rank Cat 5 Yr	% Rank Cat 10 Yr	% Rank Cat 15 Yr								
1 American Funds Capital World G/I R4	36	42	38	59	27	16	24.86	19.12	-7.55	7.71	32.29	-38.41	0.80	6.88
2 American Century One Choice 2050 Inv	30	64	20	62	-	-	21.58	15.39	-0.96	15.70	26.66	-	0.93	-0.48
3 American Century One Choice 2045 Inv	23	73	18	83	-	-	21.08	15.00	-0.78	15.50	26.36	-33.64	0.95	-0.28
4 American Century One Choice 2040 Inv	31	71	23	73	-	-	19.69	14.50	-0.27	14.99	25.95	-	0.96	-0.13
5 American Century One Choice 2035 Inv	24	81	29	97	-	-	17.92	13.62	0.37	14.28	24.31	-30.58	0.99	0.14
6 American Century One Choice 2030 Inv	31	68	31	84	-	-	15.86	12.79	1.04	13.39	22.88	-	1.01	0.29
7 American Century One Choice 2025 Inv	43	69	30	92	-	-	14.04	12.14	1.77	12.57	21.24	-25.02	1.04	0.56
8 American Century One Choice 2020 Inv	50	50	21	69	-	-	12.58	11.47	2.50	11.70	20.11	-	1.09	0.84
9 American Century One Choice 2015 Inv	56	39	13	69	-	-	11.53	10.59	3.16	10.84	18.26	-20.10	1.15	1.17
10 BMO Small-Cap Growth Y	7	35	52	16	5	25	42.25	12.06	-3.82	35.59	46.81	-42.50	0.81	-4.53
11 Columbia Small Cap Index A	60	25	16	25	23	58	40.60	15.96	0.58	25.71	25.19	-31.00	1.03	-0.72
12 American Century One Choice In Ret Inv	66	24	15	36	-	-	11.11	10.13	3.58	10.07	16.42	-16.57	1.19	1.40
13 Nuveen Real Estate Securities A	10	50	35	37	7	3	1.04	18.07	7.69	30.24	30.18	-34.96	0.61	2.61
14 Prudential Jennison Natural Resources Z	7	34	70	40	9	1	10.08	-2.43	-18.54	28.14	73.74	-52.73	-0.08	-15.08
15 Goldman Sachs Mid Cap Value Instl	11	54	57	65	11	17	32.97	18.54	-6.26	24.85	33.19	-36.47	0.92	-2.47
16 Lord Abbett Value Opportunities A	12	27	62	68	-	-	36.07	9.73	-4.18	24.50	33.82	-27.77	0.80	-4.40
17 T. Rowe Price Equity Income Adv	88	81	63	23	43	31	29.44	16.92	-0.94	14.87	25.40	-35.88	0.99	-1.66
18 TIAA-CREF Growth & Income Retire	56	55	25	52	19	-	34.01	16.17	2.79	12.91	26.52	-35.12	1.19	0.87
19 Alger Capital Appreciation Instl I	33	38	28	18	2	14	34.81	18.11	-1.03	13.48	49.12	-43.89	1.06	-0.67
20 State Street Equity 500 Index Adm	47	51	30	30	38	-	31.97	15.84	1.79	14.81	26.25	-36.89	1.12	-0.23
21 PIMCO Total Return Admin	78	82	44	46	8	6	-2.17	10.08	3.91	8.56	13.55	4.55	1.05	0.36
22 American Century Infl Adj Bond A	52	79	44	68	52	70	-9.31	6.44	12.64	5.24	10.33	-1.38	0.59	-2.92
23 Prudential High-Yield Z	27	33	20	41	11	36	7.23	14.16	5.07	14.72	48.35	-22.14	1.40	6.88
24 American Funds EuroPacific Gr R4	27	32	28	44	14	16	20.17	19.22	-13.61	9.39	39.13	-40.56	0.49	2.88
25 Oppenheimer Developing Markets Y	58	13	12	4	1	1	8.68	21.29	-17.85	27.39	82.10	-47.84	0.27	-0.49

Fund Name	Beta 3 Yr	R2 3 Yr	Std Dev 3 Yr	% US Stoc	% Non-US Stocks	% Bonds	% Cash	% Other	Morningstar Category		Turnove Ratio	Manager Tenure (Average)
									Primary Rank:	Secondary Rank:		
									Total Number Holdings	c		
1 American Funds Capital World G/I R4	0.80	94.61	13.81	37.69	54.48	0.79	4.89	2.15	399		24	9.0
2 American Century One Choice 2050 Inv	1.38	97.11	11.69	63.41	17.64	15.05	2.84	1.05	14		4	3.0
3 American Century One Choice 2045 Inv	1.34	97.55	11.30	61.78	16.97	17.15	3.12	0.98	14		3	3.4
4 American Century One Choice 2040 Inv	1.27	97.76	10.68	57.88	15.68	20.14	5.43	0.88	15		5	3.0
5 American Century One Choice 2035 Inv	1.17	98.02	9.83	53.05	14.25	23.58	8.36	0.76	15		3	3.4
6 American Century One Choice 2030 Inv	1.07	98.25	9.03	48.75	12.51	28.42	9.57	0.75	17		5	3.0
7 American Century One Choice 2025 Inv	0.98	98.39	8.24	45.02	10.46	33.43	10.33	0.75	17		3	3.4
8 American Century One Choice 2020 Inv	0.90	98.33	7.55	41.54	8.72	36.26	12.72	0.77	17		6	3.0
9 American Century One Choice 2015 Inv	0.81	97.81	6.79	38.95	6.64	38.20	15.52	0.69	17		6	3.4
10 BMO Small-Cap Growth Y	1.42	83.99	19.40	85.58	11.74	0.00	2.68	0.00	95		153	7.9
11 Columbia Small Cap Index A	1.21	90.01	15.88	97.72	0.07	0.00	2.21	0.00	602		17	3.6
12 American Century One Choice In Ret Inv	0.76	97.63	6.43	38.33	6.13	38.76	16.16	0.60	16		11	3.4
13 Nuveen Real Estate Securities A	0.82	53.17	16.41	98.27	1.35	0.00	0.00	0.38	94		89	8.7
14 Prudential Jennison Natural Resources Z	1.44	74.84	24.26	72.82	22.74	0.00	1.99	2.44	116		21	8.0
15 Goldman Sachs Mid Cap Value Instl	1.11	92.46	14.41	97.07	2.54	0.00	0.39	0.00	103		103	12.2
16 Lord Abbett Value Opportunities A	1.23	90.16	16.12	97.67	2.33	0.00	0.00	0.00	96		66	7.2
17 T. Rowe Price Equity Income Adv	0.98	97.91	12.32	86.58	5.48	0.55	6.56	0.82	117		10	28.4
18 TIAA-CREF Growth & Income Retire	1.01	97.98	12.74	85.21	13.63	0.00	0.56	0.59	186		146	9.0
19 Alger Capital Appreciation Instl I	1.12	94.03	14.40	89.31	8.46	0.00	2.24	0.00	116		124	9.4
20 State Street Equity 500 Index Adm	1.00	99.98	12.47	-	-	-	-	-	-		4	9.8
21 PIMCO Total Return Admin	1.00	52.40	3.94	0.00	0.29	168.10	-71.89	3.50	20509		380	26.8
22 American Century Infl Adj Bond A	1.68	70.84	5.66	0.00	0.00	94.43	4.84	0.73	102		27	7.0
23 Prudential High-Yield Z	0.39	3.46	5.97	0.02	0.00	93.43	4.24	2.31	625		55	7.3
24 American Funds EuroPacific Gr R4	0.94	97.08	16.09	0.87	90.86	0.31	7.56	0.39	409		27	13.7
25 Oppenheimer Developing Markets Y	1.02	89.93	18.16	0.71	91.55	0.00	5.95	1.79	116		29	6.8

# **Risk Management Matrix**

<b>RISK TO LSC RESOURCES – PEOPLE</b>							
<b>Risks</b>			<b>Strategies</b>	<b>Who is responsible?</b>		<b>Date of last review</b>	<b>Date of next review</b>
	<b>Probability</b>	<b>Severity</b>		<b>Management</b>	<b>Board</b>		
<b>Board Leadership and Governance</b> -- Potential for problems	L	H	<ul style="list-style-type: none"> <li>• Good information flow from management (including legal, financial, programmatic information) and from the OIG and outside auditors</li> <li>• Training of board</li> <li>• Orientation of new board</li> <li>• Evaluations/self-assessments</li> <li>• Sufficient staff support</li> <li>• Staying abreast of best board governance practices</li> <li>• Staying abreast of stakeholder and client concerns</li> <li>• Periodic review of governing documents to assure compliance and relevancy</li> </ul>		Board, Chairman, Gov. & Performance Review Com.		
-- Board Transitions	M	M	<ul style="list-style-type: none"> <li>• Board transition plan</li> <li>• Board orientation</li> </ul>	Secretary	Board, Chairman, Gov. & Performance Review Com.		
<b>Management Leadership Transitions</b>  -- President	H	M	<ul style="list-style-type: none"> <li>• <b>Presidential transition plan</b></li> </ul>	President	<b>Gov. &amp; Performance Review Com.</b>		

<b>RISK TO LSC RESOURCES – PEOPLE</b>							
<b>Risks</b>			<b>Strategies</b>	<b>Who is responsible?</b>		<b>Date of last review</b>	<b>Date of next review</b>
	<b>Probability</b>	<b>Severity</b>		<b>Management</b>	<b>Board</b>		
-- Other senior leadership changes	M	M	<ul style="list-style-type: none"> <li>Transition plan</li> </ul>	President	Gov. & Performance Review Com.		
<b>Management/IG Relations</b> -- Potential for problems	M	H	<ul style="list-style-type: none"> <li>Communicate, coordinate, cooperate</li> <li>Regular meetings</li> </ul>	President	Audit Com.	1/23/14	4/7/14
<b>Management Leadership Performance</b> -- Preventing leadership problems	L	H	<ul style="list-style-type: none"> <li>Cohesive, effective management team</li> <li>Emphasis on high standards</li> <li>Regular communications with board, staff, grantees, public, OIG</li> <li>Regular performance evaluations</li> </ul>	President	Gov. & Performance Review Com		4/6/14
<b>Management System Risks</b> <ul style="list-style-type: none"> <li>Performance Management (failure to achieve performance of defined goals)</li> </ul>	M	H	<ul style="list-style-type: none"> <li>Create formal organizational management performance cycle including articulation of goals and metrics</li> <li>Routine reporting of performance</li> <li>Providing training to close competency gaps</li> </ul>	President OHR Director	Ops. & Regs. Com.		4/7/14

<b>RISK TO LSC RESOURCES – PEOPLE</b>							
<b>Risks</b>			<b>Strategies</b>	<b>Who is responsible?</b>		<b>Date of last review</b>	<b>Date of next review</b>
	<b>Probability</b>	<b>Severity</b>		<b>Management</b>	<b>Board</b>		
<ul style="list-style-type: none"> <li>■ Human Capital Management (failure to attract, motivate and retain high quality staff)</li> </ul>	M	H	<ul style="list-style-type: none"> <li>• Professional training for staff and managers</li> <li>• Routine performance evaluations and feedback</li> <li>• Robust communications with employees</li> </ul>	President OHR Director	Ops. & Regs. Com.		4/7/14
<ul style="list-style-type: none"> <li>■ Information Management (failure to collect and share vital information)</li> </ul>	M	H	<ul style="list-style-type: none"> <li>• Create a common data portal for collection and sharing of grantee data</li> </ul>	Vice President for Grants Management (VPGM) Director OIT	Ops. & Regs. Com.		
<ul style="list-style-type: none"> <li>■ Acquisitions Management (higher contract costs and possible areas of fraud, waste and abuse)</li> </ul>	M	H	<ul style="list-style-type: none"> <li>• Periodically review and strengthen procurement and contracting policies</li> <li>• Routine training of employees on policies</li> </ul>	Vice President for Legal Affairs (VPLA) Controller	Ops. & Regs. Com.		
<b>Conflicts of Interest/Ethics Violations</b>	L	M	<ul style="list-style-type: none"> <li>• Training on ethics code</li> <li>• Reminders, emphasis on ethics</li> </ul>	Ethics Officer	Audit Com.		7/14

<b>RISK TO LSC RESOURCES – FUNDING</b>							
<b>Risks</b>			<b>Strategies</b>	<b>Who is responsible?</b>		<b>Date of last review</b>	<b>Date of next review</b>
	<b>Probability</b>	<b>Severity</b>		<b>Management</b>	<b>Board</b>		
<b>Adequacy of Basic Field Funding</b> -- Insufficient funding to accomplish LSC’s mission of providing equal access to justice -- Funding cut so severely that programs must close altogether or radically cut back services	H	H	<ul style="list-style-type: none"> <li>Public education</li> <li>Strengthen congressional relationships</li> <li>Develop stronger data to support funding requests, including data on outcomes and economic benefits of legal aid</li> </ul>	Government Relations/ Public Affairs (GRPA) Director	Finance Com.	1/23/14	4/6/14
	H	H	<ul style="list-style-type: none"> <li>Develop crisis-mode messaging and network</li> </ul>	GRPA Director			
<b>Adequacy of MGO Funding</b> -- Insufficient Management and Grants Oversight funding	H	H	<ul style="list-style-type: none"> <li>Strengthen congressional relationships</li> <li>Emphasize quantifying return on investment from oversight funding</li> <li>Emphasize grants oversight function</li> <li>Respond to and implement GAO recommendations</li> </ul>	GRPA Director	Finance Com.	1/23/14	4/6/14
			<ul style="list-style-type: none"> <li>Continue to assess MGO expenses to reduce any unnecessary duplication and inefficiencies</li> </ul>	VPGM			



RISK TO LSC RESOURCES –ASSETS							
Risks			Strategies	Who is responsible?		Date of last review	Date of next review
	Probability	Severity		Management	Board		
<b>Internal Fraud</b>	L	H	<ul style="list-style-type: none"> <li>Effective internal controls</li> <li>IG oversight</li> <li>Annual corporate audit</li> </ul>	Treasurer	Audit Com.		
			<ul style="list-style-type: none"> <li>Staff training on ethics</li> </ul>	Ethics Officer			
<b>Internal Financial Controls</b> -- Failures at LSC	L	H	<ul style="list-style-type: none"> <li>Management accountability</li> <li>Annual audit</li> <li>Board oversight</li> <li>Regular review/update of Accounting Manual</li> <li>Implement GAO recommendations and OMB guidance</li> </ul>	Treasurer	Audit Com.	10/20/13	
<b>Litigation</b> -- Employment	M	M	<ul style="list-style-type: none"> <li>Regular training of managers</li> <li>Clear-cut policies and uniform application</li> </ul>	OHR Director	Ops. & Regs. Com.		
			<ul style="list-style-type: none"> <li>Effective negotiation and use of releases</li> </ul>	VPLA			
<b>Integrity of electronic data/information</b> -- Potential for Problems -- Security of electronic data	L	H	<ul style="list-style-type: none"> <li>Effective system back-ups</li> <li>Effective disaster recovery</li> <li>Regular staff training</li> <li>Maintain qualified IT staff</li> <li>Effective document and system security</li> <li>Maintain up-to-date</li> </ul>	Director OIT	Ops. & Regs. Com.	1/23/14	

<b>RISK TO LSC RESOURCES –ASSETS</b>							
<b>Risks</b>			<b>Strategies</b>	<b>Who is responsible?</b>		<b>Date of last review</b>	<b>Date of next review</b>
	<b>Probability</b>	<b>Severity</b>		<b>Management</b>	<b>Board</b>		
			technology				
<b>Accuracy of grantee data</b> -- Potential for Problems	H	M	<ul style="list-style-type: none"> <li>Data validation protocols (electronic analysis)</li> <li>Clear guidance/training on grantee reporting</li> <li>Improve grantee Activity Reports to receive better data</li> </ul>	VPGM	Ops. & Regs. Com.		
			<ul style="list-style-type: none"> <li>CSR/CMS program visits</li> </ul>	OCE Director			
			<ul style="list-style-type: none"> <li>Technology assistance</li> </ul>	OPP Director			
<b>LSC Records Management</b> -- Potential for Problems	L	M	<ul style="list-style-type: none"> <li>Update records management policy, including statement on the handling of confidential information</li> <li>Train staff in new policy</li> <li>Effective FOIA procedures</li> <li>Stay abreast of best practices</li> <li>Maintain effective computer back-ups</li> <li>Maintain effective</li> </ul>	Director OIT VPLA	Ops. & Regs. Com.		

<b>RISK TO LSC RESOURCES –ASSETS</b>							
<b>Risks</b>			<b>Strategies</b>	<b>Who is responsible?</b>		<b>Date of last review</b>	<b>Date of next review</b>
	<b>Probability</b>	<b>Severity</b>		<b>Management</b>	<b>Board</b>		
			security on electronic information access <i>(continued on next page)</i> <ul style="list-style-type: none"> <li>• Improve internal access to key records</li> <li>• improve public access to records</li> <li>• Ensure compliance with legal requirements</li> </ul>				
<b>Preservation of LSC interest in grantee property</b> -- Potential for loss	L	L	<ul style="list-style-type: none"> <li>• Maintain up to date Property Acquisition Manual</li> <li>• Remind grantees of LSC policy</li> <li>• Pursue remedies as necessary</li> </ul>	VPLA	Ops. & Regs. Com.		
<b>Continuation of Operations &amp; Organizational Resilience</b>	L	H	<ul style="list-style-type: none"> <li>• Effective COOP plan</li> </ul>	Chief of Staff	Ops. & Regs. Com.		
	L	H	<ul style="list-style-type: none"> <li>• Computer network back-up</li> </ul>	Director OIT			

<b>RISK TO LSC RESOURCES – GRANTEES</b>							
<b>Risks</b>			<b>Strategies</b>	<b>Who is responsible?</b>		<b>Date of last review</b>	<b>Date of next review</b>
	<b>Probability</b>	<b>Severity</b>		<b>Management</b>	<b>Board</b>		
<b>Grantee Oversight by LSC &amp; IPAs</b> -- Preventing lapses	M	H	<ul style="list-style-type: none"> <li>• Rigorous Compliance oversight</li> <li>• Maintain comprehensive procedures manuals</li> <li>• Well-defined workplans for program visits</li> <li>• Careful review of grantee reports to LSC</li> <li>• Communications between offices</li> <li>• Internal training</li> <li>• Regular communications with programs</li> <li>• Monitoring media reports</li> </ul>	VPGM	Ops & Regs. Com. Del. Of Legal Serv. Com.		
<b>Interpretations of regulations by LSC Staff</b> -- Preventing inconsistencies	L	H	<ul style="list-style-type: none"> <li>• Joint meetings and trainings</li> <li>• Joint work groups by topic</li> <li>• Feedback from grantees</li> </ul>	VPGM	Ops & Regs. Com.		

RISK TO LSC RESOURCES – GRANTEES							
Risks			Strategies	Who is responsible?		Date of last review	Date of next review
	Probability	Severity		Management	Board		
<b>Grantee Operations</b>				<b>VPGM</b>	<b>Del. Of Legal Serv. Com.</b>		
-- Major misuse of grant funds	M	H	<ul style="list-style-type: none"> <li>Rigorous selection process for grantees</li> <li>Enforcement of regulations</li> </ul>				4/7/14 (financial planning & budgeting)
-- Failure of leadership	L	H	<ul style="list-style-type: none"> <li>Grant assurances</li> <li>Grant conditions</li> <li>Advisories</li> <li>Program letters</li> </ul>			10/21/13 (performance criteria)	
-- Failure of internal controls	M	H	<ul style="list-style-type: none"> <li>Oversight visits</li> <li>LSC Resource Information</li> </ul>			1/24/13 (Board governance – fiscal and financial oversight)	
-- Lack of board oversight	M	H	<ul style="list-style-type: none"> <li>Training of grantee staff</li> <li>Performance Criteria</li> <li>Outreach to local boards</li> </ul>				
-- Leadership transitions	H	M	<ul style="list-style-type: none"> <li>Local board education</li> <li>Outreach to Access to Justice community in region</li> </ul>				
-- Restriction violations	M	H	<ul style="list-style-type: none"> <li>On-site assessment to encourage competition</li> </ul>				
-- Poor records management	M	M	<ul style="list-style-type: none"> <li>Review/redefine services</li> </ul>				
-- Poor Quality legal services	L	M	<ul style="list-style-type: none"> <li>Seek interim provider</li> <li>Work with programs to improve compliance and make it less likely that they will violate restrictions or otherwise</li> </ul>				
-- Need to replace program	L	H					

<b>RISK TO LSC RESOURCES – GRANTEES</b>							
<b>Risks</b>			<b>Strategies</b>	<b>Who is responsible?</b>		<b>Date of last review</b>	<b>Date of next review</b>
	<b>Probability</b>	<b>Severity</b>		<b>Management</b>	<b>Board</b>		
			require the imposition of sanctions				
			<ul style="list-style-type: none"> <li>• Periodic review of regulations</li> <li>• OLA opinions</li> </ul>	VPLA			

## Responsibilities for Risk Management

### Board of Directors

- Sets strategic goals and objectives, adopts annual operating budget, and approves risk management plan.
- Reviews operational reports to monitor progress towards goals as defined in *Strategic Directions* and assure compliance with organizational requirements.
- Adopts and establishes policies and regulations.
- Reviews the organization's risk management plan (RMP).
- Maintains working relationship with members of Congress.
- Board Committees to review implementation of RMP.

### President

- Has overall responsibility for the effective implementation of the RMP.
- Assigns staff to design and carry out risk management activities.
- Assigns staff to perform annual review of the risk management activities.
- Approves all grants for the Corporation.
- Executes major contracts for the organization.
- Keeps the Board apprised of emerging threats and opportunities facing the organization.
- Leads the Executive Team in periodic review and update of the risk management plan.
- Gives final approval to the plan.
- Maintains effective relationship with members of Congress and staff.

### Vice President for Legal Affairs

- Serves as advisor to the Board of Directors in legal matters, consulting outside counsel on an as needed basis.
- Advises senior staff on contracts; reviews contracts on an as needed basis.
- Monitors implementation of risk management program.
- Recommends any necessary modifications.

### Vice President for Grants Management

- Supervises oversight of grantee operations and compliance.

### Treasurer/Comptroller

- Establishes, conducts, and maintains internal controls for financial transactions.
- Purchases D&O insurance.

### Executive Team

- Oversees organization-wide effort to protect the vital assets of LSC
- Convenes periodically to review the Corporation's priority risks and corresponding risk management strategies.

### Office Directors

- Review and recommend modifications to corporate risk management program.
- Supervise implementation of risk management strategies within their area of responsibility.

**Office of Inspector General Referrals to  
the Office of Compliance and Enforcement**



**STATUS OF OPEN or RECENTLY CLOSED REFERRALS FROM OIG AUDIT DIVISION TO OCE (Thru March 2014)**

State	Grantee	Date of OIG Onsite/ Review	Date of OIG Report	Date of Referral to OCE	OIG Referral	OCE Action	Resolution	Date Closed
TX	Lone Star Legal Aid	5 visits between 8/10 and 1/11	1/15/13 revision provided on 2/22/13	1/24/13	OIG originally referred \$45,762 in questioned costs due to unsupported credit card charges (\$4,639, purchases exceeding \$10,000 for which LSC prior approval was not obtained (\$40,458), and physical inventory items that could not be located (\$665). That amount was reduced by \$27,280 on 2/22/13. The remaining \$13,178 for prior approval and the other costs remained questioned.	OLA guidance was requested on 10/30/13 to resolve issue of intellectual versus personal property for the \$13,178 purchase of software licenses. OLA and OCE staff met on 1/10/14 to discuss the issues raised by this referral.	QC Notice was issued on 2/19/14. LSC is awaiting the program's response at this time.	Pending
ID	Idaho Legal Services		4/1/13	4/1/13	OIG referred \$215,051 in questioned costs related to TIG expenditures. Of that amount \$211,011 was questioned due to failure to adequately document personnel and fringe benefit expenditures and \$4,040 was noted to be unexpended funds that were not returned to LSC at the completion of the grant.	OCE has provided a recommended course of action to the Vice President for Grants Management. Recommendation was to recoup \$3,409 as unexpended TIG funds rather than to initiate a QC proceeding.	Letter requesting recoupment by 3/12/14 was issued on 2/19/14. By letter dated 2/26/14, ILS submitted a check for \$3,409 to LSC.	3/4/2014
VA	Central Virginia Legal Services		9/30/13	9/30/13	OIG referred \$909 in questioned costs: \$241.20 in unallowable costs for purchases of flowers or donations; \$129.61 in unsupported costs for credit card charges without supporting documentation; and \$538.61 in unapproved costs for in office supply purchases that did not have purchase orders as required by the grantee's policy.	OCE has provided a recommendation to the Vice President for Grants Management and will initially pursue informal proceedings to recoup all or part of the costs.	CVLAS has submitted a check for \$241, from non LSC funds, to reimburse LSC for the unallowable costs noted in the OIG's report. CVLAS has also provided evidence of corrective actions (developing new policies and procedures) taken re: unsupported credit card charges, and office supply purchases.	3/19/2014
IN	Indiana Legal Services, Inc.		9/30/13	9/30/13	OIG referred \$4,159 in questioned costs: \$363 in unallowable costs for purchases of flowers for bereaved employees and \$304 for late fee charges on credit/gas cards (Total = \$667) and unsupported costs in the amounts of \$55 for conference; \$13 for lunch; \$546 for lunches with out business purpose/attendee names on receipt; and \$2,878 for moving expenses without statement of work detailing the number of hours/workers required to complete (Total = \$3,492).	OCE has provided a recommendation to the Vice President for Grants Management and will initially pursue informal proceedings to recoup all or part of the costs.	Recipient has submitted evidence that the \$667 in unallowable costs has been refunded to its LSC grant line by non-LSC funds; as well as that the \$614 in undocumented/insufficiently documented costs has been re-funded to LSC grant line by non-LSC funds. Finally, the program submitted contracts for the \$2,878 in moving expenses which clearly detailed the number of hours and workers for which they were charged. Letter advising referral is closed was sent on 3/7/14 and copied to OIG.	3/7/2014

Status of OIG Referrals from Audited Financial Statements FYE 6/30/11 thru 6/30/13

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
1	NY	LS NYC	2012-233100-02	8/13/2012	Item 11-02 governing board composition.	OIG noted that management concurred with the IPA's finding and stated that moving forward, they would submit all required reports within the specified due dates. The OIG noted that follow up needed to determine if grantee is submitting reports timely.	3/18/2013 & 3/12/2014	CA Closed*** The Office of Program Performance ("OPP") was able to verify that, during calendar year 2012, and the first part of 2013, LS NYC submitted all necessary reports regarding its Governing/Policy Body Composition in a timely manner.	Pending	Under Review On 3/12/2014, OCE resubmitted evidence to OIG regarding the program's timely submission of required reporting. OIG is in the process of reviewing the submission for sufficiency.
2	KY	Appalachian Research and Defense Fund of Kentucky	2012-618030-01	8/13/2012	Two case files were lacking required documentation out of eighty case files reviewed	OIG reported that grantee mgmt. said they would implement the IPA's recommendation to ensure that personnel responsible for maintaining case files review LSC documentation requirements and determine that all case files are in compliance. OIG referred for OCE follow-up to ensure adequate response had occurred as this was a prior year finding.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		OCE conducted an onsite Technical Assistance Review in October 2012 and an onsite Compliance Review in Spring 2013. OCE is continuing to work with and provide technical assistance to this program. The program's 2014 LSC funding has several Special Grant Conditions attached to it to assist OCE and OPP in overseeing this program's ongoing process to come into compliance with LSC regulations and guidance.
3			2012-618030-02	8/13/2012	Many audit adjustments were needed in order to present the financial statements in conformity with GAAP	OIG noted that grantee mgmt. stated they would implement enhanced financial review and monthly closing procedures to improve their financial reporting. OIG referred for OCE follow-up to determine if the planned procedures have been implemented.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		

\*SRF = Summary Report Form completed by IPA.

\*\*CAP = Corrective Action Plan submitted by Grantee appears appropriate to cure deficiency.

\*\*\*CA Closed = Corrective Action taken was sufficient.

Status of OIG Referrals from Audited Financial Statements FYE 6/30/11 thru 6/30/13

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
4	KY	Appalachian Research and Defense Fund of Kentucky	2013-618030-01	9/10/2013	For the second straight year, there was a prior period adjustment required	OIG noted that, for the second straight year, there was a prior period adjustment required due to improper recording of unearned grant revenue. Referred to OCE for follow-up to ensure corrective action is taken.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		OCE conducted an onsite Technical Assistance Review in October 2012 and an onsite Compliance Review in Spring 2013. OCE is continuing to work with and provide technical assistance to this program.
5			2013-618030-02	9/10/2013	The Organization does not have a formal written policy that was effectively communicated to staff	OIG reported that time keeping requirements were not met because the grantee lacked a formal written policy which was effectively communicated to staff. Grantee management stated that they would implement policies. Referred to OCE for follow-up to ensure corrective action is taken.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.		
6				2013-618030-03	10/3/2013	Time keeping requirements were not met in that the grantee lacked a formal written policy which was effectively communicated to staff.	OIG noted that grantee management stated that they would develop a written time keeping requirements policy in accordance with Legal Services Corporation regulations and ensure that the policy is effectively communicated to staff. Referred to OCE for follow-up to ensure corrective action is taken.		Under Review LSC will continue to provide this grantee with any necessary technical assistance and training.	
7	AZ	DNA Peoples Legal Services	2012-703068-01	6/17/2012	Numerous material audit adjustments were required for the financial statements to be correct at year-end.	OIG noted that grantee mgmt. stated that error was due to an upgrade of the accounting software resulting in commingling of expense & revenue entries from the old chart of accounts. The AFS further indicated that grantee did not have chance to sort issue before IPA arrived. OIG referred for OCE follow-up on this issue as it was a repeat finding.	3/12/2014	Accept CAP For FY 2012 and FY 2013 LSC imposed numerous fiscal special grant conditions on this grantee to assist improvement in fiscal systems and internal controls. Pursuant to an on-site review conducted in July 2013, OCE determined that DNA has taken significant steps to cure the noted deficiencies.	Based on OCE's onsite review in July 2013 and review of the program's responses to the Special Grant Conditions imposed on its 2013 grant, OCE believes DNA has taken sufficient action to close these Audit findings (both 2013 findings are basically the same as	For FY 2012 and FY 2013 LSC imposed numerous fiscal special grant conditions on this grantee to assist improvement in fiscal systems and internal controls. Additionally, OCE conducted an onsite Follow-up Review in July 2013 to assess the program's steps towards improving fiscal and internal control systems. Based on the July 2013 visit, it has been determined that the program had made significant improvements to its fiscal systems and processes.

Status of OIG Referrals from Audited Financial Statements FYE 6/30/11 thru 6/30/13

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
8	AZ	DNA Peoples Legal Services	2013-703068-01	6/26/2013	Numerous material audit adjustments were required for the financial statements to be correct at year-end.	OIG noted that, for the year audited, numerous material audit adjustments were required for the financial statement to be correct at year-end. The unadjusted general ledger was not materially correct under generally accepted accounting principles. Referred to OCE for follow-up to ensure corrective action is taken as this was a repeat finding.	3/12/2014	Accept CAP OCE has been maintaining close contact with this grantee and will carefully monitor the 2013 AFS for signs of continued deficiencies.	Basically the same as the 2012 finding).	its fiscal systems and processes.
9			2013-703068-02	10/3/2013	For the year audited, numerous material audit adjustments were required for the financial statement to be correct at year-end. Thus, the unadjusted general ledger was not materially correct under accounting principles generally	OIG referral noted that DNA Accounting and Finance Office will implement fiscal year end closeout procedures and establish key deadlines dates to process and closeout financial transactions prior to the fiscal year ending. Referred to OCE for follow-up to ensure corrective action is taken.	3/12/2014	Accept CAP OCE has been maintaining close contact with this grantee and will carefully monitor the 2013 AFS for signs of continued deficiencies.		
10	CA	Inland Counties Legal Services, Inc.	2012-805230-01	8/13/2012	Internal Controls over cash accounts were not adequate.	OIG noted that grantee management accepted the finding and stated that a new controller had been hired. Referred to OCE for follow-up to ensure that controls over cash accounts have been implemented.		Under Review OCE is reviewing documents submitted by ICLS to assess for sufficiency of actions taken.		OCE is reviewing documents submitted by ICLS to assess for sufficiency of actions taken.

Status of OIG Referrals from Audited Financial Statements FYE 6/30/11 thru 6/30/13

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
11			2012-805230-02	8/13/2012	Policies and procedures for use of the accounting software and preparing transactions and reconciliations was not adequately documented. The new controller did not expend a significant effort to understand the system.	OIG noted that grantee management stated that they would strive to have that accounting manual updated in 2012 by the new controller. Referred to OCE for follow-up needed to determine if accounting manual was updated.		Under Review OCE is reviewing documents submitted by ICLS to assess for sufficiency of actions taken.		
12			2012-805230-03	8/13/2012	Grantee did not obtain all necessary documentation from subrecipients to provide reasonable assurance that federal awards were properly administered and to ensure that performance goals were achieved.	OIG noted that grantee stated that full charge bookkeeper had been hired to review monthly subgrantee submissions & that subgrantees have been notified of their deficiencies. Referred to OCE for follow-up to ensure on-going implementation.		Accept CAP This issue was addressed via follow-up correspondence with grantee in which ICLS submitted documentation regarding improved/increased oversight of subgrantee activities.		Open pending resolution of #10 and #11. This issue was addressed via follow-up correspondence with grantee.
13	MT	Montana Legal Services Association	2012-927000-01	6/17/2012	Grantee did not fully comply with grant condition requiring minimum level of client-eligible representation on Board of Trustees: 5 required, 2 currently filled.	OIG referral noted that this appears to be an on-going issue that needs LSC oversight.		Accept CAP OCE has been following up with the program on a quarterly basis to assess progress towards coming into compliance.		OCE has been following up with the program on a quarterly basis to assess progress towards coming into compliance.

Status of OIG Referrals from Audited Financial Statements FYE 6/30/11 thru 6/30/13

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
14	MT		2013-927000-01	9/10/2013	Grantee did not fully comply with grant condition regarding representation on Board of Trustees.	OIG noted that this was a prior year finding, remains unresolved. Referred to OCE for follow-up to ensure corrective action is taken.		OPEN Pursuant to an email dated March 7, 2014, MLSA notified the Office of Program Performance that it was awaiting confirmation of the final board member to bring membership into compliance with 45 CFR Part 1607. Once OCE receives evidence of the nominee's confirmation, it will be forwarded to OIG with a recommendation to close this referral.		OCE has been following up with the program on a quarterly basis to assess progress towards coming into compliance. LSC will be working to develop an oversight/follow-up mechanism for all grantees who do not comply with Board Composition requirements.
15	WY	Legal Aid of Wyoming, Inc.	2012-951050-01	6/17/2012	Audit Adjustments	OIG noted that , according to the IPA, the misstatements were caused by human error and no review of the year end accrual entries prepared was performed. OIG also noted that grantee management did issue response to remedy the problem. Referred to OCE for follow-up to determine whether corrective actions were taken.		Under Review OCE has continued to monitor the progress made by this program to cure fiscal deficiencies noted in its 2011 audit. As noted at right, the program is actively continuing to take the necessary steps to resolve the noted deficiencies.		In March 2014, the program submitted additional information regarding the steps it has taken over the last several years to decrease the number of errors occurring in its fiscal department including replacing staff, engaging a new CPA firm to help with fiscal functions, and increasing the overall number of members on its finance committee, as well as the the number of members with fiscal expertise.
16	MO	Legal Aid of Western Missouri	2013-526010-01	6/27/2013	Initial testing and follow-up testing showed that the vast majority of the organization's staff members comply with LSC timekeeping requirements. There are, however, a small number of staff members who are not in compliance.	OIG reported that grantee mgmt. fully understands the nature of the requirement and will take necessary steps to ensure that all staff is in compliance. OIG further noted that grantee mgmt. states that upon being informed by the IPA of the issue; they took action to address the issue. Referred to OCE for follow-up to ensure corrective action taken.		Under Review		An OCE Compliance Review was conducted in November 2013. This issue was noted and will be addressed, as necessary, in the Draft Report.

Status of OIG Referrals from Audited Financial Statements FYE 6/30/11 thru 6/30/13

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
17	ND	Legal Services of North Dakota	2013-535007-01	6/26/2013	LSND had over 10% LSC fund balance carryover in 2011. LSND did not request a waiver from LSC in 2012.	OIG reported that grantee did not expend this money in 2012 but intended to utilize it in 2013 and 2014 to help offset significant population adjustment cuts. Referred to OCE for follow-up to ensure compliance.	11/26/2013 information resubmitted to OIG on 3/6/2014	CA Closed Per OCE records - the grantee submitted a late request, due to change in personnel, which was granted with admonishment to be timely in the future.	OIG Concur	A-50 Complete
18	AL	Legal Services Alabama, Inc.	2013-601037-01	10/3/2013	One difference was noted for payroll time entry used for cost allocation purposes.	OIG referred this as a repeat finding which requires OCE follow-up.		Under Review		OCE has noted this deficiency in its risk assessment chart.
19	NM	New Mexico Legal Aid	2013-732010-01	6/26/2013	Improper Board Composition	OIG noted that this was repeat finding from 2011. The ED and the Human Board Composition Resources Director have been working with Board members and management staff to identify potential new client members and qualified appointing organizations willing to nominate them. Referred to OCE for follow-up to ensure corrective action is taken.		Under Review LSC will be working to develop an oversight/follow-up mechanism for all grantees who do not comply with Board Composition requirements.		LSC has formed a multi-divisional working group to address the issue of Board Composition.
20	CA	Inland Counties Legal Services, Inc.	2013-805230-01	6/26/2013	Policies & procedures for use of the accounting software and preparation of monthly, quarterly and annual transactions & reconciliations were not adequately documented. There were also account reconciliations that were not updated or thoroughly analyzed.	OIG noted that grantee management stated that continual turnover of key accounting personnel resulted in the condition. Grantee had stated that they would have the accounting manual updated by 2012. Referred to OCE for follow-up to ensure corrective action is taken as this was a prior year finding.		Accept CAP ICLS submitted a revised/updated accounting manual containing the requested policies and procedures.		Open pending resolution of ICLS referral 2013-805230-02.

Status of OIG Referrals from Audited Financial Statements FYE 6/30/11 thru 6/30/13

		Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
21			2013-805230-02	6/27/2013	The grantee did not maintain effective oversight over its retirement plan. The grantee did not always obtain signed payroll deduction forms authorizing payroll deductions to repay retirement plan loans and the form was outdated.	OIG noted that grantee management stated that they will develop a written protocol/checklist of actions necessary when a plan administrator leaves the program to be included in the accounting manual being updated. Referred to OCE for follow-up to ensure corrective action is taken.		OPEN		OCE is reviewing documents submitted by ICLS to assess for sufficiency of actions taken.
22	VA	Central Virginia Legal Services, Inc.	2014-447030-01	2/25/2014	Recipient must state who prepares monthly bank reconciliations, who reviews the reconciliations, and who approves & certifies the reconciliations. Due dates for each step to be established. Followup by LSC management needed to ensure implementation.	OIG noted based upon inquires with management that bank reconciliations and reviews were not being performed on a timely basis. OIG also noted that management during their review was not tracing bank reconciliation totals back to the trial balance and General Ledger.		ADDITIONAL INFORMATION has been requested from the program. By letter dated March 7, 2014, OCE requested specific information regarding ## 22, 23, 24, and 26.		This information has been noted in the OCE Risk Assessment Chart. Additionally, as OCE received a copy of the AFS during the competition cycle for 2014 funding, OCE recommended that several targeted Special Grant Conditions be imposed on the program's 2014 grant. Senior Management accepted that recommendation. Information submitted, to date, has been acceptable and OCE will continue to review submissions as they are received. OCE will conduct an onsite review in late 2014 to assess the effectiveness of corrective actions undertaken by the program.
23			2014-447030-02	2/25/2014	This is a repeat finding from the prior year. The CA mentions a payroll module being added to the case management system but does not mention a timeframe.	Based upon inquires with management and review of time records OIG noted instances were attorneys had not contemporaneously inputted a portion of their time into CVLAS' time keeping system by case matter and supporting activities.		ADDITIONAL INFORMATION has been requested from the program. By letter dated March 7, 2014, OCE requested specific information regarding ## 22, 23, 24, and 26.		



Status of OIG Referrals from Audited Financial Statements FYE 6/30/11 thru 6/30/13

	Grantee Name	Referral Number	Date of Referral	OIG's Finding Description	OIG's Justification for Referral	Mgmt. Response Date	OCE's Determination	OIG Assessment of OCE Determination	Status of Referral
24		2014-447030-03	2/25/2014	OIG indicated that LSC Management may want to followup on this requirement as 12 of 25 selections made by the IPA did not contain notice to the funding source. The CA mentions sending letters will be the sole responsibility of the ED, does not mention when the action will be put into place.	OIG noted instances where CVLAS had not provided to the source of funds written notification of LSC prohibitions and conditions.		ADDITIONAL INFORMATION has been requested from the program. By letter dated March 7, 2014, OCE requested specific information regarding ## 22, 23, 24, and 26.		
25		2014-447030-04	2/25/2014	Incorrect cost and time allocations can lead to possibly incorrect revenues and expenses for grants/contracts. Program management should make decisions based on revenues/expenses. The CA should be followed up on.	Cost allocations are not being performed on a timely basis. Also timesheet are not being properly monitored by managment and adjusted when funding sources have been eliminated or depleted. Also the funds in the accounting system need to be utilized.		This issue is being addressed via the Special Grant Conditions and the sufficiency of actions taken will be assessed via an onsite review later in 2014 or early 2015.		
26		2014-447030-05	2/25/2014	Based on review of the CA OIG feels LSC Management should ensure that the CA s being followed and followup on whether the Board approved the drafted policy mentioned.	OIG noted during inquires with managment and review of credit card files instances were not being properly maintained.		ADDITIONAL INFORMATION has been requested from the program. By letter dated March 7, 2014, OCE requested specific information regarding ## 22, 23, 24, and 26.		

# **Delivery of Legal Services Committee**

# Agenda

# DELIVERY OF LEGAL SERVICES COMMITTEE

April 7, 2014

## Agenda

### Open Session

1. Approval of Agenda
2. Approval of minutes of the Committee's Open Session meeting on January 24, 2014
3. Discussion of Committee's evaluations for 2013 and the Committee's goals for 2014
4. Panel presentation and Committee discussion of LSC's Performance Criteria, Performance Area Four, Criterion 4. Financial administration—challenges of financial planning and budgeting in the face of unpredictable and fluctuating funding
  - **César Torres**, Executive Director, Northwest Justice Project
  - **Steve Pelletier**, Financial Director, Northwest Justice Project
  - **Ed Marks**, Executive Director, New Mexico Legal Aid
  - **Lisa Schatz-Vance**, Development Director, New Mexico Legal Aid
  - **Calvin Harris Jr.**, CPA, President-Change Management, Harvin Consulting LLC
  - **Reginald Haley**, Program Analyst, Office of Program Performance, LSC (*Moderator*)
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

**Draft Minutes of January 24, 2014**  
**Open Session Meeting**

**Legal Services Corporation  
Meeting of the Delivery of Legal Services Committee**

**Open Session**

**Friday, January 24, 2014**

**DRAFT**

Committee Co-Chairs Father Pius Pietrzyk and Gloria Valencia-Weber convened an open session meeting of the Legal Services Corporation's ("LSC") Delivery of Legal Services Committee ("the Committee") at 2:59 p.m. on Friday, January 24, 2014. The meeting was held at the Hilton Garden Inn Downtown Austin, 500 North Interstate 35, Austin, Texas 78701.

The following Committee members were present:

Father Pius Pietrzyk, Co-Chair (by telephone)  
Gloria Valencia-Weber, Co-Chair  
Sharon L. Browne  
Victor B. Maddox  
Julie A. Reiskin  
John G. Levi, *ex officio*

Other Board members present:

Robert J. Grey, Jr.  
Laurie I. Mikva  
Martha L. Minow

Also attending were:

James J. Sandman	President
Rebecca Fertig	Special Assistant to the President
Lynn Jennings	Vice President for Grants Management
Janet LaBella	Director, Office of Program Performance
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel and Corporate Secretary
David L. Richardson	Comptroller and Treasurer, Office of Financial and Administrative Services
Lora M. Rath	Director, Office of Compliance and Enforcement
Carol A. Bergman	Director, Office of Government Relations and Public Affairs
Carl Rauscher	Director, of Media Relations, Office of Government Relations and Public Affairs
Marcos Navarro	Office of Government Relations and Public Affairs

Jeffrey E. Schanz	Inspector General
Thomas Coogan	Assistant Inspector General for Investigations, Office of Inspector General
David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
Glenn Rawdon	Program Counsel, Office of Program Performance
Herbert S. Garten	Non-Director Member, LSC's Institutional Advancement Committee
Frank B. Strickland	Non-Director Member, LSC's Institutional Advancement Committee
AnnaMarie Johnson	Executive Director, Nevada Legal Services
Paul Larsen	Former Board Chair, Nevada Legal Services
Steve Gottlieb	Executive Director, Atlanta Legal Aid Society
Mike Nations	Chairman of Audit Committee, Atlanta Legal Aid Society
Pamela Brown	Texas RioGrande Legal Aid
David Hall	Texas RioGrande Legal Aid
Thomas Stanton	Legal Aid of North West Texas
Paul Furrh	Executive Director, Lone Star Legal Aid
Don Saunders	National Legal Aid and Defenders Association (NLADA)

The following summarizes actions taken by, and presentations made to, the Committee:

Committee Co-Chair Valencia-Weber called the meeting to order. She recognized the client board members in attendance.

**MOTION**

Ms. Browne moved to approve the agenda. Mr. Maddox seconded the motion.

**VOTE**

The motion passed by voice vote.

**MOTION**

Ms. Browne moved to approve the minutes of the Committee's meeting of September 20, 2013. Mr. Maddox seconded the motion.

Mr. Maddox moved to approve the minutes of the Committee's meeting of October 21, 2013. Ms. Browne seconded the motion.

**VOTE**

The motion passed by voice vote.

Committee Co-Chair Valencia-Weber deferred discussion of the Committee's evaluations for 2013 and goals for 2014 until after the panel presentation or, if limited by time, until the next Committee meeting.

Ms. Jennings, served as panel moderator and introduced the panel presentation on grantee Board governance with respect to fiscal and financial oversight and compliance, and the panel members. She also introduced the panelists, AnnaMarie Johnson, Executive Director of Nevada Legal Services (NLS), Paul Larsen, former Board Chair of Nevada Legal Services, Steve Gottlieb, Executive Director of Atlanta Legal Aid Society (ALAS), and Michael Nations, Chair of the Audit Committee of ALAS. Mr. Larsen began the panel presentation by providing an overview of fiscal oversight and compliance by the NLS board of directors when he first became a board member, as well as the changes implemented to strengthen fiscal oversight and compliance. Ms. Johnson next discussed her relationship with the NLS board of directors and the challenges she faced when assuming the role of executive director. She explained that working closely with the NLS board and keeping them fully informed has resulted in many positive outcomes for the program. Next, Mr. Nations discussed the positive effect that an engaged and active board has on fiscal oversight and compliance at ALAS. Mr. Gottlieb shared how board oversight has evolved during his tenure as executive director of ALAS. Ms. Jennings and the panel members answered Committee members' questions.

Committee Co-Chair Valencia-Weber invited public comment and received none.

There was no new business to consider.

### **MOTION**

Mr. Maddox moved to adjourn the meeting. Ms. Browne seconded the motion.

### **VOTE**

The motion passed by voice vote.

The Committee meeting adjourned at 4:02 p.m.



# **Committee Evaluation**

## **SUMMARY OF 2013 DELIVERY OF LEGAL SERVICES COMMITTEE EVALUATION RESPONSES**

### **All members either strongly agreed or agreed that:**

- They understand and agree with the goals and purpose of the committee.
- Members have the required skills to fulfill the goals and purposes of the committee and come to meetings prepared and ready to contribute.
- Members treat each other with respect and courtesy.

### **Mixed responses (some agreed/some disagreed) that:**

- There is alignment between committee's goals and purposes and the actions taken and/or the decisions made.
- Committee responded effectively and appropriately to issues of immediate concern; made significant progress on long-term strategic issues related to its goals and purposes.
- Committee has adequate resources to support its function.
- Committee meetings are held regularly and with appropriate frequency.
- The length of committee meetings is appropriate and respectful of the agenda; consistently use meeting time well; issues get the time and attention proportionate to their importance.
- Agenda and materials are sufficiently received in advance of meetings.
- Minutes of meetings are accurate and reflect the discussion, next steps and/or action items articulated.
- Their comments are heard and valued.

### **Members liked:**

- Input from members
- Meaningful discussion about performance criteria
- Discussions on recent changes to the charter
- The committee is collegial
- Knowledgeable panelists

### **Ideas for Improvement:**

- Less time on panels; more time discussing recommendations to improve delivery of legal services
- More substantive discussion on the evaluation of grantee quality by the Corporation.
- More time for discussion and interaction

### **Future Focus:**

- More engagement with client board members
- Client engagement, how priorities are set, how satisfaction surveys are done, what metrics are really meaningful to clients
- Grantee board member trainings
- Implementing new charter

**Panel Presentation:  
Performance Criteria 4: and Panelist Bios**

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## **PERFORMANCE AREA FOUR. Effectiveness of governance, leadership and administration.**

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Performance Area Four establishes that the program should be led and managed effectively with high-quality administrative systems, procedures and performance. Good leadership and strong internal operations increase the likelihood of effective services, and decrease the risk that effective program services will be adversely affected by organizational problems.

**Criterion 1. Board governance.** The program has effective board oversight and involvement in major policy decisions, including board members who are each committed to the program and its mission, and a board that holds program management accountable for effective performance in the areas delineated by these Criteria. The board also meets its affirmative responsibility to help develop resources for the program, promote awareness of the program, enhance its effectiveness and influence, and protect and defend the interests of the organization.<sup>20</sup>

**Criterion 2. Leadership.** The program has effective leadership which establishes and maintains a shared sense of vision and mission, and emphasizes excellence, innovation, and achievement of goals and objectives.<sup>21</sup>

**Criterion 3. Overall management and administration.** The program is well managed and administered including: an effective management structure; processes and systems to ensure compliance with all funder requirements and state and federal law; capacity to address problems quickly and effectively; effective utilization of technology; effective administrative procedures; competent personnel; allocation of appropriate resources to management functions; and periodic evaluations of administrative operations.<sup>22</sup>

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<sup>20</sup> ABA Standard 1.1 (on Overall Functions and Responsibilities of the Governing Body)  
ABA Standard 1.1-1 (on Governing Body Oversight of the Provider)  
ABA Standard 1.1-2 (on Prohibition Against Interference in the Representation of Clients)  
ABA Standard 1.1-3 (on Fiscal Matters)  
ABA Standard 1.1-4 (on Relations with the Chief Executive)  
ABA Standard 1.1-5 (on Serving as a Resource to the Provider)  
ABA Standard 1.1-6 (on Resource Development)  
ABA Standard 1.2 (on Governing Body Members' Responsiveness to the Communities Served)  
ABA Standard 1.2-1 (on Individual Members' Commitment to the Provider)  
ABA Standard 1.2-2 (on Board Members from the Communities Served by the Provider)  
ABA Standard 1.2-3 (on Training of Members of the Governing Body)  
ABA Standard 1.2-4 (on Governing Body Members' Conflicts of Interest)  
ABA Standard 1.3 (on Governing Body Communication with Low Income and Legal Communities)

<sup>21</sup> ABA Standard 1.1-4 (on Relations with the Chief Executive)  
ABA Standard 2.12 (on Institutional Stature and Credibility)

<sup>22</sup> ABA Standard 2.10 (on Effective Use of Technology)  
ABA Standard 2.11 (on Provider Evaluation)  
See generally Section 5 of the ABA Standards, Standards for Internal Systems and Procedure (5.1 - 5.5)  
See generally Section 6 of the ABA Standards, Standards for Quality Assurance (6.1 - 6.6)

**Criterion 4. Financial administration.** The program has and follows financial policies, procedures, and practices that comport with applicable requirements of the American Institute of Certified Public Accountants, federal, state, and local government, and the program's funding sources, and conducts effective budget planning and oversight.<sup>23</sup>

**Criterion 5. Human resources administration.** The program maintains effective human resources administration, including compliance with all applicable laws.<sup>24</sup>

**Criterion 6. Internal communication.** The program maintains effective intra-staff and staff-management communications and relations.

**Criterion 7. General resource development and maintenance.** To the extent possible, and consistent with the program's mission, the program seeks to maintain and expand its base of funding, with the goal of increasing the quality and quantity of the program's services to eligible clients. The program also coordinates with and where possible utilizes outside resources such as academic institutions, social service organizations, foundations, corporations, organized bar associations, members of the private bar, and other institutions and individuals to supplement its efforts. The program works to increase the overall resources devoted to the legal problems of the eligible client population.<sup>25</sup>

**Criterion 8. Coherent and comprehensive delivery structure.** Overall, the program management maintains a delivery structure and approach that effectively utilizes and integrates staff, private attorneys, and other components; emphasizes innovation and creativity in delivery; is informed by current information concerning delivery research; is well-suited to meeting the most pressing legal needs of the service area; and, given available resources, constitutes an effective and economical balancing of expenditures on the various functions and activities described in the four Performance Areas.<sup>26</sup>

**Criterion 9. Participation in an integrated legal services delivery system.** The program participates in, and seeks to expand and improve, statewide (and regional if relevant) legal assistance delivery systems to achieve equal access to justice and to meet the civil legal needs for low-income persons in the state.<sup>27</sup>

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<sup>23</sup> ABA Standard 1.1-3 (on Fiscal Matters)

<sup>24</sup> While the ABA Standards listed below are cited in support of effective human resources administration, they reflect values that are important to the operation of the program as a whole.

ABA Standard 2.4 (on Cultural Competence)  
ABA Standard 2.5 (on Staff Diversity)  
ABA Standard 6.1 (on Characteristics of Staff)

<sup>25</sup> ABA Standard 1.1-6 (on Resource Development)  
ABA Standard 2.3 (on Participation in Statewide and Regional Systems)

<sup>26</sup> ABA Standard 2.2 (on Delivery Structure)

<sup>27</sup> ABA Standard 2.3 (on Participation in Statewide and Regional Systems)

**Criterion 1. Board governance.** The program has effective board oversight and involvement in major policy decisions, including board members who are each committed to the program and its mission, and a board that holds program management accountable for effective performance in the areas delineated by these criteria. The board also meets its affirmative responsibility to help develop resources for the program, promote awareness of the program, enhance its effectiveness and influence, and protect and defend the interests of the organization.

**Indicators**

**Areas of Inquiry**

The board is involved in major policy decisions, aware of issues in and performance of the program, while leaving day to day management of program operations to program management personnel. The board effectively evaluates the chief executive officer.

How are major policy decisions made? Is the board supportive of the program? Are its individual members? Do board members and officers understand the major issues at stake for the program? Are board members aware of and accurate in their perception of the requirements of the program's funding sources? Is the board aware of any major problems or issues within the program? How does the board exercise its oversight of program operations? Are board decisions appropriately documented in board minutes? Does the board exercise judgment independent of the executive director, where appropriate? How frequently does the board evaluate the executive director? Do board members assist effectively in fundraising and development activity? Is the board membership diverse and representative of the service area?

The board as a whole, and members individually, are committed to the program and its mission, are free from organizational or personal conflicts, attend meetings regularly, and as appropriate, assist in fundraising and development activity.

As a whole, the board is appropriately diverse and representative of the various geographical areas and low-income populations served by the program.

Are client board members actively engaged in board decision making?

The board effectively promotes and expands the reach and influence of the program in the communities it serves, and develops additional resources for the program.

Does the board have a policy or practice that effectively deals with conflicts of interest or potential conflicts of interest? Is the policy or practice in writing? Are organizational or individual conflicts addressed quickly and effectively?

The board exercises effective financial oversight.

Does the board meet its external responsibilities as delineated in this criterion?

Are board members given appropriate orientation and continuing training, including training on the role of the board, potential conflicts of interest, and on fiscal, fiduciary, and other responsibilities?

Does the board have a policy or practice regarding length of service on the board?

What is the level of attendance at board meetings?

What systems and procedures does the board have to ensure effective financial oversight?

**Criterion 2. Leadership.** The program has effective leadership which establishes and maintains a shared sense of vision and mission, and emphasizes excellence, innovation, and achievement of goals, and objectives.

**Indicators**

Key program staff, starting with the executive director or chief executive officer, are recognized as the program leaders. They frame a vision and inspire a culture of energy, creativity, innovation, excellence, and achievement, built on trust, confidence, integrity, and loyalty.

The program provides opportunities for the development of a diverse group of leaders.

The program has a succession plan.

**Areas of Inquiry**

Starting with the chief executive officer, are there recognized, positive, and effective leaders in the program?

Is there a shared sense of vision and mission? Is it expressed in written form? Are staff aware of it?

Does the program leadership effectively inspire creativity and innovation, trust, confidence, integrity, and loyalty?

Does the program provide opportunities for staff to develop and exercise leadership skills?

Does the program have a clear and reasonable succession plan? Is it written?

**Criterion 3. Overall management and administration.** The program is well managed and administered including: an effective management structure; processes and systems to ensure compliance with all funder requirements and state and federal law; a capacity to address problems quickly and effectively; effective utilization of technology; effective administrative procedures; competent personnel; allocation of appropriate resources to management functions; and periodic evaluations of administrative operations.

Indicators	Areas of Inquiry
The program devotes appropriate resources to management.	Is there evidence of unusual disruption, such as frequent or repeated changes in procedures, key personnel, board, or other basic operations?
The program has a management structure that effectively uses middle managers.	How are decisions made in the program? Are there clear procedures and policies? Is decision-making authority clear when delegated? Is decision-making timely and effective? Do staff members know to whom to go for decisions?
The program has experienced, capable, and diverse management and administrative staff.	Is there evidence of effective periodic evaluation? Are evaluations linked to the program's goals, vision or strategic initiatives?
The program provides effective training, supervision, and evaluation of management and administrative staff.	Is there any evidence of non-compliance with federal, state or funder requirements?
The program undertakes periodic evaluation of management operations.	Are problems addressed promptly? Are there sufficient resources allocated to management and administration? Are they excessive?
The program makes major decisions in a way that incorporates relevant information and input.	Does management provide effective leadership and management training and support to mid-level supervisors and personnel engaged in administration and management?
The program devotes appropriate resources to establish and maintain its technological infrastructure.	Does the program foster an environment that emphasizes continuous learning, constructive evaluation and feedback, improvement, and excellence?
The program has developed and regularly updates an emergency plan to enable the program to maintain operations and to minimize disruption in the event of an emergency.	Has the program made considered choices regarding the proportionality of non-advocacy staff as compared to casehandlers, consistent with program resources, number of casehandlers, and type of work?
The program has a plan for providing client services in the event of a disaster or emergency affecting its client community.	Does the program have a policy for the use of its technology? Does the program use technology effectively to enhance the efficiency of program operations and service delivery?



*Performance Area Four — Criterion 3*

**Areas of Inquiry**

Does the program have a plan in the event of an emergency or disaster?

- For preserving files, equipment and computer data bases?
- For communication between staff and management?
- For the relocation of the program's work sites?

Does the program attempt to coordinate with state/local emergency preparedness entities?

Does the program have a plan for providing client services in the event of a disaster or emergency affecting the client population?

**Criterion 4. Financial administration.** The program has and follows financial policies, procedures, and practices that comport with applicable requirements of the American Institute of Certified Public Accountants, federal, state, and local government, and the program's funding sources, and conducts effective budget planning and oversight.

**Indicators**

The program has sufficient, capable, trained and effective staff dedicated to financial administration.

The program has detailed written policies and procedures describing its financial operations which comply with all applicable requirements. The program follows such policies and procedures.

Annual program audits do not reveal any significant problems or issues; where such items have been identified, the program addresses them effectively and promptly.

The program issues accurate financial statements on a timely basis.

**Areas of Inquiry**

Do past audits or outside reports and evaluations reflect problems? Have any such problems been addressed? Is there any evidence of failure to comply with applicable funder or governmental requirements?

Is the budget consistent with the program's mission, goals, and objectives? Does the program effectively adhere to its budget?

Are there systems and procedures in place to ensure periodic and effective financial oversight by management?

Does the program engage in financial planning beyond the current year?

Does the program use up-to-date technology to enhance efficient financial operations?

**Criterion 5. Human resources administration.** The program maintains effective human resources administration, including compliance with all applicable laws.

**Indicators**

The program has sufficient, capable, trained, and effective professional staff assigned to human resources administration.

The program has a capable, culturally competent, and diverse staff.

The program's hiring, supervision, promotion, compensation, and termination policies comply with applicable laws, are efficient, and serve the mission, goals, and priorities of the organization.

The program periodically assesses salaries and employee benefits.

The program maintains and follows clear, uniform and consistent personnel practices, based upon written policies.

The program conducts periodic effective evaluations of all staff, addressing areas where improvement is required and, where appropriate, using such evaluations as part of a comprehensive personnel development strategy.

The program maintains accurate and timely personnel files, and protects the confidentiality of personnel records as required by applicable law and contract.

In its personnel administration, services, and activities, the program avoids any discrimination, harassment or other improper conduct prohibited by law, and promotes equal employment opportunity.

The program effectively retains quality staff and avoids undesirable rates of turnover.

Staff relationships are professional, collegial, and positive.

**Areas of Inquiry**

What are the recruitment policies of the program?

What are the program's fringe benefits and retention policies, such as a loan repayment assistance program, retirement plans, health insurance, and other benefits?

Does the program regularly review its salary structure and benefits?

Does the program periodically review its human resources plans and policies?

What is the current composition of the staff?

Is the current composition of the program staff diverse in terms of experience, gender, race, and disability status?

Does the program conduct annual evaluations of its entire staff? Do such evaluations include setting goals for staff? Is there a system for tracking whether such goals are met?

Does the program evaluate internal and external factors related to turnover and recruitment procedures in recent hirings? Does the program experience a high level of turnover or employee grievances?

Does the program provide promotion opportunities?

Is there cultural competency training for all staff? Have they attended?

What is the recent history and current status of staff morale? Relations with management? Relations among attorneys and casehandling units? Relations between categories of staff, such as between attorneys and paralegals, attorneys and secretaries?

**Indicators**

The program does not have serious intra-staff problems which negatively affect program performance.

To the extent that there are or have been serious morale or other internal personnel problems, the program is addressing or has addressed them effectively, and is taking or has taken appropriate steps to prevent their recurrence.

**Areas of Inquiry**

Does management create and sustain an environment that values and supports a diverse workforce?

What has been the role of management in promoting improved relations to aid better service delivery?

- Among branch offices or units?
- With central administration?
- Between the board and staff?

**Criterion 6. Internal communication.** The program maintains effective intra-staff and staff-management communications and relations.

**Indicators**

The program has systems and procedures for ensuring regular communication among all staff. The program has procedures for obtaining input on significant decisions, and for resolving complaints and problems effectively and timely.

Decisions are quickly and effectively communicated to all those affected by them.

Maximum use of technology is made to facilitate and enhance internal communication.

**Areas of Inquiry**

Is there evidence of regular and consistent efforts to communicate effectively within the program?

Do staff feel there is effective communication? Do there appear to be any problems caused by the absence of effective communication?

Do staff feel that their input is sought on significant decisions?

How does the program use technology to facilitate and enhance communication?

Does the program resolve employee complaints and problems effectively and timely?

**Criterion 7. General resource development and maintenance.** To the extent possible, and consistent with the program's mission, the program seeks to maintain and expand its base of funding, with the goal of increasing the quality and quantity of the program's services to eligible clients. The program also coordinates with and where possible utilizes outside resources such as academic institutions, social service organizations, foundations, corporations, organized bar associations, members of the private bar, and other institutions and individuals to supplement its efforts. The program works to increase the overall resources devoted to the legal problems of the eligible client population.

**Indicators**

**Areas of Inquiry**

The program has sufficient, capable, trained and effective staff dedicated to resource development, or uses outside professional development assistance as appropriate.

Has the program made reasonable efforts to expand its funding base? Has it been successful?

The program makes reasonable efforts at and has success in expanding its funding base, has considered and attempted to secure funding from sources successfully accessed by Legal Services programs, stays abreast of and pursues new opportunities, is innovative in trying to develop new sources, and analyzes and evaluates whether the requirements of a prospective funding source are consistent with the program's mission, goals, priorities, objectives, and strategies.

Is the executive director or fundraiser aware of the options that are available and is there a strategy to seek funds? Have creative approaches and opportunities been developed? Are the results reasonable?

The program has attempted to develop, and to the extent possible, has effective relationships with other major institutional resources in the service area that are involved or might be able to provide some support in the provision of legal assistance to eligible clients, as well as help in expanding program funding.

Is the program coordinating development efforts with other community organizations and agencies serving the low-income population? To the extent it does not, is this a deliberate choice based upon careful analysis of the relative value, or lack thereof, of such joint action?

Does the program employ a development professional, or have access to other professional development assistance? How effectively does it staff its development efforts?

**Criterion 8. Coherent and comprehensive delivery structure.** Overall, the program management maintains a delivery structure and approach that effectively utilizes and integrates staff, private attorneys, and other components; emphasizes innovation and creativity in delivery; is informed by current information concerning delivery research; is well-suited to meeting the most pressing legal needs of the service area; and, given available resources, constitutes an effective and economical balancing of expenditures on the various functions and activities described in the four Performance Areas.

**Indicators**

**Areas of Inquiry**

The program has a reasonable, thoughtful and effective overall delivery system, which utilizes and integrates staff, private attorneys, volunteers, branch offices, outreach, and alternative delivery methods, and which strikes an effective balance on key issues such as specialization, experience of staff, use of attorneys and paralegals, and other major design choices.

The program's choices about allocation of resources to competing activities and functions are reasonable and balanced, and consistent with its mission, goals, priorities, objectives, and strategies.

Does the program have in place and regularly use systems to gauge the efficiency and effectiveness of its overall delivery system?

Is there evidence of actual assessment of efficiency and effectiveness?

Is there evidence of change as a result of that assessment?

Is there evidence of experimentation and innovation?

**Criterion 9. Participation in an integrated legal services delivery system.** The program participates in, and seeks to expand and improve, statewide (and regional if relevant) legal assistance delivery systems to achieve equal access to justice and to meet the civil legal needs for low-income persons in the state.

**Indicators**

The program participates in statewide (and regional if relevant) efforts to provide low-income persons in the state with equal access to a full range of civil legal assistance services in all forums.

The program participates in local, statewide (and regional if relevant) efforts to maximize the effective use of available human and financial resources and to increase such resources to better address the civil legal needs of the state's low-income populations.

The program coordinates with other providers, the bar, law schools, and other relevant entities in seeking to ensure that support is provided to advocates and managers, including training, dissemination and exchange of information, and communication and coordination among practitioners in key areas of law and practice.

The program participates in statewide planning and oversight activities to achieve an integrated statewide delivery system, and coordinates and collaborates with other civil legal aid providers, private attorneys, government and corporate attorneys, the organized bar, courts and court personnel, law schools, and other public and private entities that provide legal and other social services to low-income persons.

**Areas of Inquiry**

Does the program participate in statewide (and regional if relevant) oversight activities to achieve an integrated statewide delivery system?

Is the program engaged in statewide efforts (and regional efforts if relevant) to achieve the availability of a full range of civil legal assistance in all available forums?

Is the program engaged in statewide efforts (and regional efforts if relevant) to eliminate barriers to access and provide meaningful services to low-income persons in the state?

Is the program engaged in statewide efforts (and regional efforts if relevant) to utilize existing financial and human resources effectively and efficiently?

Is the program engaged in statewide efforts (and regional efforts if relevant) to increase potential sources of funding, including financial resources, volunteer and in-kind resources?

Is the program engaged in statewide efforts (and regional efforts if relevant) to provide support to advocates and managers, including training, dissemination and exchange of information, and communication and coordination among practitioners in key areas of law and practice?

As part of its efforts to expand access, provide a full range of services, maximize resources, and ensure support within the state, does the program coordinate and collaborate with other civil legal aid providers, private attorneys, government and corporate attorneys, the organized bar, courts and court personnel, law schools, and other public and private entities that provide legal and social services to low-income persons?



## **Delivery of Legal Services Committee**

**April 7, 2014**

### **Challenges of Financial Planning and Budgeting in the Face of Unpredictable and Fluctuating Funding**

#### **César E. Torres, Executive Director, Northwest Justice Project**

César E. Torres is the Executive Director of the Northwest Justice Project, Washington's publicly funded state-wide legal services program (2006-present). Previously, he served as Deputy Director of Essex Newark Legal Services, Newark, NJ (1998–2006) and was the Managing Attorney for that program's Housing & Income Maintenance Unit (1989 – 2006). Beginning in 2003 he litigated and also supervised a Predatory Lending Practices Project. He began his legal services career immediately after law school as a staff attorney at Hudson County Legal Services (1985-1989). During law school he clerked for the Legal Aid Society (civil) in New York and completed an externship at the Center for Law and Social Policy in Washington D.C. Prior to his role at NJP, Mr. Torres' principal advocacy focus was on the rights of tenants in federally assisted housing programs, work with community efforts to limit the loss of federally assisted and affordable private housing, work on the Hope VI and Mark-to-Market housing programs, and also engaged in significant state appellate litigation experience. Mr. Torres earned his J.D. at the University of Virginia School of Law and his B.A. from Yale University.

#### **Steve Pelletier, Director of Finance, Northwest Justice Project**

Steve Pelletier is a CPA with over 30 years of not-for-profit accounting and auditing experience and he has been serving as Northwest Justice Project's (NJP) Director of Finance for the past 14 years. Northwest Justice Project is the Legal Services Corporation (LSC) and the Office of Civil Legal Aid (OCLA) grantee in Washington State with a \$22 million dollar annual budget, 17 offices and a staff of over 200. Steve is part of NJP's executive management team and his responsibilities include accounting, finance, reporting, budgeting, fiscal policy development and compliance. He received his accounting degree from Western Washington University in 1981 and he is a licensed CPA and he is an active member of the American Institute of Certified Public Accountants and the Washington Society of Certified Public Accountants.

### **Calvin Harris Jr., President of Change Management, Harvin Consulting**

Calvin Harris Jr., CPA is President of Change Management for Harvin Consulting. He has over 20 years of “C-suite” level experience in working with organizations of various sizes. His career began at Arthur Andersen, and includes senior management roles at The Council for Excellence in Government, Aeras, The United Nations Foundation, and NeighborWorks America. Calvin is a Certified Public Accountant (licensed in the State of Maryland) and the Immediate Past National President (Chairman of the Board) of the National Association of Black Accountants. He serves as the Treasurer on the Board of DC Doors, a Washington, DC charity providing housing services to the local immigrant community and is a volunteer management consultant with Compass DC, a Washington, DC organization providing free management consulting services to non-profit organizations. Calvin earned a Bachelor degree, with honors, in business administration from Morehouse College and is the former National Treasurer of the Morehouse College Alumni Association. He resides in Columbia, Maryland.

### **Ed Marks , Executive Director, New Mexico Legal Aid**

Ed Marks is Executive Director for New Mexico Legal Aid, a statewide LSC-funded program with 10 offices and 60 staff. Ed is also a member of the New Mexico Commission on Access to Justice. Between 2004 and 2011, Ed was Litigation Director and Deputy Director for Legal Aid of Western Ohio, where he helped establish regional initiatives for prisoner re-entry issues and focused on expanding rural advocacy resources. Ed also has been a national trainer and consultant for legal aid technology, and participated in LSC’s recent Summit on the Use of Technology to Enhance Access to Justice. Ed began his legal services career in 1988 as a staff attorney with DNA Legal Services on the Navajo and Hopi Nations in Arizona.

### **Lisa Schatz-Vance, Director of Development, New Mexico Legal Aid**

Lisa Schatz-Vance joined New Mexico Legal Aid in 2012 as NMLA’s first Director of Development in the organization’s 60-year history. Lisa is leading major new initiatives to diversify NMLA’s funding, including efforts to expand private donations via a new project known as Together for Justice ([www.togetherforjusticenm.org](http://www.togetherforjusticenm.org)). Prior to joining New Mexico Legal Aid, Lisa was Executive Director of the Senior Citizens’ Law Office in Albuquerque, where she was responsible for all aspects of development and fundraising. A 2001 recipient of a National Association for Public Interest Law (NAPIL) Equal Justice Fellowship, Lisa also previously worked with the Judge David L. Bazelon Center for Mental Health Law in Washington, D.C. addressing the criminalization of persons with mental illness. She is a graduate of New York Law School.

# **Operations & Regulations Committee**

# Agenda

# **OPERATIONS & REGULATIONS COMMITTEE**

**April 7, 2014**

## **Agenda**

### **Open Session**

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session Telephonic meeting on March 3, 2014
3. Report on performance management and human capital management
  - Jim Sandman, President
  - Traci Higgins, Director, Office of Human Resources
4. Consider and act on 45 CFR Part 1613— Restrictions on Legal Assistance with Respect to Criminal Proceedings and the Tribal Law and Order Act of 2010, Title II of Public Law 111-211
  - a) Final Rule
    - Ron Flagg, General Counsel
    - Stefanie Davis, Assistant General Counsel
  - b) Public comment
5. Consider and act on 45 CFR Part 1626—Restrictions on Legal Assistance to Aliens
  - a) Final Rule and Program Letter to replace the current appendix regarding documentation
    - Ron Flagg, General Counsel
    - Stefanie Davis, Assistant General Counsel
  - b) Public comment

6. Consider and act on 45 CFR Part 1614—Private Attorney Involvement
  - a) Proposed Rule
    - Ron Flagg, General Counsel
    - Stefanie Davis, Assistant General Counsel
    - Mark Freedman, Senior Assistant General Counsel
  - b) Public comment
7. Other public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

**Draft Minutes of the Committee's  
Telephonic Open Session  
Meeting of March 3, 2014**

**Legal Services Corporation  
Telephonic Meeting of the Operations & Regulations Committee**

**Open Session**

**Monday, March 3, 2014**

**DRAFT**

Committee Chairman Charles N.W. Keckler convened a telephonic open session meeting of the Legal Services Corporation's ("LSC") Operations and Regulations Committee ("the Committee") at 2:50 p.m. on Monday, March 3, 2014. The meeting was held at the Legal Services Corporation, 3333 K Street, N.W., Washington, DC 20007.

The following Committee members were present:

Charles N.W. Keckler, Chairman  
Laurie I. Mikva  
John G. Levi, *ex officio*

Other Board members present:

Martha L. Minow  
Father Pius Pietrzyk  
Julie A. Reiskin

Also attending were:

Rebecca Fertig	Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Stefanie Davis	Assistant General Counsel, Office of Legal Affairs
Mark Freedman	Senior General Counsel, Office of Legal Affairs
Janet LaBella	Director, Office of Program Performance
Lora M. Rath	Director, Office of Compliance and Enforcement
Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of the Inspector General
Matthew Glover	Associate Counsel, Office of the Inspector General
Don Saunders	National Legal Aid and Defenders Association
Chuck Greenfield	National Legal Aid and Defenders Association
Robin Murphy	National Legal Aid and Defenders Association
Terry Brooks	Director, Division of Legal Services, American Bar Association
Joanna Allison	Volunteer Lawyers Project, Boston Bar Association
Sharon Bashan	Director of Pro Bono and Operations, Neighborhood Legal Services of Los Angeles County



Sam H. Buchanan	Executive Director, Mississippi Center for Legal Services Corporation
Peggi Cornelius	Program Director, Arizona Volunteer Lawyers Program
Jim Guest	Director, Legal Services of Eastern Missouri, Volunteer Lawyers Program
Shelby Beane	Director, of Pro Bono Evaluation, Legal Aid of Northwest Texas
AnnaMarie Johnson	Executive Director, Nevada Legal Services
Anne Milne	Executive Director, Utah Legal Services
Patricia Z. Rissler	Legal Action of Wisconsin, Volunteer Lawyers Program
Lillian Krusz Welby	Pro Bono Director, Legal Services of the Hudson Valley
Andrea Zigman	Deputy Director, Legal Services NYC
Mary Ryan	Chair, Standing Committee on Pro Bono and Public Service, American Bar Association
Steve Scudder	Standing Committee on Pro Bono and Public Services, American Bar Association
Bev Groudine	Standing Committee on Legal Aid and Indigent Defendants (SCLAID), American Bar Association
Jamie Reed	

The following summarizes actions taken by, and presentations made to, the Committee:

Committee Chairman Keckler noted the presence of a quorum and called the meeting to order.

#### **MOTION**

Ms. Mikva moved to approve the agenda. Mr. Levi seconded the motion.

#### **VOTE**

The motion passed by voice vote.

#### **MOTION**

Mr. Levi moved to approve the minutes of the Committee meeting of January 23-24, 2014. Ms. Mikva seconded the motion.

#### **VOTE**

The motion passed by voice vote.

Mr. Flagg provided an overview on the process for developing the draft text for the private attorney involvement rule, CFR 45 Part 1614. Ms. Davis presented the draft text for the proposed private attorney involvement rule and discussed the proposed revisions. Mr. Flagg and Ms. Davis answered Committee members' questions.

Committee Chairman Keckler invited public comment and received none.

There was no other business to consider.

**MOTION**

Mr. Levi moved to adjourn the meeting. Ms. Mikva seconded the motion.

**VOTE**

The motion passed by voice vote.

The Committee meeting adjourned at 3: 57 p.m.

# **Management Report on Performance Management**



## MEMORANDUM

**TO:** The Operations and Regulations Committee

**FROM:** James J. Sandman  
Traci L. Higgins

**DATE:** March 18, 2014

**SUBJECT:** Risk Management Update: Performance Management Policy and Human Capital Management

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This memorandum outlines the progress made during the first quarter of 2014 in implementing LSC's Performance Management Policy and its Human Capital Plan.

### **Performance Management Process**

LSC is in the process of rolling out the revised Performance Management Policy (Policy). Between March 10 and 20, we conducted five ninety-minute staff overview sessions to introduce staff to the Policy and its various components. These sessions, as well as those held in February and March with the management team, highlighted the following key aspects of the Policy:

1. Commitment to regular communication between managers and employees about performance. "On-going communication" is the key theme with the clear understanding that this communication must be two-way.
2. Linking of individual employee performance to office performance plans and to LSC's strategic goals. The effective alignment of resources at all levels of the organization is critical to mission success.
  - During February and March, office directors shared finalized office performance plans with their staff and held meetings to discuss them.
  - Office directors are in the process of creating and sharing individual employee performance plans – linked to office performance plans – with a targeted completion date of April 18.
3. Identification of Eight "Core Competencies" against which all employees are assessed.
  - Through the use of case studies during the employee and manager overview sessions, we examined how the competencies play out in the work place and

began the process of “norming” staff to how we define success under the Policy. We emphasized that “Meets Expectation,” one of four performance levels, is a high bar and its attainment requires consistent hard work and effort.

4. Implementation of a 360-Degree Assessment Process. In addition to the traditional evaluation of employees by managers, the Policy also includes an employee self-assessment, an opportunity for employees to receive colleague feedback on their work, and an opportunity for employees to assess their managers against five Manager Leadership Qualities.
  - We also used a case study to examine how the Manager Leadership Qualities play out in the work place and began the process of norming staff on these qualities.
5. Commitment to performance assessments that are thorough, detailed, and well-explained. The overview sessions also examined the components of effective feedback and discussed what constitutes good feedback.

Successful introduction of the Policy requires on-going engagement with staff and providing opportunities to discuss and explore the key components and assessment tools. Additional sessions will be planned during the year to facilitate the roll-out of subsequent steps in the process, as well as to continue the process of norming staff on the core competencies and heightened expectations.

### **Human Capital Management**

We have several initiatives underway:

1. Regular bi-monthly meetings between OHR and office directors to address personnel concerns and training and professional development needs, with a focus on identifying appropriate resources and making them available to the employees. Needs identified to date include effective communication skills, writing skills and interviewing skills, with follow up on each continuing.
2. In early January, OIT and OHR teamed-up to create an office-wide survey to assess training needs on basic office skills including word processing, spreadsheet organization and analysis, web skills, and information management. The survey revealed several key areas of focus and we are in the process of scheduling follow up meetings to plan a training implementation schedule.
3. We issued an RFP for the provision of leadership management training and have scheduled interviews on March 21<sup>st</sup> and 24<sup>th</sup> with the two final candidates.
4. We conducted many interviews for the positions of Fiscal Compliance Analysts and Program Counsel and have identified several strong finalists for each position.

**Restrictions of Legal Assistance with  
Respect to Criminal Proceedings and the  
Tribal Law and Order Act of 2010  
Final Rule 45 CFR Part 1613**

**LEGAL SERVICES CORPORATION****45 CFR Part 1613****Restrictions on Legal Assistance With Respect to Criminal Proceedings**

**AGENCY:** Legal Services Corporation

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the Legal Services Corporation (LSC or Corporation) regulation on legal assistance with respect to criminal proceedings. The Tribal Law and Order Act of 2010 (TLOA) amended the LSC Act to authorize LSC funds to be used for representation of persons charged with any criminal offense in tribal courts. This proposed rule will bring the regulations into alignment with the amended provisions of the LSC Act. The proposed rule will also revise the conditions under which LSC recipients can accept or decline tribal court appointments to represent defendants in criminal proceedings.

**DATE:** The effective date of this rule is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, (202) 295-1563 (phone), (202) 337-6519 (fax), sdavis@lsc.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Authorities and Impetus for Rulemaking**

The Corporation first issued 45 CFR part 1613 in 1976 to implement a statutory prohibition on the use of LSC funds to provide legal assistance in criminal cases. Section

1007 of the LSC Act prohibited the use of LSC funds to provide legal assistance “with respect to any criminal proceeding.” Sec. 1007(b)(2), Pub. L. 93-355, 88 Stat. 383 (Jul. 25, 1974) (42 U.S.C. 2996f(b)(2)). The original section 1613.2 defined “criminal proceeding” as

the adversary judicial proceeding prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated ‘criminal’ by applicable law and punishable by death, imprisonment, or a jail sentence. A misdemeanor or lesser offense tried in an Indian tribal court is not a ‘criminal proceeding.’

41 FR 38506, Sept. 10, 1976.

The following year, Congress amended section 1007(b)(2) of the LSC Act to codify the Corporation’s exemption of minor crimes in tribal courts from the types of criminal proceedings for which LSC funds could not be used. Sec. 10(b), Pub. L. 95-222, 91 Stat. 1620-1623 (Dec. 28, 1977). Congress made no further adjustments to the criminal prohibition provision until it enacted the Tribal Law and Order Act (TLOA) in 2010.

The TLOA amended section 1007(b)(2) of the LSC Act to authorize the use of LSC funds to provide representation in all criminal proceedings before tribal courts. Sec. 235(d), Pub. L. 111-211, Tit. II, Subtitle C, 124 Stat. 2282. The TLOA also had two major effects on tribal criminal jurisdiction. First, it authorized tribal courts to impose longer sentences, increasing the maximum duration from up to one year to a total of nine years for multiple charges. Sec. 234(a), Pub. L. 111-211, Tit. II, Subtitle C, 124 Stat. 2280 (Jul. 29, 2010) (25 U.S.C. 1302(c)(2)). Second, it required tribes exercising the expanded sentencing authority “at the expense of the tribal government, [to] provide an



indigent defendant the assistance of a defense attorney.” Sec. 234(c)(2), Pub. L. 111-211, Tit. II, Subtitle C, 124 Stat. 2280.

Congress further expanded tribal court jurisdiction in 2013. Through the Violence Against Women Reauthorization Act of 2013 (2013 VAWA), Congress amended the Indian Civil Rights Act of 1968 to authorize tribal courts to exercise special criminal jurisdiction over domestic violence cases. Sec. 904(b)(1), Pub. L. 113-4, 127 Stat. 120-121 (Mar. 7, 2013) (25 U.S.C. 1304(a)). This “special domestic violence criminal jurisdiction” is exercised concurrently with state or Federal jurisdictions, or both, as applicable. Sec. 904(b)(2), Pub. L. 113-4, 127 Stat. 121 (25 U.S.C. 1304(b)(2)). Unlike prior congressional enactments, the 2013 VAWA explicitly authorizes tribes to exercise jurisdiction over both Indian and non-Indian defendants in certain circumstances. Sec. 904(b)(4), Pub. L. 113-4, 127 Stat. 121-22 (25 U.S.C. 1304(b)(4)).

In order for the tribe to assert special domestic violence criminal jurisdiction, the alleged act must have occurred within Indian country. Sec. 904(c), Pub. L. 113-4, 127 Stat. 122 (25 U.S.C. 1304(c)). “Indian country” is a term of art defined in 8 U.S.C. 1151. If neither the victim nor the accused is Indian, the court may not exercise jurisdiction. Sec. 904(b)(4)(A)(i), Pub. L. 113-4, 127 Stat. 121 (25 U.S.C. 1304(b)(4)(A)(i)). If only the accused is a non-Indian, the court may exercise jurisdiction only if the accused resides in the Indian country over which the tribe has jurisdiction; is employed in the Indian country of the tribe; or is a spouse, intimate partner, or dating partner of a member of the tribe or an Indian who resides in the Indian country of the tribe. Sec. 904(b)(4)(B), Pub. L. 113-4, 127 Stat. 122 (25 U.S.C. 1304(b)(4)(B)).

The 2013 VAWA also introduced another set of crimes in Indian country for which defendants are entitled to counsel at the tribal government's expense. Section 904(d)(2) states that if a sentence of any length of time may be imposed, the defendant is entitled to all of the rights set forth in section 202(c) of the Indian Civil Rights Act. Sec. 904(d)(2), Pub. L. 113-4, 127 Stat. 122 (25 U.S.C. 1304(d)(2)). The TLOA previously amended section 202(c) to require tribes exercising expanded criminal sentencing authority to provide counsel to defendants facing total terms of imprisonment that would exceed one year. Sec. 234(a), Pub. L. 111-211, 124 Stat. 2280 (25 U.S.C. 1302(c)(2)).

In summary, the TLOA and the 2013 VAWA amended the Indian Civil Rights Act to expand both the sentencing authority and the jurisdiction of tribal criminal courts. The TLOA also amended the LSC Act to allow the use of LSC funds for representation of criminal defendants in tribal courts facing sentences of more than a year. LSC grant recipients now have the option of using their LSC funds to provide criminal representation. Additionally, because tribes must provide defendants with counsel at tribal government expense in certain circumstances, LSC recipients may be faced with increasing numbers of appointments to represent criminal defendants.

## II. Procedural Background.

On January 25, 2013, the Operations and Regulations Committee (Committee) of the LSC Board of Directors (Board) voted to recommend that the Board authorize rulemaking to conform Part 1613 to the amendments to the LSC Act and to address recipients' concerns regarding criminal appointments. On January 26, 2013, the Board authorized the initiation of rulemaking.

In response to the statutory changes described above, LSC sought input from experts in tribal law, including tribal court officials and practitioners, and the public to determine whether the Corporation needed to amend its regulations. LSC published a Request for Information (RFI) regarding the restrictions on legal assistance with respect to criminal proceedings in tribal courts. 78 FR 27341, May 10, 2013. Additionally, during its July 22, 2013 meeting of the Board of Directors, the Committee heard from a panel of five experts in tribal law representing a variety of perspectives.

Pursuant to the LSC Rulemaking Protocol, LSC staff prepared a proposed rule amending Part 1613 with an explanatory rulemaking options paper. On October 22, 2013, the Board approved the proposed rule for publication in the Federal Register for notice and comment. The NPRM was published in the Federal Register on November 4, 2013. 78 FR 65933, Nov. 4, 2013. The comment period remained open for thirty days and closed on December 4, 2013.

On April X, 2014, the Committee considered the draft final rule and recommended that the Board approve its publication. On April X, 2014, the Board approved the final rule for publication. [A1]

All of the comments and related memoranda submitted to the LSC Board regarding this rulemaking are available in the open rulemaking section of LSC's website at <http://www.lsc.gov/about/regulations-rules/open-rulemaking>. After the effective date of the rule, those materials will appear in the closed rulemaking section at <http://www.lsc.gov/about/regulations-rules/closed-rulemaking>.

### III. Discussion of Comments and Regulatory Provisions

LSC received seven comments on the NPRM. Five comments were submitted by law students, one was submitted by the court clerk for the Snoqualmie Tribal Court, and one was submitted by Jonathan Asher, Executive Director of Colorado Legal Services, an LSC recipient.

Three of the commenters supported the revisions to Part 1613. One commenter opposed the revisions, and the other three commenters provided comments without expressing support for or opposition to the revisions to Part 1613. LSC will address only the substantive comments in this preamble. All of the comments received are posted on the rulemaking page of LSC's website: [www.lsc.gov/about/regulations-rules](http://www.lsc.gov/about/regulations-rules).

#### Section-by-Section Discussion of Comments and the Final Rule

##### 1613.1 Purpose.

The Corporation proposed to revise this section to state that LSC grant recipients may not represent individuals in criminal proceedings unless authorized by Part 1613. The LSC Act has been amended twice to authorize criminal representation in tribal proceedings since the regulation was originally enacted in 1976, and the Corporation proposed to amend Part 1613 to be consistent with those statutory amendments. LSC received no comments on this section of the proposed rule.

##### 1613.2 Definition.

LSC proposed to amend the definition of “criminal proceeding” to remove the exclusion of misdemeanors or lesser offenses in Indian tribal courts from the definition. The Corporation received no comments on this section of the proposed rule.

##### 1613.4 Authorized representation.

The Corporation proposed to revise section 1613.4(a) to allow recipients to undertake criminal appointments after a determination that such appointment “will not impair the recipient’s primary responsibility to provide civil legal services.” Under the current rule, recipients must determine that accepting a criminal appointment will be “consistent with” its primary responsibility to provide civil legal services. The Corporation believed the current standard does not provide meaningful guidance because any representation of a defendant in a criminal case could be characterized as not “consistent with” a recipient’s primary responsibility to provide civil legal services. The Corporation believed that changing the standard to impairment of the recipient’s primary responsibility to provide civil legal services would provide more meaningful guidance by permitting recipients to consider the impact of accepting a criminal appointment on a recipient’s financial and human resources.

Comments: The Executive Director of Colorado Legal Services expressed concern about the proposed change in the standard for declining a criminal appointment in both tribal and non-tribal courts. He stated that “[c]hanging the standard from ‘inconsistent’ to ‘impair’ may inadvertently further limit and further complicate a grantee’s ability to provide representation to defendants in criminal cases in Tribal Court rather than ease the decision . . . A decision to accept a criminal case, arguably, would always ‘impair’ the grantees’ ability to provide civil legal assistance.” He further stated that while the Corporation may expect that its interpretations and analysis would apply to the revised standard, “it is inevitable that issues and new questions will arise and need to be addressed.” He requested that LSC consider either eliminating the standard for exercising discretion to accept or decline court appointments in criminal cases or,

alternatively, amend the regulation to require that recipients be able to document a “rational basis” for exercising their discretion.

One of the law student commenters suggested that the standard for accepting or declining a court appointment in a criminal case should turn not on whether acceptance would impinge upon a recipient’s ability to provide civil legal services, but whether acceptance is necessary to avoid injustice. The commenter asserted that the proposed change to the standard “encumbers” the goal of promoting equal access to justice “because [it does] not contemplate equal access to justice as being a relevant factor for a recipient to consider in determining whether to represent a criminal defendant in Indian tribal court.” The commenter proposed that recipients should consider many factors in deciding whether to accept a criminal appointment, including the availability of other competent counsel to defend the accused, the necessity of a background in Tribal criminal law, the complexity of the case, expertise in criminal law, the financial resources of the accused, and whether the accused is out on bond or being held in pretrial detention.

Response: LSC will retain the language from the proposed rule. LSC continues to believe that the revised standard would provide more meaningful guidance by permitting recipients to consider the impact of accepting a criminal appointment on a recipient’s financial and human resources. The revised standard is not intended to impose greater limitations on recipients’ decisions regarding court appointments. To the contrary, the Corporation intends the revised standard to create greater flexibility to exercise discretion. Nothing in the proposed rule prevents recipients from considering any of the factors noted by the student commenter, including whether representation is necessary to

promote equal justice, when deciding whether to accept or decline a court appointment to represent a criminal defendant.

1613.5 Criminal representation in Indian tribal courts.

The comments discussed in section 1613.4 immediately preceding (addressing representation in criminal proceedings generally) were also applicable by their terms to proposed section 1613.5. For the reasons stated in the preceding discussion, LSC is retaining the language from the proposed rule in section 1613.5.

List of Subjects in 45 CFR Part 1613

Crime, Grant programs – law, Legal services, Tribal

For the reasons stated in the preamble, and under the authority of 42 U.S.C. 2996g(e), the Legal Services Corporation amends 45 CFR Part 1613 as follows:

PART 1613 – RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO  
CRIMINAL PROCEEDINGS

Authority: Sec. 234(d), Pub. L. 111-211, 124. Stat. 2282; 42 U.S.C.  
2996f(b)(2); 42 U.S.C. 2996g(e).

**§ 1613.1 Purpose.**

This part is designed to ensure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is authorized by this part.

**§ 1613.2 Definition.**

Criminal proceeding means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person

with an offense denominated “criminal” by applicable law and punishable by death, imprisonment, or a jail sentence.

**§ 1613.4 Authorized representation.**

\* \* \*

- (a) Pursuant to a court appointment made under a statute or a court rule of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient’s primary responsibility to provide legal assistance to eligible clients in civil matters.

\* \* \* \* \*

**§ 1613.5 Criminal representation in Indian tribal courts.**

- (a) Legal assistance may be provided with Corporation funds to a person charged with a criminal offense in an Indian tribal court who is otherwise eligible.
- (b) Legal assistance may be provided in a criminal proceeding in an Indian tribal court pursuant to a court appointment only if the appointment is made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, and is authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient’s primary responsibility to provide legal assistance to eligible clients in civil matters.

Stefanie K. Davis

Assistant General Counsel

BILLING CODE 7050-01-P



**Restrictions on Legal Assistance to Aliens**  
**Final Rule Part 1626**

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1626**

**Restrictions on Legal Assistance to Aliens**

**AGENCY:** Legal Services Corporation

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the Legal Services Corporation (LSC or Corporation) regulation on legal assistance to aliens. The rule implements statutory changes regarding aliens eligible for legal assistance from LSC recipients that have been enacted since the pertinent provisions of the existing regulation were last revised in 1997. Additional information is located in the SUPPLEMENTARY INFORMATION section.

**DATE:** This final rule will be effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, (202) 295-1563 (phone), (202) 337-6519 (fax), [sdavis@lsc.gov](mailto:sdavis@lsc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Authorities, Impetus for Rulemaking, and Existing Rules**

LSC's current appropriation restrictions, including those governing the assistance that may be provided to aliens, were enacted in 1996 and have been reincorporated annually with amendments. Section 504(a)(11) of the FY 1996 LSC appropriation prohibits the Corporation from providing funds to any person or entity (recipient) that provides legal

assistance to aliens other than those covered by statutory exceptions. Sec. 504(a)(11), Pub. L. 104-134, Title V, 110 Stat. 1321, 1321-54 (1996).

In subsequent years, Congress expanded eligibility to discrete categories of aliens. In 1997, Congress passed the Kennedy Amendment, which allowed LSC recipients to use non-LSC funds to provide related legal assistance to aliens who were battered or subjected to extreme cruelty in the United States by family members. Sec. 502(a)(2)(C), Pub. L. 104-208, Div. A, Title V, 110 Stat. 3009, 3009-60 (1996). Congress limited the type of assistance that recipients could provide to “legal assistance directly related to the prevention of, or obtaining relief from, the battery or cruelty described in” regulations issued pursuant to VAWA (hereinafter “related assistance”). Sec. 502(b)(2), Pub. L. 104-208, Div. A, Title V, 110 Stat. 3009-60. Congress renewed the Kennedy Amendment in the FY 1998 reincorporation and modification of the LSC appropriation restrictions. Sec. 502(a)(2)(C), Pub. L. 105-119, Title V, 111 Stat. 2440, 2511 (1997). Thereafter, LSC’s annual appropriation has incorporated the FY 1998 restrictions by reference. See, e.g., Pub. L. 113-6, Div. B, Title IV, 127 Stat. 198, 268 (2013) (LSC FY 2013 appropriation).

The next expansions of eligibility came through the passage of the Victims of Trafficking and Violence Protection Act of 2000 (TVPA) and its progeny. Pub. L. 106-386, 114 Stat. 1464 (2000) (22 U.S.C. 7101 note). Through the TVPA, Congress directed the Board of Directors of LSC, along with Federal benefits granting agencies, to “expand benefits and services to victims of severe forms of trafficking in persons in the United States, without regard to the immigration status of such victims.” Sec. 107(b)(1)(B), Pub. L. 106-386, 114 Stat. 1475 (22 U.S.C. 7105(b)(1)(B)). Congress passed the Trafficking Victims Protection Reauthorization Act (TVPRA) in 2003, which made certain family

members of victims of severe forms of trafficking (“derivative T visa holders”) eligible to receive legal services from LSC-funded recipients. Sec. 4(a)(2)(B)(i), Pub. L. 108-193, 117 Stat. 2875, 2877 (2003) (22 U.S.C. 7105(b)(1)(B)).

In January of 2006, Congress passed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005). VAWA 2005 further amended section 502(a)(2)(C) of the FY 1998 LSC appropriation to expand the categories of aliens to whom recipients may provide related assistance by adding aliens who (1) are victims of sexual assault or trafficking in the United States; or (2) qualify for U visas under section 101(a)(15)(U) of the Immigration and Nationality Act (INA). Sec. 104, Pub. L. 109-162, 119 Stat. 2960, 2978 (2006). The U visa provision of the INA allows aliens who are victims of one or more of the crimes listed therein and who may assist in law enforcement investigations or prosecutions related to such crimes, or who are family members of such victims, to remain in the United States for a limited period. 8 U.S.C. 1101(a)(15)(U). Additionally, VAWA 2005 removed the Kennedy Amendment’s restriction on the use of LSC funds to provide representation to aliens who are eligible for services under VAWA 2005. Sec. 104(a)(1)(A), Pub. L. 109-162, 119 Stat. 2979-80. The amended text of section 502 is not codified, but the pertinent portion is available at <http://www.lsc.gov/about/lsc-act-other-laws/violence-against-women-act-public-law-109-162-2006>.

The final expansion of eligibility occurred in 2007. The FY 2008 LSC appropriation amended section 504(a)(11) of the FY 1996 LSC appropriation to extend eligibility for assistance to forestry workers admitted to the United States under the H-2B temporary

worker provision in section 101(a)(15)(H)(ii)(b) of the INA. Sec. 540, Pub. L. 110-161, Div. B, Title V, 121 Stat. 1844, 1924 (2007).

LSC last revised Part 1626 in 1997. After the alienage restrictions were enacted in 1996, LSC adopted an interim rule to implement the restrictions. 61 FR 45750, Aug. 29, 1996. While this rule was pending for comment, Congress passed the Kennedy Amendment. LSC subsequently revised Part 1626 to implement the Kennedy Amendment. 62 FR 19409, Apr. 21, 1997, amended by 62 FR 45755, Aug. 29, 1997. In 2003, LSC added a list of documents establishing the eligibility of aliens for legal assistance from LSC grant recipients as an appendix to Part 1626. 68 FR 55540, Sept. 26, 2003. The appendix has not been changed since 2003.

After 1997, LSC apprised recipients through program letters of certain statutory changes expanding alien eligibility for legal assistance provided by LSC-funded recipients. Program Letter 02-5 (May 15, 2002) (TVPA); Program Letter 05-2 (Oct. 6, 2005) (TVPRA; superseded Program Letter 02-5); Program Letter 06-2 (Feb. 21, 2006) (VAWA 2005). The final rule would incorporate the policies set forth in Program Letters 05-2 and 06-2. Both letters will be superseded upon publication of the final rule and will be removed from the “Current Program Letters” page of LSC’s website.

## **II. Procedural Background**

As a result of the numerous amendments to the alien eligibility provisions of the FY 1996 LSC appropriation, the Corporation determined that rulemaking to update Part 1626 was appropriate. On April 14, 2013, the Operations and Regulations Committee (the Committee) of the LSC Board of Directors (the Board) recommended that the Board

authorize rulemaking to conform Part 1626 to statutory authorizations. On April 16, 2013, the Board authorized the initiation of rulemaking.

Pursuant to the LSC Rulemaking Protocol, LSC staff prepared a proposed rule amending Part 1626 with an explanatory rulemaking options paper. On July 22, 2013, the Committee recommended that the Board approve the proposed rule for notice and comment rulemaking. On July 23, 2013, the Board approved the proposed rule for publication in the Federal Register for notice and comment. LSC published the notice of proposed rulemaking (the NPRM) in the Federal Register on August 21, 2013. 78 FR 51696, Aug. 21, 2013. The comment period remained open for sixty days and closed on October 21, 2013.

On January 23, 2014, the Committee considered the draft final rule for publication. After hearing from staff and stakeholders about changes to section 1626.4(c) in the final rule and the possible consequences of those changes, the Committee voted to recommend delaying final consideration of the rule pending an opportunity for public comment on those changes. On January 25, 2014, the Board voted to proceed with a further notice of proposed rulemaking (FNPRM). LSC published the FNPRM in the Federal Register on February 5, 2014. 79 FR 6859, Feb. 5, 2014. The comment period closed on March 7, 2014.

On April 7, 2014, the Committee considered the draft final rule and voted to recommend its publication to the Board. On April 8, 2014, the Board voted to adopt and publish the final rule.<sup>[a1]</sup>

All of the comments and related memos submitted to the LSC Board regarding this rulemaking are available in the open rulemaking section of LSC's website at

<http://www.lsc.gov/about/regulations-rules/open-rulemaking>. After the effective date of the rule, those materials will appear in the closed rulemaking section at

<http://www.lsc.gov/about/regulations-rules/closed-rulemaking>

### **III. Discussion of Comments and Regulatory Provisions**

LSC received fifteen comments in response to the NPRM. Eight comments were submitted by LSC-funded recipients, four were submitted by non-LSC-funded non-profit organizations, and three were submitted by individuals. All of the comments are posted on the rulemaking page of LSC's website: [www.lsc.gov/about/regulations-rules](http://www.lsc.gov/about/regulations-rules).

Most commenters supported the revisions to conform Part 1626 to the statutes expanding eligibility for legal services to certain crime victims, victims of severe forms of trafficking, and H-2B forestry workers. LSC received the greatest number of comments in response to the three issues the Corporation specifically sought comment on: the distinction between the VAWA 2005 and TVPA definitions of "trafficking," the geographic location of the predicate activity for eligibility, and the geographic location of the victim.

#### **Organizational Note**

In the final rule, definitions that the proposed rule placed in section 1626.4(c) are being moved to section 1626.2. As a result, paragraphs (d) through (g) of section 1626.4 are being redesignated as paragraphs (c) through (f). In the following discussion of the comments and the changes to the proposed rule, the relabeled paragraphs will be referred to by the number to be used in the final rule, except where the proposed rule is explicitly referenced.

#### **Specific Areas in Which LSC Requested Comments**

1. Whether the VAWA term “trafficking” differs from the TVPA/TVPRA/INA term “severe forms of trafficking,” and, if so, how the terms are different and what evidence LSC recipients should rely on in distinguishing between these two terms.

LSC received seven comments in response to this request. Of the seven, one observed a trend of linking the VAWA and INA definitions of trafficking to the TVPA term “severe forms of trafficking” and suggested that the term “severe forms of trafficking” should control all uses of the term “trafficking.” The other six commenters generally agreed that the VAWA 2005 term “trafficking” differs from the term “severe forms of trafficking” used in the TVPA and the INA. All six of those commenters believed that “trafficking” as used in VAWA 2005 is a broader term than the TVPA’s “severe forms of trafficking.” This belief applied to both the plain term “trafficking” in VAWA 2005 and the qualifying crime of trafficking for purposes of U visa eligibility under section 101(a)(15)(U) of the INA. One commenter noted that “the term ‘trafficking’ was included in the U visa provisions to cover forms of human trafficking” in which persons were being trafficked, but would have difficulty meeting the “severe forms of trafficking” standard to obtain eligibility for benefits under the TVPA. By making trafficking a crime for which individuals could qualify for related legal assistance or a U visa, the commenter continued, Congress extended “protection and help [to] both the trafficking victims who could meet the severe forms test and those who could not.”

Commenters differed, however, in how they believed LSC should account for the difference in definitions. Five commenters recommended that LSC adopt VAWA 2005’s broader term “trafficking” over the TVPA’s “severe forms of trafficking.” A sixth commenter asserted that in determining eligibility, “a LSC funded organization should be



able to rely on the applicable state statute which would make the applicant eligible for a U visa or the federal statute which defines ‘severe form of trafficking,’ whichever is broader. Moreover, LSC funded organizations should be able to rely on any evidence that supports the applicable definition in a particular case.”

In order to qualify for a U visa, an alien must be a victim of at least one of the types of criminal activity listed in section 101(a)(15)(U)(iii) of the INA. The listed crimes, which include “trafficking,” must “violate[] the laws of the United States or occur[] in the United States (including in Indian country and military installations) or the territories and possessions of the United States[.]” 8 U.S.C. 1101(a)(15)(U)(i)(IV). Neither the INA nor VAWA 2005 defines the term “trafficking.”

The TVPA also fails to define “trafficking,” although it does define and use the terms “severe forms of trafficking in persons” and “sex trafficking.” 22 U.S.C. 7102. The TVPA defines “sex trafficking” as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 22 U.S.C. 7102(9). “Severe forms of trafficking in persons” means:

- (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

22 U.S.C. 7102(8). The TVPA does not reference state, tribal, or territorial laws that criminalize trafficking.

LSC agrees with the commenters that the VAWA term “trafficking,” incorporating as it does crimes that would constitute trafficking if they violated state or federal law, is

broader than both “sex trafficking” and “severe forms of trafficking in persons” as defined in the TVPA. Indeed, “trafficking” as used in VAWA 2005 would include both sex trafficking and severe forms of trafficking in persons, as both are defined as crimes by a federal law, the TVPA. For purposes of eligibility for services under section 1626.4, LSC will retain the proposed definitions of “victim of trafficking” and “victim of severe forms of trafficking” with minor revisions to track the relevant statutes more closely. The reason for using these definitions is that victims of trafficking under VAWA 2005 and victims of severe forms of trafficking under the TVPA are eligible for differing types of legal assistance. Trafficking victims eligible under VAWA may receive only legal assistance related to battery, cruelty, sexual assault, or trafficking and other specified crimes, while victims of severe forms of trafficking under the TVPA may receive any legal assistance that is not otherwise restricted and is within the recipient’s priorities. It is therefore important to retain the distinction between the two in order to ensure that individuals receive the legal assistance that is appropriate for their basis of eligibility.

LSC also sought comment on the types of evidence that recipients should rely on to distinguish between victims of trafficking under VAWA 2005 and victims of severe forms of trafficking under the TVPA. Only one commenter responded to this request, stating that the organization was unclear about what kind of information LSC sought. The commenter also stated that “recipients should be able to rely on the definition in the statute that is applicable to the crime involved and evidence that meets that definition.” In response to this comment, LSC will revise proposed section 1626.4(e), renumbered as section 1626.4(d) in the final rule, to separate the evidence that may be presented by individuals eligible for legal assistance under VAWA 2005 from forms of evidence that

may be presented by victims of severe forms of trafficking under the TVPA. For individuals who claim eligibility based on being a victim of trafficking under VAWA 2005, section 1626.4(d)(2) will incorporate the list used in proposed section 1626.4(e). LSC notes that this list is nonexclusive, and that recipients may accept other types of credible evidence. Evidence may also include an application for a U visa or evidence that the individual was granted a U visa.

Section 1626.4(d)(3) will set forth the types of evidence that are unique to victims of severe forms of trafficking. These forms of evidence include a certification letter issued by the U.S. Department of Health and Human Services (HHS) or, in the case of a minor victim of severe forms of trafficking, an interim or final eligibility letter issued by HHS. Recipients may also call the HHS trafficking verification line at (202) 401-5510 or (866) 401-5510 to confirm that HHS has issued an alien a certification letter. HHS is the only federal agency authorized to certify victims of severe forms of trafficking to receive public benefits or to issue eligibility letters to minors. It is important to note that minors do not need to have an eligibility letter to be eligible for services. Recipients only need to determine that a minor meets the definition of a victim of severe forms of trafficking in 22 U.S.C. 7105(b)(1)(C).

## 2. The geographic location in which the predicate activity takes place.

LSC proposed to interpret the VAWA 2005 phrase “victim of trafficking in the United States” and the TVPA phrase “victim of severe forms of trafficking in the United States” to require that an alien be trafficked into or experience trafficking within the United States to be eligible for legal assistance from LSC-funded recipients. LSC believed that this interpretation was necessary because LSC read the qualifier “in the

United States” to apply to the activity of trafficking, rather than to the victim of trafficking.

With regard to the geographical restriction as it applied to trafficking under VAWA 2005, LSC received eight comments. One commenter simply stated that LSC’s interpretation was correct. Seven commenters disagreed with LSC’s proposed interpretation, arguing in all instances that “in the United States” modified “victim of trafficking” or “victim of severe forms of trafficking,” rather than just “trafficking.” Of the commenters who disagreed with LSC’s interpretation, four linked the VAWA 2005 language to the language in section 7105(b)(1)(B) of the TVPA authorizing LSC and federal benefits granting agencies to expand benefits and services to “victims of severe forms of trafficking in the United States[.]” These commenters understood the phrase “in the United States” to “refer to the location of the victim, rather than the location of the abuse,” and relied on the heading of section 7105(b), “Victims in the United States,” in support of their reading. One commenter noted that trafficking is a qualifying crime for U visa eligibility, and that section 101(a)(15)(U) of the INA does not require that an alien have been a victim of one of the qualifying crimes within the United States to be eligible to receive a U visa. Two commenters noted that VAWA 2005 authorizes the use of LSC funds to provide legal assistance to both “victims of sexual assault or trafficking in the United States” and aliens who qualify for a U visa, which they asserted meant that even if LSC’s interpretation were correct, LSC-funded recipients could still provide assistance to aliens who were victims of sexual assault or trafficking outside the United States because both crimes are qualifying crimes under section 101(a)(15)(U)(iii). The last commenter opposing LSC’s interpretation observed that the VAWA 2005 amendments to section 502

made that section “internally inconsistent.” The commenter remarked that VAWA 2005 created two categories of eligibility—one for victims of battery, extreme cruelty, sexual assault, or trafficking “in the United States,” and one for aliens qualified for U visa status, which specifically contemplates that qualifying crimes are those that “violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States[.]” 8 U.S.C. 1101(a)(15)(U)(i)(IV). Because trafficking is a qualifying crime for U visa eligibility, the commenter continued, VAWA 2005 appears to treat trafficking inconsistently. Finally, the commenter noted that by treating trafficking as requiring activity to occur in the United States, but not placing the same requirement on sexual assault and domestic violence, which are also qualifying crimes for U visa eligibility, the regulation is unnecessarily internally inconsistent.

The same seven commenters likewise opposed LSC’s proposed interpretation of the TVPA term “victims of severe forms of trafficking in the United States.” Most of the commenters pointed to the plain language of the TVPA and the INA in support of their argument. First, they noted that the TVPA definition of “severe form of trafficking in persons” does not include a geographical limitation to trafficking activities that occur in the United States. Second, they assert that the title of section 107(b) of the TVPA, “Victims in the United States,” makes clear that it is the victims, rather than the activities, that must be in the United States. 22 U.S.C. 7105(b). Finally, they relied on the INA criteria for T visa eligibility. In order to qualify for a T visa, an alien must be a victim of severe forms of trafficking in persons; must be willing to cooperate with law enforcement, unable to cooperate due to physical or psychological trauma, or be under

the age of 18; and must be “physically present in the United States . . . on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking[.]” 8 U.S.C. 1101(a)(15)(T).

LSC agrees that it would be inconsistent with the plain language of the INA, VAWA 2005, and the TVPA and its progeny to require that an alien have been trafficked into or within the United States to qualify for legal assistance from an LSC-funded recipient. For this reason, LSC is revising the language in proposed section 1626.4(d)(1) to remove the requirement that an alien have been subjected to trafficking activity in the United States in order to be eligible to receive legal assistance from an LSC recipient.

LSC also is making two technical amendments to proposed section 1626.4(d). The first renames proposed section 1626.4(d) “Relationship to the United States,” and section 1626.4(d)(1) “Relation of activity to the United States.” LSC is making these changes to reflect that although the criminal activity giving rise to eligibility under VAWA does not need to occur in the United States, the crime must have violated the laws of the United States. The second change is restating in section 1626.4(d)(1) the language from section 101(a)(15)(U)(i)(IV) of the INA that a listed crime must have violated the laws of the United States or occurred within the United States in order to be a qualifying crime for purposes of U visa eligibility.

### 3. Whether an alien must be physically present in the United States to receive legal assistance.

In the NPRM, LSC proposed that aliens eligible to receive legal assistance under one of the anti-abuse statutes would be eligible for such assistance regardless of whether they

were present in the United States. LSC reasoned that the anti-abuse statutes, viewed collectively, did not require an alien to be present in the United States to be eligible to receive legal assistance. LSC received eight comments on this issue. Seven commenters agreed with LSC's proposed position. One commenter opposed.

The seven commenters responding in support of LSC's position generally noted that the position was consistent with section 101(a)(15)(U) of the INA, which contemplates that an alien who qualifies for U visa relief may have been a victim of a qualifying crime that occurred outside the United States. One commenter pointed out that Congress amended VAWA to allow eligible victims to file petitions for relief from outside the United States. Another commenter remarked that victims of abuse may find themselves outside the United States for reasons related to the abuse if suffered here, and that the legal assistance provided by an LSC-funded recipient may be essential to ensuring that the victims are able to petition successfully for legal status.

The commenter opposing LSC's proposal first argued that LSC is improperly "tying the removal of geographical presence in with the new applicability of assistance to aliens receiving U visas." The commenter believed that the ability of aliens who were victims of qualifying crimes that occurred outside the United States to apply for U visa relief from outside the United States "has no bearing on territorial requirements for individuals receiving assistance from the VAWA amendments." Secondly, the commenter argued that allowing recipients to represent aliens not present in the United States would significantly increase the case work of LSC recipients and would likely lead to the expenditure of scarce resources in pursuit of frivolous petitions for immigration relief. None of the LSC recipients who commented on the NPRM indicated that they were

unable to serve adequately aliens eligible under the anti-abuse statutes or were otherwise compromising their representation of other eligible clients.

LSC continues to believe that the proposed language is consistent with Congressional intent in removing the requirement that an alien have been a victim of battery, extreme cruelty, or sexual abuse in the United States. As discussed in the preceding section, however, the VAWA 2005 amendment to section 502(a)(2)(C) of the FY 1998 LSC appropriation is internally inconsistent with respect to whether victims of trafficking must be in the United States in order to be eligible for benefits. This is because the U visa provision of the INA, which includes trafficking as a qualifying crime, contemplates that the trafficking may occur outside the United States, see 8 U.S.C. 1101(a)(15)(U)(i)(IV) (“the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States . . .”), while the amendment to section 502(a)(C) uses the phrase “victim of . . . trafficking in the United States.” Sec. 104(a), Pub. L. 109-162, 119 Stat. 2960, 2979.

Because the modifier “in the United States” must be given some meaning, LSC is interpreting the VAWA 2005 term “victim of . . . trafficking in the United States” to mean that an alien who is seeking legal assistance as a victim of trafficking under VAWA does not need to show that the trafficking activity occurred in the United States, but must be present in the United States to be eligible for assistance. This reading is consistent with the reading that LSC is applying to the term “victim of severe forms of trafficking in the United States” in the TVPA.

Section 101(a)(15)(T)(i)(II) of the INA, discussed above, requires a victim of severe forms of trafficking to be present in the United States on account of such trafficking in



order to be eligible for a T visa. “On account of such trafficking” includes, but is not limited to, having been allowed entry to assist law enforcement in the investigation and prosecution of an act or perpetrator of trafficking. 8 U.S.C. 1101(a)(15)(T)(i)(II). LSC believes that this language also includes a victim of severe forms of trafficking abroad who flees into the United States to escape the trafficking. Under these circumstances, the victim is in the United States “on account of such trafficking,” and would be eligible for LSC-funded legal assistance.

Based on the comments received and the subsequent review of the INA, LSC proposed to modify the language in proposed section 1626.4(d), renumbered as section 1626.4(c), to reflect the distinction between eligibility for victims of trafficking who qualify for a U visa and those who are eligible under VAWA or under the TVPA. LSC also proposed to add subsection 1626.4(c)(2), “Relationship of alien to the United States,” to describe the circumstances under which an alien must be present in the United States to be eligible for legal assistance under the anti-abuse statutes. Section 1626.4(c)(2)(i) stated that victims of battery, extreme cruelty, or sexual abuse, or who are qualified for a U visa, do not need to be present in the United States to receive legal assistance from LSC-funded recipients. Section 1626.4(c)(2)(ii) addressed victims of severe forms of trafficking, who must be present in the United States on account of such trafficking to be eligible for LSC-funded legal assistance. Finally, Section 1626.4(c)(2)(iii) addressed victims of trafficking under VAWA, who only need to be present in the United States to be eligible for assistance.

During the Committee meeting on January 23, 2014, stakeholders expressed concern regarding the modified language in Section 1626.4(c)(2), specifically that the distinctions

between victims of trafficking under VAWA, aliens qualified for a U visa on the basis of trafficking, and victims of severe forms of trafficking under the TVPA in the final rule could have unintended consequences.

The Committee and the Board responded to this concern by authorizing the publication of an FNPRM seeking comments on the modified language in Section 1626.4(c)(2). 79 FR 6859, Feb. 5, 2014. LSC sought comment on two discrete issues. The first question focused on LSC's interpretation of the phrase "in the United States" as it applied to victims of trafficking under VAWA and victims of severe forms of trafficking under the TVPA. 79 FR at 6863. On the second issue, LSC asked whether the phrase "in the United States" in VAWA modified the crime of trafficking, all listed crimes preceding the phrase "in the United States," or the term "victim." *Id.* LSC received eleven comments in response to the FNPRM. Members of the public submitted six of the comments, national non-profit organizations submitted three comments, and legal services providers, both LSC-funded and non-LSC-funded, submitted the other two comments.

On the first question, commenters were divided about whether LSC's interpretation of the phrase "victims of . . . trafficking in the United States" as requiring the victim to be in the United States at the time the victim sought assistance from an LSC recipient was correct. One commenter stated that the interpretation was correct as applied to victims of severe forms of trafficking under the TVPA. Another stated that LSC's interpretation did not go far enough because it did not explicitly state that victims of severe forms of trafficking who were brought back to the United States to assist in the investigation or prosecution of their traffickers could qualify for LSC-funded legal assistance. Four

commenters called the interpretation overly broad as applied to victims of severe forms of trafficking under the TVPA. Finally, four commenters advocated for reading the phrase “in the United States” to be satisfied by a nexus between either the victim or the crime and the United States. In other words, the four commenters advocated that LSC read “in the United States” to mean that victims of trafficking under VAWA or severe forms of trafficking under the TVPA would be eligible either if they were in the United States at the time they sought legal assistance or if they experienced trafficking in the United States. Commenters contended that such a broad reading of the phrase would accomplish the remedial purposes of the anti-abuse statutes.

With respect to the second question, commenters again split on which term in VAWA the phrase “in the United States” modified. While all commenters agreed that the phrase modified only trafficking, rather than “sexual abuse or trafficking,” there was no unanimity on whether the phrase modified “victim of. . . trafficking,” “trafficking,” or either one. Again, the majority of comments advocated for reading “in the United States” to allow eligibility for services if either the activity of trafficking occurred in the United States or the victim of trafficking is in the United States at the time he or she seeks legal assistance from an LSC-funded recipient.

LSC considered all comments received and reviewed the language proposed in the NPRM, the language proposed in the FNPRM, the TVPA, VAWA, and the relevant sections of the INA. After considering all of the above materials, LSC is retaining the language of section 1626.4(c) proposed in the FNPRM with modification. LSC continues to believe that the approach taken in the FNPRM is most consistent with the plain language of the TVPA, VAWA, and the INA.

Section 107 of the TVPA is titled “Victims in the United States.” 22 U.S.C. 7105. Section 107(b)(1)(B) of the TVPA authorizes the secretaries of HHS, Labor, and other Federal benefits-granting agencies, as well as LSC, to expand benefits and services to “victims of severe forms of trafficking in persons in the United States” subject to subparagraph C. 22 U.S.C. 7105(b)(1)(B). The referenced subparagraph, section 107(b)(1)(C) defines the term “victim of a severe form of trafficking in persons” as used in section 107 more narrowly than the term is defined in the general definitions section of the TVPA. 22 U.S.C. 7105(b)(1)(C). In addition to being subjected to one of the crimes included within the general definition of “severe forms of trafficking in persons,” the section 107(b)(1)(C) definition requires that an individual be either under the age of 18 or the “subject of a certification under subparagraph (E).” 22 U.S.C. 7105(b)(1)(C). In order to receive a certification under subparagraph (E), a victim must have completed one of two immigration-related actions: the victim must have filed a bona fide application for a T visa that has not been denied, or the victim must have been granted continued presence to assist with the prosecution of traffickers. 22 U.S.C. 7105(b)(1)(E)(i)(II). Significantly, an individual must be present in the United States to be eligible for a T visa or to be granted continued presence.

Thus, the definition of “victim of a severe form of trafficking in persons” that explicitly applies to services funded by LSC contains a requirement that an adult victim have applied for or secured a type of immigration remedy for which presence in the United States is a necessary element. As a result, LSC believes that interpreting the phrase “in the United States” to mean that a victim of severe forms of trafficking under the TVPA must be present in the United States at the time the victim seeks legal

assistance from an LSC recipient is most consistent with the definition. In the interest of uniformity and consistency across statutes, and in the absence of evidence that Congress intended otherwise, LSC also believes that it is appropriate to interpret “in the United States” the same way in VAWA. Therefore, LSC will retain the requirement that a victim of trafficking be present in the United States at the time the victim seeks assistance in order to be eligible for LSC-funded legal assistance. The presence requirement stated in section 1626.4(c)(2) does not apply to victims of trafficking located outside the United States who are seeking legal assistance as individuals qualified for a U visa.

LSC is modifying and redesignating section 1626.4(c)(2)(iii) in response to the comments. Four commenters stated that because only section 101(a)(15)(T) of the INA, which governs eligibility for T visas, requires that the victim’s presence in the United States be on account of trafficking, applying the requirement to all victims of severe forms of trafficking is unnecessarily restrictive. The commenters pointed to the absence of a link between the trafficking activity and the victim’s presence in the continued presence regulation issued by the Departments of Justice and State. 28 CFR 1100.35. LSC concurs with the comments. Accordingly, LSC will remove section 1626.4(c)(2)(ii), redesignate proposed section 1626.4(c)(2)(iii) as section 1626.4(c)(2)(ii), and will add victims of severe forms of trafficking to redesignated section 1626.4(c)(2)(ii) as a group that must be present in the United States to be eligible to apply for LSC-funded legal assistance.

During the Committee meeting on January 23, 2014, stakeholders also expressed a concern regarding the modified language in Section 1626.4(c)(2) that the explicit reference to a presence requirement for victims of trafficking and severe forms of

trafficking could be interpreted as precluding recipients from continuing to provide legal assistance to client victims of trafficking in the event the client left the United States after the commencement of services. With respect to this concern, LSC wishes to make clear that Section 1626.4(c) applies to the initial determination of an alien's eligibility for legal assistance under the anti-abuse statutes. Once services have commenced, a client's subsequent departure from the United States does not necessarily render the client ineligible to continue receiving services. Consistent with the Corporation's longstanding policy, the specific circumstances presented by the client's situation will determine whether representation may continue if the client is absent from the United States. LSC determined in Program Letter 2000-2 that temporary absence from the United States does not change eligibility for individuals covered by the section 1626.5 presence requirement. Similarly, LSC determined that the H-2A presence requirement does not require a client to continue to be in the United States beyond the H-2A employment in order to continue receiving legal assistance. See LSC Board of Directors Meeting, November 20, 1999, transcript at 49, <http://go.usa.gov/B3D9> (implementing the recommendations of the Erlenborn Commission Report, <http://go.usa.gov/B3Tj>). In response to the FNPRM, LSC received five comments in support of this position and no comments in opposition.

### **General Comments**

Comments not directed at a specific question or section of the regulations are discussed below.

#### LSC's Objective Regarding Inclusion of Eligible Aliens

LSC received comments during the open comment period and during the January 23, 2014 Committee meeting pertaining to the criteria that LSC established for determining

the eligibility of victims of trafficking for legal assistance by LSC-funded entities and the inclusion or exclusion from eligibility of certain categories of aliens. LSC is addressing each of those comments in the discussion of the section giving rise to the comments. As an overall policy, LSC has drafted the regulation to give effect to Congress's intent that certain categories of aliens should be eligible to receive legal services from LSC recipients. In some cases, such as for victims of qualifying crimes under VAWA or H-2 visa holders, those services are limited to assistance related to the basis for eligibility. LSC's policy is to permit LSC recipients to provide eligible aliens with legal services to pursue the substantive rights, such as immigration relief, that Congress has given them.

#### Establishing Requirements for Recipient Compliance with VAWA 2005

One commenter expressed concern that the regulatory language used to expand eligibility to the categories of aliens covered by VAWA 2005 was too weak. The commenter stated that VAWA 2005 and its subsequent reauthorization acts generally contain provisions requiring DHS to issue regulations and entities receiving funding through VAWA 2005 to take certain actions within prescribed time limits after passage of the statute. The commenter recommended that LSC revise the final rule to require that recipients

- Include in their next funding or renewal of funding applications a copy of their written plans for implementing the changes called for in the final rule;
- Identify and consult with domestic violence, sexual assault, and victim services programs working to serve immigrant crime victims in the recipient's service area; and
- Submit with each funding application a copy of the recipient's plan for implementing section 1626.4, including a statement of the work the recipient has done to conduct outreach to, consult with, and collaborate with victim services providers with expertise providing assistance to underserved populations.

VAWA 2005 amended section 502 of the FY 1996 LSC appropriation to authorize LSC recipients to provide legal assistance, using LSC funds or non-LSC funds, to alien victims of battery, extreme cruelty, sexual assault, or trafficking in the United States, and aliens qualified for a U visa. VAWA 2005 does not require LSC to undertake any actions to implement the expanded authority, nor does it require LSC funding recipients to provide legal assistance to the new categories of eligible aliens. Because VAWA 2005 places no obligations on either LSC or its recipients and contains no timeframes within which they must take action, LSC is not placing implementation requirements on its recipients.

#### Publication of Interlineated Statute

One commenter recommended that LSC publish an interlineated statute showing the changes to section 502 of the FY 1996 LSC appropriation made by VAWA 2005 and republish an updated version each time it is amended. LSC publishes interlineated versions of the relevant statutes on the LSC website (<http://www.lsc.gov/about/lsc-act-other-laws/lsc-appropriations-acts-committee-reports>) and updates the page as necessary to reflect changes to the statutes. LSC believes that its practice of posting the interlineated statutes on its website addresses the commenter's recommendation and is sufficient to address changes to the laws affecting LSC and its recipients until the Corporation can undertake any necessary rulemaking.

#### Correcting Incorrect References

One commenter noted that the NPRM incorrectly referred to the "Customs and Immigration Service," rather than the agency's proper name, "Citizenship and Immigration Service." The references have been corrected.



Clarification that Individuals Should Receive the Highest Level of Services for Which They Are Eligible

In response to the FNPRM, LSC received two comments recommending that LSC clarify that individuals who are eligible for services under more than one of the anti-abuse statutes be considered as eligible for the most expansive level of services. One of the commenters requested that LSC include a provision in the rule to this effect. LSC appreciates the recommendations; however, LSC is not making amendments to the text beyond technical corrections or revisions based on responses to the specific questions asked in the FNPRM. Additionally, the substance of the clarification that these comments requested is addressed through the existing text of proposed section 1626.4(g) regarding changes in an individual's basis for eligibility.

Extension of the Comment Period

In response to the NPRM, four commenters recommended that LSC extend the comment period to allow other interested organizations the opportunity to comment. The commenters were three LSC-funded recipients and one national non-profit. Commenters stated that they had learned of the rulemaking shortly before the close of the comment period and that they believed the complex nature of the issues raised by the rulemaking required additional time to develop proper responses.

LSC did not believe an extension of the comment period for the August 21, 2013 NPRM was warranted. The comment period was open for sixty days, and recipients were advised of the rulemaking via email the day the NPRM was published in the Federal Register. For the three specific questions on which LSC sought comment in the NPRM, commenters overwhelmingly reached the same conclusion. On the other issues for which

comments were received, commenters generally made the same recommendation. None of the four commenters requesting an extension identified any specific issue they intended to address if given additional time to respond. For these reasons, LSC did not believe it was necessary to reopen the comment period for the August 21, 2013 NPRM.

### **Section-by-Section Discussion of Comments and the Final Rule**

#### 1626.2 Definitions.

1. Comment: One commenter stated that the list of anti-abuse statutes in section 1626.2(f) was incomplete. The commenter recommended adding the battered spouse waiver in the INA, 8 U.S.C. 1186a(c)(4)(C), the 2013 VAWA reauthorization, and the 2005, 2008, and 2013 reauthorizations of the TVPA to the list.

Response: As a matter of law, LSC does not have the authority to extend eligibility for legal assistance provided by LSC-funded recipients to aliens eligible for the battered spouse waiver under 8 U.S.C. 1186a(c)(4)(C). Of the statutes reauthorizing VAWA and the TVPA, only the 2005 VAWA reauthorization and the TVPRA of 2003 affected the eligibility of certain aliens to receive legal assistance from LSC-funded providers. LSC will revise the references to VAWA and the TVPA to indicate that LSC considers those statutes, as amended, as the anti-abuse statutes.

2. Comment: In response to the FNPRM, one commenter noted the use of the conjunction “and” to separate the terms “victim of sexual assault” and “victim of trafficking” within the definition of “victim of sexual assault or trafficking” in section 1626.2(k). The commenter voiced concern that the use of “and” made it appear that a victim must meet the terms of both provisions in order to qualify as a “victim of sexual assault or trafficking,” which would narrow the definition.

Response: LSC did not intend to narrow the definition and will replace “and” in section 1626.2(k)(i) with “or.”

LSC made several changes to section 1626.2. In the final rule, LSC is moving the definitions of “battered or extreme cruelty,” “victim of sexual assault or trafficking,” “victim of severe forms of trafficking,” and “qualifies for immigration relief” to section 1626.2 from proposed section 1626.4(c) to consolidate definitions in Part 1626 for ease of reference and delete proposed section 1626.4(c). LSC believes that removing the definitions from the operational text of section 1626.4 will improve the readability and comprehensibility of the rule.

With respect to the definition of “battered or extreme cruelty,” LSC will reinstate the definition used in existing subsection 1626.2(f) in the final rule. LSC determined that the cross-reference to agency regulations defining the term did not clarify or add anything to the existing definition and could result in confusion if agencies differed in their definitions of the term.

The Corporation also will include a definition of the term “certification.” “Certification” is a term created by the TVPA and is defined at 22 U.S.C. 7105(b)(1)(E). Certification refers to the determination made by the Secretary of HHS that an individual was subjected to severe forms of trafficking, is willing to provide all reasonable assistance to law enforcement in the investigation or prosecution of a trafficker, and has either filed a bona fide application for a T visa that has not been rejected or has been granted continued presence to assist law enforcement by DHS.

In the final rule, LSC is making a technical amendment to the definition of “victim of sexual assault.” In the NPRM, proposed section 1626.4(c)(2)(i) defined “a victim of

sexual assault” as an individual “subjected to any conduct included in the definition of sexual assault or sexual abuse in VAWA, including but not limited to sexual abuse, aggravated sexual abuse, abusive sexual contact, or sexual abuse of a minor or ward[.]” However, the term “sexual abuse” is not defined in VAWA, and the VAWA definition of “sexual assault” does not track the examples provided in the proposed definition. To avoid confusion, LSC will revise the definition to remove the reference to a definition of “sexual abuse” in VAWA and adopt by incorporation the VAWA definition of “sexual assault.”

Finally, LSC will alphabetize the definitions in section 1626.2 for ease of reference.

#### 1626.3 Prohibition.

LSC received no comments on the proposed technical corrections to this section.

#### 1626.4 Aliens eligible for assistance under anti-abuse laws.

As stated earlier in this preamble, LSC will delete proposed section 1626.4(c) and move the definitions contained therein to section 1626.2. Proposed subsections 1626.4(d) through (g) will be redesignated as subsections 1626.4(c) through (f) in the final rule.

#### 1626.4(a)(2) Legal assistance to victims of severe forms of trafficking and certain family members.

Paragraph (a)(2) will incorporate the policies established in Program Letter 02-5 and Program Letter 05-2. Individuals eligible for legal assistance under the TVPA and the 2003 TVPRA include individuals applying for certification as victims of severe forms of trafficking and certain family members seeking immigration relief under section 101(a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii)).

#### 1626.4(b)(2) Types of cases constituting “related legal assistance.”

1. Comment: One commenter suggested that LSC include within “related legal assistance” assistance ensuring that clients are protected by the privacy and confidentiality provisions of VAWA 2005 and are able to access the protections and benefits of education laws, including access to post-secondary educational grants and loans. According to the commenter, “a significant component of effective representation of sexual assault victims and domestic violence victims in many cultural communities is ensuring privacy and confidentiality.” Additionally, “access to educational benefits and remedies under education laws to address the subsequent problems that stem from the abuse and accommodations sexual assault survivors may need in the educational context” is an integral part of helping immigrant victims of sexual assault to move on with their lives, to stay in school, and to settle successfully in the United States.

By email dated November 25, 2013, LSC sought additional information from the commenter explaining the types of related legal assistance the commenter believed LSC recipients could provide in the context of VAWA confidentiality and privacy provisions. The commenter responded by email on December 13, 2013 with examples of assistance. The examples included “preventing discovery of shelter records or mental health records of a victim in a custody, protection order, or criminal court proceeding,” “assistance with change of identity for crime victims who are witnesses eligible to participate in victim protection programs,” and keeping information about the victim’s immigration status and information contained in a victim’s application for immigration relief under VAWA, 8 U.S.C. 1101(a)(15)(T), or 8 U.S.C. 1101(a)(15)(U), out of a family court case.

Response: LSC will retain the language in the proposed rule. LSC intended the examples of “related legal assistance,” including the list in the parenthetical, to be illustrative rather

than exhaustive. LSC understands that there may be types of assistance, including assistance protecting confidentiality and privacy rights or ensuring access to education, which may constitute “related legal assistance.” The key factor for recipients to consider in determining whether a requested service is “related legal assistance” is the connection between the assistance and the purposes for which assistance can be given: escaping abuse, ameliorating the effects of the abuse, or preventing future abuse. To the extent that ensuring clients are protected by the privacy and confidentiality provisions of VAWA and the protections and benefits of education laws is necessary to help the clients escape, ameliorate the effects of, or prevent future abuse, legal assistance to secure those protections and benefits would constitute “related legal assistance.”

1626.4(c) Definitions of Categories of Eligible Aliens Under Anti-Abuse Statutes.

As stated in the discussion of section 1626.2, LSC is deleting this section and moving the definitions to section 1626.2.

1626.4(d) Evidentiary support.

Because LSC is deleting paragraph (c), this subsection will be relocated to paragraph (d) in the final rule.

1. Comment: LSC received four comments regarding the types of evidence that recipients may consider in support of a showing that an alien is eligible for legal assistance under one of the anti-abuse statutes. All of the comments supported the use of the list of evidentiary types taken directly from VAWA.

Response: LSC will retain the text of proposed section 1626.4(e) with respect to types of evidentiary support.

2. Comment: One commenter recommended that LSC revise proposed paragraphs (e) and (f) to “clearly state that where programs may represent individuals without regard to their citizenship or immigration status . . . programs are not required to inquire into the citizenship or immigration status of these clients.” Another commenter similarly suggested that LSC should include language in the final rule shifting the eligibility focus at intake from citizenship or eligible alien status to victimization.

Response: LSC will retain the language of the proposed rule. VAWA 2005 authorizes, rather than requires, LSC funds to be used to represent victims of battery, extreme cruelty, sexual assault, and trafficking, or aliens who are qualified for a U visa. Recipients are responsible for setting their own priorities and may choose not to prioritize the types of assistance that are authorized under VAWA 2005. LSC believes that recipients should retain the discretion to conduct their intake processes in the ways that they determine are the most effective at identifying clients who are eligible for services and whose cases are within the recipients’ priority areas.

LSC reminds recipients that Advisory Opinion AO-2009-1008 addressed the question whether recipients must determine the immigration status of aliens who qualify for assistance under one of the anti-abuse statutes. In that opinion, the Office of Legal Affairs stated that once a recipient determined that an individual has a legal need that would qualify for the exceptions of the anti-abuse statutes to the alienage requirement, the recipient does not need to inquire into the citizenship or immigration status of that individual. The final rule does not affect the validity of the conclusion stated in AO-2009-1008.

3. Comment: Two commenters recommended revising the examples of changes in eligibility in proposed section 1626.4(e). One recommended including examples of when an alien’s eligibility for legal assistance may change from eligibility under an anti-abuse statute to eligibility by reason of the alien’s immigration status and vice versa in the preamble to the final rule. The other recommended removing or revising the examples in section 1626.4. The commenter believed that the examples provided in proposed section 1626.4(e) were “problematic” because they suggested that an individual whose application for status was rejected would subsequently be deemed ineligible to receive legal assistance under the anti-abuse statutes or they were too vague about which component of the Department of Homeland Security (DHS) made the determination of ineligibility and at which stage of review the determination of ineligibility was made. The commenter also opined that the requirement in the draft rule and in Program Letter 06-2 that recipients terminate representation of an individual once DHS issued a final denial of the individual’s petition for a U visa is without basis in law. The commenter reasoned that the VAWA 2005 amendment to section 502 of the FY 1996 LSC appropriation based eligibility for services on an individual’s “qualifying” for a U visa, which the commenter stated “arguably applies when there is a need for corrected documents or there is after-acquired evidence.”

Response: LSC is removing the examples from the text of the regulation. However, LSC wishes to clarify two points in response to the comments. The existing regulation defines “rejected” as “an application that has been denied by DHS and is not subject to further administrative appeal. In the example of the “final denial” of a petition for a U visa, LSC did not intend to create ambiguity and should have used the regulatory term “rejected.”



With respect to subsequent eligibility, LSC did not intend the examples to suggest that an individual whose application for status was rejected because of insufficient or incomplete evidence would be ineligible for related legal assistance at a later date if the individual returned with additional evidence that he or she was a victim of battery or extreme cruelty, sexual assault, trafficking, or one of the qualifying crimes for a U visa. The example was intended only to explain how an individual's eligibility for services may change when the application in connection with which the individual qualified for services is rejected.

LSC is sensitive to the difficulties that alien victims of abuse may have in developing and documenting credible evidence of the abuse. For purposes of eligibility, however, LSC's policy is that once the petition for a U visa upon which an individual was determined to be eligible for services has been rejected and no further avenues of appeal are available for that petition, the individual must be deemed not qualified for a U visa and the recipient must terminate representation consistent with applicable rules of professional responsibility unless there is another basis upon which the alien can be found eligible. The individual may be found eligible for services based on qualifying for a U visa at a later time if the individual can provide additional credible evidence supporting his or her claim for eligibility.

LSC will remove the statement at the end of proposed section 1626.4(e) that recipient staff should review the evidence presented at intake to support an individual's basis for eligibility under the anti-abuse statutes. Upon further consideration, LSC determined that this sentence was unduly prescriptive about how recipients assess eligibility and appeared to set up a different rule for reviewing eligibility under the anti-abuse statutes. Recipients

should have mechanisms in place for evaluating a client's continued eligibility for services, regardless of the basis for eligibility.

1626.4(e) Recordkeeping.

Because LSC is deleting paragraph (c), this subsection will be relocated to paragraph (e) in the final rule.

1. Comment: Two commenters opposed the requirement in proposed paragraphs (f)(1) and (f)(2) that if an alien provides a visa or visa application as evidence to support his eligibility for legal services under the anti-abuse statutes, the recipient must keep a copy of the document in its files. One commenter noted that the requirement was a change in LSC policy, which currently does not require applicants to keep copies of immigration documents to prove alien eligibility. The other commenter stated that such a requirement is contrary to "motivations and the direction of the evolution of federal VAWA confidentiality law." The commenter described the confidentiality provisions of VAWA as protecting not only the information contained within a VAWA, T, or U visa application, but also as preventing a third party from obtaining information about the existence of such applications except in certain carefully circumscribed cases.

Response: LSC agrees with these comments. In the final rule, LSC will replace proposed subparagraph (f) with language substantially similar to existing subsection (b):

"Recipients are not required by § 1626.12 to maintain records regarding the immigration status of clients represented pursuant to this section." The Corporation is including a sentence in the final rule stating that if an alien presents a recipient with an immigration document as evidence of eligibility under the anti-abuse statutes, the recipient shall document eligibility under the anti-abuse statutes by making a note in the client's file

stating that the recipient has seen the visa or the application for a visa that supports the applicant's claim for eligibility and identifying the type of document, the applicant's alien registration number ("A number"), the date of the document, and the date of the review. The note should be signed by the staff member who reviewed the document. LSC understands the confidentiality concerns that this approach may raise; however, recipients must be able to document the basis for an individual's eligibility. In the event an alien presents an immigration document, LSC believes that documenting the basis for eligibility by recording the type of immigration document presented is reasonable and accommodates the commenters' concern.

1626.4(f) Changes in basis for eligibility.

Because LSC is deleting paragraph (c), this subsection will be relocated to paragraph (f) in the final rule. No other changes will be made to this subsection.

1626.5 Aliens eligible for assistance based on immigration status.

1. Comment: LSC received four comments regarding proposed section 1626.5(e). The proposed change to this section updated the reference to withholding of removal under section 243(h) of the INA to section 241(b)(3) of the INA to reflect the transfer of the provision from one section of the INA to the other. The comments were substantially similar in their recommendation and rationale. The commenters recommended that persons granted withholding of deportation under prior section 243(h) of the INA should not be removed from the regulation because some persons are still subject to deportation proceedings or orders of deportation and cannot obtain withholding of removal under section 241(b)(3) of the INA.

Response: LSC made this change to the rule to reflect an update to the INA. Further research showed that Congress intended individuals with orders of exclusion or deportation to be treated the same as individuals with orders of removal. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress recharacterized the actions of deportation (expulsion from the United States) and exclusion (barring from entry into the United States) into a single action—removal. Sec. 304, Pub. L. 104-208, Div. C, Tit. III, 110 Stat. 3009-589 (1996) (8 U.S.C. 1229a) (establishing “removal proceedings” as the proceedings in which an immigration judge would decide the admissibility or deportability of an alien); see also 8 U.S.C. 1229(e)(2) (defining “removable” to mean that an alien is either inadmissible under section 212 of the INA or deportable under section 237 of the INA); Sec. 308, Pub. L. 104-208, Div. C, Tit. III, 110 Stat. 3009-614–3009-625 (amending various sections of the INA to change references to “deportation” or “exclusion” to “removal”). Section 309(d)(2) of IIRIRA explicitly states that for carrying out the purposes of the INA, “any reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation.” Sec. 309(d)(2), Pub. L. 104-208, Div. C, Tit. III, 110 Stat. 3009-627 (8 U.S.C. 1101 note).

LSC does not believe that, when Congress passed IIRIRA, it intended to bar individuals granted withholding of deportation under prior section 243(h) of the INA from continued eligibility for legal services from an LSC-funded recipient. Rather, the various provisions in IIRIRA consolidating “deportation” and “exclusion” under the umbrella of “removal,” combined with the deeming provision in section 309(d)(2), suggest that Congress intended the rights, remedies, and obligations attending deportation

and exclusion to carry over to removal. Consequently, LSC is revising section 1626.5(e) to restore the references to individuals who received withholding of deportation under prior INA section 243(h).

2. Comment: The same four commenters recommended that LSC include in section 1626.5 “withholding of removal under the Convention Against Torture (CAT)” and “deferral of removal under CAT” as bases for eligibility. Their reasons for the recommendation were twofold. First, withholding and deferral of removal under the CAT are “extremely similar” to withholding of deportation or removal under either prior section 243(h) or current section 241(b) of the INA because each type of withholding is intended to prevent an individual from being involuntarily returned to a country where his or her life or freedom would be endangered. The second reason was a practical one: that individuals may not have documentation specifying which type of withholding of removal they have received. The commenters stated that the United States Citizenship and Immigration Service uses the same code for all three types of withholding.

Response: LSC is sensitive to the fact that individuals who have obtained withholding of removal under the CAT may need legal assistance in much the same way that individuals who have received withholding of removal under section 243(h) of the INA or deportation under prior section 241(b) of the INA do. However, Congress has not authorized LSC to extend eligibility to individuals who have obtained withholding of removal under the CAT. Because LSC has neither the authority nor the discretion to extend eligibility for LSC-funded legal assistance to these individuals, LSC will retain the text from the proposed rule.

LSC is making a technical amendment to section 1626.5(c). The first sentence of the section states that an alien who has been granted asylum by the Attorney General under Section 208 of the INA is eligible for assistance. LSC would insert the phrase “or the Secretary of DHS” to reflect the fact that Section 208 of the INA, 8 U.S.C. 1158, has been amended to give the Secretary of DHS the authority to grant asylum, in addition to the Attorney General. Sec. 101(a)(1), (2), Pub. L. 109-13; 119 Stat. 231, 302 (2005).

#### 1626.6 Verification of citizenship.

LSC received no comments on the proposed changes to this section.

#### 1626.7 Verification of Eligible Alien Status.

LSC received comments on the proposal to remove the appendix to Part 1626 and publish the contents as a program letter or equivalent document, which will be discussed in the section on the appendix. LSC received no comments on the other proposed changes to this section.

#### 1626.8 Emergencies.

LSC received no comments on the proposed changes to this section.

#### 1626.11 H-2 Forestry and Agricultural Workers.

1. Comment: LSC received two comments in response to the proposed revisions to section 1626.11. LSC proposed to amend section 1626.11 to add H-2B forestry workers as a new category of aliens eligible for legal assistance from LSC-funded recipients, consistent with the FY 2008 LSC appropriation’s amendment to section 504(a)(11)(E) of the FY 1996 LSC appropriation. Both comments supported the amendment, stating that the ability to represent H-2A agricultural and H-2B forestry workers enables recipients to engage more fully in investigating and enforcing labor laws, particularly wage and

conditions laws. One commenter recommended that Congress should act to expand eligibility for LSC-funded legal assistance to “all low-income workers, regardless of their immigration status.”

Response: LSC appreciates the comments in support of the revisions to section 1626.11. LSC is making technical amendments to sections 1626.11(a) and (b) in the final rule. The original version of section 1626.11 stated that agricultural workers “admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii)” were eligible for legal assistance related to certain issues arising under the workers’ employment contracts. 53 FR 40194, 40196, Oct. 19, 1988 (NPRM); 54 FR 18109, 18112, Apr. 27, 1989 (final rule). This language omitted the full relevant text of the statute that made nonimmigrant workers “admitted to or permitted to remain in the United States under” 8 U.S.C. 1101(a)(15)(h)(ii)(A) eligible for legal services. Sec. 305, Pub. L. 99-603, 100 Stat. 3359, 3434 (1986) (emphasis added). Congress used the same “admitted to, or permitted to remain in” language when it expanded eligibility to H-2B forestry workers. Sec. 540, Pub. L. 110-161, Div. B, Title V, 121 Stat. 1844, 1924 (2007). This same omission was made in the NPRM for this rule. 78 FR 51696, 51704, Aug. 21, 2013. The omission of this language was an oversight and LSC is amending sections 1626.11(a) and (b) to include it.

Proposed Appendix to Part 1626 – Examples of Documents and Other Information  
Establishing Alien Eligibility for Representation by LSC Programs.

1. Comment: LSC received seven comments in response to the proposal to remove the appendix to Part 1626 and instead publish the list of documents establishing alien eligibility as program letters or equivalent policy documents. Six commenters supported the proposal, and one commenter objected. The six commenters supporting the proposal

agreed with LSC's assessment that the frequently changing nature of immigration documents and forms requires a more flexible means of disseminating up-to-date information to LSC recipients than the rulemaking procedure allows. One of the comments in support, however, recommended that LSC publish the initial program letter for public comment and establish a comment and feedback procedure for issuance of subsequent program letters. The desire for notice and comment was reflected in the one comment opposing the proposal. The commenter opposing the removal of the appendix asserted that experienced immigration practitioners are often in the best position to understand fully the types of documentation that can adequately demonstrate an eligible alien status. The commenter stated that because rulemaking is the only way to ensure an opportunity for public comment and obtaining public comment is consistent with LSC's policy of engaging in open dialogue with its stakeholders, LSC should continue publishing the list of documentary evidence as the Appendix to Part 1626.

2. Comment: In response to the FNPRM, LSC received one comment asserting that the program letter constitutes guidelines or instructions that require notice and an opportunity for comment under section 1008(e) of the LSC Act, 42 U.S.C. 2996g(e).

Response: LSC agrees that practitioner input is essential to ensuring that the list of documents and other evidence of alien eligibility is complete, accurate, and useful. LSC does not agree that the program letter constitutes guidance or instructions requiring notice and public comment. As stated in the preamble to the NPRM, LSC is publishing the initial program letter replacing the Appendix to Part 1626 under the LSC Rulemaking Protocol. The Rulemaking Protocol requires the Corporation to provide a comment period of at least thirty days for any regulatory changes that occur through notice and



comment rulemaking. 67 FR 69762, 69764, Nov. 19, 2002. LSC does not intend that removal of the list of documents from the regulation will limit the ability of recipients to provide input into future versions of the list.

The program letter replacing the Appendix to Part 1626 was published for public comment on March 7, 2014. 79 FR 13017, Mar. 7, 2014. The comment period closed on April 7, 2014.

#### List of Subjects in 45 CFR Part 1626

Aliens, Grant programs-law, Legal services, Migrant labor, Reporting and recordkeeping requirements

For the reasons discussed in the preamble, the Legal Services Corporation proposes to revise 45 CFR part 1626 to read as follows:

### **PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS**

#### **Sec.**

1626.1 Purpose.

1626.2 Definitions.

1626.3 Prohibition.

1626.4 Aliens eligible for assistance under anti-abuse laws.

1626.5 Aliens eligible for assistance based on immigration status.

1626.6 Verification of citizenship.

1626.7 Verification of eligible alien status.

1626.8 Emergencies.

1626.9 Change in circumstances.

1626.10 Special eligibility questions.

1626.11 H-2 forestry and agricultural workers.

1626.12 Recipient policies, procedures, and recordkeeping.

**AUTHORITY:** 42 U.S.C. 2996g(e).

**§ 1626.1 Purpose.**

This part is designed to ensure that recipients provide legal assistance only to citizens of the United States and eligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance.

**§ 1626.2 Definitions.**

(a) Anti-abuse statutes means the Violence Against Women Act of 1994, Pub. L. 103-322, 108 Stat. 1941, as amended, and the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (collectively referred to as “VAWA”); Section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U); and the incorporation of these statutory provisions in section 502(a)(2)(C) of LSC’s FY 1998 appropriation, Pub. L. 105-119, Title V, 111 Stat. 2440, 2510 as incorporated by reference thereafter; the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464 (“TVPA”), as amended; and Section 101(a)(15)(T) of the Immigration and Nationality Act (“INA”), 8 U.S.C. 1101(a)(15)(T).

(b) Battered or subjected to extreme cruelty includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution may be considered acts of violence. Other abusive actions may also be acts of

violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

(c) Certification means the certification prescribed in 22 U.S.C. 7105(b)(1)(E).

(d) Citizen means a person described or defined as a citizen or national of the United States in 8 U.S.C. 1101(a)(22) and Title III of the Immigration and Nationality Act (INA), Chapter 1 (8 U.S.C. 1401 et seq. ) (citizens by birth) and Chapter 2 (8 U.S.C. 1421 et seq.) (citizens by naturalization) or antecedent citizen statutes.

(e) Eligible alien means a person who is not a citizen but who meets the requirements of § 1626.4 or § 1626.5.

(f) Ineligible alien means a person who is not a citizen and who does not meet the requirements of § 1626.4 or § 1626.5.

(g) On behalf of an ineligible alien means to render legal assistance to an eligible client that benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

(h)(1) Qualifies for immigration relief under section 101(a)(15)(U) of the INA means:

(i) A person who has been granted relief under that section;

(ii) A person who has applied for relief under that section and who the recipient determines has evidentiary support for such application; or

(iii) A person who has not filed for relief under that section, but who the recipient determines has evidentiary support for filing for such relief.

(2) A person who “qualifies for immigration relief” includes any person who may apply for primary U visa relief under subsection (i) of section 101(a)(15)(U) of the INA or for derivative U visa relief for family members under subsection (ii) of section

101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)). Recipients may provide assistance for any person who qualifies for derivative U visa relief regardless of whether such a person has been subjected to abuse.

(i) Rejected refers to an application for adjustment of status that has been denied by DHS and is not subject to further administrative appeal.

(j) Victim of severe forms of trafficking means any person described at 22 U.S.C. 7105(b)(1)(C).

(k) Victim of sexual assault or trafficking means:

(1) A victim of sexual assault subjected to any conduct included in the definition of sexual assault in VAWA, 42 U.S.C. 13925(a)(29); or

(2) A victim of trafficking subjected to any conduct included in the definition of “trafficking” under law, including, but not limited to, local, state, and federal law, and T visa holders regardless of certification from the U.S. Department of Health and Human Services (HHS).

(l) United States, for purposes of this part, has the same meaning given that term in 8 U.S.C. 1101(a)(38) of the INA.

### **§ 1626.3 Prohibition.**

Recipients may not provide legal assistance for or on behalf of an ineligible alien. For purposes of this part, legal assistance does not include normal intake and referral services.

### **§ 1626.4 Aliens eligible for assistance under anti-abuse laws.**

(a) Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law:

(1) A recipient may provide related legal assistance to an alien who is within one of the following categories:

(i) An alien who has been battered or subjected to extreme cruelty, or is a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(ii) An alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty, or has been a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)).

(2)(i) A recipient may provide legal assistance, including but not limited to related legal assistance, to:

(A) An alien who is a victim of severe forms of trafficking of persons in the United States; or

(B) An alien classified as a non-immigrant under section 101(a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii) regarding others related to the victim).

(ii) For purposes of this part, aliens described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section include individuals seeking certification as victims of severe forms of trafficking and certain family members applying for immigration relief under 8 U.S.C. 1101(a)(15)(T)(ii).

(b) (1) Related legal assistance means legal assistance directly related:

(i) To the prevention of, or obtaining relief from, the battery, cruelty, sexual assault, or trafficking;

(ii) To the prevention of, or obtaining relief from, crimes listed in section 101(a)(15)(U)(iii) of the INA (8 U.S.C. 1101(a)(15)(U)(iii)); or

(iii) To an application for relief:

(A) Under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(B) Under section 101(a)(15)(T) of the INA (8 U.S.C. 1101(a)(15)(T)).

(2) Such assistance includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse. Such representation may include immigration law matters and domestic or poverty law matters (such as obtaining civil protective orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings and contempt actions).

(c) Relationship to the United States. (1) Relation of activity to the United States. An alien is eligible under this section if the activity giving rise to eligibility violated a law of the United States, regardless of where the activity occurred, or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

(2) Relationship of alien to the United States. (i) An alien defined in § 1626.2(b), (h), or (k)(1) need not be present in the United States to be eligible for assistance under this section.

(ii) An alien defined in § 1626.2(j) or (k)(2) must be present in the United States to be eligible for assistance under this section.

(d) Evidentiary support. (1) Intake and subsequent evaluation. A recipient may determine that an alien is qualified for assistance under this section if there is evidentiary support that the alien falls into any of the eligibility categories or if the recipient determines there will likely be evidentiary support after a reasonable opportunity for further investigation. If the recipient determines that an alien is eligible because there will likely be evidentiary support, the recipient must obtain evidence of support as soon as possible and may not delay in order to provide continued assistance.

(2) Documentary evidence. Evidentiary support may include, but is not limited to, affidavits or unsworn written statements made by the alien; written summaries of statements or interviews of the alien taken by others, including the recipient; reports and affidavits from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; orders of protection or other legal evidence of steps taken to end abuse; evidence that a person sought safe haven in a shelter or similar refuge; photographs; documents; or other evidence of a series of acts that establish a pattern of qualifying abuse.

(3) Victims of severe forms of trafficking. Victims of severe forms of trafficking may present any of the forms of evidence listed in paragraph (d)(2) of this section or any of the following:

(i) A certification letter issued by the Department of Health and Human Services (HHS).

(ii) Verification that the alien has been certified by calling the HHS trafficking verification line, (202) 401-5510 or (866) 401-5510.

(iii) An interim eligibility letter issued by HHS, if the alien was subjected to severe forms of trafficking while under the age of 18.

(iv) An eligibility letter issued by HHS, if the alien was subjected to severe forms of trafficking while under the age of 18.

(e) Recordkeeping. Recipients are not required by § 1626.12 to maintain records regarding the immigration status of clients represented pursuant to this section. If a recipient relies on an immigration document for the eligibility determination, the recipient shall document that the client presented an immigration document by making a note in the client's file stating that a staff member has seen the document, the type of document, the client's alien registration number ("A number"), the date of the document, and the date of the review, and containing the signature of the staff member that reviewed the document.

(f) Changes in basis for eligibility. If, during the course of representing an alien eligible pursuant to § 1626.4(a)(1), a recipient determines that the alien is also eligible under § 1626.4(a)(2) or § 1626.5, the recipient should treat the alien as eligible under that section and may provide all the assistance available pursuant to that section.

**§ 1626.5 Aliens eligible for assistance based on immigration status.**

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:



(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 101(a)(20) of the INA (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the INA, and such application has not been rejected;

(c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (relating to refugee admissions) or who has been granted asylum by the Attorney General or the Secretary of DHS under section 208 of the INA (8 U.S.C. 1158);

(d) An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7), as in effect on March 31, 1980) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(e) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation or exclusion under section 243(h) of the INA (8 U.S.C. 1253(h), as in effect on April 16, 1996) or withholding of removal pursuant to section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)); or

(f) An alien who meets the requirements of § 1626.10 or § 1626.11.

#### **§ 1626.6 Verification of citizenship.**

(a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens,

unless the only service provided for a citizen is brief advice and consultation by telephone, or by other non-in-person means, which does not include continuous representation.

(b) When a recipient has reason to doubt that an applicant is a citizen, the recipient shall require verification of citizenship. A recipient shall not consider factors such as a person's accent, limited English-speaking ability, appearance, race, or national origin as a reason to doubt that the person is a citizen.

(1) If verification is required, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct, and authentic of any of the following documents as evidence of citizenship:

- (i) United States passport;
- (ii) Birth certificate;
- (iii) Naturalization certificate;
- (iv) United States Citizenship Identification Card (INS Form 1-197 or I-197); or
- (v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(2) A recipient may also accept any other authoritative document, such as a document issued by DHS, by a court, or by another governmental agency, that provides evidence of citizenship.

(3) If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

**§ 1626.7 Verification of eligible alien status.**

(a) An alien seeking representation shall submit appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone, or by other non-in-person means, which does not include continuous representation of a client.

(1) As proof of eligibility, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct, and authentic, of any documents establishing eligibility. LSC will publish a list of examples of such documents from time to time in the form of a program letter or equivalent.

(2) A recipient may also accept any other authoritative document issued by DHS, by a court, or by another governmental agency, that provides evidence of alien status.

(b) A recipient shall upon request furnish each person seeking legal assistance with a current list of documents establishing eligibility under this part as is published by LSC.

**§ 1626.8 Emergencies.**

In an emergency, legal services may be provided prior to compliance with § 1626.4, § 1626.6 and § 1626.7 if:

(a) An applicant cannot feasibly come to the recipient's office or otherwise transmit written documentation to the recipient before commencement of the representation required by the emergency, and the applicant provides oral information to establish eligibility which the recipient records, and the applicant submits the necessary documentation as soon as possible; or

(b) An applicant is able to come to the recipient's office but cannot produce the required documentation before commencement of the representation, and the applicant

signs a statement of eligibility and submits the necessary documentation as soon as possible; and

(c) The recipient informs clients accepted under paragraph (a) or (b) of this section that only limited emergency legal assistance may be provided without satisfactory documentation and that, if the client fails to produce timely and satisfactory written documentation, the recipient will be required to discontinue representation consistent with the recipient's professional responsibilities.

**§ 1626.9 Change in circumstances.**

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, continued representation is prohibited by this part and a recipient must discontinue representation consistent with applicable rules of professional responsibility.

**§ 1626.10 Special eligibility questions.**

(a) (1) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(2) All citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are eligible to receive legal assistance provided that they are otherwise eligible under the Act.

(b) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(c) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(d) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of the Immigration Reform and Control Act (“IRCA”) is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, and the application has not been rejected.

(e) A recipient may provide legal assistance to indigent foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and the Federal implementing statute, the International Child Abduction Remedies Act, 42 U.S.C. 11607(b), provided that they are otherwise financially eligible.

**§ 1626.11 H-2 agricultural and forestry workers.**

(a) Nonimmigrant agricultural workers admitted to, or permitted to remain in, the United States under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii)(a), commonly called H-2A agricultural workers, may be provided legal assistance regarding the matters specified in paragraph (c) of this section.

(b) Nonimmigrant forestry workers admitted to, or permitted to remain in, the United States under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii)(b), commonly called H-2B forestry workers, may be provided legal assistance regarding the matters specified in paragraph (c) of this section.

(c) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

(1) Wages;

(2) Housing;

(3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

**§ 1626.12 Recipient policies, procedures and recordkeeping.**

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Stefanie K. Davis

Assistant General Counsel

BILLING CODE 7050-01-P

**Private Attorney Involvement**  
**Proposed Rule Part 1614**

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1614**

**Private Attorney Involvement**

**AGENCY:** Legal Services Corporation

**ACTION:** Notice of proposed rulemaking

**SUMMARY:** This proposed rule updates the Legal Services Corporation (LSC or Corporation) regulation on private attorney involvement (PAI) in the delivery of legal services to eligible clients.

**DATE:** Comments must be submitted by [INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

**ADDRESSES:** Written comments must be submitted to Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 337-6519 (fax) or pairulemaking@lsc.gov. Electronic submissions are preferred via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, (202) 295-1563 (phone), (202) 337-6519 (fax), pairulemaking@lsc.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Regulatory History**



In 1981, LSC issued the first instruction (“Instruction”) implementing the Corporation’s policy that LSC funding recipients dedicate a percentage of their basic field grants to involving private attorneys in the delivery of legal services to eligible clients. 46 FR 61017, 61018, Dec. 14, 1981. The goal of the policy was to ensure that recipients would provide private attorneys with opportunities to give legal assistance to eligible clients “in the most effective and economical manner and consistent with the purposes and requirements of the Legal Services Corporation Act.” Id. at 61017. The Instruction gave recipients guidance on the types of opportunities that they could consider, such as engaging private attorneys in the direct representation of eligible clients or in providing community legal education. Id. at 61018. Recipients were directed to consider a number of factors in deciding which activities to pursue, including the legal needs of eligible clients, the recipient’s priorities, the most effective and economical means of providing legal assistance, linguistic and cultural barriers to effective advocacy, conflicts of interest between private attorneys and eligible clients, and the substantive expertise of the private attorneys participating in the recipients’ projects. Id. LSC reissued the Instruction without substantive change in 1983. 48 FR 53763, Nov. 29, 1983.

LSC subsequently promulgated the PAI policy in a regulation published at 45 CFR part 1614. 49 FR 21328, May 21, 1984. The new regulation adopted the policy and procedures established by the Instruction in large part. The rule adopted an amount equivalent to 12.5% of a recipient’s basic field grant as the amount recipients were to spend on PAI activities. Id. The rule also adopted the factors that recipients were to consider in determining which activities to pursue and the procedures by which recipients were to establish their PAI plans. Id. at 21328-29. Finally, the rule incorporated the

Instruction's prohibition on using revolving litigation funds as a method of engaging private attorneys. Id. at 21329.

LSC published a notice of proposed rulemaking (NPRM) to amend part 1614 in 1985. 50 FR 34510, Aug. 26, 1985. The NPRM proposed numerous revisions to the original rule. A major substantive change was the introduction of the mandatory direct delivery provision. Id. at 34511. LSC believed that “the essence of PAI is the direct delivery of legal services to the poor by private attorneys,” and consequently required recipients to incorporate direct delivery into their PAI programs. Id. However, LSC left to the recipients' discretion the determination of what percentage of a recipient's PAI program to dedicate to direct delivery. Id. The NPRM also introduced new provisions on joint ventures, waivers, and sanctions for failure to comply with the PAI requirement. Id. at 34511, 34512. Finally, the NPRM proposed simplified audit provisions and a significantly rewritten section prohibiting revolving litigation funds. Id. at 34511. The NPRM left the 12.5% PAI requirement unchanged. Id. at 34510.

After receiving comments, the Corporation published the revised part 1614 as a final rule with an additional request for comments. 50 FR 48586, Nov. 26, 1985. LSC requested comments on a new, previously unpublished definition of the term “private attorney.” Id. at 48586-87. The original definition of “private attorney” substantially mirrored the definition that exists today:

As of January 1, 1986, the term “private attorney” as used in this Part means an attorney who is not a staff attorney as defined in § 1600.1 of these regulations. In circumstances where the expenditure of funds with respect to a private attorney would violate the provisions of the Ethics in Government Act (18 U.S.C. 207) if the recipients or grantees were federal agencies, such funds may not be counted as part of the PAI requirement.

Id. at 48591. Although LSC is not a federal agency for purposes of the Ethics in Government Act, the Corporation chose to follow the Act because the Corporation uses taxpayer funds to make grants to its recipients. The purpose of the Ethics in Government Act, LSC stated, “is to keep people at federal agencies from transferring money to former colleagues of theirs who have retired into private practice.” Id. at 48587. The Corporation addressed two issues through the proposed definition. The first issue was that the purpose of the PAI rule was to reach out to attorneys who had not been involved previously in providing legal services to the poor – a purpose that was not accomplished by paying former LSC recipient staff attorneys to provide legal services. Id. The second was the appearance of impropriety created when a recipient paid a former attorney to handle the kinds of cases that the attorney worked on while employed by the recipient. Id. LSC recognized that there may be circumstances under which the most appropriate person to handle a given case would be an attorney previously employed by a recipient, and did not prohibit recipients from using funds to pay the former staff attorney in such cases. The only thing LSC proposed to prohibit was counting such funds toward a recipient’s PAI requirement. Id.

The last substantive change to Part 1614 came with the June 13, 1986 publication of the amended final rule. 51 FR 21558, June 13, 1986. In the amended final rule, the Corporation removed the reference to the Ethics in Government Act from the definition of “private attorney.” Id. However, LSC adopted the policy of the Ethics in Government Act by including a separate provision prohibiting recipients from including in their PAI requirement payments made to individuals who had been staff attorneys within the

preceding two years. Id. The definition of “private attorney” thus became the definition that exists today:

As of January 1, 1986, the term “private attorney” as used in this Part means an attorney who is not a staff attorney as defined in § 1600.1 of these regulations

45 CFR § 1614.1(d).

LSC made a technical amendment to Part 1614 in 2013 to bring Section 1614.7, which established procedures for addressing a recipient’s failure to comply with the PAI requirement, into conformity with the Corporation’s enforcement policy. 78 FR 10085, 10092, Feb. 13, 2013.

On January 26, 2013, the LSC Board of Directors (Board) voted to authorize LSC to initiate rulemaking to consider revisions to the PAI rule in response to the recommendations made by LSC’s Pro Bono Task Force (Task Force). The Task Force and its recommendations are discussed at greater length below. On April 14, 2013, the Board voted to convene two rulemaking workshops for the purpose of obtaining input from recipients and other stakeholders regarding the Task Force’s recommendations and potential changes to part 1614. Through a request for information published in the Federal Register on May 10, 2013, the Corporation invited comments on the recommendations pertaining to part 1614 and solicited participants for the two rulemaking workshops. 78 FR 27339, May 10, 2013.

The first workshop was held on July 21, 2013, in Denver, Colorado, immediately following the Board’s quarterly meeting. LSC subsequently published a second request for information, which posed new questions and solicited participants for the second and final rulemaking workshop. 78 FR 48848, Aug. 12, 2013. The second rulemaking

workshop was held on September 17, 2013, at LSC headquarters in Washington, DC. The closing date of the comment period for both requests for information was October 17, 2013.

The Corporation considered all comments received in writing and provided during the rulemaking workshops in the development of this NPRM. On March 3, 2014, the Operations and Regulations Committee (Committee) of the Board held a telephonic meeting to discuss the proposed text of the rule. On April XX, 2014, the Committee voted to publish the NPRM in the Federal Register for comment.<sup>[a1]</sup>

## II. The Pro Bono Task Force

On March 31, 2011, the LSC Board of Directors (Board) approved a resolution establishing the Pro Bono Task Force. Resolution 2011-009, “Establishing a Pro Bono Task Force and Conferring Upon the Chairman of the Board Authority to Appoint Its Members,” Mar. 31, 2011, <http://www.lsc.gov/board-directors/resolutions/resolutions-2011>. The purpose of the Task Force was to “identify and recommend to the Board new and innovative ways in which to promote and enhance pro bono initiatives throughout the country[.]” Id. The Chairman of the Board appointed to the Task Force individuals representing legal services providers, organized pro bono programs, the judiciary, law firms, government attorneys, law schools, bar leadership, corporate general counsels, and technology providers.

The Task Force focused its efforts on identifying ways to increase the supply of lawyers available to provide pro bono legal services while also engaging attorneys to reduce the demand for legal services. Legal Services Corporation, Report of the Pro Bono Task Force at 2, October 2012, available at <http://lri.lsc.gov/legal-representation/private->

[attorney-involvement/resources](#). Members considered strategies for expanding outreach to private attorneys and opportunities for private attorneys to represent individual clients in areas of interest to the attorneys. In addition, the Task Force explored strategies, such as appellate advocacy projects or collaborations with special interest groups, to help private attorneys address systemic problems as a way to decrease the need for legal services on a larger scale than can be achieved through individual representation. Id. Finally, the Task Force considered ways in which volunteers, including law students, paralegals, and members of other professions, could be better used to address clients' needs. Id.

In October, 2012, the Task Force released its report to the Corporation. The Task Force made four overarching recommendations to LSC in its report.

Recommendation 1: LSC Should Serve as an Information Clearinghouse and Source of Coordination and Technical Assistance to Help Grantees Develop Strong Pro Bono Programs

Recommendation 2: LSC Should Revise Its Private Attorney Involvement (PAI) Regulation to Encourage Pro Bono.

Recommendation 3: LSC Should Launch a Public Relations Campaign on the Importance of Pro Bono

Recommendation 4: LSC Should Create a Fellowship Program to Foster a Lifelong Commitment to Pro Bono

The Task Force also requested that the judiciary and bar leaders assist LSC in its efforts to expand pro bono by, for example, changing or advocating for changes in court rules that would allow retired attorneys or practitioners licensed outside of a recipient's jurisdiction to engage in pro bono legal representation. Id. at 25-27. Collaboration among LSC recipients, the private bar, law schools, and other legal services providers was a theme running throughout the Task Force's recommendations to the Corporation.

Recommendation 2 provided the impetus for the NPRM. Recommendation 2 had three subparts. Each recommendation focused on a portion of the PAI rule that the Task Force identified as posing an obstacle to effective engagement of private attorneys. Additionally, each recommendation identified a policy determination of the Corporation or an interpretation of the PAI rule issued by the Office of Legal Affairs (OLA) that the Task Force believed created barriers to collaboration and the expansion of pro bono legal services. The three subparts are:

2(a) – Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees’ PAI obligations, especially in “incubator” initiatives.

2(b) – Grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low-income clients.

2(c) – LSC should reexamine the rule that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.

Id. at 20-21.

The Task Force observed in Recommendation 2 that the “PAI regulation has resulted in increased collaboration between LSC grantees and private attorneys,” but that the legal market has changed since the rule’s issuance. Id. at 20. The Task Force suggested that “there are certain areas where the regulation might productively be revised to ensure that LSC grantees can use their grants to foster pro bono participation.” Id. at 20. For example, the omission of services provided by law students and other non-lawyers and the poor fit of the “staff attorney” construct in the definition of “private attorney” created complications for recipients attempting to fulfill the PAI requirement. Id. at 20-21. The Task Force encouraged LSC to undertake a “thoughtful effort to reexamine the regulation to ensure that it effectively encourages pro bono participation.” Id. at 22.

### III. Public Comments

LSC determined that an examination of the PAI rule within the context of the Task Force recommendations would benefit from early solicitation of input from stakeholders. LSC therefore published two requests for information seeking both written comments and participation in two rulemaking workshops held in July and September 2013. The first request for information focused discussion specifically on the three parts of Recommendation 2. 78 FR 27339, May 10, 2013. The second request for information, published after the July workshop, supplemented the first with questions developed in response to issues raised at the July workshop. 78 FR 48848, Aug. 12, 2013. In particular, the August request for information posed more detailed questions about the issues identified in Recommendation 2.

LSC received a total of twenty-five responses from LSC recipients, the American Bar Association (ABA), through its Standing Committee on Legal Aid and Indigent Defendants, the National Legal Aid and Defender Association, and others involved in pro bono work, including a state court judge and a representative of the National Association of Pro Bono Professionals. The nature of the written comments and workshop presentations led LSC to consider the recommendations of the Task Force in the context of overlapping solutions that address more than one of the recommendations, rather than discrete responses to each recommendation. For example, LSC considered the definition of the term “private attorney” as an issue whose resolution would respond to both Recommendations 2(a) and 2(b). This preamble will identify and discuss the Task Force recommendations and the comments as the Corporation did—within the framework of cross-cutting issues.



The report of the Pro Bono Task Force, the responses to the requests for information, transcripts of workshop presentations, and other related materials are available at <http://www.lsc.gov/rulemaking-lscs-private-attorney-involvement-pai-regulation>.

#### The Definition of “Private Attorney”

The current PAI rule defines “private attorney” as “an attorney who is not a staff attorney as defined in § 1600.1 of these regulations.” 45 CFR 1614.1(d). “Staff attorney,” in turn, is defined as “an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from [LSC] 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 [LSC] Act.” 45 CFR 1600.1. Finally, LSC has defined “attorney” as “a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction in which assistance is rendered.” 45 CFR 1600.1.

The “private attorney” definition received considerable criticism in written responses to the requests for information and during the workshops themselves. Commenters called the definition “confusing and limiting” because the use of the word “private” seems to exclude government attorneys, in-house counsel, corporate attorneys, attorneys at other non-profits, law school professors, and adjunct law professors, even though the definition itself does not exclude them. They noted that the definition prevents recipients from allocating to the PAI requirement costs associated with involving law students, law graduates who have not yet become members of a state bar, and paralegals in the provision of legal information and legal assistance to eligible clients. Finally, they discussed the fact that because the definition is tied to the term “staff attorney,” with its

inclusion of an attorney who earns more than one-half of his or her professional income from an LSC grant, recipients cannot pay attorneys who are not otherwise employed, or not employed full-time (e.g., a retired attorney or a stay-at-home parent), to take cases at a discounted rate without turning them into “staff attorneys” whose activities are excluded from counting toward the PAI requirement. Commenters overwhelmingly recommended revising the term “private attorney,” with many of the recommendations being substantially similar to Recommendation 2(a) of the Task Force report.

In Recommendation 2(a), the Task Force recommended that LSC allow resources spent by recipients to supervise and train law students, law graduates, deferred associates, and others to be counted toward meeting recipients’ PAI obligations. Panelists expanded upon this recommendation by suggesting that LSC amend the rule to allow recipients to allocate to the PAI requirement costs associated with involving paralegals, retired attorneys, and other professionals who may assist the recipient in providing legal assistance, such as accountants or forensic investigators. Some commenters noted that paralegals and lay advocates can contribute to recipients’ PAI activities by participating in training events or representing clients in administrative proceedings where permitted by federal or state law. Other commenters described the contributions made by non-legal professionals to their delivery of legal services, such as financial experts conducting forensic accounting and providing expert testimony in recipient client cases. A few commenters advocated continuing to limit participation in PAI activities to licensed attorneys. On the whole, commenters supported including within the PAI rule services provided by non-lawyers that directly aid recipients in their delivery of legal assistance to eligible clients.

LSC considered Recommendation 2(a) and all of the comments relevant to the definition of “private attorney” and determined that a revision was in order. As noted by commenters, the existing definition excludes many individuals whose participation is instrumental in improving and expanding the availability of quality legal assistance to LSC-eligible individuals. LSC proposes to address the recommendation and comments in two ways. The first is to revise the definition of “private attorney.” The second is to expand the PAI rule to allow recipients to allocate to the PAI requirement costs associated with engaging law students, law graduates, or other professionals in the recipients’ provision of legal information and legal assistance to eligible clients.

LSC proposes to revise the definition of the term private attorney in three significant ways. First, LSC proposes to remove the reference to staff attorney as defined in section 1600.1 and replace it with affirmative statements about who a private attorney is. Second, LSC proposes to exclude from the term attorneys employed more than 1,000 hours per calendar year by LSC recipients or subrecipients. Finally, LSC proposes to exclude from the definition attorneys employed by non-LSC-funded legal services providers who are acting within the scope of their employment. LSC proposes these exclusions because the purpose of the PAI rule is to engage attorneys who are not currently involved in the delivery of legal services to low-income individuals as part of their regular employment.

In addition to revising the definition of the term private attorney, LSC proposes to add definitions for the new terms law graduate, law student, and other professional. As defined, individuals in these categories will be included along with private attorneys as individuals that recipients may involve in the delivery of legal services.

#### Defining Law Student Involvement

In Recommendation 2(a), the Task Force noted that “[c]ontributions from law school clinics can be counted only if a private attorney supervises the students” and encouraged the Corporation to “consider amending the regulation to allow grantee organizations to count as PAI expenses the funds they expend on training and supervising law students.” Report of the Pro Bono Task Force at 20. Under the current rule, recipients may allocate to the PAI requirement costs associated with law student activities only when a private attorney, including a professor overseeing a law school clinic, supervises the student. See OLA External Opinion EX-2005-1001. In its analysis, OLA noted that “[n]one of the support or indirect delivery activities listed in §1614.3(b)(2) expressly include the supervision of law students or discuss activities done solely as an ‘investment’ in potential future private attorney involvement[.]” EX-2005-1001 at 5. OLA concluded that because law students did not meet the definition of “private attorney,” any costs associated with services provided by the students could not be allocated to the recipient’s PAI requirement. Likewise, recipients could not count toward the PAI requirement the time recipient attorneys spent supervising the law students because the supervision could not be considered support provided by the recipient to a private attorney.

Participants in the rulemaking workshops and other commenters echoed Recommendation 2(a). One commenter described a new bar rule in New York that will require all applicants to the New York bar to provide fifty hours of pro bono legal services prior to applying for admission. The same commenter stated that allowing recipients to receive PAI credit for training and supervising law students will result in more effective and efficient integration of the “hundreds of thousands of new volunteer law student pro bono hours that are becoming available into their delivery systems.”

While commenters generally supported extending PAI to services provided by law students, they did so with some caveats. Some commenters were concerned that services provided by law students would become the focus of some recipients' programs, thus detracting from the rule's emphasis on engaging licensed attorneys in the delivery of legal services. Others suggested caps on the amount of the 12.5% that could be met by credit for supervising law students. Finally, others suggested that only those law student activities that involve substantive legal work that actually expand recipients' capacity—such as research or developing pleadings—should be included within the rule.

LSC considered this issue at length. A significant part of the discussion centered on the implicit suggestion in both the Task Force report and the comments that recipients should be able to allocate to the PAI requirement costs associated with their existing programs involving law students. LSC proposes to adopt the part of Recommendation 2(a) that advocates including law students within the rule. Interviewing clients, legal research, development of standard forms for posting on a legal resource website, and drafting briefs or memoranda are examples of law student work that supports the provision of legal information or legal assistance to eligible clients.

#### Defining Paralegal Involvement

The Task Force suggested that LSC recipients “consider ways in which they can involve other members of the law firm community in pro bono – including paralegals and other administrative staff.” Report of the Pro Bono Task Force at 11. Although the Task Force did not recommend explicitly that LSC consider amending part 1614 to include paralegals among the groups that recipients could engage in the delivery of legal services, it did suggest in Recommendation 2(a) that “resources spent supervising and training law

students, deferred associates, and others” should be counted toward the PAI requirement. Id. at 20.

Commenters recommended including paralegals within the definition of “private attorney.” Commenters pointed out that paralegals can represent clients in administrative proceedings and assist in will preparation under an attorney’s supervision. By taking on these types of duties, commenters continued, paralegals both expand the availability of services to eligible clients and relieve the supervising attorney of having to undertake those duties alone, thereby increasing her availability to provide legal services.

LSC is adopting the recommendation to include paralegals in the rule. LSC considered establishing paralegals as a separate category of individuals recipients may engage in activities under this part. LSC researched accrediting standards and job descriptions for paralegals and determined that the term “paralegal” can cover a wide range of roles, from purely administrative support staff to provider of substantive legal services under the supervision of a licensed attorney. Additionally, LSC found that there is no uniformity across states with regard to the education, licensing, or credentialing that an individual must have to be called a “paralegal.” See, e.g., National Federation of Paralegal Associations, Paralegal Regulation by State (updated 2012), available at <http://www.paralegals.org/default.asp?page=30>. Therefore, paralegals are included within the term other professional.

#### Support and Other Activities

Recommendations 2(b) and 2(c) of the Task Force report formed the basis for the most significant proposed changes to part 1614. These recommendations focused, respectively, on intake and referral programs and on case-handling requirements under

the existing regulations. Both recommendations touched on common issues: whether PAI activities must include screening for LSC eligibility, whether recipients must track the outcomes of all cases in which services are provided through private attorneys, and whether recipients must accept individual cases handled by private attorneys as their own cases. LSC proposes to address the issues raised by these recommendations and the relevant comments by introducing provisions governing three areas: screening, clinics, and intake and referral systems. LSC will discuss the three areas separately in this preamble.

### Screening

Recommendation 2(c) of the Task Force report discussed two requirements. The first was that recipients accept individuals assisted through the clinic as their own clients in order to allocate costs associated with supporting the clinic to the PAI requirement. This requirement, stated in OLA External Opinion EX-2008-1001, is addressed below in the discussion regarding clinics and intake and referral systems.

EX-2008-1001 raised a second issue: whether recipient participation in an unscreened clinic could potentially subsidize restricted activities, such as providing legal assistance to aliens not eligible for LSC-funded services. To put this issue into context, we briefly review restrictions imposed by statutes and LSC's regulations.

The LSC Act requires LSC recipients to provide LSC-funded services based on financial eligibility criteria and priorities that are determined pursuant to LSC guidelines. 42 U.S.C. 2996f(a)(2). Recipients of LSC funding are subject to two types of restrictions under the LSC Act and LSC's annual appropriations: restrictions on the use of LSC funds and some other funds ("fund restrictions") and restrictions on all activities, regardless of

the source of funds (“entity restrictions”). Thus, while LSC recipients can use, for example, Older Americans Act funds for services to people who are not financially eligible (a funds restriction), LSC recipients cannot use any funds, other than Tribal funds, for ineligible aliens (an entity restriction). The applicability of these restrictions to non-LSC funds is governed by 45 CFR part 1610.

The LSC funds restrictions appear primarily in the LSC Act. See, e.g., 42 U.S.C. 2996f(b) (prohibitions on the use of LSC funds for various activities including criminal proceedings, political activities, and desegregation proceedings). The LSC entity restrictions appear primarily in LSC’s annual appropriation. Since the early 1980s, Congress has imposed restrictions on LSC grantees through riders in LSC’s appropriation. In 1996, Congress added the current set of appropriation restrictions and expanded them to apply to all activities of LSC grantees. See, e.g., sec. 504, Pub. L. 104-134, 110 Stat. 1321, 1321-53—1321-57. Before an LSC recipient may provide legal assistance to an individual, the recipient must ensure that the individual meets the LSC eligibility criteria or may be assisted by the recipient using non-LSC funds, and that the assistance will not involve a restricted activity.

LSC has further defined when recipients must screen for eligibility. LSC’s Case Service Report (CSR) Handbook describes two types of services that recipients may provide: legal assistance and legal information. The CSR defines “legal assistance” as “the provision of limited service or extended service on behalf of a client or clients that meets the criteria of the CSR Closing Categories contained in Chapter VIII. Legal assistance is specific to the client’s unique circumstances and involves a legal analysis that is tailored to the client’s factual situation. Legal assistance involves applying legal



judgment in interpreting the particular facts and in applying relevant law to the facts presented.” Legal Services Corporation, Case Service Report Handbook, at 3 (2008 ed., as amended 2011). By contrast, the CSR Handbook defines “legal information” as “substantive information not tailored to address a person’s specific legal problem. As such, it is general and does not involve applying legal judgment and does not recommend a specific course of action.” Id. LSC does not require recipients to determine whether an individual is eligible for services if the recipient is providing the individual only with legal information as defined in the CSR Handbook. Other Services Report FAQ, Nov. 2011, at 8, <http://grants.lsc.gov/rin/about-rin/grantee-guidance/other-services-report>.

With these statutory, regulatory, and policy requirements in mind, LSC has examined the issue whether recipient participation in an unscreened clinic could potentially subsidize restricted activities. The Task Force report did not discuss the issue of subsidies. When discussing screening in the clinic context, commenters expressed minimal concern about the potential for assisting clients who are ineligible for LSC-funded services. Most commenters focused on expanding the availability of private attorneys to provide pro bono legal services and not on the scope of LSC’s legal obligations to ensure that LSC resources are not used to subsidize restricted activities. One commenter suggested that the test for the PAI rule should be whether the activity is targeted at the base of eligible clients, even if the recipient cannot know whether every person assisted would be eligible. Another spoke about screened advice clinics, recommending that recipients should be able to count resources toward the PAI requirement for the time recipients spend supervising such clinics. The LSC Office of Inspector General (OIG) expressed concern that a relaxed screening requirement for

clinics would have the “unintended effect of increasing subsidization of restricted activity.” OIG urged LSC to exercise caution to “ensure that changes to the PAI rule do not make it more difficult to prevent and detect noncompliance with LSC regulations and do not increase the risk that LSC funds will be used to subsidize, whether intentionally or not, restricted activity.”

LSC considered the commenters’ views on screening and the burden that screening may place on recipients’ support for clinics operated solely by them or through the joint efforts of community organizations. LSC considered those views in light of the statutory restrictions Congress places on the funds appropriated to LSC and on recipients of LSC funds. LSC has concluded that, regardless of whether legal assistance is provided directly by a recipient or through PAI activities, to avoid impermissible subsidization, individuals must be screened for LSC eligibility and legal assistance may be provided only to those individuals who may be served consistent with the LSC Act, the LSC appropriation statutes, and the applicable regulations. Clinics that provide only legal information do not require screening.

The population to be served through the PAI rule is clearly stated in the introductory section of the existing rule: “This part is designed to ensure that recipients of Legal Services Corporation funds involve private attorneys in the delivery of legal assistance to eligible clients.” 45 CFR 1614.1(a). In its report, particularly Recommendation 2, the Task Force took no position on expanding the scope of the rule to allow recipients to provide legal assistance to serve populations beyond eligible individuals through their PAI programs. Rather, the Task Force emphasized changes to part 1614 that would improve recipients’ ability to reach out to individuals who wanted to become engaged in

providing legal services. LSC believes that the overall set of proposed changes to the PAI regulation promotes the Task Force’s recommendations and commenters’ expressed desire for increased flexibility to engage individuals and to support clinics while carrying out the Corporation’s obligation to ensure that recipients of Corporation funds comply with applicable statutory restrictions.

### PAI Clinics

“Clinics,” as the term applies in the field, covers a diverse array of service delivery methods. Clinics have various screening mechanisms, levels of service provided, and involvement of recipients and other organizations, such as courts, churches, and community organizations. For example, both a training provided by a recipient attorney on a particular topic of law to private attorneys who are volunteering for a pro bono project and a scheduled, time-limited, session open to the public at which individuals can receive brief advice or extended representation from a private attorney may be called “clinics.” The varying nature of clinics made it difficult to draft a rule that would give recipients the flexibility they desire, and that the Task Force recommended, to achieve the goals of the PAI rule while simultaneously meeting the Corporation’s responsibility to ensure accountability for the use of LSC funds and observance of the LSC funding restrictions.

In Recommendation 2(c), the Task Force noted that recipients “are under strict guidelines about what cases they can and cannot handle. . . . Yet, under the PAI regulations they cannot count placement of any cases that they are not themselves able to accept.” Report of the Pro Bono Task Force at 21. The Task Force encouraged LSC to “reexamine the rule that mandates adherence to LSC grantee case handling requirements,

including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.” Id. The Task Force stated that “the regulation poses challenges to effective pro bono collaborations,” and pointed to OLA External Opinion EX-2008-1001 as an example. Id. EX-2008-1001, inter alia, concluded that individuals receiving direct services from a private attorney, even in a clinic setting, must be screened and must be accepted as clients of the recipient in order for the recipient to count the case toward its PAI requirement.

Commenters generally supported Recommendation 2(c). Commenters criticized the position set forth in EX-2008-1001 as a hindrance to recipients’ ability to collaborate effectively and efficiently with other providers in carrying out activities that attract the participation of private attorneys. One commenter stated that when another organization is the main organizer or “owner” of a clinic, it will often not want to follow another entity’s rules in operating the clinic. Additionally, the commenter noted that other organizations and volunteers would not want to participate in a clinic that has to meet all of LSC’s CSR requirements because private attorneys do not want to follow any more rules than they have to.

After consideration of Recommendation 2(c), comments at the workshops and in response to the requests for information, and EX-2008-1001, LSC is reversing the requirement that individuals receiving direct services from a private attorney, even in a clinic setting, must be accepted as clients of the recipient in order for the recipient to count the case toward its PAI requirement. LSC considers the organizational and technical support described in EX-2008-1001 to be more akin to support activities described in section 1614.3(b) than to direct delivery activities under section 1614.3(a).

LSC proposes to no longer require recipients to apply the CSR case-handling requirements to legal assistance provided by private attorneys through clinics supported by the recipient in order to allocate the associated costs to the PAI requirement.

LSC proposes to establish a new category of activities specifically for clinics. This new regulatory provision will allow recipients to allocate costs associated with support to clinics to the PAI requirement. The new provisions of section 1614 will govern only those clinics in which a recipient plays a supporting role. Recipients will remain responsible for complying with the screening and CSR case-handling requirements for those clinics at which recipient attorneys provide legal assistance to individuals.

#### Intake and Referral Systems

Recommendation 2(b) of the Task Force report proposed revisions to part 1614 that would allow recipients “to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low-income clients.” Report of the Pro Bono Task Force at 21. In its recommendation, the Task Force noted that under the existing PAI rule, “LSC grantees cannot count money spent to support centralized screening and referral services as PAI, even where those referral services are needed to support pro bono programs.” Id. The Task Force identified two OLA opinions, AO-2009-1004 and AO-2011-001, as creating obstacles to recipients’ efforts to maximize their resources by participating in integrated pro bono referral systems.

Panelists and commenters overwhelmingly supported Recommendation 2(b). Many of them echoed the Task Force’s conclusion that intake and referral systems are an especially efficient and effective way to reach large numbers of individuals seeking legal

assistance. Integrated systems in which recipients have already screened the cases and identified the individual's legal needs make it easier for the private attorney taking the case to simply begin work on the case. Intake and referral systems also are an attractive vehicle for collaborating with other providers and private attorneys because they allow participating individuals to help a large number of clients with little time commitment. Like the Task Force, many commenters and panelists urged LSC to reverse AO-2009-1004 and AO-2011-001 in the interest of removing barriers to collaboration and the efficient delivery of legal assistance.

AO-2009-1004 and AO-2011-001 stand for different propositions. In AO-2009-1004, OLA considered whether a recipient could count toward its PAI requirement costs associated with a hotline staffed by another legal services provider that referred cases back to the four LSC funding recipients within the state. OLA determined that because the hotline operator was another legal services provider that was either handling cases itself or referring the cases to other legal services providers including the recipient, the costs associated with the recipient's support for the hotline could not be counted toward the PAI requirement. As stated above, the purpose of the PAI rule is to engage attorneys who are not currently involved in the delivery of legal services to low-income individuals as part of their regular employment. Accordingly, LSC continues to believe that the result in AO-2009-1004 is correct and will not rescind the opinion.

In AO-2011-001, the recipient participated in an intake and referral system for which the recipient screened clients for eligibility and referred eligible cases out to volunteer attorney programs for placement. OLA concluded that the activity was not direct delivery under section 1614.3(a) because the recipient did not accept the cases as its own prior to

referring them out and did not track the cases in any way after making the referrals. OLA also concluded, based on an LSC policy decision, that the activity did not count as a permissible support activity under section 1614.3(b). The policy decision turned on the fact that the recipient did not track the referrals in any way, so the recipient could not determine whether the referred individuals received services or what the outcomes of those services were. “Under such circumstances, without the recipient involvement and oversight required by ‘1614 compliant’ direct delivery systems, LSC cannot be assured that such systems ‘generate the most possible legal services for eligible clients from available, but limited, resources.’” AO-2011-001, p. 5.

LSC has determined that the policy position relied on by OLA in AO-2011-001 was more stringent than necessary. LSC no longer believes that it is necessary for recipients to accept the clients being referred as their own and to track the outcome of the services provided by the private attorney. LSC proposes instead to require that recipients participating in intake and referral systems only report the number of LSC-eligible individuals referred to lawyer placement programs and the number of such individuals who actually are placed with private attorneys. If adopted in the final rule, these proposals would serve to overturn AO-2011-001.

#### Flexibility in Choice of PAI Activities

During the workshops and in the written comments, LSC heard differing opinions regarding whether LSC should prescribe or limit with some precision how recipients should meet their PAI requirement. For example, LSC received comments about whether recipients should be required to dedicate a certain percentage of the PAI requirement to the direct delivery of legal assistance. As another example, some panelists and

commenters expressed concern that allowing supervision of law students to count toward the PAI requirement would cause recipients to direct resources away from expanding opportunities to involve licensed attorneys in the delivery of legal assistance. As a further example, some panelists and commenters voiced reservations that allowing recipients to allocate costs associated with brief service clinics to the PAI requirement would result in fewer resources being spent to get licensed attorneys to accept individual cases for extended representation. Finally, some commenters opposed the Task Force recommendation to expand the PAI rule to allow recipients to engage law students, law graduates, and non-lawyer professionals. Commenters opposing the recommendation generally focused on the rule's purpose of engaging attorneys in the delivery of legal assistance.

The current rule requires recipients to provide direct delivery of legal services as part of their PAI activities; however, it does not mandate that recipients commit a certain amount of their PAI requirement to providing direct delivery. Nor does it place caps on the types of support or other activities in which recipients may engage to meet the 12.5% requirement. LSC has decided to continue this approach to the PAI rule. This determination rests on two bases. First, consistent with the recommendations of the Pro Bono Task Force, the Corporation decided to expand the categories of individuals that recipients may engage in the delivery of legal information and legal assistance. A principal purpose of the PAI rule was to engage private attorneys in the delivery of legal services, and LSC believes this remains a significant goal. However, LSC also believes helping to meet the unmet legal needs of eligible clients also was and remains a significant purpose of the rule. The delivery of legal services has changed since the rule's



inception, and continues to change, in ways that encourage openness and inclusiveness toward other providers as additional resources to help meet currently unmet legal needs. As the Task Force remarked, law students, law graduates, paralegals, and professionals in non-legal fields can make significant contributions to LSC recipients' delivery of legal information and legal assistance. LSC wants recipients to think creatively about the best means for leveraging community resources to improve the delivery of legal information and legal assistance to eligible clients.

Second, LSC believes that there likely is no "one size fits all" structure for creating the optimal PAI program. The most effective and efficient system is a function of, among other factors, the nature of the unmet legal needs and the available volunteer resources in a recipient's service area. Furthermore, LSC does not believe it has the data or the experience to identify a single optimal structure for PAI services. As with their priorities, recipients must determine which combination of direct delivery, intake and referral systems, clinics, or other activities will allow them to meet or exceed their PAI requirements and best serve their clients.

#### IV. Section-by-Section Discussion of the Proposed Changes

##### 1614.1 Purpose.

LSC proposes to revise section 1614.1 to state more clearly the purpose of the PAI rule. Proposed section 1614.1 states the Corporation's expectation that PAI will be "an integral part" of a recipient's delivery of legal services. It also states that that the Corporation has designed part 1614 to ensure that recipients involve private attorneys in the delivery of legal information and legal assistance to eligible clients, and encourages recipients to engage law students, law graduates, or other professionals in those activities.

LSC proposes to move the requirement that recipients expend an amount equal to 12.5% of their annualized basic field grants on PAI activities from existing section 1614.1(a) to the statement of general policy in section 1614.2(a). Existing section 1614.1(b), regarding the use of Native American or migrant funds for PAI activities, is being relocated to proposed section 1614.2(b). The Corporation proposes to delete existing section 1614.1(c), revise and move section 1614.1(d) to section 1614.3, and move section 1614.1(e) to proposed section 1614.5.

#### 1614.2 General policy.

LSC proposes to revise section 1614.2 to contain the policy statements that govern the PAI rule. Proposed section 1614.2(a) is adapted from existing section 1614.1(a) and states the requirement that recipients expend an amount equal to at least 12.5% of their annualized basic field grants on PAI activities. Similarly, LSC proposes to move existing section 1614.1(b), regarding the involvement of private attorneys in the delivery of legal services supported by Native American or migrant funding, to section 1614.2(b). LSC proposes to add “law students, law graduates, or other professionals” in both sections to reflect the expansion of the rule to include these individuals in recipients’ delivery of legal information and legal assistance.

#### 1614.3 Definitions.

The Corporation proposes to relocate all parts of existing 1614.3 to new sections of part 1614 and create a new definitions section in section 1614.3.

Proposed section 1614.3(a) defines the term attorney for purposes of part 1614 only. LSC’s regulations define the term attorney at part 1600.1 to mean an individual providing legal assistance to eligible clients who is authorized to practice law in the jurisdiction in

which services are rendered. 45 CFR 1600.1. This definition does not make sense within the context of part 1614, the purpose of which is to engage attorneys who are not providing services to eligible clients. LSC therefore proposes to except part 1614 from using the definition of attorney in section 1600.1 of these regulations.

Proposed section 1614.3(b) defines the term law graduate to mean an individual who has completed the educational or training requirements required for application to the bar in any U.S. state or territory. The definition is intended to capture two types of individuals: those who have recently graduated from law school, but who are not yet licensed attorneys; and those who have completed a practical legal apprenticeship program that provided them with the necessary qualifications to become licensed in any jurisdiction that admits apprentices to the bar. LSC proposes to limit the term law graduate to those individuals who have completed their education or training within the preceding two years. The reason for this limitation is to capture individuals who have completed legal training and intend to enter a legal career, but who have not yet been admitted to the bar. If an individual defined as a law graduate under this part has not been admitted to the bar within two years of completing his or her education or training, that individual could fall under the definition of other professional in proposed section 1614.3(f)

Proposed section 1614.3(c) defines the term law student to include two groups. The first is individuals who are or have been enrolled in a law school that can provide the student with a degree that is a qualification for application to the bar in any U.S. state or territory. The second is individuals who are or have been participating in an apprenticeship program that can provide the individual with sufficient qualifications to

apply for the bar in any U.S. state or territory. LSC recognizes that the delivery of legal education is evolving and that there are differences among the states with respect to the prerequisites for admission to the bar. Some states may allow only graduates of law schools accredited by the American Bar Association (ABA) or the American Association of Law Schools (AALS) to apply. Others allow graduates of such schools plus schools that are not accredited by either the ABA or AALS, but that are approved by the state bar or state legislature, to apply. Some states allow individuals who have completed legal apprenticeship programs to apply for admission to the bar; others do not. LSC proposes to define law student broadly enough to give recipients the flexibility to engage individuals who are pursuing some form of legal education in the provision of legal information or legal assistance to eligible individuals under this part.

LSC proposes to limit the term law student to those individuals who are currently enrolled, full-time or part-time, in law school or in an apprenticeship program, or who have been so enrolled within the past year. The term is intended to capture both current enrollees and those who take a brief sabbatical from their legal education. LSC also proposes to limit the term to those individuals who have not been expelled from law school or terminated from a legal apprenticeship program.

Proposed section 1614.3(d) defines the term legal assistance. This definition is substantially adapted from the LSC CSR Handbook, and is different from the term legal assistance defined in the LSC Act and in section 1600.1 of these regulations. LSC proposes to adopt the CSR Handbook definition in the PAI rule for consistency in the treatment of legal assistance and compliance with eligibility screening requirements by both recipients and private attorneys.

Proposed section 1614.3(e) defines the term legal information as the provision of substantive legal information that is not tailored to address an individual's specific legal problem and that does not involve applying legal judgment or recommending a specific course of action. This definition is also adapted substantially from the CSR Handbook for the same reasons stated above with respect to the definition of legal assistance.

Proposed section 1614.3(f) defines the term other professional. Other professional means any individual who is not engaged in the practice of law, is not employed by the recipient, and is providing services to an LSC recipient in furtherance of the recipient's provision of legal information or legal assistance to eligible clients. LSC intends this definition to cover a wide spectrum of professionals whose services will help recipients increase the effectiveness and efficiency of their programs. Such professionals include paralegals, accountants, and attorneys who are not authorized to practice law in the recipient's jurisdiction (such as an attorney licensed in another jurisdiction or a retired attorney who is prohibited from practicing by the bar rules). These individuals may provide services within their areas of expertise to a recipient that would improve the recipient's delivery of legal services. For example, a volunteer paralegal representing a client of the recipient in a Supplemental Security Income case or a volunteer accountant providing a legal information program on the earned income tax credit would constitute other professionals assisting a recipient in its delivery of legal information or legal assistance to eligible clients.

Proposed section 1614.3(g) defines the term PAI clinic as "an activity under this part in which private attorneys, law students, law graduates, or other professionals are involved in providing legal information and/or legal assistance to the public at a specified

time and location.” PAI clinics may consist solely of a legal information session on a specific topic, such as bankruptcy or no-contest divorce proceedings, that are open to the public and at which no individual legal assistance is provided. Or, a PAI clinic may be open to the public for walk-in intake and screening, and either the provision of individual legal assistance or a referral for services from another organization. Some clinics are hybrids of the two models, and some clinics are aimed at providing technical assistance to pro se litigants, such as help understanding the court procedures or filling out pleadings. The common thread among the activities considered to be clinics is that they are open to the public and distinct from a recipient’s regular legal practice.

Proposed section 1614.3(h) defines the term private attorney. LSC proposes to remove the definition of private attorney in existing section 1614.1(d) and replace it with an entirely new definition.

- (a) **Private attorney** (1) means
- (i) an attorney licensed or otherwise authorized to practice law in the jurisdiction in which the recipient is located; or
  - (ii) an attorney employed less than 1,000 hours per calendar year by an LSC recipient or subrecipient, but only as to activities conducted outside the scope of his or her employment by the recipient.
- (2) Private attorney does not include:
- (i) an attorney employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient; or
  - (ii) an attorney employed by a non-LSC-funded legal services provider acting within the terms of his or her employment with the non-LSC-funded provider.

The proposed definition of private attorney improves upon the current definition in multiple ways. It removes the link to the term staff attorney. By eliminating the reference to staff attorney, the Corporation is also eliminating the obligation of recipients to determine how much of a private attorney’s income is derived from PAI compensation in order to determine whether the recipient may allocate costs associated with services

provided by the private attorney to the PAI requirement. The proposed definition explicitly contemplates that any attorney licensed or otherwise authorized, by court rules or legislation, to practice law in a jurisdiction may provide legal assistance to eligible clients or legal information through a recipient's PAI program. The definition does not identify specifically government attorneys, corporate attorneys, law professors, retired attorneys, and others who may be licensed or otherwise authorized to practice law in a particular jurisdiction. However, LSC believes that the revised definition makes clear that these categories of attorneys are included within the definition.

The proposed definition also allows attorneys who are employed less than 1,000 hours per calendar year at a recipient to be considered private attorneys with respect to legal services provided to the recipient outside of their employment. This aspect of the definition is intended to capture the attorney who is employed half-time or less by a recipient. A recipient may allocate to its PAI requirement costs associated with this attorney's provision of legal assistance or legal information on his or her own time.

The proposed rule established two exceptions to the definition of private attorney. The first exception is for attorneys who are employed more than 1,000 hours per calendar year by a recipient. The second is for attorneys employed by non-LSC-funded legal services providers who are acting within the terms of their employment. In both situations, the excepted attorney is already engaged, as part of their regular employment, in the provision of legal services to low-income individuals.

Proposed section 1614.3(i) defines the term screen for eligibility. The proposed definition makes clear that clients who will be receiving legal assistance through PAI activities must receive the same level of screening that recipients use for their own legal

assistance activities. Screening for eligibility includes screening for income and assets, eligible alien status, citizenship, whether the individual's case is within the recipient's priorities, and whether the client seeks assistance in an area or through a strategy that is restricted by the LSC Act, the LSC appropriation acts, and applicable regulations.

Screening for eligibility can also include determining whether a client can be served using non-LSC funds.

#### 1614.4 Range of activities.

LSC proposes to move existing sections 1614.3(a), (b), and (d) to section 1614.4, and to combine the provisions governing the direct delivery of legal services in one paragraph. LSC also proposes to expand upon the types of other activities, including support activities, that recipients may engage in under this part. LSC proposes to move existing section 1614.3(c) to proposed section 1646.6, which will govern the procedure recipients use to develop their PAI plans. Finally, LSC proposes to move existing section 1614.3(e), regarding accounting and recordkeeping standards for the PAI program, to a new section 1614.7 Compliance.

Proposed section 1614.4(a) will set forth the requirements applicable to direct delivery activities under this part. Proposed section 1614.4(a)(1) adopts existing section 1614.3(a), which states that recipients' PAI programs must include the direct delivery of legal services by private attorneys, in its entirety and without change. Under proposed section 1614.4(a)(2), recipients may count toward the PAI requirement representation of an eligible client by a non-attorney in an administrative proceeding where permitted by law. For example, a recipient may count toward its PAI requirement a law student or paralegal's representation of an eligible client in a Supplemental Security Income case, as



long as the representation is permitted by law and undertaken consistent with the jurisdiction's rules of professional responsibility. Proposed section 1614.4(a)(3) adopts existing section 1614.3(d), which states the minimum requirements that a direct delivery system must meet. LSC proposes to combine the provisions relating to direct delivery systems in one paragraph for ease of reference.

LSC proposes to expand section 1614.4(b) to cover support and other activities. The proposed rule introduces activities that received considerable attention from the Task Force, panelists during the rulemaking workshops, and commenters responding to the Requests for Information.

Proposed section 1614.4(b)(1) adopts existing section 1614.3(b)(1) with one change.

Support provided by private attorneys to the recipient as part of its delivery of legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources[.]

(Emphasis added.) LSC proposes to change the current language—“support provided by private attorneys to the recipient in its delivery of legal assistance. . .”—to make clear that the support covered by the rule is support that inures primarily to the benefit of the recipient's clients. For example, PAI support activities would not include a recipient obtaining pro bono legal counsel to defend the recipient in an employment discrimination action brought by one of its own employees.

Consistent with the expansion of the rule to allow recipients to involve paralegals and non-legal professionals in the provision of legal services under this part, LSC proposes to add a new section 1614.4(b)(2):

Support provided by other professionals in their areas of professional expertise to the recipient as part of its delivery of legal information or legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of intake support, research, training, technical assistance, or direct assistance to an eligible client of the recipient[.]

To qualify as support services under this section, the services must inure to the benefit of the recipient's clients. For example, an accountant who is reviewing financial records of a recipient client who has filed for bankruptcy is providing support to the recipient as part of the recipient's delivery of legal assistance to an eligible client. Similarly, an accountant who is providing information at an earned income tax credit clinic organized by the recipient is providing support to the recipient as part of the recipient's delivery of legal information. An accountant who is reviewing the recipient's financial statements to ensure that they accurately reflect the recipient's financial activities is not providing support as part of the recipient's delivery of legal assistance because the support is provided to the recipient for its benefit as an organization, rather than for the benefit of its clients.

As a result of the introduction of proposed section 1614.4(b)(2), existing section 1614.3(b)(2), describing support provided by the recipient to private attorneys engaged in the delivery of legal services, will be incorporated and redesignated as section 1614.4(b)(3). The lists of activities in sections 1614.4(b)(1), (2), and (3) are intended to be illustrative rather than exhaustive.

Proposed section 1614.4(b)(4) establishes the rules governing recipient support for PAI clinics. Proposed section 1614.4(b)(4)(i) applies to clinics involving private attorneys, law students, law graduates, or other professionals that provide only general legal information. Individuals receiving general legal information through a PAI clinic do

not need to be screened for eligibility for the reasons stated in the preceding discussion of the definition of legal information.

Proposed section 1614.4(b)(4)(ii) applies to PAI clinics providing individualized legal assistance. In order for a recipient to participate in or support a legal assistance clinic, the clinic must screen for eligibility and provide legal assistance only to those individuals who may be served consistent with the LSC Act and relevant statutory and regulatory restrictions. In other words, the clinic may only provide legal assistance to individuals who either meet the requirements to receive legal assistance from an LSC recipient using LSC funds (e.g., income and assets, citizenship or eligible alien status, case within the recipient's priorities, and assistance that is not otherwise restricted), or who are eligible to receive services from the recipient that may be supported by non-LSC funds. An example of the latter category is an individual who exceeds the income and asset tests for LSC eligibility, but is otherwise eligible for assistance. The rule makes clear that recipients may not allocate costs associated with the latter category of cases to their PAI requirements because the clients served are not eligible for LSC-funded legal assistance.

Some PAI clinics are hybrid clinics at which legal information is provided, either as a group presentation or on an individual basis, and individual legal assistance is also provided. These clinics are addressed under the provisions governing legal assistance clinics in proposed section 1614.4(b)(4)(ii)(C). Recipients may support hybrid clinics and allocate costs associated with their support to the PAI requirements, but only if the clinic screens for LSC eligibility prior to providing legal assistance and only provides assistance to individuals who may be served by an LSC recipient.

Consistent with Recommendation 2(c) of the Task Force report, recipients are no longer required to treat legal assistance provided through PAI clinics as direct delivery activities under proposed section 1614.4(a) and accept the individuals assisted as their own clients. Recipients may, however, choose to treat legal assistance provided by private attorneys through PAI clinics as direct delivery activities.

Proposed section 1614.4(b)(5) establishes the rules governing intake and referral systems. This addition to the rule adopts Recommendation 2(b) by allowing recipients to allocate costs associated with intake and referral to private attorneys to their PAI requirement. Section 1614.4(b)(5) reflects the Corporation's decision to relieve recipients of the obligation to accept referred clients as part of their caseload and to determine the ultimate resolution of the clients' cases by considering intake and referral activities other activities. Cases screened and referred through these systems do not need to be accepted by the recipient as CSR cases and tracked in order for recipients to allocate costs associated with the system to the PAI requirement.

The rule establishes two requirements for allocating costs. First, recipients must screen applicants for services for LSC eligibility. Second, recipients must track the number of eligible persons referred to a program that places applicants for services with private attorneys and the number of eligible persons who were placed with a private attorney through the program receiving the referral. LSC believes these requirements are necessary to ensure that LSC funds are not being spent for restricted purposes and to ensure that programs using intake and referral systems to place eligible clients with private attorneys are satisfying this goal.

Proposed section 1614.4(b)(6) establishes the rules for allocating costs associated with the work provided by law students to the PAI requirement. The screening and other requirements of the rule apply to work provided by law students under this part.

Proposed section 1614.4(c) adopts existing section 1614.3(c) in its entirety. LSC proposes to revise the phrase “involve private attorneys in the provision of legal assistance to eligible clients” to include law students, law graduates, or other professionals. LSC proposes this change to reflect the rule’s inclusion of the other categories of individuals that recipients may engage in PAI activities.

Proposed section 1614.4(d) makes clear that the rule is not intended to permit any activities that would conflict with the rules governing the unauthorized practice of law in the jurisdiction in which a recipient is located.

#### 1614.5 Compensation of recipient staff and private attorneys; blackout period.

LSC proposes to introduce a new section 1614.5 establishing rules for the treatment of compensation paid to private attorneys, law students, law graduates, or other professionals under the PAI rules. Proposed 1614.5(a) states that recipients may allocate to the PAI requirement costs for the compensation of staff for facilitating the involvement of private attorneys, law students, law graduates, or other professionals in the provision of legal information and legal assistance to eligible clients under this part. This section is intended to make clear that recipients may not allocate costs associated with compensation, such as salaries or stipends, paid to individuals employed by the recipient who are providing legal information or legal assistance to eligible clients as part of their employment. In other words, a recipient may allocate costs to the PAI requirement for compensation paid to a recipient attorney responsible for supervising law students or law

graduates paid a stipend by the recipient, but may not allocate the costs of the stipends paid to the law students or law graduates. LSC believes this limitation is necessary to allow recipients to allocate costs associated with supervising law students and law graduates to the PAI requirement, as recommended by the Task Force, without diluting the PAI requirement by allowing recipients to also allocate the costs associated with compensating those individuals.

Proposed section 1614.5(b) establishes limits on the amount of compensation paid to a private attorney, law student, law graduate, or other professional that a recipient may allocate to its PAI requirement. LSC proposes to limit the amount of compensation to the amount paid for up to 800 hours of service during a calendar year. The reason for this limitation is that compensation at a higher level is inconsistent with the goal of the PAI rule to engage private attorneys in the work of its recipients. It does not seem consistent with that goal for a recipient to count toward its PAI requirement compensation paid to individuals who are functionally recipient staff.

Proposed section 1614.5(c) adopts a revised version of existing section 1614.1(e), which prohibits recipients from allocating to the PAI requirement PAI fees paid to a former staff attorney for two years after the attorney's employment has ended, except for judicare or similar fees. LSC proposes to remove as obsolete the references to the effective date of the regulation and contracts made prior to fiscal year 1986. LSC also proposes to change the time period of the rule's coverage from attorneys employed as staff attorneys for any portion of the previous two years to any individual employed by the recipient for any portion of the current year and the previous year for more than 1,000 hours per calendar year, except for individuals employed as law students. The latter

change is proposed to account for the expansion of the rule to allow recipients to engage individuals other than private attorneys in activities under this part. In recognition of the fact that law students are primarily engaged in educational endeavors, even while working at a recipient, LSC proposes to exclude law students from the scope of this provision.

Additionally, LSC proposes to set the threshold for the blackout period at 1,000 hours or more worked for the recipient within a calendar year. This proposal represents a change from existing section 1614.1(e), which requires the two-year blackout period for staff attorneys. As discussed previously, whether an individual is a staff attorney within the meaning of the LSC Act and these regulations turns on whether the individual received more than one-half of the individual's income from a recipient.

The proposed rule eases the administrative burden on a recipient by allowing the recipient to consider how many hours of legal information or legal assistance to eligible clients an individual provides to the recipient, rather than inquiring into the individual's finances. Furthermore, the proposed rule allows recipients to allocate costs associated with the participation in incubator programs of private attorneys and law graduates who are not employed by the recipient. Finally, the rule allows recipients to count compensation paid to attorneys participating in incubator projects toward the PAI requirement, but only for those attorneys who are not within the blackout period for payments to individuals previously employed by the recipient.

#### 1614.6 Procedure.

LSC proposes to move the text of existing section 1614.4, regarding the procedure recipients must use to establish their PAI plans, to section 1614.6. LSC proposes to

include law students, law graduates, or other professionals as individuals that recipients may consider engaging in activities under this part during the development of their PAI plans. However, LSC is not revising proposed section 1614.6(b) to require recipients to consult with local associations for other professionals. LSC believes that recipients are in the best position to know which other professionals they may attempt to engage in their PAI programs, and encourages recipients to determine which professional associations they may want to consult in developing their PAI plans.

LSC also proposes to relocate existing section 1614.2(b), regarding joint PAI efforts by recipients with adjacent, coterminous, or overlapping service areas, to section 1614.6(c) without substantive changes. The Corporation believes that existing section 1614.2(b) is more appropriately located in the section governing the procedure that recipients must follow to establish their PAI plans and that this proposed change will improve the structure and logic of the rule.

#### 1614.7 Compliance.

As stated above, LSC proposes to move existing paragraph 1614.3(e) regarding compliance in its entirety to a separate section. LSC believes that separating the accounting and recordkeeping requirements for the PAI program from the section prescribing the types of activities that recipients may engage in will improve the comprehensibility of the rule. LSC also proposes to divide existing section 1614.3(e)(3) into two sections. Proposed section 1614.7(c) will contain the statement that in private attorney models, attorneys may be reimbursed for actual costs and expenses. Proposed section 1614.7(d) will state that fees paid for services under this part may not exceed 50% of the current market rate of the local prevailing market for the type of service provided.



The proposed split of section 1614.3(e)(3) ensures that the 50% cap applies to fees paid to law students, law graduates, or other professionals, as well as to private attorneys.

1614.8 Prohibition of revolving litigation funds.

LSC proposes to move existing section 1614.5, prohibiting the use of revolving litigation funds to meet the PAI requirement, to new section 1614.8. The only proposed substantive change to this section is the inclusion of law students, law graduates, or other professionals.

1614.9 Waivers.

LSC proposes to move existing section 1614.6, governing the procedures by which recipients may seek full or partial waivers of the PAI requirement, to new section 1614.9 without substantive change. LSC proposes to make technical amendments by replacing the references to the Office of Field Services (OFS) and the Audit Division of OFS, which no longer exist, with references to LSC. The Corporation is making this change for ease of administration by obviating the need to revise the rule in the event an internal restructuring, which is purely an operational event that does not affect substantive rights of recipients, causes the responsibility for making waiver decisions to transfer from one component to another.

1614.10 Failure to comply

LSC proposes to move existing section 1614.7, establishing sanctions for a recipient's failure to comply with the PAI requirement or seek a waiver of the requirement, to new section 1614.10 without revision.

List of Subjects in 45 CFR Part 1614

Legal services, Private attorneys, Grant programs – law

For the reasons stated in the preamble, and under the authority of 42 U.S.C. 2996g(e), the Legal Services Corporation proposes to amend 45 CFR Part 1614 as follows:

**PART 1614 – PRIVATE ATTORNEY INVOLVEMENT**

Sec.

1614.1 Purpose.

1614.2 General policy.

1614.3 Definitions.

1614.4 Range of activities.

1614.5 Compensation of recipient staff and private attorneys; blackout period.

1614.6 Procedure.

1614.7 Compliance.

1614.8 Prohibition of revolving litigation funds.

1614.9 Waivers.

1614.10 Failure to comply.

1. The authority citation for Part 1614 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e)

2. Revise section 1614.1 to read as follows:

**§ 1614.1 Purpose.**

Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical, and effective client-centered legal assistance to eligible clients. This part is designed to ensure that recipients of Legal Services

Corporation funds involve private attorneys, and encourages recipients to involve law students, law graduates, or other professionals, in the delivery of legal information and legal assistance to eligible clients.

3. Revise section 1614.2 to read as follows:

**§ 1614.2 General policy.**

(a) Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12.5%) of the recipient's LSC annualized basic field award to the involvement of private attorneys, law students, law graduates, or other professionals in the delivery of legal services to eligible clients; this requirement is hereinafter referred to as the "PAI requirement." Funds received from the Corporation as one-time special grants shall not be considered in calculating a recipient's PAI requirement.

(b) Funds received from LSC as Native American or migrant grants are not subject to the PAI requirement. However, recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by private attorneys, law students, law graduates, or other professionals in a manner that is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

4. Revise section 1614.3 to read as follows:

**§ 1614.3 Definitions.**

(a) In this part, the term **attorney** does not have the meaning stated in 45 CFR 1600.1.

(b) **Law graduate** means an individual who, within the last two years, has completed the education and/or training requirements necessary for application to the bar in any U.S.

state or territory.

(c) **Law student** means an individual who is, or has been, enrolled, full-time or part-time, within the past year, and not expelled from:

(i) a law school that can provide the student with a degree that is a qualification for application to the bar in any U.S. state or territory; or

(ii) an apprenticeship program that can provide the student with sufficient qualifications for application to the bar in any U.S. state or territory.

(d) **Legal assistance** means service on behalf of a client or clients that is specific to the client's or clients' unique circumstances, involves a legal analysis that is tailored to the client's or clients' factual situation, and involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented.

(e) **Legal information** means substantive legal information not tailored to address a person's specific problem and that does not involve applying legal judgment or recommending a specific course of action.

(f) **Other professional** means an individual, not engaged in the practice of law and not employed by the recipient, providing services to a recipient in furtherance of the recipient's provision of legal information or legal assistance to eligible clients. For example, a paralegal representing a client in a Supplemental Security Income (SSI) case, an accountant providing tax advice to an eligible client, or an attorney not authorized to practice law in the jurisdiction in which the recipient is located would fit within the definition of other professional. An individual granted a limited license to provide legal services by a body authorized by court rule or state law to grant such licenses in the jurisdiction in which the recipient is located would also meet the definition of other

professional.

(g) **PAI Clinic** means an activity under this part in which private attorneys, law students, law graduates, or other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.

(h) **Private attorney** (1) means

(i) an attorney licensed or otherwise authorized to practice law in the jurisdiction in which the recipient is located; or

(ii) an attorney employed less than 1,000 hours per calendar year by an LSC recipient or subrecipient, but only as to activities conducted outside the scope of his or her employment by the recipient.

(2) Private attorney does not include:

(i) an attorney employed 1,000 hours or more per calendar year by an LSC recipient or subrecipient; or

(ii) an attorney employed by a non-LSC-funded legal services provider acting within the terms of his or her employment with the non-LSC-funded provider.

(i) **Screen for eligibility** means to screen individuals for eligibility using the same criteria recipients use to determine an individual's eligibility for cases accepted by the recipient and whether LSC funds or non-LSC funds can be used to provide legal assistance (e.g., income and assets, citizenship, eligible alien status, within priorities, applicability of LSC restrictions).

5. Revise section 1614.4 to read as follows:

**§ 1614.4 Range of activities.**

(a) Direct delivery of legal assistance to recipient clients.

- (1) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients by private attorneys through programs such as organized pro bono plans, reduced fee plans, judicare panels, private attorney contracts, or those modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorney's fees through “revolving litigation fund” systems, as described in § 1614.8 of this part, shall neither be used nor funded under this part nor funded with any LSC support.
- (2) In addition to the activities described in paragraph (a)(1), direct delivery of legal assistance to eligible clients may include representation by a non-attorney in an administrative tribunal that permits non-attorneys to represent individuals before the tribunal.
- (3) Systems designed to provide direct services to eligible clients of the recipient by private attorneys on either a pro bono or reduced fee basis, shall include at a minimum, the following components:
  - (i) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;
  - (ii) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;
  - (iii) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

- (iv) Access by private attorneys to LSC recipient resources that provide back-up on substantive and procedural issues of the law.

(b) Support and other activities. Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to:

- (1) Support provided by private attorneys to the recipient as part of its delivery of legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources;
- (2) Support provided by other professionals in their areas of professional expertise to the recipient as part of its delivery of legal information or legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of intake support, research, training, technical assistance, or direct assistance to an eligible client of the recipient; and
- (3) Support provided by the recipient in furtherance of activities undertaken pursuant to this section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.
- (4) PAI Clinics.
  - (i) Legal information provided in PAI clinics. A recipient may allocate to its PAI requirement costs associated with providing support to clinics, regardless of whether the clinic screens for eligibility, if the clinic provides only legal

information.

(ii) Legal assistance provided in PAI clinics. If the clinic provides legal assistance to individual clients, a recipient may provide support for the clinic if the clinic screens for eligibility and provides legal assistance only to clients who may be served consistent with the LSC Act and relevant statutory and regulatory restrictions.

(A) A recipient may allocate to its PAI requirement costs associated with its support of such clinics for legal assistance provided to individuals who are eligible to receive LSC-funded legal services.

(B) Where a recipient supports a clinic that provides legal assistance to individuals who are eligible for permissible non-LSC-funded services, the recipient may not allocate to its PAI requirement costs associated with the legal assistance provided to such individuals. For example, a recipient may not allocate to its PAI requirement costs associated with legal assistance provided through a clinic to an individual who exceeds the income and asset tests for LSC eligibility, but is otherwise eligible.

(C) For clinics providing both legal information to the public and legal assistance to clients screened for eligibility, a recipient may allocate to its PAI requirement costs associated with its support of both parts of the clinic.

(5) Screening and referral systems.

(i) A recipient may participate in a referral system in which the recipient



conducts intake screening and refers LSC-eligible applicants to programs that assign applicants to private attorneys on a pro bono or reduced fee basis.

(ii) In order to allocate to its PAI requirement costs associated with participating in such referral systems, a recipient must be able to track the number of eligible persons referred by the recipient to each program and the number of eligible persons who were placed with a private attorney through the program receiving the referral.

(6) Law student activities. A recipient may allocate to its PAI requirement costs associated with law student work supporting the recipient's provision of legal information or delivery of legal assistance to eligible clients. Compensation paid by the recipient to law students may not be allocated to the PAI requirement.

(c) Determination of PAI activities. The specific methods to be undertaken by a recipient to involve private attorneys and other professionals in the provision of legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

- (i) The priorities established pursuant to Part 1620 of these regulations;
- (ii) The effective and economic delivery of legal assistance to eligible clients;
- (iii) The linguistic and cultural barriers to effective advocacy;
- (iv) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients or other professionals and individual eligible clients; and
- (v) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys and other

professionals.

(d) Unauthorized practice of law. This part is not intended to permit any activities that would conflict with the rules governing the unauthorized practice of law in the recipient's jurisdiction.

6. Revise section 1614.5 to read as follows:

**§ 1614.5 Compensation of recipient staff and private attorneys; blackout period.**

(a) A recipient may allocate to its PAI requirement costs associated with compensation paid to its employees only for facilitating the involvement of private attorneys, law students, law graduates, or other professionals in activities under this part.

(b) A recipient may not allocate to its PAI requirement costs associated with compensation paid to a private attorney, law graduate, or other professional for services under this part for any hours an individual provides above 800 hours.

(c) No PAI funds shall be committed for direct payment to any individual who for any portion of the current year or the previous year has been employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient, except for employment as a law student; provided, however:

(1) this paragraph shall not be construed to restrict the use of PAI funds in a pro bono or judicare project on the same terms that are available to other attorneys;

(2) this paragraph shall not apply to the use of PAI funds in an incubator project in which a person is employed for less than a year at an LSC recipient as part of a program to provide legal training to law graduates or newly admitted attorneys who intend to establish their own independent law practices; and

(3) this paragraph shall not be construed to restrict the payment of PAI funds as a

result of work performed by an attorney or other individual who practices in the same business with such former employee.

7. Revise section 1614.6 to read as follows:

**§ 1614.6 Procedure.**

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys, law students, law graduates, or other professionals to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys, law students, law graduates, or other professionals in the provision of legal assistance to eligible clients and shall document that each year its

proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

(c) In the case of recipients whose service areas are adjacent, coterminous, or overlapping, the recipients may enter into joint efforts to involve private attorneys, law students, law graduates, or other professionals in the delivery of legal services to eligible clients, subject to the prior approval of LSC. In order to be approved, the joint venture plan must meet the following conditions:

- (1) The recipients involved in the joint venture must plan to expend at least twelve and one-half percent (12.5%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12.5% of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under § 1614.6;
- (2) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and
- (3) The joint PAI venture must provide an opportunity for involving private attorneys, law students, law graduates, or other professionals throughout the entire joint service area(s).

8. Revise section 1614.7 to read as follows:

**§ 1614.7 Compliance**

The recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit Guide for Recipients and Auditors and the

Accounting Guide for LSC Recipients and shall have the following characteristics:

(a) They shall accurately identify and account for:

(1) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(2) Payments to private attorneys for support or direct client services rendered. The recipient shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(3) Contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and 45 CFR part 1627;

- (4) Other such actual costs as may be incurred by the recipient in this regard.
- (b) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.
- (c) In private attorney models, attorneys may be reimbursed for actual costs and expenses.
- (d) Fees paid to individuals for providing services under this part may not exceed 50% of the local prevailing market rate for that type of service.

9. Add section 1614.8 to read as follows:

**§ 1614.8 Prohibition of revolving litigation funds.**

- (a) A revolving litigation fund system is a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in § 1609.2 of these regulations by advancing funds to private attorneys, law students, law graduates, or other professionals to enable them to pay costs, expenses, or attorneys' fees for representing clients.
- (b) No funds received from the Legal Services Corporation shall be used to establish or maintain revolving litigation fund systems.
- (c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys, law students, law graduates, or other professionals for costs and expenses, provided:

- (1) The private attorney, law student, law graduate, or other professional is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under the Act and under the Corporation's Regulations; and
- (2) The private attorney, law student, law graduate, or other professional has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.
- (d) Nothing in this section shall prevent a recipient from recovering from a private attorney, law student, law graduate, or other professional the amount advanced for any costs, expenses, or fees from an award to the attorney for representing an eligible client.

10. Add section 1614.9 to read as follows:

**§ 1614.9 Waivers.**

- (a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.
- (b) A complete waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:
- (1) Because of the unavailability of qualified private attorneys, law students, law graduates, or other professionals an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys, law students, law graduates, or other professionals in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

(1) The population of qualified private attorneys, law students, law graduates, or other professionals available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified private attorneys, law students, law graduates, or other professionals are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts—including, but not limited to, communicating its problems expending the required amount to LSC and requesting and availing itself of assistance and/or advice from LSC regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose current encumbrances and projected expenditures for the current fiscal year would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could



not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12.5%) requirement but, because of variances in the timing of work performed by the private attorneys and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12.5%) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full 12.5% of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least 12.5% of cases brought on behalf of eligible clients through its PAI program(s).

(d)(1) A waiver of special accounting and bookkeeping requirements of this part may be granted by the Audit Division with the concurrence of LSC, if the recipient shows to the satisfaction of the Audit Division of LSC that such waiver will advance the purpose of this part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by LSC; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this Part may be for the

current, or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All waiver requests shall be addressed to LSC or the Audit Division as is appropriate under the preceding provisions of this Part. The Corporation shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

11. Add section 1614.10 to read as follows:

**§ 1614.10 Failure to comply.**

(a) If a recipient fails to comply with the expenditure required by this part and if that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's support payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12.5%) of the recipient's basic field award.

(b) The withholding of funds under this section shall not be construed as any action under 45 CFR parts 1606, 1618, 1623, or 1630.

(c) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient's service

area through PAI programs. Disbursement of these funds shall be made through a competitive solicitation and awarded on the basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people.

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### § 1614.1 Purpose.

Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical, and effective client-centered legal assistance to eligible clients. This part is designed to ensure that recipients of Legal Services Corporation funds involve private attorneys, and encourages recipients to involve law students, law graduates, and/or other professionals, in the delivery of legal information and legal assistance to eligible clients.

### § 1614.2 General policy.

(a) Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12-1/2 %) of the recipient's LSC annualized basic field award to the involvement of private attorneys, law students, law graduates, and/or other professionals in the delivery of legal services to eligible clients; this requirement is hereinafter referred to as the "PAI requirement". Funds received from the Corporation as one-time special grants shall not be considered in calculating a recipient's PAI requirement.

(b) Funds received from LSC as Native American or migrant grants are not subject to the PAI requirement. However, recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by private attorneys, law students, law graduates, and/or other professionals in a manner that is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

### § 1614.3 Definitions.

(a) In this part, the term **attorney** does not have the meaning stated in 45 CFR 1600.1.

(b) **Law graduate** means an individual who, within the last two years, has completed the education and/or training requirements ~~required~~ necessary for application to the bar in any U.S. state or territory.

(c) **Law student** means an individual who is, or has been, enrolled, full-time or part-time, within the past year, and not expelled from:

(i) a law school that can provide the student with a degree that is a qualification for application to the bar in any U.S. state or territory, or

(ii) an apprenticeship program that can provide the student with sufficient qualifications for application to the bar in any U.S. state or territory.

(d) **Legal assistance** means services on behalf of a client or clients that is specific to the client's or clients' unique circumstances, involves a legal analysis that is tailored to the client's or clients' factual situation, and involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented.

(e) **Legal information** means substantive legal information not tailored to address a person's specific problem and that does not involve applying legal judgment or recommending a specific course of action.

(f) **Other professional** means an individual, not engaged in the practice of law and not employed by the recipient, providing services to a recipient in furtherance of the recipient's provision of legal information and legal assistance to eligible clients. For example, a paralegal representing a client in a Supplemental Security Income (SSI) case, an accountant providing tax advice to an eligible client, ~~an independent social worker providing support services to a client,~~ or an attorney not authorized to practice law in the jurisdiction in which the recipient is located would fit within the definition of "other professional." An individual granted a limited license to provide legal services by a body authorized by court rule or state law to grant such licenses in the jurisdiction in which the recipient is located would also meet the definition of other professional.

(g) **PAI Clinic** means an activity under this part in which private attorneys, law students, law graduates, ~~and or~~ other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.

(h) **Private attorney** (1) means

(i) an attorney licensed or otherwise authorized to practice law in the jurisdiction in which the recipient is located; or

~~(ii) a retired attorney who is authorized to practice law pursuant to the rules of the jurisdiction in which the recipient is located.~~

(iii) an attorney employed less than 1,000 hours per calendar year by an LSC recipient or subrecipient, but only as to activities conducted outside the scope of his or her employment by the recipient.

(2) **Private attorney** does not include:

(i) an attorney employed ~~more than~~ 1,000 hours or more per calendar year by an LSC recipient or subrecipient; or

(ii) an attorney employed by a non-LSC-funded legal services provider acting within the

terms of his or her employment with the non-LSC-funded provider.

(i) **Screen for eligibility** means to screen individuals for eligibility using the same criteria recipients use to determine an individual's eligibility for cases accepted by the recipient and whether LSC funds or non-LSC funds can be used to provide legal assistance (e.g., income and assets, citizenship, eligible alien status, within priorities, applicability of LSC restrictions).

#### § 1614.4 Range of activities.

(a) Direct delivery of legal assistance to recipient clients.

(1) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients by private attorneys through programs such as organized pro bono plans, reduced fee plans, judicare panels, private attorney contracts, or those modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorney's fees through "revolving litigation fund" systems, as described in § 1614.8 of this part, shall neither be used nor funded under this part nor funded with any LSC support.

(2) In addition to the activities described in paragraph (a)(1), direct delivery of legal assistance to eligible clients may include representation by a non-attorney in an administrative tribunal that permits non-attorneys to represent individuals before the tribunal.

(3) Systems designed to provide direct services to eligible clients of the recipient by private attorneys on either a pro bono or reduced fee basis, shall include at a minimum, the following components:

- (i) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;
- (ii) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;
- (iii) Case oversight and follow-up procedures to ensure the timely disposition of

cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

- (iv) Access by private attorneys to LSC recipient resources that provide back-up on substantive and procedural issues of the law.

(b) Support and other activities. Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to:

- (1) Support provided by private attorneys to the recipient as part of its delivery of legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources;

(2) Support provided by other professionals in their areas of professional expertise to the recipient as part of its delivery of legal information or legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of intake support, research, training, technical assistance, or direct assistance to an eligible client of the recipient; and

- (3) Support provided by the recipient in furtherance of activities undertaken pursuant to this section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(4) PAI Clinics.

(i) Legal information provided in PAI clinics. A recipient may allocate to its PAI requirement costs associated with providing ~~organizational support or technical assistance~~ to ~~other organizations conducting~~ clinics, regardless of whether the clinic screens for eligibility, if the clinic provides only legal information.

(ii) Legal assistance provided in PAI clinics. If the clinic provides legal assistance to individual clients, a recipient may provide support for the clinic if the clinic screens for eligibility and provides legal assistance only to clients who may be served consistent with the LSC Act and relevant statutory and regulatory restrictions.

(A) A recipient may allocate to its PAI requirement costs associated with its support of such clinics for legal assistance provided to individuals who are eligible to receive LSC-funded legal services.

(B) Where a recipient supports ~~or~~ a clinic that provides legal assistance to individuals who are eligible for permissible non-LSC-funded services, the recipient may not allocate to its PAI requirement costs associated with the legal assistance provided to such individuals. For example, a recipient may not allocate to its PAI requirement costs associated with legal assistance provided through a clinic to an individual who exceeds the income and asset tests for LSC eligibility, but is otherwise eligible.

(C) For clinics providing both legal information to the public and legal assistance to clients screened for eligibility, a recipient may allocate to its PAI requirement costs associated with its support of both parts of the clinic.

(5) Screening and referral systems.

(i) A recipient may participate in a referral system in which the recipient conducts intake screening and refers LSC-eligible applicants to programs that assign applicants to private attorneys on a pro bono or reduced fee basis.

(ii) In order to allocate to its PAI requirement costs associated with participating in such referral systems, a recipient must be able to track the number of eligible persons referred by the recipient to each program and the number of eligible persons who were placed with a private attorney through the program receiving the referral.

(6) Law student activities. A recipient may allocate to its PAI requirement costs associated with law student work supporting the recipient's provision of legal information or delivery of legal assistance to eligible clients. Compensation paid by the recipient to law students may not be allocated to the PAI requirement.

—(c) Determination of PAI activities. The specific methods to be undertaken by a recipient to involve private attorneys and other professionals in the provision of legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

- (1) The priorities established pursuant to Part 1620 of these regulations;
- (2) The effective and economic delivery of legal assistance to eligible clients;
- (3) The linguistic and cultural barriers to effective advocacy;



(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients or other professionals and individual eligible clients; and

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys and other professionals.

(d) Unauthorized practice of law. This part is not intended to permit any activities that would conflict with the rules governing the unauthorized practice of law in the recipient's jurisdiction.

#### **§ 1614.5 Compensation of recipient staff and private attorneys; blackout period.**

(a) A recipient may allocate to its PAI requirement costs associated with compensation paid to its employees only for facilitating the involvement of private attorneys, law students, law graduates, and other professionals in activities under this part.

(b) A recipient may not allocate to its PAI requirement costs associated with ~~any~~ compensation paid to a private attorney, law graduate, or other professional for services under this part ~~if the for any hours an individual provides more than above 800 hours.:~~

~~(1) if the amount of compensation exceeds one-half of the average salary paid during the recipient's fiscal year to a recipient staff attorney, law graduate, or other professional, of comparable professional experience; or~~

~~(2) if the attorney, law graduate, or other professional provides more than 800 hours of services under this part.~~

(c) No PAI funds shall be committed for direct payment to any individual who for any portion of the current year or the previous two years year has been employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient, except for employment as a law student; provided, however, that:

(1) this paragraph shall not be construed to restrict the use of PAI funds in a pro bono or judicare project on the same terms that are available to other attorneys;

(2) this paragraph shall not apply to the use of PAI funds in an incubator project in which a person is employed for less than a year at an LSC recipient as part of a program to provide legal training to law graduates or newly admitted attorneys who intend to establish their own independent law practices; and

(3) this paragraph shall not be construed to restrict the payment of PAI funds as a result of work performed by an attorney or other individual who practices in the same business with such former employee.

## § 1614.6 Procedure.

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and Part 1620 of the regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys, law students, law graduates, and or other professionals to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

(c) In the case of recipients whose service areas are adjacent, coterminous, or overlapping, the recipients may enter into joint efforts to involve private attorneys, law students, law graduates, or other professionals in the delivery of legal services to eligible clients, subject to the prior approval of LSC. In order to be approved, the joint venture plan must meet the following conditions:

(1) The recipients involved in the joint venture must plan to expend at least twelve and one-half percent (12-1/2 %) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12-1/2 % of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under § 1614.6;

(2) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(3) The joint PAI venture must provide an opportunity for involving private attorneys, law

students, law graduates, or other professionals throughout the entire joint service area(s).

### § 1614.7 Compliance

The recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and shall have the following characteristics:

(a) They shall accurately identify and account for:

(1) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(2) Payments to private attorneys for support or direct client services rendered. The recipient shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(3) Contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and 45 CFR part 1627;

(4) Other such actual costs as may be incurred by the recipient in this regard.

(b) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a

separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(c) In private attorney models, attorneys may be reimbursed for actual costs and expenses.

(d) Fees paid to individuals for providing services under this part may not exceed 50% of the local prevailing market rate for that type of service.

#### **§ 1614.8 Prohibition of revolving litigation funds.**

(a) A revolving litigation fund system is a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in § 1609.2 of these regulations by advancing funds to private attorneys, law students, law graduates, or other professionals to enable them to pay costs, expenses, or attorneys' fees for representing clients.

(b) No funds received from the Legal Services Corporation shall be used to establish or maintain revolving litigation fund systems.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys, law students, law graduates, or other professionals for costs and expenses, provided:

(1) The private attorney, law student, law graduate, or other professional is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under the Act and under the Corporation's regulations; and

(2) The private attorney, law student, law graduate, or other professional has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

(d) Nothing in this section shall prevent a recipient from recovering from a private attorney, law student, law graduate, or other professional the amount advanced for any costs, expenses, or fees from an award to the individual for representing an eligible client.

#### **§ 1614.9 Waivers.**

(a) While it is the expectation and experience of the Corporation that most basic field programs

can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

- (1) Because of the unavailability of qualified private attorneys, [law students, law graduates, or other professionals](#) an attempt to carry out a PAI program would be futile; or
- (2) All qualified private attorneys, [law students, law graduates, or other professionals](#) in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

- (1) The population of qualified private attorneys, [law students, law graduates, and-or other professionals](#) available to participate in the program is too small to use the full PAI allocation economically and effectively; or
- (2) Despite the recipient's best efforts, too few qualified private attorneys, [law students, law graduates, and-or](#) other professionals are willing to participate in the program to use the full PAI allocation economically and effectively; or
- (3) Despite a recipient's best efforts--including, but not limited to, communicating its problems expending the required amount to LSC and requesting and availing itself of assistance and/or advice from LSC regarding the problem--expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or
- (4) The recipient uses a fee-for-service program whose current encumbrances and projected expenditures for the current fiscal year would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12-1/2 %) requirement but, because of variances in the timing of work performed by the private attorneys and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12-1/2 %) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full 12-1/2 % of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least 12-1/2 % of cases brought on behalf of eligible clients through its PAI program(s).

(d)(1) A waiver of special accounting and bookkeeping requirements of this part may be granted by the Audit Division with the concurrence of LSC, if the recipient shows to the satisfaction of the Audit Division of LSC that such waiver will advance the purpose of this part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by LSC; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this Part may be for the current, or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All waiver requests shall be addressed to LSC or the Audit Division as is appropriate under the preceding provisions of this Part. The Corporation shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

**§ 1614.10 Failure to comply.**

(a) If a recipient fails to comply with the expenditure required by this part and if that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's support payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12-1/2 %) of the recipient's basic field award.

(b) The withholding of funds under this section shall not be construed as any action under 45 CFR parts 1606, 1618, 1623, or 1630.

(c) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient's service area through PAI programs. Disbursement of these funds shall be made through a competitive solicitation and awarded on the basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people.

# **Board of Directors**



# Agenda

# **BOARD OF DIRECTORS**

**April 8, 2014**

## **Agenda**

### **OPEN SESSION**

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of January 25, 2014
4. Chairman's Report
5. President's Report
6. Members' Reports
7. Inspector General's Report
8. Consider and act on resolution acknowledging the service of Ronald Merryman
9. Consider and act on resolution commending the Office of the Inspector General
10. Consider and act on the report of the Delivery of Legal Services Committee
11. Consider and act on the report of the Finance Committee
12. Consider and act on the report of the Audit Committee
13. Consider and act on the report of the Operations and Regulations Committee
14. Consider and act on the report of the Governance and Performance Review Committee

15. Consider and act on the report of the Institutional Advancement Committee
16. Report on implementation of recommendations of the Pro Bono Task Force Report and Pro Bono Innovation Fund
17. Public comment
18. Consider and act on other business
19. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

### **CLOSED SESSION**

20. Approval of minutes of the Board's Closed Session of January 25, 2014
21. Management Briefing
22. Inspector General Briefing
23. Consider and act on General Counsel's report on potential and pending litigation involving LSC
24. Consider and act on list of prospective funders
25. Consider and act on motion to adjourn meeting

**Draft Minutes of January 25, 2014**  
**Open Session Meeting**

**Legal Services Corporation  
Meeting of the Board of Directors**

**Open Session**

**DRAFT**

**Saturday, January 25, 2014**

Chairman John G. Levi convened an open session meeting of the Legal Services Corporation's ("LSC") Board of Directors at 10:04 a.m. on Saturday, January 25, 2014. The meeting was held at the Hilton Garden Inn Downtown Austin, 500 North Interstate 35, Austin, Texas 78701.

The following Board members were present:

John G. Levi, Chairman  
Martha L. Minow  
Sharon L. Browne  
Robert J. Grey, Jr.  
Charles N.W. Keckler  
Harry J. F. Korrell III (by telephone)  
Victor B. Maddox  
Laurie I. Mikva  
Father Pius Pietrzyk (by telephone)  
Julie A. Reiskin  
Gloria Valencia-Weber  
James J. Sandman, *ex officio*

Also attending were:

Lynn Jennings	Vice President for Grants Management
Wendy Rhein	Chief Development Officer
Rebecca Fertig	Special Assistant to the President
Ronald S. Flagg	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
David L. Richardson	Comptroller and Treasurer, Office of Financial and Administrative Services
Carol A. Bergman	Director, Office of Government Relations and Public Affairs
Jeffrey E. Schanz	Inspector General
Carl Rauscher	Director of Media Relations, Office of Government Relations and Public Affairs
Ronald "Dutch" Merryman	Assistant Inspector General for Audit, Office of the Inspector General
Thomas Coogan	Assistant Inspector General for Investigations, Office of the Inspector General

David Maddox	Assistant Inspector General for Management and Evaluation, Office of the Inspector General
Lora M. Rath	Director, Office of Compliance and Enforcement
Herbert S. Garten	Non-Director Member, Institutional Advancement Committee
Paul Furrh	Lone Star Legal Aid
Debra Furrh	
Ofelia Zapata	Texas RioGrande Legal Aid Client Board Member
Don Saunders	National Legal Aid and Defenders Association (NLADA)
Bruce Bower	

The following summarizes actions taken by, and presentations made to, the Board:

Ms. Browne led the Pledge of Allegiance.

**MOTION**

Dean Minow moved to approve the agenda. Ms. Browne seconded the motion.

**VOTE**

The motion passed by a voice vote.

**MOTION**

Dean Minow moved to approve the minutes of the Board's telephonic meeting of November 21, 2013. Ms. Reiskin seconded the motion.

**VOTE**

The motion passed by a voice vote.

**MOTION**

Ms. Reiskin moved to nominate Chairman Levi to continue his service as Board Chairman. Ms. Mikva seconded the motion.

**VOTE**

The motion passed by voice vote.

**MOTION**

Mr. Maddox moved to nominate Vice Chair Minow to continue her service as Board Vice Chair. Ms. Reiskin seconded the motion.

**VOTE**

The motion passed by voice vote.

Chairman Levi gave the Chairman's Report. He thanked the Board for its continuing hard work and acknowledged several individuals for making the Austin Board meeting and events a success.

President Sandman gave the President's Report, which included updates on implementing the recommendations of the Fiscal Oversight Task Force; the status of LSC's business process analysis; the work of the Legal Aid Interagency Roundtable; offering reflections LSC's leadership in technology; and feedback received from grantees through a survey completed by executive directors. He answered Board members' questions.

During members' reports, Professor Valencia-Weber reported that she is continuing her role as a consultant to the Department of Justice Office of Tribal Justice. Ms. Reiskin reported that she and President Sandman moderated a panel with client board members at the National Legal Aid and Defenders Association (NLADA) conference.

Inspector General Schanz and Mr. Maddox gave the Inspector General's Report, which included reporting on updating the OIG strategic plan; the OIG's organization health survey to assess where improvements can be made; the Inspector General's work plan; and the OIG staff's receipt of the Council of Inspectors General for Integrity and Efficiency (CIGIE) award in 2013. They answered Board members' questions.

Professor Valencia-Weber gave the report of the Delivery of Legal Services Committee. She was followed by Mr. Grey who gave the report of the Finance Committee.

### **MOTION**

Mr. Grey moved to adopt the revised temporary operating budget for fiscal year 2014 and corresponding resolution, as amended.

### **VOTE**

The motion passed by voice vote.

Mr. Maddox gave the Audit Committee report.

Mr. Keckler gave the Operations and Regulations report.

### **MOTION**

Mr. Keckler moved to approve publication of a Further Notice of Proposed Rulemaking for 45 CFR Part 1626 with a 30-day comment period.

**VOTE**

The motion passed by voice vote.

**MOTION**

Mr. Keckler moved to adopt the resolution approving proposed revisions to the LSC Employee Handbook, as amended.

**VOTE**

The motion passed by voice vote.

Dean Minow gave the Governance and Performance Review Committee report.

**MOTION**

Dean Minow moved to adopt the LSC Whistleblower Policy, as amended.

**VOTE**

The motion passed by voice vote.

**MOTION**

Dean Minow moved to adopt the resolution supporting LSC Management's revisions to the LSC Performance Management Policy.

**VOTE**

The motion passed by voice vote.

**MOTION**

Dean Minow moved to adopt the resolution amending Section 5.02 of the LSC Bylaws to prohibit non-director members of Board committees from counting towards a committee quorum.

**VOTE**

The motion passed by voice vote.



**MOTION**

Dean Minow moved to approve extending President Sandman's contract for an additional three-year term.

**VOTE**

The motion passed by voice vote.

Chairman Levi noted that the Board met with the ABA Standing Committee on Pro Bono & Public Services to provide an update and discuss LSC's implementation of the Pro Bono Task Force's recommendations.

Chairman Levi gave the Institutional Advancement Committee report

Chairman invited public comment. Ms. Zapata, Texas RioGrande Legal Aid client board member, shared issues that regularly arise among the client community, including disparity in the quality of legal representation between poor people and rich people, and LSC restrictions on representation of prisoners, class actions, and lobbying and legislative advocacy.

**MOTION**

Dean Minow moved to authorize an executive session of the Board meeting. Mr. Keckler seconded the motion.

**VOTE**

The motion passed by voice vote.

The Board continued its meeting in closed session at 11:59 a.m.

## **Resolutions**

### **Recognizing Ronald “Dutch” Merryman and the Office of the Inspector General**



BOARD OF DIRECTORS

**RESOLUTION**  
**IN RECOGNITION AND APPRECIATION OF**  
**OUTSTANDING SERVICE BY**  
**RONALD D. MERRYMAN**

**WHEREAS**, Ronald D. (“Dutch”) Merryman has faithfully and with distinction served as the Assistant Inspector General for Audit of the Office of Inspector General (“OIG”) of the Legal Services Corporation (“LSC” or “Corporation”) for the last 10 years, as well as Acting Inspector General during a transitional period for both the Board of Directors and the OIG;

**WHEREAS**, Dutch has contributed significantly to the development and enhancement of a robust audit program in furtherance of promoting the economy and efficiency of LSC programs and operations;

**WHEREAS**, throughout Dutch’s tenure, he has instilled confidence across the Inspector General community in the work of LSC and the LSC OIG; and

**WHEREAS**, Dutch’s leadership and commitment to LSC’s mission of providing high-quality civil legal services to low-income Americans by helping ensure the proper stewardship of federal funds have been a great asset to the Corporation;

**NOW, THEREFORE, BE IT RESOLVED** that the LSC Board of Directors hereby commends and extends its sincere appreciation to Dutch for his 10 years of outstanding service and many contributions to LSC and to the cause of civil legal assistance for low-income Americans.

**Adopted by the Board of Directors**  
April 8, 2014

\_\_\_\_\_  
John G. Levi  
*Chairman*

**Attest:**

\_\_\_\_\_  
Ronald S. Flagg  
*Vice President for Legal Affairs,*  
*General Counsel & Corporate Secretary*

## RESOLUTION

### COMMENDING THE OFFICE OF INSPECTOR GENERAL FOR RECEIVING THE 2013 INVESTIGATION AWARD FOR EXCELLENCE FROM THE COUNCIL OF INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

**WHEREAS**, in 1988, Congress created the Office of the Inspector (“OIG”) of the Legal Services Corporation (“LSC” or Corporation”); and

**WHEREAS**, the LSC OIG has two principal missions: to assist LSC in identifying ways to promote efficiency and effectiveness in the activities and operations of LSC and its grantees, and to prevent and detect fraud and abuse; and

**WHEREAS**, the OIG works to achieve its missions by fact-finding through financial, performance, and other types of audits, evaluations and reviews, as well as investigations into allegations of wrongdoing; and

**WHEREAS**, the Council of Inspectors General on Integrity and Efficiency (“CIGIE”) is an independent entity within the executive branch comprised of Inspectors General and government ethics and law enforcement officials; and

**WHEREAS**, on November 15, 2013, CIGIE recognized the OIG’s Office of Investigations, Investigative Counsels and Analysts for their outstanding efforts and accomplishments and awarded them the 2013 Investigation Award for Excellence for developing, piloting, and implementing an investigative program to reduce grantee fraud by examining compliance with grant regulations and guidelines;

**NOW, THEREFORE, BE IT RESOLVED** that the LSC Board of Directors hereby thanks the OIG for its dedication to LSC, and commends and congratulates the Office of Investigations, Investigative Counsels and Analysts for receiving CIGIE’s 2013 Investigation Award for Excellence.

**Adopted by the Board of Directors**  
April 8, 2014

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John G. Levi  
*Chairman*

**Attest:**

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Ronald S. Flagg  
*Vice President for Legal Affairs,  
General Counsel & Corporate Secretary*

# **Pro Bono Task Force Report Implementation Update**

# LSC PRO BONO TASK FORCE IMPLEMENTATION UPDATE

## MARCH 2014

### I. PRO BONO TASK FORCE OVERVIEW

In March 2011, LSC created a Pro Bono Task Force comprised of judges, corporate general counsel, bar leaders, technology experts, leaders of organized pro bono programs, law firm leaders, government lawyers, law school deans, and the heads of legal aid organizations, to consider how to increase pro bono contributions to civil legal aid. The Task Force divided into working groups and spent months conducting interviews, identifying effective practices, and sharing ideas before reporting its findings and recommendations to the LSC Board of Directors.

In October 2012, the Pro Bono Task Force released its findings and recommendations. Implementation of the recommendations is following two tracks. The first track relates to activities that require a formal process directed by LSC, such as budget requests and the promulgation of regulations. The second track is less formal and engages a broad array of stakeholders. To facilitate implementation, LSC has established a Steering Committee and four subcommittees to work on the remaining recommendations.

### II. IMPLEMENTING THE TASK FORCE RECOMMENDATIONS

#### A. Creation of a Pro Bono Innovation Fund

One of the Task Force's key recommendations is for LSC to work with Congress to create a Pro Bono Innovation/Incubation Fund ("PBIF"). On January 17, 2014, the President signed P.L. 113-76, the Consolidated Appropriations Act of 2014, which included \$2.5 million in LSC's appropriation for a new grant making program called the Pro Bono Innovation Fund.

**Purpose** The purpose of the Pro Bono Innovation Fund is to encourage LSC grantees to develop strong pro bono programs that serve larger numbers of low-income clients. The Fund will support innovations that expand the delivery of pro bono legal services. The grant criteria will require both innovation (new ideas or new applications of existing best practices) and replicability (likelihood that the innovation, if successful, could be implemented by other legal aid programs). To ensure accountability, LSC will require Innovation Fund projects to evaluate their experience and report their results to LSC.

**Eligible Applicants.** Eligible applicants for the Innovation Fund would be existing LSC grant recipients.

**Project Design Elements:** The Innovation Fund's grant making design is structured with the findings of the Pro Bono Task Force in mind. The design is focused on addressing persistent challenges in pro bono delivery systems and on expanding the engagement of private lawyers, law students, law graduates, and other professionals in addressing unmet civil legal needs for low-income clients. Successful Innovation Fund applicants will propose projects that address the following elements:

**Engaging more lawyers in pro bono service:** Projects should effectively engage different or more segments of the bar, such as solo practitioners, in-house corporate counsel, law students, and government attorneys.

**Addressing gaps in service:** Gaps in services may be hard-to-reach clients such as rural populations, limited-English proficient individuals, or people with special legal issues such as children, older Americans, veterans, human trafficking victims, or individuals with disabilities.

**Addressing persistent challenges in pro bono delivery systems:** Projects will also employ innovative strategies or promising practices that address persistent challenges in the pro bono delivery system. These may include efforts to improve screening, coordination and referral of cases within a legal community; improving efficiency and expanding collaboration and resource-sharing with other service providers or stakeholders in a city, state, or region; and providing effective orientation, training, legal resources, and mentors for pro bono volunteers.

**Outline of Selection Process and Timeline.**

Stakeholder Outreach	March 2014
Notice of Funds Availability Released	April 2014
Application Period (incl. grantee technical assistance)	April - June 2014
Applications Due	July 2014
Internal Review	July - August 2014
Grant Awards	September 2014

**B. Revision of LSC’s Private Attorney Involvement Regulation**

The Task Force also recommended that LSC revise its Private Attorney Involvement (PAI) Regulation to enhance pro bono. During 2013, LSC conducted two public workshops on potential revisions to the regulation and also solicited written comments. Twelve people testified at the workshops and ten commenters submitted written comments. LSC management has drafted a Notice of Proposed Rulemaking (NPRM) which will be presented to the Board in April. Once the NPRM is published in the *Federal Register*, the public will have sixty days to provide comments.

**C. Implementation Steering Committee and Subcommittees**

To oversee the implementation of the remainder of the Task Force’s recommendation, the LSC Board of Directors established a Steering Committee and collaborated with the ABA’s Pro Bono Committee to outline the scope of the subcommittees. The subcommittees are:

1. Pro Bono Toolkit, Technology, and Effectiveness Implementation Subcommittee;
2. Pro Bono Culture Change Subcommittee;
3. Pro Bono Fellowship Subcommittee; and
4. Pro Bono Rules Change Implementation Subcommittee



Subcommittees are comprised of LSC Board members, LSC grantees, members of the private bar, the judiciary as well as interested stakeholder groups. We want to be as inclusive as possible and leverage resources from the legal services community.

<b>Pro Bono Toolkit, Technology, and Effectiveness Implementation Subcommittee</b>		
<b>Scope:</b>	This subcommittee will focus on developing a toolkit and technology platform for LSC grantees to strengthen and enhance their pro bono efforts. It will also focus on measuring and evaluating the effectiveness of pro bono programs to better coordinate efforts and research to maximize the success of pro bono programs.	
<b>Rec. #1.</b>	LSC should serve as an Information Clearing house and Source of Coordination and Technical Assistance to help grantees develop strong pro bono programs.	
<b>Rec. 1.2:</b>	Create a professional association specifically for pro bono managers at LSC grantees.	
<b>Rec. 1.3:</b>	Develop a pro bono tool kit.	
<b>Co-Chairs:</b>	Martha Minow, LSC Board Julie Reiskin, LSC Board Nan Heald, Pine Tree Legal Services Esther Lardent, Pro Bono institute	
<b>Members:</b>	Scott Cummings, UCLA School of Law	Lora Livingston, Travis County District Court
	Colleen Cotter, Legal Aid Society of Cleveland	Michael Monahan, State Bar of Georgia, Pro Bono Project
	Lisa Dewey, DLA Piper	Dave Pantos, Legal Aid of Nebraska
	L. Joseph Genereux, Dorsey & Whitney, LLP	Linda Rexer, Michigan State Bar Foundation
	Robert Gillett, Legal Services of Central Michigan	Maureen Syracuse, APBCo
	Terry Hamilton, Lone Star Legal Aid	Angela Vigil, Baker and McKenzie, LLP
	Anne Geraghty Helms, DLA Piper	Cheryl Zalenski, ABA
	Ellen Lawton, EL Consulting	Jennifer van Dulmen (point person for NAPBPro)
<b>Goals</b>	<p><b>Goals 1 &amp; 2:</b> Enable LSC and its grantees to more effectively assess existing pro bono efforts and to identify areas of expansion and improvement. Review and catalog efforts under way or in the planning stages to assess the effectiveness, outcomes, and impact of pro bono work.</p> <p><b>Goal 3:</b> Build a website/resource for grantees to identify, access, build, and scale the most effective pro bono programs.</p> <p><b>Goals 4 and 5:</b> Take innovations to a national scale/Develop collaborative models.</p>	
<b>Status:</b>	<ul style="list-style-type: none"> <li>• Co-chair conference call: April 12, 2013</li> <li>• Co-chair conference call: May 6, 2013</li> <li>• Co-chair conference call: June 17, 2013</li> </ul>	

	<ul style="list-style-type: none"> <li>• Full Subcommittee call: July 17, 2013</li> <li>• Goals 1 &amp; 2 conference call: August 13, 2013</li> <li>• Goal 3 conference call: September 11, 2013</li> <li>• Goals 4 &amp; 5 conference call: September 23, 2013</li> <li>• Conference call on March 14, 2014 to solicit input on revised PAI plan.</li> <li>• <u>Revising the LSC PAI Plan</u>. A draft PAI plan has been shared with the subcommittee along with an inventory of PAI plans. The next step is to have a call with subcommittee members to solicit their feedback. The goal is to have a revised PAI plan for the 2015 grants competition cycle.</li> <li>• <u>Understanding Grantee Pro Bono Technology Needs</u>. At the 2014 TIG conference, LSC moderated a focus group to discuss innovative uses of technology as it relates to the pro bono delivery of legal services to gain a better understanding of which technology projects can improve pro bono participation and better support the work of pro bono coordinators and attorneys. With this information, LSC will work with the committee and other stakeholders, including technology providers, to help grantees improve their technology capacity.</li> <li>• <u>Toolkit Webpage</u> – A pilot web page was launched in January 2014 and is accessible at <a href="http://lri.lsc.gov/">http://lri.lsc.gov/</a>. We continue to seek feedback for improving the page and soliciting additional content from the committee.</li> <li>• <u>Working with Pro Bono Experts</u>. LSC is partnering with pro bono experts to accompany Office of Program Performance Program Liaisons on select site visits to evaluate grantee pro bono efforts. To date, two representatives from DLA Piper have joined us on Program Quality Visits to Community Legal Services in Phoenix, AZ and Legal Aid Bureau in Maryland. We hope to expand the program this year.</li> </ul>
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Pro Bono Rules Change Implementation Subcommittee					
<b>Scope:</b>	This subcommittee will explore options to change judicial, CLE and other state rules to promote and support pro bono.				
<b>Request #3.</b>	Judges and Bar Leaders should amend attorney practice, judicial ethics, and CLE rules to support pro bono. Provide CLE credit for pro bono work. Revise judicial codes of conduct to allow judges to encourage lawyers to provide pro bono legal services. Explore other state rule changes that would encourage additional pro bono work by the private bar. Create or strengthen State Access to Justice commissions.				
<b>Co-Chairs:</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Harry Korrell, LSC Board</td> <td style="width: 50%;">Judge Jim Moyer, U.S. Magistrate, Western District of KY</td> </tr> <tr> <td>Laurie Mikva, LSC Board</td> <td></td> </tr> </table>	Harry Korrell, LSC Board	Judge Jim Moyer, U.S. Magistrate, Western District of KY	Laurie Mikva, LSC Board	
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Laurie Mikva, LSC Board					
<b>Members:</b>	Renee Chantler, DLA Piper	Mary Ryan, Nutter, McClennen & Fish, LLP			
	Lisa Dewey, DLA Piper	Steve Scudder, ABA			
	Hon. Janice Holder, Tennessee Supreme Court	Hon. Richard Thornburgh, K&L Gates LLP			
	Jane LaBarbera, American Association of Law Schools	Ginny Martin (point person for NAPBPro)			

<b>Status:</b>	<ul style="list-style-type: none"> <li>Co-chair conference call: April 24, 2013</li> <li>Full Subcommittee call: June 21, 2013</li> <li>Full Subcommittee call: September 13, 2013</li> <li>Revised Rules inventory sent to the Advisory Committee – January 6, 2014</li> <li>Full Subcommittee call: February 19, 2014</li> </ul> <p>The subcommittee has discussed pursuing a two-pronged strategy that would, if resources permit, (1) focus on engaging a large number of states; and (2) assess what can be done in those states that have not adopted any rules that promote pro bono activity. To target our work, the following documents were prepared for the subcommittees review:</p> <ul style="list-style-type: none"> <li>(1) State by State Rules Inventory</li> <li>(2) Overview analysis – This document analyzes the rules that the subcommittee is interested in. It also identifies the states that have the most rules and policies that promote the provision of pro bono services and the states that have the fewest.</li> <li>(3) Rules Breakdown – Presents the information by rules instead of by state.</li> </ul> <p>The next step is to reach out to additional stakeholders to discuss how to affect potential changes.</p>
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<b>Pro Bono Fellowship Development Committee</b>	
<b>Scope:</b>	This subcommittee will research and develop options for potential "fellowship"-type opportunities at various stages in a lawyer's career.
<b>Rec. #4.</b>	LSC should create a fellowship program to foster a lifelong commitment to pro bono.
<b>Co-Chairs:</b>	John Levi, LSC Board <span style="float: right;">David Stern, Equal Justice Works</span> Charles Keckler, LSC Board
<b>Members:</b>	Margaret Benson, Chicago Volunteer Lawyers Fdn. <span style="float: right;">John Rosenberg</span>
	Ronald Flagg, LSC <span style="float: right;">Jim Sandman, LSC</span>
	Steve Grumm, ABA <span style="float: right;">Jennifer van Dulmen, Community Legal Services</span>
	Roberta (Bert) Ritvo, DLA Piper <span style="float: right;">John Whitfield, Blue Ridge Legal Services</span>
<b>Status:</b>	<ul style="list-style-type: none"> <li>Co-chair conference call: May 8, 2013</li> <li>Co-chair conference call: May 29, 2013</li> <li>Full Subcommittee call: June 26, 2013</li> <li>This committee developed a number of fellowship proposals that included pro bono fellowships and non-pro bono fellowships.</li> <li>In order to avoid duplication of effort, the work of this committee has been transferred to the Board's Institutional Advancement Committee.</li> <li>In conjunction with LSC's 40th Anniversary this year, LSC's Board of Directors has initiated a campaign to raise private funds to help LSC launch several</li> </ul>

	<p>fellowship programs to attract and fund new lawyers and law students to serve clients in need, including a program to support expansion of pro bono efforts by LSC grantees. Specifically, LSC seeks to create a one-year Senior Pro Bono Fellowship program for senior or emeritus attorneys to support pro bono programs in the legal aid organizations it funds. Fellows would make contacts with pro bono lawyers, engage with local firms and corporate legal departments, and promote sustainable pro bono systems within grantee organizations. Each fellow would receive a small annual stipend of \$15,000, and the host organization would receive \$15,000 to invest in its pro bono efforts. This program would be initiated in 40 grantee programs.</p>
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<b>Pro Bono Culture Change Implementation Subcommittee</b>		
<b>Scope:</b>	This subcommittee will build on and amplify the successes of various public relations campaigns and other initiatives that instill the value of pro bono among members of the bar.	
<b>Rec. #3.</b>	LSC should launch a Public Relations campaign on the importance of pro bono.	
<b>Co-Chairs:</b>	Sharon Brown, LSC Board Gloria Valencia-Weber, LSC Board Jo-Ann Wallace, NLADA	
<b>Members:</b>	Lisa Dewey, DLA Piper	Larry McDevitt, Van Winkle Law Firm
	Douglas Eakeley, Lowenstein Sandler, LLP	Steve Scudder, ABA
	Richard Gruenberger, DLA Piper	Paige Sessenbrenner, Adams & Reese, LLP
	Anne Geraghty Helms, DLA Piper	John Whitfield, Blue Ridge Legal Services
	George Hettrick, Hunton & Williams	Lisa Wood, Foley Hoag, LLP
	Maha Jaweid, Department of Justice	
<b>Status:</b>	<ul style="list-style-type: none"> <li>• Co-chair conference call: April 24, 2013</li> <li>• Co-chair conference call: June 4, 2013</li> <li>• The subcommittee is working to recalibrate and re-scope its efforts. The ABA Standing Committee on Pro Bono &amp; Public Service has expressed some interest in partnering on this issue.</li> <li>• LSC Senior Staff and our DLA Piper Partners met with members of APBCo to solicit their input. March 4, 2014</li> </ul>	

# **Pro Bono Innovation Fund**

### PRO BONO INNOVATION FUND

**Background.** In March 2011, LSC's Board of Directors formed a Pro Bono Task Force to identify how to engage pro bono lawyers to leverage LSC's federal funding and increase the resources available to serve low-income people. The Task Force included more than 60 distinguished leaders from the judiciary, major corporations, private practice, law schools, the federal government, the organized bar, pro bono programs, and the legal aid community ([See a list of Pro Bono Task Force members](#)).

The Task Force issued a comprehensive report and recommendations in October 2012. The report provides a summary of findings that illustrate the current crisis in legal services:

- At least 50% of eligible low-income individuals seeking help from LSC-funded organizations are turned away because of insufficient resources. Other studies have found that 80% of the civil legal needs of low-income people go unmet.
- In 2011 and 2012, LSC-funded organizations reduced their staffs by more than 1,000 people because of resource constraints. These cuts have serious consequences for low-income people who must navigate a complicated legal system unaided.
- Effective engagement of private lawyers, law students, law graduates, and other professionals to help address this "justice gap" is uneven across the country.

The report suggests ways that pro bono can be used to increase the supply of lawyers and others who are available to provide legal assistance. One of the Task Force's key recommendations was the creation of an Innovation Fund to encourage new ideas for engaging pro bono assistance to narrow the justice gap. The full report and a one-page summary can be found at <http://www.lsc.gov/media/reports>.

On January 17, 2014, the President signed P.L. 133-76, the Consolidated Appropriations Act of 2014, which included \$2.5 million in LSC's appropriation for a new grant making program called the Pro Bono Innovation Fund.

**Purpose** The purpose of the Pro Bono Innovation Fund is to encourage LSC grantees to develop strong pro bono programs that serve larger numbers of low-income clients. The Fund will support innovations that expand the delivery of pro bono legal services. The grant criteria will require both innovation (new ideas or new applications of existing best practices) and replicability (likelihood that the innovation, if successful, could be implemented by other legal aid programs). To ensure accountability, LSC will require Innovation Fund projects to evaluate their experience and report their results to LSC.

The award of an innovation grant is not meant to substitute for, or be credited against, LSC's longstanding regulatory requirement that LSC recipients spend an amount equivalent

to 12.5 percent of their annualized basic field award to involve private attorneys in the delivery of legal assistance to eligible clients. *See* 45 C.F.R. § 1614.1(a).

**Eligible Applicants:** The Innovation Fund will provide grants to existing LSC grantee organizations. Other organizations and entities are not eligible to apply directly to LSC for Innovation Fund grants, but are encouraged to collaborate and participate as project partners or sub-grantees with LSC grantees.

**Project Design Elements:** The Innovation Fund’s grant making design is structured with the findings of the Pro Bono Task Force in mind. The design is focused on addressing persistent challenges in pro bono delivery systems and on expanding the engagement of private lawyers, law students, law graduates, and other professionals in addressing unmet civil legal needs for low-income clients. Successful Innovation Fund applicants will propose projects that address the following elements:

***Engaging more lawyers in pro bono service:*** Projects should effectively engage different or more segments of the bar, such as solo practitioners, in-house corporate counsel, law students, and government attorneys. Projects can target pro bono programs for specialized practitioners or bar associations.

***Addressing gaps in service:*** Gaps in services may be hard-to-reach clients such as rural populations, limited-English proficient individuals, or people with special legal issues such as children, older Americans, veterans, human trafficking victims, or individuals with disabilities.

***Addressing persistent challenges in pro bono delivery systems:*** Projects will also employ innovative strategies or promising practices that address persistent challenges in the pro bono delivery system. These may include efforts to improve screening, coordination and referral of cases within a legal community; improving efficiency and expanding collaboration and resource-sharing with other service providers or stakeholders in a city, state, or region; and providing effective orientation, training, legal resources, and mentors for pro bono volunteers.

**Funding Availability:** Approximately \$2.375 million is available for 2014 grant awards. In this pilot year, LSC recommends a minimum \$50,000 per funding request. There are no maximum amounts for Innovation Fund grant requests that are within the total funding available.

**Award Period:** Applicants may propose project terms between 18 and 24 months, with three additional months added to the grant term for evaluation and final reporting.

**Outline of Selection Process and Timeline.**

Stakeholder Outreach	March 2014
Notice of Funds Availability Released	April 2014
Application Period (incl. grantee technical assistance)	April - June 2014
Applications Due	July 2014
Internal Review	July - August 2014
Grant Awards	September 2014

**Status Report:**

The Pro Bono Implementation Fund Team is on schedule to announce grant awards by mid-September. The Team has completed a series of 9 stakeholder outreach meetings and webinars reaching almost 200 stakeholders. Next steps in the process include: assessing the comments and input received during the outreach phase, preparing frequently asked questions; drafting a Notification of Funds Availability; and developing a compliance regime.

**PBIF Outreach Webinar and Meeting Schedule**

<b>Stakeholder Group</b>	<b>Date</b>
Grantee Executive Directors: Meeting #1	Thursday, March 6, 2014
House Appropriations Staff Briefing	Friday, March 7, 2014
Senate Appropriations Staff Briefing	Monday, March 10, 2014
Grantee Executive Directors: Meeting #2	Tuesday, March 11, 2014
IOLTA Funders: Meeting #1	Wednesday, March 12, 2014
Access to Justice Partners: Meeting #1	Thursday, March 13, 2014
LSC Pro Bono Task Force Members and LSC Board of Directors	Friday, March 14, 2014
IOLTA Funders: Meeting #2	Friday, March 14, 2014
Access to Justice Partners: Meeting #2	Friday, March 21, 2014



# **White House Forum Bios**

**White House Forum on Increasing Access to Justice**

**Public-Private Partnerships**

**April 8, 2014**

*Sylvia A. Ayler, Director, Legal, Merck Office of General Counsel, Merck Sharp & Dohme Corporation*

*Anne Geraghty Helms, Pro Bono Counsel, DLA Piper*

*Jessie R. Nicholson, Chief Executive Officer, Southern Minnesota Regional Legal Services, Inc.*

*Diane K. Smith, Executive Director, Legal Services of Northwest Jersey, Inc.*

*Brett J. Strand, Counsel, Office of the General Counsel, 3M Company*

*Catherine Weiss, Partner & Chair, Lowenstein Center for the Public Interest at Lowenstein Sandler*

*Diana C. White, Executive Director, Legal Aid Foundation of Chicago*

*Jim Sandman, President, Legal Services Corporation (Moderator)*

**Sylvia A. Ayler, Director, Legal, Merck Office of General Counsel, Merck Sharp & Dohme Corporation**

Sylvia A. Ayler is a Legal Director in the Patent Department at Merck & Sharp & Dohme Corp. Since 1993, she has been licensed to practice in Pennsylvania, New York and New Jersey, and since 1992, before the United States Patent and Trademark Office. She received her law degree from Seton Hall University in 1993 and Bachelor's degree in Biochemistry from Cook College, Rutgers University in 1985.

Sylvia has been with Merck since 1987, working in the Chemical Engineering and Biochemical Engineering Departments. In 1991, she joined the Merck Patent Department where she began her legal career. She attended law school at night, while receiving legal training in the Patent Department.

Sylvia is a member of the New Jersey Corporate Counsel Association (NJCCA) and co-chair of the Intellectual Property Law section. She has served on several pro bono program panels that actively promote pro bono nationally and is the recipient of Legal Services of New Jersey Equal Justice Medal (December 1997). She also is a major contributor to Merck's Office of General Counsel in house pro *bono*, Justice for Veterans Initiative and Street Law programs.

She is published in Goklen, Thien, Ayler, et al, Development of Crossflow Filtration Processes for the Commercial-Scale Isolation of a Bacterial Lipase, *Bio. Eng.*, 11 (1994) 49-56.

**Anne Geraghty Helms, Pro Bono Counsel, DLA Piper**

Anne Geraghty Helms, Pro Bono Counsel for the Chicago office, assists the pro bono team with its programs and oversees the operations of those programs in Chicago as well as in firm offices in Texas, Seattle, Phoenix and Minneapolis.

Ms. Helms concentrates her own practice on juvenile and criminal justice issues and, since joining DLA Piper in 2006, has helped to develop, and has herself worked on, a number of initiatives in this area. Through the Chicago office's signature Juvenile Justice Project, she successfully defended a 15-year-old

girl who had been charged with attempted murder. Ms. Helms also recently helped to secure an evidentiary hearing on behalf of a young man who received a lengthy prison sentence in adult court when he was only 15 years-old. She coordinates a firmwide project on behalf of the Northwestern University School of Law's Center on Wrongful Convictions, through which firm lawyers are drafting entries for the soon-to-be-published *Encyclopedia of Wrongful Convictions in the United States*, and she contributed to, and is helping to implement the findings of, *From Juvenile Court to the Classroom: The Need for Effective Child Advocacy*, a report which examines the issues children face when they are transferred from detention back into the school system. Ms. Helms also serves as a member of the Advisory Committee Human Rights Watch's Children's Rights Division.

For the past two years, Ms. Helms has been a leader in a firmwide effort to end the practice of sentencing individuals to life without the possibility of parole for crimes committed while they were juveniles. She serves as a member of the Illinois Coalition for the Fair Sentencing of Children, an organization devoted to ending this practice, and was the principal author of a report released by the Coalition in February 2008, *Categorically Less Culpable: Children Sentenced to Life Without Possibility of Parole in Illinois*. The report, which received national media attention, generated significant dialogue in Illinois on the issue of juvenile life without parole.

Although principally focused on juvenile and criminal justice issues, Ms. Helms also has worked on a range of other projects since joining DLA Piper. For example, she successfully obtained T-visa relief for a client who forced by her employer into domestic servitude, assisted International Justice Mission in its efforts to develop a land registration system in Rwanda and co-taught a short course on pro bono at two law schools in Mexico City as part of the firm's New Perimeter program in partnership with Mexico Appleaseed that focuses on helping to strengthen pro bono culture in Mexico City.

Most recently, Ms. Helms has helped develop a firmwide signature project focused on education. As part of that initiative, she serves as outside counsel to Woodlawn Children's Promise Community, an organization devoted to improving the trajectory of children's lives through education, and has helped set up and operate a new legal clinic in Chicago's Woodlawn community.

Ms. Helms has been profoundly committed to pro bono work throughout her legal career. She comes to DLA Piper from Wilmer Cutler Pickering Hale and Dorr LLP, where she was a litigation associate in that firm's Washington, DC office. While at WilmerHale, Ms. Helms was active in the firm's pro bono program. In 2004, she helped represent a young Iraq war veteran suffering from severe post-traumatic stress disorder who was charged in federal court with second-degree murder. Ms. Helms also was part of a federal trial team that challenged Maryland's lethal injection procedures as cruel and unusual, and she co-authored a brief for the Maryland Supreme Court which argued that the state's lethal injection procedures violated the Administrative Procedures Act – an argument that ultimately was successful in bringing Maryland's capital punishment system to a halt.

**Jessie R. Nicholson, Chief Executive Officer, Southern Minnesota Regional Legal Services, Inc.**

Jessie R. Nicholson, Esq. has led Southern Minnesota Regional Legal Services as Chief Executive Officer since August 2007. Previously she held the positions of Deputy Executive Director (January 1994 – July 2007), Senior Leadership Attorney (January 2004 – July 2007), and Staff Attorney (November 1985 – January 1994) with the organization.

Ms. Nicholson is active in leadership of both the Minnesota State Bar Association and Ramsey County Bar Association. She currently sits on the MSBA's Assembly (2006 – present); Board of Governors (1998 – 2001; 2002 – 2004; MSBA Council: 2010-present); and Professionalism Committee (1998 – present; co-chair 2000 – 2001) and previously held positions on the Convention Planning Committee (2000 – 2001); and Task Force on ABA Model Rules of Professional Conduct (2002 – 2003). Ms. Nicholson sat on the RCBA's Board of Directors (2007 – 2010) and currently sits on the Diversity Committee (1998 – present).

Other professional affiliations of Ms. Nicholson's include the: Minnesota Association of Black Lawyers; African American Project Directors Association for Legal Services Law Firm Executive Directors; National Legal Aid and Defender Association, Regulations and Program Enhancement Committees; Conciliator for Archdiocese of Minneapolis and St. Paul, Office of Conciliation; and the Board of Trustees, St. Thomas Academy, St. Paul.

Ms. Nicholson is the recipient of numerous awards and honors including: MSBA Civil Litigation Section: Advocate Award (2014); MN Black Women Lawyers Network Achievement Award (2013);

William Mitchell College of Law: The Honorable Ronald E. Hachey Outstanding Alumni Award (2009); William Mitchell College of Law: James P. Anderson Trailblazer Award (2008); Catholic Spirit (Archdiocese of St. Paul/Minneapolis): Leading With Faith Award Finalist (2003); MSBA President's Award: Member of Task Force on Model Rules Professional Conduct (2003); William Mitchell College of Law: Distinguished Service Award (2000); William Mitchell College of Law: "100 Who Made a Difference," Award recognizing "100 Outstanding Alumni" on the occasion of the school's 100<sup>th</sup> anniversary (2000); and the African American Community Service Award (2000) from her hometown of Waterloo, IA.

Ms. Nicholson received her Juris Doctor from William Mitchell College of Law (1985).

**Diane K. Smith, Executive Director, Legal Services of Northwest Jersey, Inc.**

Diane K. Smith is the Executive Director of Legal Services of Northwest Jersey, a five-office legal services program that provides free legal services to low-income families and individuals in Hunterdon, Morris, Somerset, Sussex and Warren Counties in New Jersey. Her achievements include providing leadership in developing a new vision of equal access of justice; directing merger of four not-for-profit corporations to form LSNWJ; development of Team Delivery model; diversifying funding to meet emerging needs; creation of collaborative projects, including LIBRE for victims of domestic abuse, LAPAHA for people affected by HIV/AIDS, and Veterans Justice Initiative for homeless veterans; continuing leadership in

disaster recovery; and strengthening of LSNWJ's volunteer projects. Smith has been in leadership positions in legal services for more than 30 years. She is former President of the Somerset County Bar Association and is active in the State Bar, having served on the Nominating Committee and Pro Bono committees. She was Chair of the District XIII Ethics Committee and has served on the Supreme Court Committees on Women and Minority Concerns.

**Brett J. Strand, Counsel, Office of the General Counsel, 3M Company**

Brett Strand joined 3M in 2010 as Labor and Employment Counsel after several years in private practice in Austin, Texas. He currently serves as lead employment counsel for 3M's Consumer Business Group and the Electronics & Energy Business Group, as well as Finance, IT, Business Transformation, R&D, Talent Solutions, and the South Central and Southeast regions of 3M manufacturing plants. Brett also manages disputes and matters involving 3M employee agreements, as well as all ERISA litigation, and he serves as employment counsel for corporate M&A transactions. In addition to his work assignments, Brett serves 3M on the Human Resources Security Committee, and the 3Mgives Youth Advisory Committee.

Brett has long had a passion for pro bono legal services, serving as Vice Chair of the Texas Advocacy Project from 2009-2010, and receiving the Judge Suzanne Covington Pro Bono Service Award in 2006. Brett currently serves on the Pro Bono Committee within the 3M Office of General Counsel, and leads a team of 3M legal professionals in partnership with the Southern Minnesota Regional Legal Services (SMRLS) organization to provide pro bono representation to indigent immigrants and refugees seeking to become naturalized U.S. citizens. He also works with the Iraqi Refugee Assistance Project to provide legal assistance to displaced Iraqi and Afghan refugees.

Brett was valedictorian of his graduating class from The Citadel where he received his B.A., *summa cum laude*, served as the Regimental Commander of the Corps of Cadets, and studied abroad at the University of Cambridge. Brett received his law degree from the University of Texas School of Law, where he also taught legal research and writing for two years. During his third year of law school, Brett was awarded a Texas Governor's Fellowship, which allowed him to work as an aide in the Office of the Governor, assisting on a variety of matters including legislative analysis. Following law school, Brett completed a two-year judicial clerkship with the Honorable Andrew W. Austin, United States Magistrate Judge for the Western District of Texas.

Brett's wife, Kaia, is a native Minnesotan who teaches elementary school, and he has two children, Audrey (10) and Douglas (6).

**Catherine Weiss, Chair, Lowenstein Center for the Public Interest at Lowenstein Sandler**

As chair of the Lowenstein Center for the Public Interest, Catherine Weiss spearheads the firm's pro bono program. Just as the firm has an unwavering commitment to engaging in meaningful pro bono work, Catherine's legal career has been dedicated to serving the public. A lifelong public interest lawyer,

Catherine has served as the Director of the Division of Public Interest Advocacy in the New Jersey Department of the Public Advocate, as Deputy Director of the Democracy Program at the Brennan Center for Justice at NYU School of Law, and as Director of the Reproductive Freedom Project in the national office of the ACLU.

Catherine is charged with ongoing implementation of the Center's mission to perform work of the highest quality in a manner that maximizes results for pro bono clients and causes. Her role involves selecting and managing the Center's pro bono matters, a task for which Catherine is well-suited as a result of her broad experience in management-level positions in nonprofits. Under her leadership, the Center has built strong relationships with local and national public interest and legal services organizations, and the firm has developed extensive experience in several areas of pro bono practice, including immigration, education and housing.

Catherine also maintains a substantive practice as a litigator. She approaches matters with an appellate lawyer's eye toward constructing challenges to unjust laws or policies and winning decisions that reform the law. In addition to leading pro bono teams in impact litigation, she manages and participates in signature initiatives through which the firm provides individual representation, on an ongoing basis, to children in immigration proceedings; victims of persecution in asylum proceedings; survivors of domestic violence in seeking orders of protection; veterans in disability hearings; low-income individuals in bankruptcy proceedings; indigent criminal defendants in appealing their convictions; and nonprofit organizations seeking counsel and assistance in corporate and governance matters.

**Diana C. White, Executive Director, Legal Assistance Foundation of Metropolitan Chicago**

Diana is the Executive Director of the LAF (formerly Legal Assistance Foundation of Metropolitan Chicago), the largest provider of free legal services to poor people in civil cases in the Chicago area. As Executive Director, Diana has spearheaded LAF's move into one new downtown location and the creation of specialized Practice Groups, a new Client Screening Unit, and a new Community Engagement Unit. She recently received a grant to hire an outside consultant to map and streamline LAF's case-handling procedures. The goal of all these changes is to provide better service, more efficiently, in a time of tight budgets and exploding need.