FINAL REPORT

LEGAL SERVICES CORPORATION

Office of Compliance and Enforcement

Legal Aid of West Virginia, Inc.

Follow-Up to a Case Service Report/Case Management System Review

November 14 – 18, 2011

Recipient No. 449041

I. EXECUTIVE SUMMARY

Finding 1: LAWV's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Finding 2: LAWV's revised financial eligibility policy is compliant with 45 CFR Part 1611. Accordingly, 2008 Required Corrective Action No. 3 is closed.

Finding 3: LAWV's manner of determining eligibility is not consistent with LSC regulations.

Finding 4: LAWV is in substantial compliance with LSC's income and asset eligibility documentation requirements. Accordingly, 2008 Required Corrective Action No. 4 is closed.

Finding 5: LAWV is in substantial compliance with LSC's citizenship/alien eligibility documentation requirements. Accordingly, 2008 Required Corrective Action No. 5 is closed.

Finding 6: Contrary to the requirements of 45 CFR § 1611.9, LAWV's retainer agreement does not identify the nature of the services to be provided.

Finding 7: LAWV is in substantial compliance with the requirements of 45 CFR Part 1636.

Finding 8: LAWV is in compliance with the requirements of 45 CFR §§ 1620.4 and 1620.6(c).

Finding 9: LAWV is in substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011)as amended 2011), § 5.6. Accordingly, 2008 Required Corrective Action No. 2 is closed.

Finding 10: LAWV's application of the CSR case closure categories is inconsistent with Chapter VIII, CSR Handbook (2008 Ed., as amended 2011)

Finding 11: LAWV is in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timely Closing of Cases). Accordingly, 2008 Required Corrective Action No. 1 is closed.

Finding 12: LAWV is in compliance with CSR Handbook (2008 Ed., as amended 2011), § 3.2 (Single Recording of Cases).

Finding 13: Contrary to CSR Handbook (2008 Ed., as amended 2011), § 10.1(a)(ii), six (6) files were mislabeled as PAI cases.

Finding 14: LAWV is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 15: LAWV is in compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities), but its policy requires revision.

Finding 16: LAWV is in compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 17: LAWV is in compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 18: LAWV is in compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities), but its policy requires revision.

Finding 19: LAWV is in compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Finding 20: LAWV is in compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 21: LAWV is in compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 22: LAWV is in compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 23: LAWV is in compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 24: LAWV is in compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 25: LAWV is in compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 26: LAWV is in compliance with the requirements of 42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 27: Based upon a limited review of LAWV's fiscal policies and procedures, and fiscal/accounting records, as well as interviews with its fiscal staff, LAWV has generally sound internal controls through the oversight responsibilities of its Board of directors, adoption of its Fiscal Policies and Procedures Manual ("FPPM") and the segregation of

duties amongst its staff. However, as described below, some changes are required/recommended.

Finding 28: Effective January 1, 2012, funding previously allocated to service area MWV (migrant funding) will be included in LAWV's basic field and will be subject to the same conditions and restrictions imposed on its basic field grant.

Finding 29: A limited review of LAWV's accounting records determined that during the review period, LAWV has incurred $8,873.70 in bank fees associated with its general operating account. While this account includes funds from LAWV's various funding sources, the entire fee is charged to LSC funds. Those fees which are in excess of LSC's proportional share of the funds in the operating account could be disallowed as unreasonable or unnecessary.

Finding 30: LAWV is in compliance with 45 CFR Part 1627 (Subgrants and membership fees or dues) in that LAWV does not operate any LSC funded subgrants and LAWV is not paying prohibited membership fees or dues with LSC funds.

Finding 31: A limited review of LAWV's accounting records revealed that LAWV has not retained any unexpended funds from its closed TIG grants. However, LAWV needs to ensure that its executed one-time grants (including TIG awards) are reported separately in its financial statements in accordance with 45 CFR § 1628.3(g). Also, LAWV must ensure that it properly accounts for its entire TIG award amount, which includes the amount of any TIG Conference Fees assessed by LSC.

Finding 32: Contrary to 45 CFR § 1614.3(e)(1)(ii), sampled files reflected that LAWV provided advance payments to private attorneys performing legal services in its judicare program.

II. BACKGROUND OF REVIEW

On November 14 – 18, 2011, the Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") Follow-Up Review ("FUR") at Legal Aid of West Virginia, Inc. ("LAWV"). The team consisted of three (3) OCE Program Counsel, one (1) OCE Program Analyst, and an OCE Temporary Employee.

LAWV is a non-profit legal services organization that provides free civil legal services to low-income residents in LSC service area WV-5 and MWV, consisting of the state of West Virginia.[1] According to LSC's Recipient Information Network ("RIN"), the service area is 24,231 square miles, with a poverty population totaling 315,794. LAWV is headquartered in Charleston and maintains local offices in Beckley, Clarksburg, Elkins, Huntington, Lewisburg, Logan, Martinsburg, Morgantown, Parkersburg, Princeton, and Wheeling. *See* www.newrin.lsc.gov/grantpro.html.

In 2009, LAWV received basic field funding totaling $3,114,720.00; total LSC funding was $3,119,728.00. In 2010, its basic field award was $3,638,205.00; total LSC funding was $3,378,270.00. In addition to its LSC funding, LAWV receives grant and contract support from various local, state and federal, and private sources. According to available information, LSC, non-LSC grant support, derivative income, and fundraising revenue totaled $7,953,404.00 in 2009, $8,515,700.00 in 2010, and $7,973,323.00 in 2011. *See* http://www.newrin.lsc.gov/Scripts/LSC/Grantpro/pgpb3.asp.

At the time of the FUR, LAWV was staffed by an Executive Director, a Legal Director, two (2) managing attorneys, 10 supervising attorneys, 26 staff attorneys, 21 paralegals, an Information Technology Specialist, a private attorney involvement ("PAI") coordinator, a Chief Financial Officer, 16 persons working as regional ombudsmen or behavioral health advocates, six (6) management professionals, four (4) administrative assistants, and 16 secretarial/clerical positions. *See* http://www.newrin.lsc.gov/greps/default.asp.

According to information provided by LAWV, its board of directors approved priorities for 2011 are stated as family law, income maintenance, housing, consumer, elderly, medical, and other urgent legal needs. For 2009, LAWV reported 5,845 closed cases. Family law accounted for 61% of all closed cases; housing, 14%; income maintenance, 9%; consumer/finance, 6%; miscellaneous, 4%; health, 2%; and employment, 2%. Education, juvenile, and individual rights combined for less than 2%. Approximately 72% of all closed cases were closed after counsel and advice or limited action; 17% were court decisions; 5% were settled; and 3% were agency decisions. Other and extensive services accounted for less than 3%. In that same year, LAVW reported a self-inspection error rate of 3.5%. Exceptions were noted with respect to CSR Handbook (2008 Ed., as amended 2011), §§ 3.3, 5.3, 5.4, 5.5, and 5.6.

For 2010, LAWV reported 6,448 closed cases. Family law accounted for 59% of all closed cases; housing, 14%, consumer/finance, 8%; income maintenance, 8%; miscellaneous, 5%; employment 3%; and health 2%. Education and individual rights combined for less than 2%. In

[1] Effective January 1, 2012, LSC has eliminated funding for service area MWV and has combined the amount of migrant funding that LAWV previously received for service area MWV into its basic field award.

that same year, LAWV reported an error rate of 3.9%. Exceptions were noted with respect to CSR Handbook (2008 Ed., as amended 2011), § 3.3, 5.3, 5.5, and 5.6.

In preparation for the FUR, OCE requested that LAWV provide, among other things, a list of all cases reported to LSC in its 2009 CSR data submission ("closed 2009 files"), a list of all cases reported to LSC in its 2010 CSR data submission ("closed 2010 files"), a list of all cases closed between January 1 and August 31, 2011 ("closed 2011 files"), and a list of all cases which remained open as of August 31, 2011 ("open files"). OCE requested that each list contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case, the funding code assigned to the case, and an indication of whether the case was handled by one of LAWV's staff or by a private attorney pursuant to 45 CFR Part 1614. LAWV was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 4, 2005). LAWV was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

LAWV responded that it would afford OCE access through the use of staff intermediaries. In other words, LAWV would maintain possession of its case files and disclose to OCE, via the intermediary, client names, case numbers, financial eligibility information, citizenship/alien eligibility information, retainer agreements, Part 1636 statements, and materials otherwise available in the public record. LAWV further agreed to disclose both the general nature of the client's legal problem and the general nature of the legal assistance provided.

Thereafter, LAWV provided the requested materials. OCE then selected a sample of 505 cases to be reviewed. An effort was made to create a representative sample of cases which the team would review during the FUR. The sample was distributed proportionately among open and closed cases, as well as among LAWV's various office locations. The sample consisted largely of randomly selected cases, but also included cases selected to test for compliance with those CSR instructions relative to timely closings, application of the CSR case closing categories, and duplicate reporting.

In accordance with the approved work plan, the team visited LAWV's main office Charleston, and its local offices in Wheeling, Morgantown, Clarksburg, Huntington, Parkersburg, and Princeton. During the FUR, the team interviewed LAWV's Executive Director, its Legal Director, the Director of LAWV's Access to Legal Aid Services ("ATLAS"), the Chief Financial Officer, the Accounting Assistant, the Financial Assistant, and the Supervising Attorneys and intake staff in the seven (7) offices that were visited. In the course of the FUR, the team evaluated LAWV's financial eligibility policy and its intake procedures, and reviewed 492 files, including 109 open files, 194 closed 2011 files, 114 closed 2010 files, and 75 closed 2009 files.[2] The team also collected pamphlets, leaflets, and brochures that were available in the offices that were visited, and LAWV provided copies of the pamphlets, leaflets, and brochures which were

[2] Of the 492 files that were reviewed, 146 were targeted; the remaining 346 files were randomly selected. The team did not request that LAWV pull any files.

available in the remaining local offices. LAWV accounted for all of the files identified in the sample.

In December 2007, OCE conducted a CSR/CMS review of LAWV. The Final CSR/CMS Report (the "Report") was issued on May 5, 2008 and contained seven (7) Required Corrective Actions:

1. ensure timely closing;
2. ensure compliance with CSR Handbook (2001 Ed.), ¶ 5.1;
3. revise financial eligibility policy to comply with 45 CFR § 1611.3(b) and (e);
4. ensure compliance with Part 1611 and CSR Handbook (2001 Ed.), ¶¶ 5.3 and 5.4;
5. ensure compliance with Part 1626 and CSR Handbook (2001 Ed.), ¶ 5.5;
6. ensure compliance with 45 CFR § 1611.9; and
7. revise judicare contracts consistent with 45 CFR Part 1642.[3]

Following the 2007 on-site visit, but prior to the Report being issued, LSC published a revised CSR Handbook. Consequently, although the Report and its Required Corrective Actions reference the CSR Handbook (2001 Ed.), the FUR was designed to assess LAWV's compliance with the pertinent sections of the CSR Handbook (2008 Ed., as amended 2011).

During the FUR, OCE focused primarily on those actions taken by LWV in response to the Required Corrective Actions. OCE also reviewed LAWV's compliance with other regulatory and reporting requirements, including 45 CFR Parts 1608, 1609, 1611, 1612, 1613, 1615, 1617, 1620, 1626, 1632, 1633, 1637, 1638, 1642 and 1643, the requirements of 42 U.S.C. 2996f, and the requirements of CSR Handbook (2008 Ed., as amended 2011), §§ 2.5, 3.1, 3.2, 5.3, 5.4, 5.5, 5.6 and Chapter VIII.[4]

As discussed more thoroughly herein, 2008 Required Corrective Action Nos. 1 - 5 are closed. Additional corrective actions are required, including additional corrective action relative to 2008 Required Corrective Action No. 6.

By letter dated January 5, 2012, OCE issued a Draft Report ("DR") detailing its Findings, Recommendations, and Required Corrective Actions. LAWV was afforded 30 days to review the DR and submit written comments. On January 26, 2012, LAWV requested an extension of time and OCE granted LAWV until March 5, 2012. By letter dated March 5, 2012, LAWV submitted its comments to the DR.

LAWV did not comment on each Finding individually. Rather, it commented on each individual Recommendation and Required Corrective Action and stated, generally, that there were no issues which it flatly rejected. LAWV commented that the DR covered a number of cases and issues, from both the November 2007 and November 2011 visits. LAWV noted that it was either originally in full compliance or has followed earlier recommendations and now has achieved full compliance. On a few older issues some concerns remain. As well, LAWV stated that the DR identified some new concerns.

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[3] Since LSC has repealed 45 CFR Part 1642, Required Corrective Action No. 7 is moot.

[4] OCE did not review LAWV's compliance with 45 CFR Parts 1610, 1614, 1627, or 1635 during the FUR.

LAWV's comments contained brief descriptions of actions it expected to take in response to each of the DR's Recommendations and Required Actions. LAWV stated that in most instances corrective actions will be taken in the near future, either by management directive, staff training, or by Board policy decisions. LAWV stated that some of the concerns identified in the DR, such as the use of language instructing staff to review non-citizen applicants' documentation before signing the Non-Citizen Eligibility Questionnaire, rather than having the form be a signed statement staff have reviewed such documents, are fairly inconsequential. Nevertheless, LAWV stated that it will conform its procedures to the precise requirements in the LSC suggestions or mandates.

OCE has carefully considered LAWV's comments and has made such revisions to the DR as OCE deems appropriate.[5] Additionally, based on LAWV's comments, OCE has closed 2012 Required Corrective Action Nos. 1, 3, 4, 12, 13, 14 and 15. OCE requests further action by LAWV with respect to 2012 Required Corrective Action Nos. 2, 5, 6, 7, 8, 9, 10 and 11, and Finding No. 16.

[5] A copy of LAWV's comments have been attached as an appendix hereto.

III. FINDINGS

Finding 1: LAWV's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Recipients are required to utilize automated case management system ("ACMS') and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.1.

Based on discussions with LAWV staff, a review of the ACMS, and a comparison of the information yielded by the ACMS to information contained in the files sampled, LAWV's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. The file information disclosed by LAWV during the FUR was consistent with the information contained in the case lists.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 2: LAWV's revised financial eligibility policy is compliant with 45 CFR Part 1611. Accordingly, it is recommended that 2008 Required Corrective Action No. 3 be closed.

LSC regulations require that the board of directors of a recipient adopt policies consistent with 45 CFR Part 1611 for determining the financial eligibility of applicants and groups. At a minimum, each recipient's financial eligibility policy must: (1) specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds; (2) establish an annual income ceiling not to exceed 125% of the Federal Poverty Guidelines; (3) establish asset ceilings; and (4) specify that, notwithstanding any other provisions of the regulation or the recipient's financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the applicant and shall not consider any assets jointly held with the abuser. *See* 45 CFR §1611.3; *see also*, 70 *Federal Register* 45545, at 45550 (August 8, 2005).

As part of its financial eligibility policy, recipients may adopt authorized exceptions to its annual income ceiling consistent with 45 CFR § 1611.5. *See* 45 CFR § 1611.3(c)(2). The policy may also authorize a waiver of the recipient's asset ceilings for specific applicants under unusual circumstances and when approved by the Executive Director, or his/her designee. However, when the asset ceiling is waived, recipients are required to document the reasons for the waiver and maintain such records as are necessary to inform LSC of the reasons for such waiver. *See* 45 CFR § 1611.3(d)(2). Additionally, the policy may permit financial eligibility to be determined by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families, provided that the recipient has determined that the income standards of the governmental program are at or below 25% of the Federal Poverty Guideline and that the

governmental program has eligibility standards which include an asset test. *See* 45 CFR §§ 1611.3(f) and 1611.4(c); *see also*, 70 *Federal Register* at 45553.

The Report found that LAWV's financial eligibility policy failed to specify that only individual and groups determined to be financially under LAWV's financial eligibility policy and LSC regulations may receive LSC funded legal assistance, as required by 45 CFR § 1611.3(b), and lacked the language required by 45 CFR § 1611.3(e).[6] Accordingly, Required Corrective Action No. 3 directed LAWV to take appropriate corrective action to conform its financial eligibility policy to the requirements of 45 CFR §§ 1611.3(b) and (e).

Prior to the FUR, LAWV provided a copy of its revised financial eligibility policy. The revised policy indeed contains statements consistent with 45 CFR §§ 1611.3(b) and (e) and is otherwise consistent with Part 1611. Accordingly, Required Corrective Action No. 3 is closed.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 3: LAWV's manner of determining eligibility is not consistent with LSC regulations.

In making financial eligibility determinations regarding individual applicants, LSC regulations require that recipients make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. *See* 45 CFR §§ 1611.7(a)(1). For each case reported to LSC, recipients are required to record the applicant's household size, total household income and the total value of the household's assets. The information may be recorded on a form adopted by the recipient to obtain the information necessary to the determination, or it may be recorded electronically in the recipient's ACMS. *See* CSR Handbook (2008 Ed., as amended 2011), §§ 5.1, 5.3 and 5.4.

Although the Report found LAWV's intake practices were consistent with LSC regulatory requirements, in light of LSC Office of Legal Affairs ("OLA) Advisory Opinion AO 2009-1006 (September 3, 2009), OCE decided to review LAWV's manner of determining eligibility. In an effort to assess LAWV's manner of determining eligibility, the team interviewed the ATLAS Director in Charleston, a paralegal and a secretary in Wheeling, a legal assistant in Huntington, and the secretary in Princeton.

ATLAS is LAWV's state-wide paralegal and attorney staffed client helpline. It provides intake and limited legal assistance to eligible clients throughout LAWV's service area. According to LAWV's Grants Narrative, its Executive Director, and the ATLAS Director, except for emergency walk-ins, ATLAS is the point of intake for all applicants for legal assistance. Although centered in Charleston, each local office has a designated telephone line that connects applicants directly to ATLAS – there is no need to dial into ATLAS when calling from a local office. Callers are screened for income and asset eligibility, citizenship/alien eligibility, conflicts and duplication. All of the information that is collected is entered directly into LAWV's ACMS. As appropriate, eligible applicants receive counsel and advice or limited service from the

[6] The policy was otherwise compliant with 45 CFR Part 1611.

paralegals and/or attorneys who staff the helpline. If more extensive service is required, the caller's application is referred to the appropriate local office.

The information provided by the ATLAS Director was confirmed by the staff who were interviewed in the local offices, except that the Wheeling staff advised that walk-in applicants are not necessarily directed to contact ATLAS. Rather, the Wheeling staff will complete the intake application.

In each of the local offices that were visited during the FUR, all of the staff that were interviewed advised that walk-in applicants are screened for income and asset eligibility, citizenship/alien eligibility, program-wide conflicts and duplication. All of the information that is collected is entered directly into the ACMS.

All of the persons interviewed demonstrated sufficient familiarity with LAWV's financial eligibility policy and LSC Program Letter 06-02. However, none of them were aware of the requirement to inquire regarding income prospects. The ATLAS Director stated that such inquiry is only made of applicants whose income exceeds LAWV's annual income ceiling.

LAWV is advised that LSC regulations require reasonable inquiry into the income prospects of all applicants for legal assistance. *See* 45 CFR § 1611.7(a). As part of their financial eligibility screening, recipients are required to make reasonable inquiry into the income prospects of each applicant for LSC funded legal assistance. Although the regulation does not define "reasonable", LSC has suggested as a guide that after inquiring into the applicant's household income, recipients could ask whether the applicant has any reason to believe that his/her income is likely to change significantly in the near future. *See* OLA Advisory Opinion AO 2009-1006 (September 3, 2009). Both the inquiry and the applicant's response should be documented as part of the recipient's financial eligibility determination. *See* 45 CFR § 1611.7(a)(1).

Additionally, OCE observed that the "Application for Legal Assistance", form used by LAWV during intake was deficient. Specifically, some of the local offices advised OCE that the local domestic violence shelters use an LAWV paper intake form, entitled "Application for Legal Assistance". However, in reviewing the form, OCE noted that as to household assets, the form only screens for vehicles and real estate. The form does not screen for other non-exempt assets stated in LAWV's financial eligibility policy.

Forms, electronic or otherwise, that are employed by recipients in making financial eligibility determinations should be modeled after the recipient's financial eligibility policy. In other words, if under the recipient's asset policy, the net value of bank accounts, stocks, bonds, etc. are non-exempt assets, the forms used by the recipient in making its financial eligibility determination should be designed in such a manner as to capture such information.

Lastly, the ATLAS Director and the staff of the Wheeling and Princeton offices also advised OCE that applicants seeking assistance in filing for bankruptcy are regarded as exceptions to LAWV's annual income ceiling. *See* Charleston open File Nos. 11E-2075097 and 11E-2070442, Princeton open File No. 11E-2074358, and Princeton closed 2010 File No. 10E-2054006. They

explained that persons requiring assistance in filing for bankruptcy are regarded as applicants seeking legal assistance to obtain a governmental benefit.

This practice is not stated in LAWV's financial eligibility policy and is not consistent with LSC regulations. LAWV was advised that bankruptcy is not a governmental program for low income individuals or families and it is not a governmental program for persons with disabilities as those terms are defined at 45 CFR §§ 1611.2(g) and (h). LAWV was further advised that it may allocate the legal assistance provided in such instances to its LSC fund – and report such assistance - only where it has documented its consideration of any of its duly adopted authorized exceptions.

In Charleston open File No. 11E-2075097 and Princeton open File No. 11E-2074358, the files contained sufficient documentation of the applicant's fixed debts and obligations. Accordingly, the legal assistance provided may be allocated to LAWV's LSC fund and the cases are reportable.

There was no such information in either Charleston open File No. 11E-2070442 or Princeton closed 2010 File No. 10E-2054006. As such, Charleston open File No. 11E-2070442 should be excluded from LAWV's CSR data submission and the cost associated with the case should be allocated to one of LAWV's non-LSC funds. The Princeton file was reported in error.

LAWV is advised, that absent documentation of its consideration of one or more of the authorized exceptions adopted by its board of directors, legal assistance provided to applicants whose income exceeds its annual income ceiling may not be charged to its LSC fund, nor may such legal assistance be included in its CSR data submission.

In its response to the DR, LAWV offered no comments specific to the Finding. However, in response to the DR's corresponding Required Corrective Action No. 1, LAWV stated that intake staff will be trained to request and evaluate information concerning applicants' prospective income, as well as their current income information, as per OLA Advisory Opinion AO 2009-2006 (September 3, 2006).

In response to the DR's corresponding Required Corrective Action No. 2, LAWV noted that the DR did not cite its financial eligibility determinations as a significant problem. *See* Finding 4. Rather, the DR found LAWV in substantial compliance with LSC income and asset documentation requirements. Nonetheless, LAWV stated that its intake forms – and computerized records – will be reviewed and revised to ensure consistency with applicable LAWV eligibility policies.

In response to the DR's corresponding Required Corrective Action No. 3, LAWV agreed that bankruptcy is not a governmental benefit program providing an exception to the basic income limitations. LAWV further stated that it will provide training and guidance concerning LAWV and LSC policy on the exceptions to the general eligibility requirements.

OCE accepts LAWV's response to the DR's corresponding Required Corrective Action No. 1. However, OCE finds it necessary to request that LAWV submit copies of its revised intake forms to OCE before closing Required Corrective Action Nos. 1 and 2.

Finding 4: LAWV is in substantial compliance with LSC's income and asset eligibility documentation requirements. Accordingly, 2008 Required Corrective Action No. 4 is closed.

For each case reported to LSC, recipients are required to record the number of members in the applicant's household, the total income received by all members of the applicant's household, and the total value of the household assets. *See* CSR Handbook (2008 Ed., as amended 2011), §§ 5.3 and 5.4. Consistent with a recipient's financial eligibility policies and 45 CFR Part 1611, upon consideration of certain factors, LSC regulations permit recipients to determine applicants whose income exceeds the recipient's applicable annual income ceiling to be financially eligible. *See* 45 CFR § 1611.5. In such instances, the documentation of eligibility must indicate the specific facts and factors relied on by the recipient in making its determination. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

The Report cited five (5) files that lacked a properly documented financial eligibility determination. Consequently, LAWV was directed to take corrective action to ensure compliance with Part 1611 and CSR Handbook (2001 Ed.), ¶¶ 5.3 and 5.4.

LAWV advised that after receiving the Report, it upgraded its ACMS to include clarification of asset recording. The upgrade also provides simpler demonstration of financial eligibility. More importantly, however, the advent of a centralized intake system has added consistency and uniformity to LAWV's financial eligibility determinations.

As discussed in Finding 3, two (2) of the files that were reviewed during the FUR contained income eligibility determinations that were inconsistent with LSC regulatory requirements. *See* Charleston open File No. 11E-2070442 and Princeton closed 2010 File No. 10E-2054006.[7] Additionally, Wheeling open File No. 07E-1022864 and Huntington closed 2010 File No. 08E-2034570 lacked the income eligibility documentation required by LSC.[8] Wheeling open File No. 07E-1022864 should identified for de-selection, but Huntington closed 2010 File No. 08E-2034570 and Princeton closed 2010 File No. 10E-2054006 have already been reported in error.

Without exception, the LSC funded files that were reviewed during the FUR contained the asset determination required by LSC.[9]

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[7] LAWV is encouraged to review Charleston open File No. 11E-2070442 for information that would support one or more of the 45 CFR § 1611.5 authorized exceptions.

[8] These files involved applicants whose household income exceeded LAWV's annual income ceiling. Although the applicants' household incomes were between 125% and 200% of the FPG, the files lacked documentation of LAWV's consideration of any of the authorized exceptions adopted by its governing body.

[9] OCE reviewed one (1) non-LSC funded file that involved an applicant whose assets exceeded LAWV's asset ceiling and lacked a waiver. *See* Wheeling open File No. 07E-1022864. LAWV indicated that the asset screen likely reflected the value of an exempt asset, however, there was no information in the file identifying the type of

Inasmuch as LAWV demonstrated substantial compliance with the reporting requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3, Required Corrective Action No. 4 is closed.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 5: LAWV is in substantial compliance with the LSC's citizenship/alien eligibility documentation requirements. Accordingly, 2008 Required Corrective Action No. 5 is closed.

The level of documentation necessary to evidence citizenship or alien eligibility depends, in part, on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. According to the CSR Handbook (2008 Ed., as amended 2011), § 5.5, the citizenship attestation may be on a separate document or may be contained within another document, provided there is a separate signature line dedicated to the citizenship attestation. Neither a "yes/no" checkbox as to citizenship, nor a signed statement that the client attests to the truth of the intake information will suffice.

Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7.

In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5.

In accordance with the "Violence Against Women Act 2006 Amendment," recipients may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. Recipients are also allowed to include these cases in their CSRs. *See* LSC Program Letter 06-2 (February 21, 2006).

The Report cited 14 files that lacked the citizenship/alien eligibility documentation required by LSC regulations. Consequently, LAWV was directed to ensure compliance with Part 1626 and CSR Handbook (2001 Ed.), ¶ 5.5.

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asset considered. LAWV is encouraged to review the file to determine the existence of documentation in the file identifying the asset as exempt, otherwise this file should be identified for de-selection from LAWV's CSR data submission.

The team reviewed two (2) files during the FUR that lacked the citizenship/alien eligibility documentation required by LSC regulations and the CSR Handbook. *See* Huntington closed 2011 File No. 09E-2043471 and Huntington closed 2010 File No. 10E-2051399. Prior to the FUR, LAWV identified one (1) file that lacked the citizenship/alien eligibility documentation required by LSC regulations and the CSR Handbook for de-selection. *See* Huntington closed 2011 Non-Reportable File No. 09E-2041425. Huntington closed 2011 File No. 09E-2043471 should also be identified for de-selection, but Huntington closed 2010 File No. 10E-2051399 was reported in error.

Inasmuch as LAWV is in substantial compliance with the documentation requirements of Part 1626 and the CSR Handbook (2008 Ed., as amended 2011), Required Corrective Action No. 5 is closed. However, during the FUR OCE noted several other compliance issues.

Specifically, as discussed in Finding 3, the LAWV staff disclosed that walk-in applicants who access ATLAS are not required to attest in writing to their citizenship or submit documentation verifying their alien eligibility as required by 45 CFR §§ 1626.6 and 1626.7. Recipients are required to obtain signed citizenship attestations or verify alien eligibility status through the review of appropriate documentation for applicants who appear in person to seek services from the recipient, even if the recipient chooses to provide those services via telephone. *See* OLA Advisory Opinion AO-2009-1002 (June 10, 2009).[10]

Additionally, several files were reviewed during the FUR that contained non-conforming citizenship attestations. LSC regulations require that all applicants for legal assistance who claim U.S. citizenship shall attest to such, in writing, in a standard form prescribed by LSC. *See* 45 CFR § 1626.6(a). The CSR Handbook (2008 Ed., as amended 2011), § 5.5 states that citizenship attestations shall be stated as follows:

I am a citizen of the United States: *Signature of applicant* Date: _____

As of January 1, 2009, all cases reported must comply fully with the 2008 CSR Handbook, regardless of when they were opened. *See* CSR Handbook (2008 Ed., as amended 2011), August 3, 2007 Letter from Helaine M. Barnett, LSC President.

LAWV has developed a conforming citizenship attestation.[11] However, several of the local offices visited during the FUR receive referrals from the local domestic violence clinics. The intake sheet that is received by LAWV from the domestic violence clinic contains a statement affirming the person's understanding that they will be attending a clinic, a disclaimer, and it

[10] There are a number of methods of obtaining the required Part 1626 documentation from walk-in applicants who access ATLAS. LAWV could have all applicants sign a citizenship attestation or submit appropriate alien eligibility documentation in the local office. Alternatively, an electronic signature pad and/or document scanner would ensure compliance with the requirements of Part 1626.

[11] In most of the offices, the attestation appears as a box at the top of LAWV's retainer agreement and states: "I certify that I am a citizen of the United States of America." In Parkersburg, the team observed a different attestation. In that office, the applicant must check either the box that states "I am a citizen of the United States of America," or the box that states "I am not a citizen of the United States of America. Both attestations provide a separate signature line tied only to the citizenship attestation as required by the CSR Handbook. although the second box in the Parkersburg attestation is entirely unnecessary.

includes a citizenship attestation. But, there is no separate signature line tied only to the citizenship attestation. Similarly, LAWV's older retainer agreements contain non-conforming citizenship attestations.

Similarly, OCE reviewed LAWV's "LSC Eligibility Questionnaire: Non-Citizen Eligibility Status" form. This form is used primarily for aliens seeking legal representation. The form contains a number of questions that correspond to the categories stated at 45 CFR § 1626.5. Upon completion, the form is signed by the applicant for legal assistance and an LAWV staff representative. The form contains the following instruction:

> The LAWV staff member who signs this form should review documentation from the applicant to support the category of eligibility claimed.

It is unnecessary for the alien seeking representation to sign the form. Consistent with 45 CFR §§ 1626.7(a)(1) and 1626.12, the form should require that the staff member signing the form identify the specific documentation submitted by the applicant, along with the alien registration, USCIS, or other identifying number.

Accordingly, LSC requires that LAWV remain vigilant in ensuring that all files contain the necessary citizenship/alien eligibility documentation. LSC further requires that LAWV amend the "LSC Eligibility Questionnaire: Non-Citizen Eligibility Status" form consistent herewith, and cease the use of all non-conforming citizenship attestations.

In its response to the DR, LAWV commented that one of the concerns expressed in the DR, such as the use of language instructing staff to review non-citizen applicants' documentation before signing the "Non-Citizen Eligibility Status" form, rather than having the signed form evidence staff's review of such documents is fairly inconsequential. Nevertheless, in response to the DR's corresponding Required Corrective Action No. 5, LAWV stated that it will conform its procedures to the precise requirements or mandates of LSC and will update the "Non-Citizen Eligibility Status" form to include the statement affirming a staff member's review of appropriate documentation.

In response to the DR's corresponding Required Corrective Action No. 4, LAWV stated that its own internal citizenship attestation forms were revised and made fully compliant with LSC requirements several years ago. However, some domestic violence shelters continue to use an older, non-conforming attestation form. These shelters will be given new, appropriate forms, and staff will be trained to check carefully for their use on shelter referrals.

OCE has considered LAWV's comments and agrees with LAWV's comments concerning its "Non-Citizen Eligibility Status" form. After reviewing this Finding and the DR's corresponding Required Corrective Action, OCE has re-drafted the Finding and the corresponding Required Corrective Action No. 5. However, OCE requests that LAWV submit copies of the revised attestation form provided to the shelters, the date such forms were provided, the date(s) of the staff training, and the revised "Non-Citizen Eligibility Status" form before closing Required Corrective Action Nos. 4 and 5.

Finding 6: Contrary to the requirements of 45 CFR § 1611.9, LAWV's retainer agreement does not identify the nature of the services to be provided.

LSC regulations require that recipients execute a retainer agreement with each client who receives extended legal services from the recipient. *See* 45 CFR § 1611.9(a). No written retainer agreement is required for advice and counsel or brief services provided by the recipient, or for legal services provided by a private attorney pursuant to 45 CFR Part 1614. *See* 45 CFR § 1611.9(b).

The retainer agreement is to be executed when representation commences or as soon thereafter as is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a). The lack of a retainer does not preclude CSR reporting eligibility. Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

The Report noted three (3) files that required retainers, but lacked one. It also noted several instances in which the retainers failed to identify the nature of the services to be provided. Accordingly, LAWV was directed to ensure compliance with 45 CFR § 1611.9.

Where required, retainer agreements were present in all of the reportable files that were reviewed during the FUR.[12] However, in reviewing LAWV's retainer agreement, it was noted that as to the nature of the legal services to be provided, the retainer states "Legal services will be provided ...". Such a statement is insufficient to "identify ... the nature of the legal services to be provided" as required by 45 CFR § 1611.9(a), and would hardly assure against a "misunderstanding as to what services are to be rendered to a particular client". *See* 70 *Federal Register* 45545, at 45561 (August 8, 2005). Nor does "legal services" provide a clear understanding of the service to be rendered. *Id.* Accordingly, Required Corrective Action No. 6 will remain open and LAWV is directed to revise its retainer agreement to include a statement identifying the nature of the legal services to be provided.

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Required Corrective Action No. 6, LAWV stated that its retainer agreement may be revised as noted. Alternatively, an engagement letter may be used and referred to in the retainer, addressing the nature of the legal services to be provided. Such action will require both LAWV staff and Board participation, but is expected to be completed in 2012.

OCE has considered LAWV's comments and requests that LAWV submit copies of the revised retainer, or engagement letter, before closing Required Corrective Action No. 6.

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[12] Three (3) of the non-reportable files that were reviewed during the FUR that required a retainer agreement lacked one. *See* Wheeling closed 2011 Non-Reportable File No. 01E-1001523, Morgantown open File No. 11E-4070547, and Morgantown closed 2011 File No. 09E-2043471. These files were non-reportable for other reasons.

Finding 7: LAWV is in substantial compliance with the requirements of 45 CFR Part 1636.

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a)(1) and (2).

The statement is not required in every case. It is required only when a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or when a recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

Where required, Part 1636 statements were present in all of the reportable files that were reviewed during the FUR.[13]

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 8: LAWV is in compliance with the requirements of 45 CFR §§ 1620.4 and 1620.6(c).

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

As noted previously, LAWV's approved priorities for 2011 are stated as family law, income maintenance, housing, consumer, elderly, medical, and other urgent legal needs. Without exception, the files that were reviewed during the FUR were within LAWV's priorities.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 9: LAWV is in substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6. Accordingly, 2008 Required Corrective Action No. 2 is closed.

LSC regulations specifically define "case" as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a "case,"," reportable in the CSR data, depends, to some extent on whether the case is within the recipient's priorities and whether the recipient has provided some level of legal assistance, limited or otherwise. If the recipient has

[13] There was one (1) non-reportable file that required a Part 1636, but lacked one. *See* Wheeling closed 2011 Non-Reportable File No. 01E-1001523. This file was non-reportable for other reasons.

not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2008 Ed., as amended 2011), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC, such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.6.

The team reviewed six (6) files that lacked a description of the legal assistance provided that had not already been identified for de-selection. *See* Huntington closed 2011 File No. 10E-2063032, Princeton closed 2011 File No. 11E-2071359, Clarksburg closed 2010 File No. 10E-2052223, Princeton closed 2009 File Nos. 09E-15038847 and 09E-15038423, and ATLAS closed 2009 File No. 09E-2043348. Prior to the FUR, LAWV identified several files that lacked a description of the legal assistance provided for de-selection. *See* Charleston open File Nos. 11E-2075980, 06E-2016365 and 00E-1002513, Huntington open File Nos. 11E-2069601, 06E-9003706 and 06E-9003747, Wheeling closed 2011 Non-Reportable File Nos. 11E-2073882, 09E-1045637, 10E-2064831, 10E-2056435, 11E-2066015, 09E-1037448, Princeton closed 2011 Non-Reportable File Nos. 10E-2062996, 11E-15074975, 10E-2062620 and 11E-2065803.

Huntington closed 2011 File No. 10E-2063032 and Princeton closed 2011 File No. 11E-2071359 should also be identified for de-selection. Clarksburg closed 2010 File No. 10E-2052223, Princeton closed 2009 File Nos. 09E-15038847 and 09E-15038423, and ATLAS closed 2009 File No. 09E-2043348 have already been reported in error.

Inasmuch as LAWV demonstrated substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6, 2008 Required Corrective Action No. 2 is closed.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 10: LAWV's application of the CSR case closure categories is inconsistent with Chapter VIII, CSR Handbook (2008 Ed., as amended 2011).

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.1.

The CSR case closure categories applied by LAWV in 27 of the files that were reviewed during the FUR were inconsistent with Chapter VIII, CSR Handbook (2008 Ed., as amended 2011). *See* Charleston closed 2011 File No. 10E-2055325 (closed as "contested court decision", but the level of assistance indicated in the file was more consistent with "negotiated settlement with litigation"); Charleston closed 2011 File No. 09E-2050089 (closed as "extensive services", but

the level of assistance indicated in the file was more consistent with "limited action"); Morgantown closed 2011 File No. 09E-4044358, Charleston closed 2010 File No. 07E-20119944, Clarksburg closed 2010 File Nos. 06E-5012587 and 08E-5036834, Parkersburg closed 2009 File Nos. 07E-6022541, 07E-2017566 and 07E-6025697, Huntington closed 2011 File No. 10E-9058966, Wheeling closed 2010 File No. 07E-1026559, and Wheeling closed 2009 File No. 07E-1019378 (closed as "limited action", but the level of assistance indicated in the files was more consistent with "extensive service"); Huntington closed 2011 File No. 11E-2068583 (closed as "counsel and advice", but the level of assistance indicated in the file was more consistent with "limited action"); Clarksburg closed 2011 File Nos. 11E-2069390 and 11E-5072041, and Wheeling closed 2010 File No. 08E-2030812 (closed as "counsel and advice", but the level of assistance indicated in the file was more consistent with "contested court decision"); Huntington closed 2010 File Nos. 10E-2058010 and 10E-2057267 (closed as "limited action", but the level of assistance indicated in the files was more consistent with "counsel and advice"); Morgantown closed 2009 File No. 009E-4048261 (closed as "uncontested court decision", but the level of assistance indicated in the file was more consistent with "contested court decision"); Parkersburg closed 2011 File No. 09E-6043983 (closed as "contested court decision", but the level of assistance indicated in the file was more consistent with "uncontested court decision"); Parkersburg closed 2010 File No. 08E-6032868, Parkersburg closed 2009 File No. 07E-6024781, and Princeton closed 2009 File No. 09E-15047381 (closed as "counsel and advice", but the level of assistance indicated in the file was more consistent with "extensive service"); Charleston closed 2009 File No. 09E-2043875 (closed as "other", but the level of assistance indicated in the file was more consistent with "counsel and advice"); and Charleston closed 2010 File Nos. 08E-2028443 and 06E-2012534, and Charleston closed 2009 File No. 07E-2026545 (closed as "other", but the level of assistance indicated in the file was more consistent with "extensive services").

Additionally, it was noted that LAWV closes non-reportable cases using LSC case closing category "K - other", together with a de-selection code. By e-mail dated November 22, 1011, LAWV explained that it uses the de-select codes to identify closed files as reportable or not. According to LAWV,

> This is a broadening of the de-select process for coding. The system allows LAWV to use the LSC closure codes to note what action was taken on a client case without confusing whether the case should be reported to LSC in the CSR reports. This information can be quite useful. For example, we can easily determine how many cases are accidentally opened by looking at reportable code DC, and distinguish those cases from duplicate cases (DD) opened by a client making multiple contacts to LAWV. By combining the reason closed code and the reportable code categories, we can also determine, for example, how many cases which could not be reported because LSC required documentation was not obtained but were nevertheless handled to the point of a court decision, etc.
>
> In this process, there are very few K closure codes reported to LSC --- I believe we had 44 K reportable codes in about 5,000 staff cases in 2010.

We also do not create any confusion for those applying LSC closure codes by creating unusable, *i.e.*, unreportable, closure codes, such as an X. Our system avoids that problem, and allows us a much more detailed review of cases **not** reported to LSC. This is important, since we have major components of LAWV serving clients whose cases are frequently not eligible to be reported in the CSR system.

The reportable codes are in a table labeled "de-select," and are shown below, along with their description. One additional safeguard we use to ensure accuracy in the CSR reports is that cases coded AA for a reportable code must also be checked as LSC eligible in a separate section of the client data file. That check is specifically to ensure compliance with the citizenship, income, asset and subject categories, and is normally completed in the initial intake process.

Deselect	DeselectDes
AA	LSC Reportable
DA	Client Withdrew Before Any Assistance
DB	Erroneous Information at Intake
DC	Admin or Computer Error
DD	Duplicate Case
DE	Untimely Closure
DF	Missing LSC Required Documents
RG	Over Income
RH	Over Assets
RI	Conflict of Interest
RJ	Ineligible Alien
RK	Outside of Priorities
RL	Prisoner
RM	Drug Related Eviction
RN	Class Action
RO	Selective Service Case
RP	Redistricting Case
RQ	Criminal Case
RR	Abortion Case
RS	School Desegregation Case
RT	Census Case
RU	Out of Jurisdiction
RV	Unmeritorious Claim
RW	Fee Generating
RX	Other

LSC recognizes that the sub-code de-selection process shows strong forward thinking by LAWV in capturing de-selected case information that could prove highly useful to it in making improvements to case maintenance. Several of the sub-codes can operate to identify potential problem patterns for unreported cases, such as missing required documentation, or administrative or computer error, and other areas. This is a very refined coding system that warrants commendation. However, because the sub-codes are used in combination with a CSR case closing category, namely "K-other," LSC requests that LAWV use any alphabet other than the eight (8) CSR case closing categories. In other words, LAWV must avoid the use of "A," "B," "F," "G," "H," "I," "K," or "L" as each of these are intended by LSC to connote a level of legal assistance provided to the client. The sub-codes developed by LAWV, in combination with any other alphabet, makes for a highly innovative approach to de-selection and could be identified as a "best practice" model, worthy of consideration by other LSC recipients.

In its response to the DR, LAWV stated that the files cited in this Finding are all being reviewed and adjusted as appropriate. Additionally, LAWV commented that it does not understand the basis for the DR's corresponding Required Corrective Action No. 7. LAWV stated that LSC case closing category "K ", or "other", is permitted under CSR Handbook (2008 Ed., as amended 2011), § 8.3, when a case does not fit any of the other CSR case closure categories. LAWV argued that it only uses the code in precisely that manner.

LAWV stated that of the 6,466 staff cases contained in its 2011 CSR data submission, only three (3) were closed as "K". LAWV responded that PAI cases have more reported "K" cases than staff, and these will be monitored very carefully in the future. But, overall the total for LAWV in 2011 is only about 1% of all reported cases – 97 of 7,822.

LAWV responded that the DR appears to confuse LAWV's use of the LSC closure alphabet for Closure Categories in non-LSC reportable cases with the LAWV system of de-select and non-reportable cases.
Nonetheless, LAWV stated that it will conform to requirements of the CSR Handbook (2008 Ed., as amended 2011) and the *Frequently Asked Questions* and carefully monitor its use of the LSC closure codes as the DR suggests for cases reported to LSC.
OCE has carefully considered LAWV's response, but, as noted in the DR, requests that LAWV avoid the use of any of the CSR case closing categories in closing non-reportable cases. Otherwise, OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 7 is closed.

Finding 11: LAWV is in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timely Closing of Cases). Accordingly, Required Corrective Action No. 1 is closed.

The Report, at Required Corrective Action No. 1, directed LAWV to ensure that cases are timely closed. During the FUR, LAWV confirmed that a management review of the open cases is conducted periodically.

During the FUR, the team reviewed six (6) untimely closed files that had not already been identified for de-selection. *See* Princeton open File No. 02E-15000067, Clarksburg closed 2011 File No. 07E-5026512, Morgantown closed 2011 File No. 09E-4048586, Charleston closed 2009 File No. 05E-2009664, Morgantown closed 2009 File No. 07E-4024404, and Huntington closed 2009 File No. 08E-9031793. Prior to the FUR, LAWV identified several untimely closed cases for de-selection. *See* Charleston open File No. 00E-1002513, Morgantown open File No. 08E-4026919, Clarksburg open File No. 06E- 5016921, and Wheeling closed 2011 Non-Reportable File Nos. 09E-1039110, 07E-1025615, 08E-1029627 and 09E-1037448. Princeton open File No. 02E-15000067, Clarksburg closed 2011 File No. 07E-5026512, and Morgantown closed 2011 File No. 09E-4048586 should also be identified for de-selection. Charleston closed 2009 File No. 05E-2009664, Morgantown closed 2009 File No. 07E-4024404, and Huntington closed 2009 File No. 08E-9031793 were reported in error.

Inasmuch as LAWV demonstrated substantial compliance with the requirements of CSR Handbook (208 Ed.), § 3.3, Required Corrective Action No. 1 is closed.

However, of the 109 open files that were reviewed during the FUR, eleven (11) were dormant. *See* Charleston open File Nos. 06E-2016417, 04E-2006560, 05E-2009977, 06E-2016365 and 00E-1000568A, Clarksburg open File Nos. 04E-2006568, 04E-2007743, and 05E-2009563, Wheeling open File No. 08E-2031565, and Morgantown open File Nos. 02E-4000318 and 05E-4002655.
LAWV stated that it conducts periodic management reviews of case files and, presumably, these files will be de-selected during such review. However, inasmuch as most of these files appear to have been opened more than five (5) years ago, it is recommended that LAWV review all of the files that have been opened for five (5) years or more to assess for dormancy.

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Recommendation No. 1, LAWV stated that it will re-emphasize to Case Supervisors that periodic case reviews must specifically include old and obviously inactive cases. Using its case management system, LAWV stated that is implementing a set of periodic date reports that flag files in which no apparent activity has occurred in a set period of time, whether several months, one year or some other period. Cases appearing in these reports will have to be reviewed by staff and supervisors to ensure they need to be kept open and are being properly handled.

Finding 12: LAWV is in compliance with CSR Handbook (2008 Ed., as amended 2011), § 3.2 (Single Recording of Cases).

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.2.

When a recipient provides more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by

the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.2.

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed., as amended 2011), § 6.3. Recipients are further instructed to report related legal problems of an eligible client as single case when the recipient attempts to resolve the related legal problems simultaneously through a single legal process. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.4.

No duplicates were identified among the reportable files that were reviewed during the FUR.[14]

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 13: Contrary to CSR Handbook (2008 Ed., as amended 2011), § 10.1(a)(ii), six (6) files were mislabeled as PAI cases.

Recipients may record and report the provision of legal assistance by a private attorney as a case if the legal assistance provided to the client was provided by a private attorney participating in a recipient's PAI program. *See* CSR Handbook (2008 Ed., as amended 2011), § 10.1(a)(ii).

Thirty-nine (39) of the files that were reviewed during the FUR appeared on the list of PAI cases. However, in six (6) such files, the legal assistance was provided by staff. *See* Charleston open File No. 11E-2065780, Huntington open File Nos. 10E-2057798, 10E-2058399 and 11E-2069617, Princeton closed 2011 File Nos. 11E-2069487and 11E-2065188, and Princeton closed 2009 File No. 09E-15047381.

LAWV was advised that in cases in which staff and a private attorney provide legal assistance, but have not co-counseled the case, the recipient should close the case as a staff or a PAI case depending on whether the staff or private attorney provided the highest level of assistance. *See* CSR Handbook (2008 Ed., as amended 2011), § 10.1(b)(iv). In the six (6) cases cited above, the higher level of assistance was provided by a staff attorney.

Accordingly, to the extent that these files are reportable, they are reportable as staff cases, not PAI.

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Recommendation No. 4, LAWV stated that procedures for guiding staff on how to properly close and report cases handled by both staff and PAI volunteers

[14] One (1) duplicate was identified among the non-reportable files that were reviewed during the FUR. LAWV disclosed that Princeton closed 2011 Non-Reportable File No. 10E-2058811 is a duplicate of Princeton closed 2010 File No. 10E-2058174.

will be reviewed and updated, and appropriate training will be provided to staff members involved.

Finding 14: LAWV is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in *pro bono* legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court. *See* 45 CFR § 1604.4.

Prior to the FUR, LAWV provided a copy of its outside practice of law policy, and disclosed that the only approvals granted for compensated outside practice were for newly hired attorneys who were obliged to complete work on prior private cases. LAWV further stated that it does not routinely maintain records of every outside practice approval.

The policy is consistent with Part 1604. During the FUR, LAWV's Executive Director and Legal Director disclosed that they had received four (4) requests to engage in outside practice this year. The Executive Director and Legal Director discussed the nature of the requests with OCE. All of the requests were consistent with 45 CFR § 1604.4. Based on these discussions, as well as discussions with various LAWV attorneys, it appears that LAWV is in compliance with the requirements of 45 CFR Part 1604.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 15: LAWV is in compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities), but its policy requires revision.

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

LAWV has developed a policy, "Partisan Political Activity and The Hiring Process," that is contained within the LAWV Policies and Procedures Manual. LAWV's Chief Financial Officer advised that the policy is provided to new employees as part of their orientation to guide staff in complying with Part 1608.

The policy is consistent with the 45 CFR §§ 1608.5(a) and (b) and 1608.6(a), (b) and (c), but it does not address the restrictions stated at 45 CFR §§ 1608.4 or 1608.6(a). Accordingly, LAWV

is directed to revise its policy to address the restrictions stated at 45 CFR §§ 1608.4 and 1608.6(a).

The Executive Director and Legal Director indicated their awareness of LSC Program Letter 11-1 (September 14, 2011) and stated that the letter had been discussed with staff. They further stated that LAWV ensures compliance through periodic visits to the various local offices, adoption of a policy that mirrors the requirements of Part 1608, and staff training. The Chief Financial Officer also stated that neither LAWV nor its staff are involved in any restricted political activities.

LAWV assembled copies of the materials available to the public in each of its local offices. A review of the materials, LAWV financial records, case files, and discussions with LAWV staff indicates that LAWV is in compliance with the requirements of 45 CFR Part 1608. In addition, a limited review of fiscal records reflected in LAWV's Chart of Accounts and expenses shown within its Trial Balance provided no indication that LAWV was involved in any prohibited political activity during the review period.

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Required Corrective Action No. 8, LAWV stated that this is an action that will be addressed by the LAWV governing body later in 2012.

LAWV is advised that before closing Required Corrective Action No. 8, review of any such action by OCE will be required.

Finding 16: LAWV is in compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b). LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

During the FUR, the team reviewed one (1) file that appeared to be fee-generating. *See* Clarksburg open File No. 10E-2057358. The file is LSC funded and involves an action by LAWV for breach of contract, habitability and wrongful eviction. The prayer for relief requests both compensatory and punitive damages, and requests that the City of Clarksburg enact proper due process protections for all condemnation proceedings initiated by the City.

LAWV stated that the recovery of damages is not the principal purpose of the litigation and that attorneys in the Clarksburg community are not likely to take this type of case.

To the extent that LAWV has determined that that referral of the case to the private bar is not possible because recovery of damages is not the principal object of the case and substantial statutory attorneys' fees are not likely to be available, LAWV may provide LSC funded legal assistance. *See* 45 CFR § 1609.3(b)(3)(iii).

The DR directed LAWV to demonstrate the showing required by 45 CFR § 1609.3(b)(3)(iii).

In response to the DR, LAWV neglected to address this request.

LAWV is advised that LSC regulations require that recipients maintain records sufficient to document their compliance with Part 1609. *See* 45 CFR § 1609.6. By memo dated December 8, 1997, LSC prescribed certain specific recordkeeping requirements. *See* OPO's Memo to All LSC Program Directors (December 8, 1997). The requirements are mandatory and recipients must use either the forms attached to the memo or such other forms that have been approved by the recipient's auditor. One such form was intended for use by recipients to document its compliance with Part 1609. Accordingly, OCE requests that LAWV provide the documentation maintained relative to Clarksburg open File No. 10E-2057358 to document its compliance with Part 1609.

Finding 17: LAWV is in compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient, except as otherwise provided by LSC regulations. *See* 45 CFR § 1642.3.[15] However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in

[15] The regulations defined "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

enforcement action. *See* LSC Program Letter10-1 (February 18, 2010); *see also*, 75 *Federal Register* 21506 (April 26, 2010).[16]

None of the files that were reviewed during the FUR indicated any activity inconsistent with Part 1642.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 18: LAWV is in compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities), but its policy requires revision.

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

LAWV has adopted a written policy entitled "Legislative and Administrative Rulemaking (Part1612)". The policy is provided to all new employees as part of their orientation materials to ensure its employees are aware of and comply with LSC requirements regarding lobbying and other restricted activities as set forth in 45 CFR Part 1612.

The policy is consistent with 45 CFR §§ 1612.3, 1612.4, and 1612.5. The policy does not address 45 CFR §§ 1612.7, 1612.8, or 1612.9. Accordingly, LAWV is directed to revise its Part 1612 policy to reflect the restrictions stated at 45 CFR §§ 1612.7, 1612.8, and 1612.9. Additionally, although the policy addresses those activities permissible under 45 CFR § 1612.6, it should clarify that such non-LSC funded activities are permissible only in response to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to an LAWV employee.

A limited review of LAWV's fiscal records did not reveal any inconsistencies with LAWV's policy, and in discussions with the Chief Financial Officer, she confirmed that LAWV and its staff were not involved in prohibited public rulemaking or lobbying.

A review of the materials available to the public at LAWV's local offices, LAWV financial records, case files, and LAWV's semi-annual reports, as well as discussions with LAWV staff indicates that LAWV is in compliance with the requirements of 45 CFR Part 1612.

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

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Required Corrective Action No. 9, LAWV commented that revision of its Part 1612 policy will be addressed by the Board later in 2012.

LAWV is advised that before closing Required Corrective Action No. 9, review of any such action by OCE will be required.

Finding 19: LAWV is in compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

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

Neither the interviews with LAWV staff, nor the files that were reviewed during the FUR indicated LAWV's involvement in legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 20: LAWV is in compliance with the requirements of 45 CFR Part 1617 (Class actions).

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

Neither the interviews with LAWV staff, nor the files that were reviewed during the FUR indicated LAWV's initiation of, or participation in a class action.

In its response to the DR, LAWV offered no comments specific to this Finding.

[17] It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

Finding 21: LAWV is in compliance with the requirements of 45 CFR Part 1632 (Redistricting).

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

Neither the interviews with LAWV staff, nor the files or fiscal records that were reviewed during the FUR indicated LAWV's involvement in such activity.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 22: LAWV is in compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

Neither the interviews with LAWV staff, nor the files that were reviewed during the FUR indicated LAWV's involvement in any such eviction proceeding.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 23: LAWV is in compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

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

Neither the interviews with LAWV staff, nor files that were reviewed during the FUR indicated LAWV's participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 24: LAWV is in compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Recipients and their employees are prohibited from representing, or referring to other recipients, individuals as a result of a face-to-face encounter, or personal encounter via other means of communication such as a personal letter or telephone call, in which the recipient or its employee advised the individual to obtain counsel or take legal action, where the individual did not seek the advice and with whom the recipient has no attorney-client relationship. *See* 45 CFR §§ 1638.2 and 1638.3.

Neither the interviews with LAWV staff, nor files that were reviewed during the FUR indicated LAWV's involvement in such activity.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 25: LAWV is in compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

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

Neither the interviews with LAWV staff, nor the files or fiscal records that were reviewed during the FUR indicated LAWV's involvement in such activity.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 26: LAWV is in compliance with the requirements of 42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

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

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or

secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b) (10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

All of the files that were reviewed demonstrated LAWV's compliance with the above LSC statutory prohibitions. Discussions with the staff confirmed that LAWV was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 27: Based upon a limited review of LAWV's fiscal policies and procedures, and fiscal/accounting records, as well as interviews with its fiscal staff, LAWV has generally sound internal controls through the oversight responsibilities of its board of directors, adoption of its Fiscal Policies and Procedures Manual ("FPPM") and the segregation of duties amongst its staff. However, as described below, some changes are required/recommended.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the LSC Act, any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, the LSC Audit Guide for Recipients and Auditors, the Accounting Guide, the CSR Handbook (2008 Ed., as amended 2011), the 1981 LSC Property Manual (as amended), and the Property Acquisition and Management Manual ("PAMM"), and with any amendments of the foregoing adopted before or during the period of the grant. Recipients agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. *See* LSC Grant Assurances for Calendar Year 2011 Funding (Form C), See Assurance 1.

Recipients, under the direction of its board of directors, are required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) effectiveness and efficiency of operations; (2) reliability of financial reporting; and (3) compliance with applicable laws and regulations.

The Accounting Guide provides guidance on all aspects of fiscal operations and the 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides

guidance to recipients on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur. The Accounting Guide provides that in establishing an adequate internal control structure, the following items must be considered: competent personnel; definition of duties and responsibilities; segregation of duties; establishment of independent checks and proofs; establishment of an accounting manual; and Committee of Sponsoring Organizations ("COSO") considerations such as risk assessment. *See* Accounting Guide (2010 Edition), Appendix VII – Accounting Procedures and Internal Control Checklist; *see also*, LSC Program Letter 10-2 (July 1, 2010), Appendix A - Embezzlement, Fraud, and the Critical Importance of Effective Internal Control.

Financial Oversight Committee

The Accounting Guide, Part 1-7 - Responsibilities of the Financial Oversight Committee or Committees, defines a recipient's board of directors' fiduciary responsibility to the recipient, including the establishment of a Finance Committee which should, at a minimum (subject to any requirements of state law): review and revise budgets and make recommendations to the full board of directors; review monthly financial management reports with the chief financial officer, controller, and/or CPA (IPA); review accounting and control policies; review the audited financial statements, management letter, and senior staff's response with staff and auditor; regularly review and make recommendations about investment policies; coordinate board training on financial matters; and act as liaison between full board and staff on fiscal matters.

The Accounting Guide also recommends that recipients have an Audit Committee whose role, (subject to any requirements of state law) include: hiring the auditor; setting the compensation of the auditor; overseeing the auditor's activities; setting rules and processes for complaints concerning accounting practices and internal control practices; reviewing the annual IRS Form 990 for completeness, accuracy, and on-time filing and providing assurances of compliance to the full board; and ensuring the recipient's operations are conducted and managed in a manner that emphasizes ethical and honest behavior, compliance with applicable laws, regulations and policies, effective management of the recipient's resources and risks, and accountability of persons within the organization.

While it is recognized that some boards due to their small size and other considerations will decide not to have a separate audit committee, nevertheless it is generally considered a best practice for governing bodies to have both a finance committee and a separate audit committee. The critical point is that all of the finance and audit committee duties listed immediately above must be performed by a financial oversight committee(s). It is also critical, and considered a best practice, that the financial oversight committee(s) have at least one member who is a financial expert or for the board to have access to a financial expert. A financial expert has (1) an understanding of Generally Accepted Accounting Principles ("GAAP") and financial statements, (2) the capacity to apply GAAP in connection with preparing and auditing financial statements, (3) familiarity with developing and implementing internal financial controls and procedures, and (4) the capacity to understand the implications of different interpretations of accounting rules.

LAWV maintains an Audit Committee but not a separate Finance Committee; however, based on a limited review of LAWV's policies and through on-site interview with its Chief Financial Officer, it was determined that its Audit Committee performs the responsibilities of a financial oversight committee, as described above. The Audit Committee meets quarterly and the Chief Financial Officer is responsible for distribution of financial reports to the members of the management team and the Audit Committee including updated and approved budget (planned versus actual) and overview of the LAWV monthly and year-to-date financials, including a statement of cash on hand. The Chief Financial Officer advised that the Board's President, who serves on the Audit Committee, possesses financial expertise. Board members receive training on case handling and federal/state regulatory compliance and LSC compliance issues are reported at LAWV's Board meetings.

Segregation of Duties

Through a review of its responses to the LSC Internal Control Worksheet prepared during the on-site visit, review of the policies and procedures in LAWV's FPPM, and interviews with LAWV's fiscal staff, it appears that LAWV has established a segregation of duties to the extent practical based on its staffing level.

Staff Training

During the review period LAWV staff members have attended various training sessions related to LSC guidelines and/or fiscal internal controls. In January 2011, the Financial Assistant-Payroll attended a seminar entitled "The Ultimate Course in Payroll Management". The Database Specialist attends Kemps (case management and timekeeping system) training annually. In June 2009, the Chief Financial Officer attended "Sage MIP Fund Accounting Basic Training," provided by the vendor and the topics covered included General Ledger, bank reconciliation, accounts payable, and budget. In August 2011, LAWV's Executive Director, Chief Financial Officer, and Administrative Director attended the Management Innovation Excellence ("MIE") 2011 National Conferences for Legal Aid Directors and Administrators. While at this conference the Chief Financial Officer attended a session entitled "Financial Oversight and Internal Controls: Don't Allow Your Internal Controls to go Adrift in Difficult Conditions," which included presentations by an OCE Program Analyst and a Program Counsel from the Office of Program Performance ("OPP").

Bank Account Reconciliations

LAWV maintains seven (7) bank accounts for various purposes including operating cash, client trust funds, grants, payroll, and investments. The bank statement reconciliation process is performed monthly by the Accounting Assistant with the exception of the payroll account which is prepared by the Financial Assistant-Payroll. The bank statement reconciliations are then reviewed by either the Chief Financial Officer or the Executive Director. A limited review of LAWV's bank statement reconciliations indicates that they are performed and initialed by both the preparer and reviewer.

Upon review of LAWV's bank statement reconciliation from August of 2011, it was revealed that in its general operating account there are five (5) outstanding checks totaling $1,261.99 which were over 6 months old. LAWV currently does not have a written policy/procedure covering stale checks; however, the Chief Financial Officer advised that she investigates any checks outstanding over six (6) months. It is recommended that LAWV develop a written policy and/or procedure which requires that stale checks, over six (6) months old, be researched and resolved to the extent possible.

Salary Advances

As described in the LAWV Personnel Manual, LAWV offers salary advance loans to its non-probationary employees who have been employed for at least 12 months. These employees may request a salary loan for a maximum amount of $1,250.00 and an employee may receive only one (1) salary loan during a three year period. There are currently five (5) open salary advance loans totaling $4,368.00. Salary loans must be approved and are normally repaid by payroll deductions. The maximum repayment period for a salary loan is one (1) year on a schedule of 25 equal payments to be withheld from wages each pay day until the salary loan is repaid in full. Once a salary loan is approved, the employee must sign a promissory note, installment payment agreement, and wage assessment order permitting LAWV to withhold wages. These internal controls ensure that the salary advance loans will be repaid to LAWV.

Travel Advances

Employees may request Travel Advances for overnight conference/meeting travel expenses, as described in the LAWV Policies and Procedures Manual. A request is made to the Supervisor on the LAWV Travel Advance Form and must be made two (2) weeks in advance. Interview with the Chief Financial Officer disclosed that LAWV is repaid for Travel Advances through the employees' expense reports. If there is still a balance owed after the expense reimbursement then the employee must include a check for that amount with their expense report. There are currently no open Travel Advances.

Records Retention

LAWV has a written records retention policy titled "Document Destruction Policy – Administrative and Accounting Records" (Sarbanes-Oxley Act). This policy was adopted in December 2005 and then revised in May of 2008 and again in May 2009. A comparison of LAWV's record retention requirements to LSC guidelines shows that some of its retention requirements differ from the guidelines contained on pages 69 through 71 of the Accounting Guide. It was determined that LAWV's policy includes retention requirements for employee expense account records, grant and contract documents, non-capitalized equipment leases, and petty cash records that are shorter than the LSC guidelines. It is noted that there were several other types of documents where LAWV's retention requirements are longer than what LSC requires. LAWV must revise its record retention policy to ensure that the specified retention requirements are no less than the LSC guidelines contained in the Accounting Guide.

Credit Cards

LAWV maintains a corporate VISA card issued by BB&T. There are currently 15 authorized users who are each managers or information technology ("IT") staff in the Charleston office. LAWV maintains a credit card policy within its FPPM. The policy states, in part, that the credit cards shall be used only for expenditures approved for and contained within the LAWV budget and there shall be no personal use of the credit card. The policy further states that staff utilizing the credit card must turn in detailed receipts to the Accounting Assistant by the end of the month in which the purchase occurred and that cash advances are not allowed.

Limited testing of six (6) months credit card statements from March through August 2011 found LAWV maintains receipts associated with all charges and the supporting documentation adequately identifies the purpose of the expenditure. The statements revealed that LAWV had paid off the balance in full each month and incurred no finance charges.

Cash Receipts from Clients

LAWV will sometimes accept cash from a client to cover anticipated fees in connection with their legal representation (Client Trust Accounts). LAWV has written procedures on this area which are contained in its FPPM. The procedure states, in part, that receipt of client funds or property will be documented using a 3-part client trust receipt form. The LAWV staff member receiving the funds or property will prepare the form, with distribution of the original to the client or person making the deposit and copies to the Accounting Assistant in the Charleston office and the case handler for placement in the client file.

To strengthen recipients' internal control with the goal of reducing opportunities for fraudulent activities to occur, LSC recommends that clients be provided a notice about LAWV's cash receipts policy which states that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor. *See* Accounting Guide, Appendix VII, Section H-9 and H-15; *see also,* LSC Program Letter 10-2. It is recommended that LAWV place a sign in each of its office lobbies that contains a notice to its clients of LAWV's cash policy. LAWV is encouraged to implement this recommendation as it provides a control to better inform its clients as deterrence to possible fraudulent activities. Prior to the FUR team departing LAWV, the Executive Director advised that LAWV will implement this recommendation.

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Required Corrective Action Nos. 10 and 11, LAWV stated that it will revise its record retention policies and procedures later in 2012 to ensure retention requirements that match or exceed the requirements for such records found in the LSC Accounting Guide. It also commented that it will develop a written policy and procedure for its Accounting Guide describing how stale checks will be researched and resolved.

In response to the DR's corresponding Recommendation No. 6, LAWV stated that it routinely gives its clients a receipt for money received in all forms, including cash and checks. Nonetheless, it stated that it will place a sign in each of its office lobbies that provide notice of its

cash receipts policy, including a statement that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor. LAWV stated that cash receipts are now part of its client trust policies and procedures.

OCE requests that LAWV submit copies of its revised records retention policies and procedures and its policy and procedure addressing stale checks before closing Required Corrective Action Nos. 10 and 11.

Finding 28: Effective January 1, 2012, funding previously allocated to LAWV's migrant service area will be included in LAWV's basic field and will be subject to the same conditions and restrictions imposed on its basic field grant.

In a letter dated October 21, 2011 from the LSC President to LAWV's Chairperson, LAWV was advised that beginning January 1, 2012, funding previously allocated to service area MWV will be included in LAWV's LSC basic field grant.

A review of LAWV's financial information revealed that as of year-end 2010 LAWV had a migrant fund balance of $43,946.96 and as October 31, 2011 the migrant fund balance was $55,845.11. The Chief Financial Officer was advised that the outstanding funds allocated to service area MWV can be rolled into its BFG balance and that its LSC fund balance, including any amount reclassified from migrant funds to BFG will be subject to the same conditions and restrictions imposed on its other basic field funds, including the requirements of 45 CFR Part 1628 – Recipient Fund Balances. Specifically, as per 45 CFR § 1628.3(a), recipients are permitted to retain from one fiscal year to the next LSC fund balances up to 10% of their LSC support, and as per 45 CFR § 1628.3(b), recipients may request a waiver to retain a fund balance up to a maximum of 25% of their LSC support for special circumstances.

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 29: A limited review of LAWV's accounting records determined that during the review period, LAWV has incurred $8,873.70 in bank fees associated with its general operating account. While this account includes funds from LAWV's various funding sources, the entire fee is charged to LSC funds. Those fees which are in excess of LSC's proportional share of the funds in the operating account could be disallowed as unreasonable or unnecessary.

LAWV maintains its general operating account through the local branch of BB&T bank. The account is considered a commercial account into which LAWV deposits funds from its various funding sources. Through review of LAWV's Trial Balance it was determined that under the account Bank Fees there is a monthly service charge assessed by BB&T for this account.

During the review period, LAWV paid BB&T a total of $8,873.70 in bank fees. While the operating account is interest bearing, the amount of the bank fees is significantly more than the amount of interest earned. For example, the August 2011 bank OA statement detailed interest of

$3.91 (based on an interest rate of 0.02%) and a service charge of $237.61. The bank statement stated that 2011 interest paid year-to-date was $47.09 for the operating account. As stated previously, this account is LAWV's general operating account and includes LSC funds as well as other funds from LAWV's various funding sources. However, review of LAWV's accounting records revealed that its bank fees are being paid entirely with LSC funds.

Costs by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost meets the criteria set forth at 45 CFR § 1630.3(a). Among other things, the criteria requires that the cost be reasonable and necessary for the performance of the grant or contract. *See* 45 CFR § 1630.3(a)(2). A cost is reasonable, if in its nature or amount, it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. *See* 45 CFR § 1630.3(b).

The payment of bank service fees does not appear to be a prudent usage of LSC funds. Further, using LSC funds to pay the entire fee/charge for an account that is only partially comprised of LSC funds is less than prudent. Rather, the associated fees/charges should be distributed proportionally among the various funding sources whose funds are deposited in that account.

It is recommended that LAWV transfer its operating accounting funds to a financial institution that offers a suitable bank account which charges minimal, or no, fees. If LAWV determines it will keep its operating account funds in its current account or in another fee account, LAWV should allocate the associated fees/charges proportionally among the various funding sources whose funds are deposited in that account, rather than charging such fees solely to LSC funds. Alternatively, LAWV could elect to cease charging any bank fees associated with its operating account to LSC.

In its comments to the DR, LAWV is requested to provide an update as to whether they have transferred its operating account funds to a financial institution that does not charge fees. Additionally, LAWV must include an analysis covering each month over the five year period from November 1, 2006 through October 31, 2011 which provides: the monthly service charge for its operating account that LAWV paid to its bank; the amount of the fee that was paid using LSC funds, and the percentage of the balance in its operating account each month that was comprised of LSC funds.

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Required Corrective Action No. 12, LAWV commented that following the FUR it began coding the fees/charges associated with its operating account to unrestricted funding.

OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 12 is closed.

In response to the DR's corresponding Recommendation No. 7, LAWV stated that it will continue to research financial institutions in the Charleston area for any offering minimal or no-fee operating accounts.

Finding 30: LAWV is in compliance with 45 CFR Part 1627 (Subgrants and membership fees or dues) in that LAWV does not operate any LSC funded subgrants and LAWV is not paying prohibited membership fees or dues with LSC funds.

LSC regulations define a subrecipient as an entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. *See* 45 CFR § 1627.2(b)(1). Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, except that any such arrangement involving more than $25,000 shall be included. Furthermore, 45 CFR § 1627.2(b)(2) defines subgrant to mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the definition in paragraph (b)(1) of this section. 45 CFR § 1627.3 outlines requirements for all subgrants including the mandate in (a)(1) of that section which states that all subgrants must be submitted in writing to the Corporation for prior, written approval.

A limited review of LAWV's fiscal records and discussions with its Chief Financial Officer confirmed that LAWV had no LSC funded subgrants in effect during the review period. A review of LAWV's accounting records determined compliance with 45 CFR §1627.2 as none of LAWV's judicare attorneys had received payments approaching $25,000.00 for any year during the review period.

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual, except that payment of membership fees or dues mandated by a government organization to engage in a profession may be charged to a recipient's LSC fund. *See* 45 CFR § 1627.4.

A limited review of LAWV's accounting records and interview with its Chief Financial Officer determined that membership dues, including dues to National Legal Aid and Defender Association ("NLADA"), were paid with non-LSC funds, in compliance with 45 CFR § 1627.4(a).

In its response to the DR, LAWV offered no comments specific to this Finding.

Finding 31: A limited review of LAWV's accounting records revealed that LAWV has not retained any unexpended funds from its closed TIG grants. However, LAWV needs to ensure that its executed one-time grants (including TIG awards) are reported separately in its financial statements in accordance with 45 CFR § 1628.3(g). Also, LAWV must ensure that it properly accounts for its entire TIG award amount, which includes the amount of any TIG Conference Fees assessed by LSC.

LAWV has been awarded five (5) TIG grants between 2005 through 2010, as detailed below:

YEAR	TIG	AWARD AMOUNT	PURPOSE	GRANT STATUS

2005	05221	$27,900	Renewal Web Site Grant	Closed
2006	06221	$27,600	Continuation Web Site Grant	Closed
2007	07221	$35,000	VoIP Telephone System (ATLAS)	Closed
2008	08221	$30,000	Pro Se Focused Grants (HotDocs)	Active
2010	10008	$47,100	Infrastructure (Video Conferencing	Active

TIG grants are a type of one-time grant. Section 2-2.1 of the Accounting Guide entitled "Recognition of LSC Grant and Contract Support" states, in part that: A one-time grant/contract can be awarded to support a specific event, project, or one-time purchase or activity, or it can be awarded as a one-time infusion of resources to support the recipient's annualized activities. One-time grants that are essentially one-time infusions to the annualized grant/contract should be recorded as support as eligible costs are incurred during the period specified in the grant/contract - consistent with the accounting for the annualized grant/contract. Until expenses are incurred for the restricted activity, one-time grants in this category should be included and recorded in the recipient's financial statements as a liability (e.g., Unearned Grant Revenue) on the statement of financial position. *Executed one-time grants must be reported separately in the financial statements in accordance with 45 CFR § 1628.3(e). This may be done by providing a supplemental schedule of related revenue and expense or a separate column within the financial statement reporting on grant activities.* (Italicized for emphasis.) When a one-time grant or contract expires or is terminated, the unexpended amount is to be returned to LSC.

Review of LAWV's 2009 and 2010 audited financial statements revealed that LAWV did not report one-time TIG grants separately in the financial statements in accordance with 45 CFR §1628.3(e) and the Accounting Guide, either as a supplemental schedule of related revenue and expense or a separate column within the financial statement reporting on grant activities. LAWV must discuss this issue with its Independent Public Accountant ("IPA") and ensure that in the future TIG awards are reported in its audited financial statement in this manner.

A limited review of LAWV's accounting records and interview with its Chief Financial Officer revealed that there are not any unexpended funds from any of LAWV's closed TIG grants. There are two (2) open TIGs remaining and the unfunded balances reflected in LAWV's financial records agree with LSC's internal records. There is still $15,750.00 remaining under TIG 08221 and $12,000.00 available under TIG 10008. The Chief Financial Officer advised that LAWV has already expended these funds but is still waiting to request and/or receive the funding for achieving the related TIG milestones.
From a limited review of LAWV's accounting records, it was determined that when LAWV records its TIG awards and expenses it is not including the amount of any associated TIG conference fees, which are assessed by LSC. This results in the underreporting of its TIG awards and expenses in LAWV's audited financial statements by the amount of the TIG

conference fees. Examples of TIG conference fees include $1,100.00 for TIG 10008 and $2,760.00 for TIG 06221. While it is recognized that the TIG conference fees are withheld from the payments provided to LAWV, it still should be included in LAWV's accounting records (including the audited financial statements), as they are part of the award amount. Going forward, LAWV must ensure that it properly accounts for its entire TIG award amount, which includes the amount of any TIG conference fees.

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Required Corrective Action Nos. 13 and 14, LAWV stated that it will work with its auditor to ensure that all executed one-time grants, including TIG awards, are reported separately on its financial statements in accordance with 45 CFR § 1628.3(g). It also stated that it will record the total TIG award as revenue and expense, including any TIG conference fees assessed by SC against the grant.

OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action Nos. 13 and 14 are closed pending review of LAWV's audited financial statements.

Finding 32: Contrary to 45 CFR § 1614.3(e)(1)(ii), sampled files reflected that LAWV provided advance payments to private attorneys performing legal services in its judicare program.

LSC regulations require LSC recipients to devote an amount of LSC and/or non-LSC funds equal to 12.5% of its LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. This requirement is referred to as the "PAI" or private attorney involvement requirement. Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients.

LAWV provides opportunities for attorneys to volunteer on a *pro bono* basis, and in some cases, contracts with lawyers to make significant representation available to clients. Individual cases are referred to counsel through a judicare system, providing reduced-fee payments with a maximum specific billable amount. Judicare cases are supported by both LSC and non-LSC funds. One component of LAWV's judicare makes private attorneys available to evaluate the client's legal right to bankruptcy relief and, if appropriate, represent the client in the bankruptcy proceedings. Another component provides assistance in family proceedings.

During the FUR, OCE reviewed several cases in which LAWV paid private attorneys for legal services prior to the services being rendered. For example, in Princeton open File No. 09E-1547863, LAWV paid the private attorney $500.00 to represent the client in adoption proceedings. The invoice stated the payments were for "contract services," but the file contained no documentation of any work having been performed. A notation in the file reflected that as of January 13, 2010, the attorney was trying to locate the client. In Princeton open File No. 09E-15049699, LAWV paid the private attorney $500.00 to represent the client. The file was opened on December 15, 2009 and the attorney was paid on December 16, 2009. The invoice stated the payments were for "contract services," but the funds appear to have been paid prior to work

being performed. Notes in the file indicate that the attorney is currently providing legal assistance to the client. In Princeton open File No. 09E-2048087, LAWV paid the private attorney $274.00 to represent the client. The file was opened on October 21, 2009. On April 11, 2011, the attorney was requested to contact the client, and on April 13, 2011, the attorney was paid. The invoice stated the payments were for "contract services," but the funds appear to have been paid prior to work being performed. Notes in the file indicate that the case is pending.

LAWV is reminded that LSC regulations require that bills and/or invoices from private attorneys be submitted before payments are made. *See* 45 CFR § 1614.3(e)(1)(ii). Accordingly, LAWV is directed to cease payment of private attorneys prior to services being rendered.

In its response to the DR, LAWV offered no comments specific to this Finding. However, in response to the DR's corresponding Required Corrective Action No. 15, LAWV stated that it will ensure compliance with 45 CFR § 1614.3(e)(1)(ii) for all future PAI activities.

OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 15 is closed.

IV. RECOMMENDATIONS[18]

In view of the foregoing, it is recommended that LAWV:

1. Periodically review open cases to ensure that such cases are still active;

   In response to this Recommendation, LAWV stated that it will re-emphasize to Case Supervisors that periodic case reviews must specifically include old and obviously inactive cases. Using its case management system, LAWV is implementing a set of periodic date reports that flag files in which no apparent activity has occurred in a set period of time, whether several months, one year or some other period. Cases appearing on these reports will have to be reviewed by staff and supervisors to ensure they need to be kept open and are being properly handled.

2. Continue to monitor case files to ensure the presence of the necessary Part 1626 documentation;

   In response to this Recommendation, LAWV stated that Part 1626 forms and documentation procedures are being updated and will be mandatory for future use.

3. Provide training to staff on the proper application of CSR case closure categories;

   In response to this Recommendation, LAWV stated that as noted prior to and during the CSR/CMS visit, this training is ongoing for LAWV case handling and intake staff, and their supervisors. Such training will continue.

4. Ensure that cases are coded consistent with CSR Handbook (2008 Ed., as amended 2011), § 10.1(b)(iv);

   In response to this Recommendation, LAWV stated that procedures for guiding staff on how to properly close and report cases handled by both staff and PAI volunteers will be reviewed and updated, and appropriate training will be provided to staff members involved.

5. Place a sign in each of its lobbies that contains a notice to its clients of LAWV's cash receipts policy including a statement that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor; and

   In response to this Recommendation, LAWV stated that it will place a sign in each of its office lobbies that provides notice of its cash receipts policy, including a statement

[18] Items appearing in the "Recommendations" section are not enforced by LSC and therefore LAWV is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help LAWV with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors. By contrast, the items listed in "Required Corrective Actions" must be addressed by LAWV, and will be enforced by LSC.

that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor. Cash receipts are now part of LAWV's client trust policies and procedures. LAWV routinely gives its clients a receipt for money received in all forms, including cash and checks.

6. Transfer its operating account to a financial institution that offers a suitable bank account which charges minimal, or no, fees.

   In response to this Recommendation, LAWV stated that it will continue to research financial institutions in the Charleston area for any offering minimal or no fees on operating accounts.

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the Findings of this report, LAWV is required to take the following corrective actions:

1. Ensure that intake practices are consistent with OLA Advisory Opinion AO 2009-1006 (September 3, 2009 and OLA Advisory Opinion AO 2009-1002 (June 10, 2009);

   In response this Required Corrective Action, LAWV stated that intake staff will be trained to request and evaluate information concerning applicants' prospective income as well as their current income information as per OLA Advisory Opinion 2009-1006.

   OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 1 is closed.

2. Revise its manual intake forms consistent with its financial eligibility policy;

   In response to this Required Corrective Action, LAWV stated that intake forms (and computerized records) will be reviewed and revised as noted to ensure consistency with applicable LAWV eligibility policies.

   OCE requests that LAWV submit a copy of its revised intake before closing Required Corrective Action No. 2.

3. Ensure that consideration of authorized exceptions is limited to those exceptions adopted by LAWV's board of directors;

   In response to this Required Corrective Action, LAWV agreed with the DR and stated that bankruptcy is not a government benefit program providing an exception to basic income limitations. LAWV will provide staff training and guidance concerning LAWV and LSC policy on exceptions to the general eligibility requirements.

   OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 3 is closed.

4. Cease use of all non-conforming citizenship attestations and ensure that all citizenship attestation forms are consistent with CSR Handbook (2008 Ed., as amended 2011), § 5.5;

   In response to this Required Corrective Action, LAWV stated that it's own internal citizenship attestation forms were revised and made fully compliant with LSC requirements several years ago. However, some domestic violence shelters continue to use an older non-conforming attestation form. These shelters will be given new, appropriate forms, and staff will be trained to check carefully for their use on shelter referrals.

OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 4 is closed.

5. Revise the "Non-Citizen Eligibility Status" form to require that the staff member signing the form identify the specific documentation submitted by the applicant, along with the alien registration, USCIS, or other identifying number;

   In response to this Required Corrective Action, LAWV stated that the current form will be updated to include the statement affirming a staff member review of appropriate documentation has occurred as required.

   OCE requests that LAWV submit a copy of its revised "Non-Citizen Eligibility Status" form before closing Required Corrective Action No. 5.

6. Revise its retainer agreement to ensure that it identifies the nature of the legal services to be provided;

   In response to this Required Corrective Action, LAWV stated that the retainer agreement may be revised as noted. Alternatively, an engagement letter may be used and referred to in the retainer, addressing the same point. This step will require both LAWV staff and Board participation, but is expected to be completed in 2012.

   OCE requests that LAWV submit a copy of its revised retainer agreement before closing Required Corrective Action No. 6.

7. Cease the use of CSR case closure category "K" in conjunction with LAWV's de-selection codes;

   In response to this Required Corrective Action, LAWV stated that it will continue to use code K internally as a valuable part of its record keeping. The use of this code on cases involved in LSC reporting will be in accordance with the requirements and specifications of the LSC CSR Handbook (2008 Ed., as amended 2011).

   OCE has carefully considered LAWV's response, but, as noted in the DR, requests that LAWV avoid the use of any of the CSR case closing categories in closing non-reportable cases. Otherwise, OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 7 is closed.

8. Revise its Part 1608 policy to address the restrictions stated at 45 CFR §§ 1608.4 and 1608.6(a);

   In response to this Required Corrective Action, LAWV commented that this is an action that will be addressed by the LAWV governing body later in 2012.

OCE requests that LAWV submit a copy of its revised Part 1608 policy before closing Required Corrective Action No. 8.

9. Revise its Part 1612 policy to clarify that the non-LSC funded activities addressed in the policy are permissible only in response to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to LAWV or one of its employees;

   In response to this Required Corrective Action, LAWV commented that this is an action that will be addressed by the LAWV Board later in 2012.

   OCE requests that LAWV submit a copy of its revised Part 1612 policy before closing Required Corrective Action No. 9.

10. Adopt record retention guidelines as contained in the Accounting Guide;

    In response to this Required Corrective Action, LAWV commented that it will revise its record retention policies and procedures later in 2012 to ensure retention requirements match or exceed the requirements for such records found in the LSC Accounting Guide.

    OCE requests that LAWV submit a copy of its revised record retention policies and procedures before closing Required Corrective Action No. 10.

11. Develop a written policy and/or procedure which require that stale checks (over six months old) be researched and resolved to the extent possible;

    In response to this Required Corrective Action, LAWV commented that it will develop a written policy and procedure for its Accounting Guide describing how stale checks (over six months old) will be researched and resolved.

    OCE requests that LAWV submit a copy of its written policy and procedure before closing Required Corrective Action No. 11.

12. Allocate the fees/charges associated with its operating account proportionally among the various funding sources whose funds are deposited in that account, rather than charging such fees solely to LSC funds. Alternatively, LAWV may elect to cease charging any bank fees associated with its operating account to LSC;

    In response to this Required Corrective Action, LAWV commented that following the on-site visit it began coding the fees/charges associated with its operating account to unrestricted funding.

    OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 12 is closed.

13. Ensure that its executed one-time grants, including TIG awards, are reported separately in its financial statements in accordance with 45 CFR §1628.3(g);

    In response to this Required Corrective Action, LAWV commented that it will work with its Auditor to ensure that all executed one- time grants, including the TIG awards, are reported separately on its financial statements in accordance with 45 CFR § 1628.3(g).

    OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 13 is closed pending review of LAWV's audited financial statements.

14. Ensure that proper accounting for the entire TIG award amount, including the amount of any TIG conference fees assessed by the LSC; and

    In response to this Required Corrective Action, LAWV commented that it will record the total TIG award as revenue and expense including any TIG conference fees assessed by LSC against the grant.

    OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 14 is closed pending review of LAWV's audited financial statements.

15. Ensure compliance with 45 CFR § 1614.3(e)(1)(ii).

    In response to this Required Corrective Action, LAWV commented that it will ensure compliance with 45 CFR § 1614.3(e)(1)(ii) for all future PAI activities.

    OCE finds LAWV's comments responsive and, accordingly, Required Corrective Action No. 15 is closed.

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March 5, 2012

Lora Rath, Acting Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, N.W. 3rd Floor
Washington D.C. 20007

re: Legal Aid of West Virginia, Inc.
Recipient No. 449041
OCE Draft Report to Follow-up Visit - November 2011

Dear Ms. Rath:

Please find enclosed the Legal Aid of West Virginia response and comments covering the draft report of the OCE Case Service Report/Case Management System on-site follow-up visit conducted from November 14 - 18, 2011. Your courtesy in extending the time period for our response by 30 days from the original due date of February 5, 2012 is very much appreciated. That extension permitted us to draft a solid response and also complete our various Grant Activity and other reports to LSC without difficulty.

Please do not hesitate to contact me at the address listed above if you should need further information or have any additional questions.

Sincerely,

Adrienne Worthy
Executive Director

cc: James P. Martin
Attorney at Law
Legal Director

Enclosure (1)

Legal Aid of WV
Recipient No. 449041
OCE Draft Report to Follow-up Visit - November 2011

A. LAWV General Comments to the Draft Report:

The LSC Draft Report of January 12, 2012 covers a significant number of cases and issues, both from the current visit on November, 2011 and the prior OCE on-site review in 2007. On most topics, LAWV was either originally in full compliance with LSC rules or has followed earlier recommendations and has now been found to be in full compliance. On a few older issues some concerns remained. Some new concerns were identified in the course of the November 2011 visit or from the records submitted to LSC. These are included in the January 2012 Draft Report, and addressed in this response if needed. As noted in the LSC Report, LAWV cooperated fully with the document requests and with on-site reviewers in both 2007 and 2011.

Brief descriptions of LAWV's actions expected in response to each of the January 2012 Report Recommendations and Required Actions follow these Comments as Sections B and C of this Response. There are no LSC issues which LAWV flatly rejects. In most instances corrective actions will be taken in the near future, either by management directive, staff training or by Board policy decisions. Some concerns identified by LSC, such as the use of language instructing staff to review non-citizen applicants's documentation before signing the Non-Citizen Eligibility Questionnaire rather than having the form be a signed statement staff have reviewed such documents, are fairly inconsequential. Nevertheless, as the LAWV responses here indicate, LAWV will conform its procedures to the precise requirements in the LSC suggestions or mandates.

The January 2012 Report notes cases at several points with apparently incorrect codes, missing documents, eligibility errors and similar problems or omissions. Those cases are all being reviewed and adjusted as appropriate. The Report includes a Requirement (Number 7) that LAWV "...cease the use of CSR case closure category K in conjunction with LAWV's deselection codes...." We do not understand the basis for this Requirement. Code K is permitted under the 2008 CSR Handbook when a case "does not fit any of the other CSR case closure categories...." (Section 8.3, p25 and Fn 53, 2008 CSR Handbook.) LAWV **ONLY** uses Code K in precisely this manner. For 2011, of 6466 staff cases, 3 had a Closure Code K. PAI cases have more reported K codes than staff, and will be monitored very carefully in the future, but overall the total for the program in 2011 is only about 1% of all cases reported, 97 of 7822. To be clear, LAWV will conform to the 2008 CSR Handbook (2011 ed., plus FAQ's.) and carefully monitor use of the LSC closure codes as the report suggests for cases reported to LSC in the CSR system.

The report appears to confuse LAWV use of the LSC closure alphabet for Closure Categories in non-LSC reportable cases with the LAWV system of deselect and non-reportable codes. This is

addressed in Findings 9 and 10, pages 15 through 18 of the Draft Report. We ask you reread our email of November 21, 2011 on this point, again noting we will follow report Requirement 7 on use of Code K in CSR reported cases in the future. The other components of our case management system do not affect handling or reporting of cases to the Legal Services Corporation at all, and should be of little interest to LSC, but are very valuable to LAWV.

B. LAWV Response to Draft Report Recommendations:

1. Periodic Review of Open Cases. LAWV will reemphasize to Case Supervisors that periodic case reviews must specifically include old and obviously inactive cases. Using our case management system, we are implementing a set of periodic data reports that flag files in which no apparent activity has occurred in a set period of time, whether several months, one year or some other period. Cases appearing in these reports will have to be reviewed by staff and supervisors to ensure they need to be kept open and are being properly handled.

2. §1626 Documentation. The §1626 forms and documentation procedures are being updated and will be mandatory for future use. We do not feel compliance with §1626 has been a problem area for LAWV and expect that pattern to continue.

3. CSR Training. As noted before and during the OCE visit, this training is ongoing for the LAWV case handling and intake staff members and their supervisors. That will continue as the report recommends.

4. PAI Case Coding Consistent with CSR Handbook §10.1(b)(iv). Procedures for guiding staff on how to properly close and report cases handled by both staff and PAI volunteers will be reviewed, updated and appropriate training provided to staff members involved.

5. Stale Check Policy and Procedure. A written policy and procedure will be developed to require the checks outstanding more than six months will be researched and resolved. The procedure will be added to our bank reconciliation process and the policy will be included in the Accounting and Finance manual.

6. Cash Receipt Sign. LAWV will place a sign in each of our office lobbies that gives notice to our clients of LAWV's cash receipts policy including a statement that the client is entitled to a receipt for cash provided and if a receipt is not provided that the client should see a supervisor. Cash receipts are part of our Client Trust policies and procedures. LAWV routinely gives our clients a receipt for money received in all forms which includes cash and checks.

7. Bank Fees. LAWV will continue to research financial institutions in the Charleston area for any offering minimal or no fees on operating accounts.

C. LAWV Response to Draft Report Required Corrective Actions:

1. Intake Practices — Prospective Income Questions. Intake staff will be trained to request and evaluate information concerning applicants' prospective income as well as their current income information, per OLA Advisory Opinion 2009-1006;

2. LAWV Intake Forms. Intake forms (and computerized records) will be reviewed and revised as noted to ensure consistency with applicable LAWV eligibility policies. The January 2012 report did not note this a significant problem and did note LAWV was in substantial compliance with LSC income and asset documentation requirements.

3. Eligibility Exceptions. LAWV agrees with the notations in the report. Bankruptcy is not a government benefit program providing an exception to basic income limitations. LAWV will provide staff training and guidance concerning LAWV and LSC policy on exceptions to the general eligibility requirements.

4. Citizenship Attestation Forms. LAWV's own internal citizenship attestation forms were revised and made fully compliant with LSC requirements several years ago. However, some domestic violence shelters continue to use an older non-conforming attestation form. These shelters will be given new, appropriate forms, and staff will be trained to check carefully for their use on shelter referrals.

5. LAWV Non-Citizen Eligibility Status Form. The current form will be updated to include the statement affirming a staff member review of appropriate documentation has occurred as required.

6. Retainer Agreement. The LAWV retainer agreement may be revised as noted. Alternatively, an engagement letter may be used and referred to in the retainer, addressing the same point. This step will require both LAWV staff and Board participation, but is expected to be completed in 2012.

7. CSR Closure Code K. LAWV will continue to use code K internally as a valuable part of our record keeping. The use of this code on cases involved in LSC reporting will be in accordance with the requirements and specifications of the LSC CSR Handbook (2008 ed.).

8. §1608 Policy on Prohibited Political Activities. As the report notes, LAWV is in compliance with the LSC rules specified in §1608. The report requires the current LAWV policy must nevertheless be updated to add provision on §§1608.4 and 1608.6(a). That is an action which will be addressed by the LAWV Board later in 2012.

9. §1612 Lobbying/Rulemaking Policy. As with the report notes on §1608, the January 2012 findings show LAWV is in compliance with §1612. Nevertheless, LSC requires additional verbiage be added to the LAWV policy implementing this LSC regulation. That action will be addressed by the LAWV Board later in 2012.

10. Record Retention Policy. LAWV will revise its record retention policies and procedures later in 2012 to ensure retention requirements match or exceed the requirements for such records found in the LSC Accounting Guide

11. Stale Check Policy and Procedure. LAWV will develop a written policy and procedure for our Accounting Guide describing how stale checks (over six months old) will be researched and resolved.

12. Bank Fees. After the LSC visit, LAWV began coding the fees/charges associated with our operating account to unrestricted funding. LAWV will continue to research financial institutions in the Charleston area for any offering minimal or no fees on operating accounts.

13. TIG Award Reporting. LAWV will work with our Auditor to ensure that all executed one-time grants, including the TIG awards, are reported separately on our financial statements in accordance with 45 CFR Section 1628.3(g).

14. TIG Grant Accounting. LAWV will record the total TIG award as revenue and expense including any TIG conference fees assessed by LSC against the grant.

15. PAI Pre-Payments (§1614.3(e)(1)(ii)). This recommendation will be followed for all future PAI activities. Currently open cases are not affected.