



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

**Legal Aid Society of Greater Cincinnati**  
Program Integrity Review  
June 15-19, 2009

Recipient No. 436040

## **I. EXECUTIVE SUMMARY**

**The findings, recommendations, and corrective actions in this report are based on the facts and history of this specific program at the time of the on-site visit; they do not necessarily apply to other programs in different situations.**

**Finding No. 1: Legal Aid Society of Greater Cincinnati (LASGC) is not compliant with the program integrity requirements of 45 CFR § 1610.8 that grantees have objective integrity and independence from any organization that engages in restricted activities. LASGC does not operate in a manner that provides sufficient physical and financial separation from Legal Aid Society of Southwest Ohio, LLC (LASSO), which engages in some restricted activities. Additionally some questions arose regarding whether LASGC maintained functional legal separation from LASSO.<sup>1</sup>**

### **A. Legal Separation of Organizations**

LASSO is a membership limited liability company that has LASGC as its sole controlling member. While they are separately incorporated, they function as one entity for many purposes, which raise some questions about whether LASSO is in fact operating as a legally separate entity under 45 CFR § 1610.8(a)(1). No finding is reached regarding legal separation in light of the Part 1610 finding based on physical and financial separation and the grantee's anticipated corrective action.

### **B. Transfer and Subsidization**

LASGC is in compliance with the requirements of 45 CFR § 1610.8(a)(2). LASGC does not transfer or subsidize restricted activities with LSC funds.

### **C. Physical and Financial Separation**

LASGC is not in compliance with the requirements of 45 CFR § 1610.8(a)(3) that they maintain physical and financial separation. The two entities currently have an integrated administrative, intake, technological and legal structure that undermines their physical and financial separation.

**Finding 2: LASGC is in compliance with 45 CFR § 1610.4, which requires a recipient receiving public or IOLTA funds to use them in accordance with the specific purposes for which they were provided, but not for any activity prohibited by or inconsistent with Section 504.**

**Finding 3: LASGC is in compliance with 45 CFR § 1610.5 which requires that a recipient of LSC funds provide to the source of funds, unless the amount is less than \$250, with written notification of the prohibitions and conditions which apply to the funds.**

**Finding 4: LASGC is in compliance with the requirements of 45 CFR § 1610.7, which applies the prohibitions and requirements of 45 CFR Part 1610 to both LSC funds transferred and to the non-LSC funds transferred.**

**Finding 5: LASGC is in compliance with 45 CFR § 1610.9 which requires that funds received by a recipient from a source other than the Corporation is accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.**

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<sup>1</sup> Despite LSC's finding of noncompliance, based on our review it was clear that LASGC had taken numerous steps in a good faith effort to comply with the requirements of 45 CFR § 1610.8.

**Finding 6: LASGC does not comply with 45 CFR § 1635.3(d) certification requirements.**

## II. BACKGROUND

### General Background

The Legal Aid Society of Cincinnati, Inc. (LASC) was incorporated on February 3, 1908, as a private, non-profit corporation.<sup>2</sup> Originally limited to serving Cincinnati, in the 1970's services were expanded to include Brown and Clermont counties and later incorporated Butler, Warren, Highland and Clinton counties in its service area. In recognition of this expanded service area, LASC adopted the name Legal Aid Society of Greater Cincinnati (LASGC), which was registered with the state of Ohio as a fictitious name in 1999. LASGC provides free civil legal assistance to indigents and low-income elderly people in seven counties in Ohio.

On October 24, 2006, the LASGC Board of Trustees passed a resolution to establish Legal Aid Society of Southwest Ohio, LLC (LASSO). On February 26, 2007, Articles of Organization were filed with the Secretary of Ohio, pursuant to the Ohio Limited Liability Company Act, organizing LASSO as a limited liability company. LASGC is the single-member of the LLC. LASSO is a non-profit, non-LSC funded, wholly owned subsidiary of LASGC. LASSO began operating on April 1, 2007, and engages in limited restricted activities, including representation of undocumented persons on a full-range of legal issues and participation in cases where attorneys' fees are requested.<sup>3</sup>

### Background of Review

On June 15-19, 2009, the Office of Compliance and Enforcement (OCE) conducted an onsite Program Integrity Review (PIR) of LASGC. The stated purpose of the visit was to review LASGC's compliance with 45 CFR Part 1610. The visit was conducted by a team consisting of an OCE attorney, a fiscal consultant, and a management consultant. The visit focused on a review of the totality of LASGC's relationship with non-LSC entities engaging in restricted activities in light of the requirements of Part 1610, and an assessment of LASGC's policies and procedures relating to Part 1610 to determine whether they are consistent with the LSC statutes, regulations, and other applicable authorities.

In preparation for the visit, OCE requested that LASGC provide, among other things;

1. A copy of LASGC's Certificate of Incorporation and Articles of Incorporation; the names of all current board members, committees and committee members.
2. A copy of LASSO's Certificate of Incorporation and Articles of Incorporation; the names of all current board members, committees and committee members.
3. A list of any staff that provides services in any capacity to; are employed by; or shared by LASGC who also provides services in any capacity to; are employed by; or shared by an organization which engages in restricted activities. For each staff member listed in response to this inquiry provide: a) the name of the organization employing such staff; b) the position occupied and detailed description of the duties performed by such staff for LASGC and for the organization which engages in restricted activities; and 3) the terms and conditions of employment between LASGC and such staff;

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<sup>2</sup> See State of Ohio Incorporation Certification for Legal Aid Society of Cincinnati, Inc. submitted in response to the OCE document request.

<sup>3</sup> This information is based on interviews with the LASGC Executive Director and Managing Attorneys of both programs.

4. A list of any joint utilization of the same office space or equipment (telephonic equipment, electronic equipment, and/or physical equipment such as fax machines, telephones, copier, and automobiles) between LASGC and any organization which engages in restricted activity in which the office space or any of the equipment is under the control of either LASGC or the other organization. For each space and/or piece of equipment provide: 1) the name of the organization with whom LASGC jointly utilizes the facility or equipment; 2) what specific facilities and/or equipment are jointly utilized; 3) the breakdown of the frequency of use of such facilities or equipment by LASGC and by the other organization; 4) the financial arrangement for such joint utilization; and 5) whether there are separate entrances, signs and/or other forms of identification distinguishing LASGC from the other organization;
5. A current staff list and directory for LASGC and LASSO;
6. Provide a detailed floor plan which clearly indicates the location of all the above mentioned equipment, office space and its user in response to request no. 4;
7. Provide a detailed floor plan of all facilities which house both LASGC and any organizations which engage in restricted activities detailing the uses of the space by each entity;
8. A copy of any and all contracts regulating or specifying the transfer of non-LSC funds from LASGC to any organization which engages in restricted activity;
9. A copy of any and all lease/sublease agreements between LASGC and organizations which engage in restricted activity;
10. A list of all cases in which LASGC is/was co-counsel with an organization which engages in restricted activity, since LASGC's inception. Provide the name and job title of each attorney involved, both for LASGC and the restricted organization.
11. A copy of the written report with all back-up material submitted to LASGC's Governing Body in support of LASGC's Certificate of Program Integrity. Also provide a copy of any other material considered by the Governing Body in this process;
12. A complete and detailed description of LASGC's accounting system;
13. Copies of all LASGC's and LASSO's board and board committee minutes from January 1, 2006, to present;
14. Copies of any contracts, memoranda of understanding, or other written agreements between LASGC and any organizations which engage in restricted activities which are housed in the same facility;
15. LASGC's litigation and administrative manuals;
16. All current leases to which LASGC is a signatory; and
17. A list of any and all entities conducting restricted activities that the recipient has a relationship with involving funding, sub-grants, subsidies, sharing of staff, resources and/or facilities. Include a brief description of all such relationships.

Additional document requests were made based on the program's response and the onsite review. LASGC cooperated fully with the OCE Review team and provided all documents requested by the team in an organized, thorough, and timely manner.

The visit was conducted at LASGC's offices in Cincinnati and Hamilton, Ohio. Interviews were conducted with the LASGC Executive Director; LASGC staff conducting intake, administrative and legal support for LASSO; and LASGC and LASSO legal management staff.

On March 12, 2010, LSC had a detailed discussion with the LASGC Executive Director regarding LSC's findings. Each item that was of concern to LSC and the steps that could be taken to provide for sufficient separation between LASGC and LASSO was addressed with LASGC's Executive Director. LASGC's Executive Director indicated that they have made several changes since LSC's Program Integrity Review that address many of the concerns raised and also stated that most of the remaining concerns could be easily addressed. LASGC further indicated that LASSO may consider the option of eliminating all restricted activities, thus removing the need for program integrity between LASGC and LASSO.

By letter dated April 6, 2010, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. LASGC was asked to review the DR, and provide written comments within thirty (30) days of its receipt of the letter. By letter dated May 6, 2010, LASGC submitted its comments to the DR, and informed LSC of its decision regarding corrective action No.1. LASGC's comments are reflected in this Final Report and have been attached as an appendix hereto.

### III. APPLICABLE LAW

LSC Regulations, at 45 CFR § 1610.8(a), require recipients to maintain program integrity by having “objective integrity and independence from any organization that engages in restricted activities.” The regulation specifies three separate factors, each of which must be met, for a recipient to be determined to have objective integrity and independence from such an organization. First, the organizations must be legally separate entities. *See* 45 CFR § 1610.8(a)(1). Second, there can be no transfer of LSC funds from the recipient to the other organization and LSC funds cannot subsidize restricted activities. *See* 45 CFR § 1610.8(a)(2). For the purposes of Part 1610, a “subsidy” is:

a payment of LSC funds to support, in whole or part, a restricted activity conducted by another entity, or payment to another entity to cover overhead, in whole or in part, relating to a restricted activity. A recipient will be considered to be subsidizing the restricted activities of another organization if it provides the use of its LSC-funded resources to the organization without receiving a “fair-market price” for such use.

62 Fed. Reg. 27698 (May 21, 1997) (Preamble to final rule).

Finally, the organizations must be physically and financially separate. Physical and financial separation is characterized by a variety of indicators, including but not limited to:

1. The existence of separate personnel;
2. The existence of separate accounting and timekeeping records;
3. The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
4. The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

45 CFR § 1610.8(a)(3).

The physical and financial separation requirement is separate and distinct from the non-subsidization requirement. While separate accounting may be evidence of lack of subsidization, the regulation explicitly states that mere bookkeeping separation is insufficient to meet the physical and financial separation requirements. Taken together, the recipient and the other organizations engaged in LSC- restricted activities must operate as two separate entities (that may collaborate), and cannot operate as essentially one entity with administrative separation on paper.

Physical and financial separation is the most nuanced and complex of the three factors required by the regulation. Whether physical and financial separation exists is determined on a case-by-case basis, considering the totality of the circumstances. Individual factors present in one situation might be acceptable in the context of the overall relationship between the entities, although they might be unacceptable in another situation in which other factors weigh more heavily against a finding of sufficient separation. Each factor weighs for or against separation. Some factors are weighed heavily; some lightly. It is the total weight of all the factors taken together that LSC looks at in determining the strength of the grantee’s physical and financial separation from the other entity.

Thus, determinations taking into account the physical and financial separation standard must ensure that there is no identification of the recipient with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient’s involvement with or endorsement of prohibited activities.

62 Fed. Reg. at 27698.

Ultimately, in all situations the separation between the organizations must be clear to clients, courts, agencies and others with whom the recipient comes into contact, and to the general public. *See* LSC OLA External Opinion 2003-1009 (June 24, 2003).

In addition to Part 1610, LSC issued a program letter on October 30, 1997, with “Guidance in Applying the Program Integrity Standards.” In discussing the separate personnel factor of physical and financial separation, LSC stated: “There is no per se bar against a recipient employing part-time staff who are also employed part-time by an organization which engages in restricted activities.” 1997 Program Integrity Guidance at 3. LSC cautioned, however, that “the more staff ‘shared,’ or greater the responsibilities of the staff who are employed by both organizations, the more danger that program integrity will be compromised.” *Id.*

#### IV. FINDING

The findings, recommendations, and corrective actions in this report are based on the facts and history of this specific program; they do not necessarily apply to other programs in different situations.

**Finding No. 1: Legal Aid Society of Greater Cincinnati (LASGC) is not compliant with the program integrity requirements of 45 CFR § 1610.8 that grantees have objective integrity and independence from any organization that engages in restricted activities. LASGC does not operate in a manner that provides sufficient physical and financial separation from Legal Aid Society of Southwest Ohio, LLC (LASSO), which engages in some restricted activities.<sup>4</sup> Additionally some questions arose regarding whether LASGC maintained functional legal separation from LASSO.<sup>5</sup>**

##### A. Legal Separation of Organizations

LASSO is a membership limited liability company that has LASGC as its sole controlling member. While they are separately incorporated, they function as one entity for many purposes, which raise some questions about whether LASSO is in fact operating as a legally separate entity under 45 CFR § 1610.8(a)(1). No finding is reached regarding legal separation in light of the Part 1610 finding based on physical and financial separation and the grantee's anticipated corrective action.

In response to the DR, LASGC stated that there may be some confusion, and possibly disagreement, as to the source of law that we should look to in determining whether or not LASGC and LASSO are "legally separate entities" pursuant to § 1610.8(a)(1). It further stated that it is their view that the legally separate entity question would be determined by Ohio law, and a single, member, Limited Liability Company is a separate legal entity from the "single member." LASGC also stated that, in light of LSC's determination of "No Finding" on the legal entity separation, and its emphasis of the physical and financial separation issues, it does not see a need to more fully address the legal separation issue at this time.

##### *1. Corporate Structure:*

###### *a. Incorporation:*

As discussed above, the LASC was incorporated February 3, 1908, as a private, non-profit corporation and its services were expanded in 1970's to include Brown, Clermont, Butler, Warren, Highland and Clinton counties. Based on its expanded service area, LASC adopted the name Legal Aid Society of Greater Cincinnati (LASGC), which was registered with the state of Ohio as a fictitious name in 1999. LASGC is funded by a variety of federal, state (Ohio) and local agencies and organizations including the Legal Services Corporation.

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<sup>4</sup> In response to the DR, LASGC stated that LSC should consider that as a result of Congressional action on the "attorneys fees" restriction, and subsequent changes in 45 CFR §1642 and §1609, the extent of LASSO's "restricted activity" is greatly reduced. LASGC believes that this development should affect the weighing of factors as LASGC and LSC move forward to develop a mutually-acceptable degree of separation between LASGC and LASSO. *See* 45 CFR § 1610.8(a)(3)(iii).

<sup>5</sup> Despite LSC's finding of noncompliance, based on our review it was clear that LASGC had taken numerous steps in a good faith effort to comply with the requirements of 45 CFR § 1610.8.

After extended discussions by the LASGC board, which included a consulting session with Pro Bono Counsel and LASGC Board members, it was recommended that formation of a single member LLC would be a simplified approach to reach LASGC's goal of creation of an entity within the LASGC service area to serve certain LSC-restricted clients utilizing non-LSC funding, primarily the Ohio Bar Foundation funding, and which would be compliant with 45 CFR Part 1610. On October 24, 2006, the LASGC Board of Trustees passed a resolution to establish Legal Aid Society of Southwest Ohio, LLC (LASSO), and authorized the appointment of LASSO's managers and the appointment of an implementing committee.<sup>6</sup> On February 26, 2007, Articles of Organization were filed with the Secretary of Ohio, pursuant to the Ohio Limited Liability Company Act, organizing LASSO as a limited liability company. LASGC is the single-member of the LLC. LASSO is a non-profit, non-LSC funded, wholly owned subsidiary of LASGC. LASSO began operating on April 1, 2007, based out of LASGC office space in Hamilton, Wilmington and downtown Cincinnati. On November 1, 2008, the Wilmington office was closed due to funding cuts.<sup>7</sup> John Schrider, LASGC's Director of Litigation and attorney with LASGC since 1974, was appointed Director of LASSO.

b. Other Entities:

In 2007, LASGC established the Community Law Center Real Estate Company (CLC), a wholly owned subsidiary. CLC owns and operates the LASGC office building in downtown Cincinnati. Other tenants of the property enter into lease agreements with CLC and not with LASGC. LASSO, however, does not have a lease agreement with CLC.

The Volunteer Lawyers Project (VLP) of the Volunteer Lawyers for the Poor Foundation is a separate 501(c)(3) not-for-profit corporation, housed in LASGC offices in Cincinnati. Founded in 1982, it is a joint project of the Cincinnati Bar Association and LASGC. It maintains its own board of directors. Services are coordinated and integrated with those of LASGC. Pursuant to an operating agreement, LASGC provides all staff to VLP, supported with non-LSC funds.

c. LASSO treated as disregarded entity under federal tax code:

LASGC files a single tax return for itself and LASSO by choosing to treat LASSO as a "disregarded entity" under the federal tax code and reporting LASSO as a 100% ownership entity of LASGC on LASGC's annual IRS Form 990.<sup>8</sup> LASGC and LASSO could have chosen to have LASSO file its own separate Form 990 instead of as a "disregarded entity" by submitting IRS Form 8832. At the time of the review LASGC's Form 990 had been filed for 2007 and the 2008 990 was subject to an extension.

d. LASSO Funding:

LASSO has no sources of funding independent of LASGC. All funding utilized by LASSO flow from or through LASGC and are reflected on LASGC IRS Form 990 (2007)<sup>9</sup> and Annual Audits (2007 and 2008).<sup>10</sup> The Executive Director indicated that one consideration in establishing the structure of LASSO was to ensure the subsidiary would not become a competing entity for funding.

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<sup>6</sup> See Minutes of October 24, 2006 Board meeting submitted in response to Document Request.

<sup>7</sup> As of November 1, 2008 the office no longer has dedicated staff. However, the lease did not expire until August 2009 and, accordingly, the space was available for meetings with clients at the time of the instant review.

<sup>8</sup> See Operating Agreement for LASSO dated February 23, 2007.

<sup>9</sup> See Electronic files and LASGC 2007 IRS Form 990.

<sup>10</sup> See Electronic files, LASGC 2007 and 2008 Annual Audit.

e. Employer Identification Number:

All Federal Payroll Tax reporting for both LASGC and LASSO staff is made using LASGC's Employer Identification Number (EIN), and is filed as a single entity.<sup>11</sup> LASSO has not applied for or received an Employer Identification Number and while this practice was allowable at the time of the formation of LASSO, under tax code revisions, this is no longer an acceptable practice. LASGC was provided with the appropriate IRS citations upon which to take corrective action.

f. Retirement Plans:

Staff of both LASGC and LASSO are enrolled in an employer funded Defined Contribution Pension Plan, in which both LASGC and LASSO make payments. The Plan was established in 2004 and the Legal Aid Society of Cincinnati is the only employer defined in the Plan.<sup>12</sup> Some staff of both entities also contribute to 401(k) or 403(b) plans in which the only employer is defined as Legal Aid Society of Cincinnati.<sup>13</sup> The requirement for use of separate EINs for LASGC and LASSO may have an impact on the future arrangements for these retirement plans.

g. CEO, Statutory Agent, and Signing/Contracting Agent:

The Executive Director of LASGC is the CEO, statutory agent, for all entities including LASSO. She does not hold any title or position with LASSO and handles these duties in her LASGC capacity.<sup>14</sup>

2. *Board of Managers:*

LASSO was organized by an Operating Agreement which was filed with the state of Ohio on February 23, 2007, and signed on February 27, 2007, by the Executive Director of Legal Aid Society of Cincinnati. The State of Ohio Certification was filed March 19, 2007.<sup>15</sup> The Operating Agreement states that management and control of the LLC rests in one or more individuals elected by the Member (LASGC) to a Board of Managers. The Member may also remove or replace Managers. At the time of the review, the Board of Managers was composed of three members who were also members of the LASGC Board of Trustees.

3. *Board of Managers Minutes: The Board of Managers does not have separate minutes.*

Discussions regarding LASSO are conducted during the LASGC Board Meetings and included in their minutes. LASSO's Board of Managers does not have separate minutes.<sup>16</sup>

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<sup>11</sup> In August 2007, final regulations (T.D. 9356) were issued requiring single member LLCs (SMLLCs) to be treated as the taxpayer for employment tax and excise tax obligations. The SMLLC will continue to be disregarded for other federal tax purposes. This change will begin for employment taxes that accrue after January 1, 2009. In response to the DR, LASGC informed LSC that since the 2009 site visit, LASSO has applied for and received its own Employee Identification Number and associated separate payroll tax account. This change was effective July 1, 2009. As a result, and also simply due to the passage of time, there is a growing file of LASSO documentation over John Schrider's signature in his capacity as Director of LASSO.

<sup>12</sup> See LAS of Cincinnati Money Purchase Plan (a Defined Contribution Plan) and schedule of payments for 2008.

<sup>13</sup> See LAS of Cincinnati 401(k) Plan.

<sup>14</sup> Based on the information obtained during the onsite visit, LSC's understanding was that the Executive Director is also the sole signing/contracting agent for LASSO, however based on follow up conversations and documentation provided LSC has learned that the Director of LASSO does enter into some contracts on behalf of LASSO.

<sup>15</sup> See Operating Agreement for LASSO and State of Ohio Certification submitted in response to Document Request.

<sup>16</sup> See January 23, 2007, February 27, 2007, and August 26, 2008 Board Minutes submitted in response to Document Request.

#### 4. Conflict of Interest Policy:

The current LASGC Board of Trustees Conflict of Interest Policy, which is dated subsequent to the formation of LASSO, makes no mention of LASSO and requires that in their capacity as Trustees “...they must subordinate personal, individual, business, third-party, and other interests to the welfare and best interests of the LASGC.” This requires that decisions made on behalf of LASSO be based on the benefit of LASGC.<sup>17</sup>

#### **B. Transfer and Subsidization**

LASGC is in compliance with the requirements of 45 CFR § 1610.8(a)(2). LASGC does not transfer or subsidize restricted activities with LSC funds.

An LSC recipient may receive contract services from any other organization, so long as the contract provides the recipient with reasonable assurance as to the process used for determining that fair value is exchanged for the services, and that no LSC funds are used to subsidize restricted activities. Based on the information obtained from the program the administrative, financial and technical services expenses are allocated according to a reasonable, well documented methodology, providing assurance that a fair value is exchanged, and that no LSC funds are used to subsidize restricted activities.

*1. Costs are allocated according to a reasonable, well documented methodology, providing assurance that a fair value is exchanged, and that no LSC funds are used to subsidize restricted activities. See Methodology for Accounting Separation of Subsidiaries.*

LASGC owns a commercial building located at 215 E 9<sup>th</sup>, Cincinnati, through its wholly owned subsidiary, Community Law Center Real Estate Company, Inc., (CLC). Space in the building is occupied by LASGC, LASSO, CLC and other businesses both with and without affiliation. CLC conducts the leasing activity of the building. Current leases were tested and it was found that while rates vary, they currently average about \$10/sq. ft. annually.<sup>18</sup> All Legal Aid space including common areas are allocated by square feet to each of these categories and charged to the appropriate functions at \$9.90/sq. ft. for 2008.<sup>19</sup> Each office or space is also identified by its “furnishings” and a monthly allocation, computed annually, based on furniture and equipment cost is applied.<sup>20</sup>

LASGC identifies Legal Aid usage by function; LASSO direct, LASGC direct, Management Services, and Legal Support. The latter two costs are allocated based upon direct time charged in the preceding two. Monthly Time Allocations for LASSO and LASGC are generated by program area, that of LASSO also reflecting time spent in restricted activities. These reports are used to generate Allocation Calculations, percentage factors for the month, for Management and Legal Support services. Based on these calculations, allocations are made for LASSO indirect costs. A fund transfer reflecting direct and allocated costs is initiated from appropriate funding sources and pre and post allocation Statements of Activities, Income and Expense Detail, are generated.<sup>21</sup> This process is generally sufficient to ensure that LSC funds provided LASGC do not subsidize restricted activities of LASSO.

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<sup>17</sup> See LASGC Board of Trustees Conflict of Interest Policy (Approved December 9, 2008).

<sup>18</sup> See Sample lease contract for Women Helping Women.

<sup>19</sup> See Annotated Floor Plans and computations for allocating occupancy costs.

<sup>20</sup> See Sample spreadsheet determining furnishing/equipment costs applied.

<sup>21</sup> See Sample of process documents and pre/post allocation reports for month of January 2008.

## 2. Two areas which could develop unintentional results.

a. Managing and Senior Attorneys in both LASGC and LASSO may exercise oversight and review of attorneys who may be in the same functional work group, as defined by program priorities, but be on the personnel staff of the other organization. Time spent on cross organizational supervision is not recorded. However, nearly 75% of Managing and Senior Attorneys are LASSO staff so any potential cumulative effect of LASGC subsidizing LASSO would be unlikely;<sup>22</sup> and only a portion of any managing/senior attorney salary is allocated to LSC funding.<sup>23</sup> Additionally, the restricted activity is such a minimal part of the case load that there is a de minimus chance of spending any significant time in supervision of such a matter by LASGC managers or senior attorneys.

b. The salary of Managing Attorney Regina Campbell is allocated on an arbitrary basis equally between LASGC and LASSO.<sup>24</sup> The space rent on her office, located on the 4<sup>th</sup> floor of 215 E 9<sup>th</sup>, is allocated to LASGC, and therefore eligible for LSC funding.<sup>25</sup> Attorney Campbell previously had management responsibility for LASSO staff in an outlying office, which is no longer the case. The program has indicated its intention to review and reclassify Campbell's position to correct this situation.

### C. Physical and Financial Separation

LASGC is not in compliance with the requirements of 45 CFR § 1610.8(a)(3) that they maintain physical and financial separation. The two entities currently have an integrated administrative, intake, technological and legal structure that undermines their physical and financial separation. In total, the weight of the factors against physical separation from LASGC is heavier than those that indicate separation. For convenience, some of the factors are grouped according to the enumerated factor headings in § 1610.8(a)(3), but that is a non-exhaustive list. Also, factors in one grouping, such as separation of facilities, may also have effects in other groupings, such as forms of identification.

In response to the DR, LASGC stated that it is optimistic that it can reach an agreement with LSC, to create an acceptable degree of separation without adding unnecessary administrative cost. LASGC also stated that, it is counting on LSC to consider that,

“along with maintaining separate identities for LASGC and LASSO in the Southwest Ohio area, there is a compelling need to communicate to the public that both organizations are legitimate, coordinated legal aid programs. This is not a theoretical concern. LASGC has had to protect its client community from bogus “legal aid” programs through litigation in federal court to enjoin these scam operations. Therefore, LASGC will strive to develop a plan that allows us to present an accurate picture to the public, i.e., that LASGC and LASSO are separate, but affiliated organizations, that they both provide free civil legal services, that their activities are coordinated with each other, and that these entities are to be distinguished from other so-called legal aid programs that may trick low-income residents and may damage the reputation of both LASGC and LASSO in the community.”

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<sup>22</sup> See List of Personnel LASGC and LASSO provided in response to Document Request.

<sup>23</sup> See Electronic files, Sample payroll computation LASGC and Sample payroll computation LASSO.

<sup>24</sup> See Payroll Journals for May 2009 reflecting payment from LASGC and LASSO to K A Malone.

<sup>25</sup> See Summary of space allocation by Org and Function during 2008 for 215 E 9<sup>th</sup>.

## 1. *Separate personnel*<sup>26</sup>

a. LASGC staff provide administrative, reception/intake and legal work support for LASSO. Some of these employees are assigned to support specific LASGC and LASSO staff (such as the legal secretaries in Cincinnati), other are assigned to support specific LASSO staff (such as in the legal secretaries in the Hamilton Office), and others provide support to all of the staff of both offices (such as the administrative and intake staff). Because LASGC is the parent company, the Executive Director believes it is not necessary to enter into a contract with LASSO for such services, although, as discussed below under Transfer and Subsidization, expenses are allocated between the organizations. Interviews and job descriptions reveal that the work performed by administrative and support staff does not vary according to program.

### *Administrative:*

The Administrative staff is comprised of 12 LASGC staff members (Executive Director, Administrative Secretary, HR Specialist, Development Director, Director of Administration, development contract employee, Controller, Accounts Payable Specialist, Accountant, Data Systems Administrator, and Information Systems Administrator and Facility Manager – contracted to CLC).

The Administrative staff performs the same duties for LASGC employees as they do for LASSO employees including, but not limited to trainings, staff orientation, benefits administration, personnel file maintenance (filed in alphabetical order incorporating the staff of both programs), and Information Technology support.

### *Reception/Intake:*

The majority of intake for LASGC, LASSO and VLP is provided by six LASGC Intake Paralegals assigned to specific issues; two are assigned to the Family and Immigration Practice Group, two are assigned to Housing and Consumer Practice Group, and two are assigned to issues not falling into those two groups (predominately benefits).

Calls for LASGC, LASSO (both the Cincinnati and Hamilton offices), and VLP enter the program on a single toll-free telephone number. The LASGC Receptionist answers the phone greeting the caller with a generic program name, "Legal Aid Society." If the caller requests legal assistance, the Receptionist determines the nature of the problem and transfers the caller to the appropriate Intake Paralegal, according to a Call Direction List. After determining eligibility by entering information directly into the PIKA Time and Case Management System, the Intake Paralegal uses legal problem specific written questionnaires to determine the appropriate disposition. The questionnaires identify whether cases should be referred to a specific case handler (i.e., the Housing and Consumer Practice Group's Emergency Day Advocate if the case related to uninhabitable), to VLP, or an assignment slot. Most case handlers have a pre-set number of slots for each two week period. The slots are set by the management of the Practice Group and are coordinated to specific legal problems. Once the slots are filled for a particular legal problem, overflow calls are routed to the Practice Group's Managing Attorney.

Intake for the Children and Education Practice Group is unique and does not follow the above process. Educational issues are referred to a LASSO paralegal for intake; she completes intake in PIKA and

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<sup>26</sup> According to staffing lists for LASGC and LASSO dated June 17, 2009, LASGC employs 52 staff members and LASSO employs 45 staff members. The Managing Attorney of the Family and Immigration Practice Group, is included on the LASGC staffing list though she is considered a 50-50 employee of LASGC and LASSO. While these staff are listed as working for two organizations, as discussed below they are all hired by LASGC, reported for tax purposes as LASGC employees, and subject to the ultimate employment authority of the LASGC Executive Director.

completes an Education Intake Form. The bulk of the other cases for this Practice Group are referred to LASSO staff attending a Shelter Care Docket, pursuant to a guardian ad litem contract with Butler County. Only LASSO staff work on this contract. Lastly, referrals from staff are handled pursuant to the Cincinnati Child Health Law Partnership, *see below*.

*Legal Work Support:*

LASGC employs nine legal secretaries and two legal assistants to support the legal work conducted by LASGC and LASSO case handlers. Legal secretaries are assigned to workgroups and support from four to nine case handlers across multiple Practice Groups and, in Cincinnati, both programs. Back-up support is also assigned.<sup>27</sup> Because the LASSO staff has a significantly greater number of case handlers, most of the case handling staff using the legal secretary workgroups are LASSO staff (18 LASGC, 45 LASSO). The legal secretaries are supervised by the Director of Administration, an employee of LASGC.

Three of the legal secretaries are located in the Hamilton office. Because all of the case handling staff in Hamilton are LASSO employees, the workgroups for each of these secretaries are composed entirely of LASSO employees.

The legal secretaries are assigned work by the case handlers in their workgroup via e-mail or a written workslip. Work includes typing letters (or editing/formatting e-mailed letters), drafting form letters specified by the case handler, and drafting or editing pleadings.

Two LASGC legal assistants are assigned to the Family and Immigration Practice Group. One works for the Managing Attorney (who herself works 50-50 LASGC and LASSO) and one works on divorce pleadings, which may be assigned to staff of either program.

b. Legal work of LASGC and LASSO is completely integrated. LASGC and LASSO's legal staff is organized according to four substantive practice groups composed of staff of both programs. Staff is assigned to work in one or more practice groups. Some staff is supervised by the Managing Attorney of the practice group and others are supervised by Senior Attorneys within the practice group.<sup>28</sup> Given the structure of layered of supervision within the practice groups, some LASSO staff supervises the work of LASGC legal staff and vice versa.

Supervision includes case assignment, case review, participation in the development of workplans (a collaborative effort between supervisors and the Practice Group Managing Attorney, informal case consultation, and evaluations). Issues regarding workplan development are resolved by John Schrider, the Director of LASSO. Regarding evaluations, the Executive Director of LASGC reviews evaluations for LASGC employees. She also reviews LASSO evaluations to ensure consistency and with an eye toward risk management for the firm. The LASGC Executive Director emphasized that at LASGC and LASSO,

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<sup>27</sup> For example, LASGC legal secretary Sandy Dyer is assigned to a workgroup of nine case handlers: Regina Campbell (LASGC staff, Managing Attorney of the Income, Work and Health Practice Group), Tim Delaney (LASGC paralegal in Income/ Work/Health Practice Group), Melissa McKenna (LASGC staff attorney in the Family/Immigration and Housing/Consumer Practice Groups), Lauren Morrison (LASSO staff attorney in the Family/Immigration Practice Group), Adolf Olivas (LASSO staff attorney in the Family/Immigration Practice Group), Eric Palmer (LASSO staff attorney in the Housing/Consumer Practice Group), Theresa Roush (LASSO paralegal in the Housing/Consumer Practice Group), Jeff Schoenberger (LASSO volunteer attorney in the Family/Immigration and Housing/Consumer Practice Groups) and Becky Tehan (LASSO paralegal in the Children/Education and Housing/Consumer Practice Group).

<sup>28</sup> One Practice Group Managing Attorney is an LASGC employee (Regina Campbell, Income/Work/Health), two are LASSO employees (Elaine Fink, Children and Education; Nick DiNardo, Housing and Consumer) and one is a 50-50-employee of LASGC and LASSO (Kelly Malone, Family and Immigration).

there is no labor union and therefore the supervisory responsibilities are not defined in the labor law context.

Senior attorneys of both programs meet monthly to discuss emerging legal needs, new projects, adjust case acceptance criteria and discuss CLE and pro bono initiatives.

*Children and Education Practice Group:*

The Children and Education Practice Group is comprised of 24 staff assigned full time or part-time to the group; all are LASSO staff except for two LASGC staff attorneys. The two LASGC staff attorneys (Melissa McKenna and Donita Parrish) are supervised by Elaine Fink, the LASSO Managing Attorney of the group.

*Family and Immigration Practice Group:*

The Family and Immigration Practice Group is comprised of 23 staff assigned full time or part-time to the group; all are LASSO staff except for seven LASGC staff (one Senior Attorney, one volunteer staff attorney, four staff attorneys and one legal assistant). The Senior Attorney does not have a supervisor but has supervisory responsibility for some LASGC staff and one LASSO staff attorney (Jason Fountain). The remaining LASGC staff is supervised by either another LASGC attorney or the group's Managing Attorney, Kelly Malone. As described below, Ms. Malone is a 50-50 employee of LASSO and LASGC.

*Housing and Consumer Practice Group:*

The Housing and Consumer Practice Group is comprised of 24 staff assigned full time or part-time to the group; all but three are LASSO employees. The three LASGC employees are supervised by LASSO staff (Cicely Tingle, staff attorney, is supervised by Jessica Powell, LASSO Senior Attorney; Terry Willacker, staff attorney and Angela Rouden, paralegal, is supervised by Mark Lawson, LASSO Senior Attorney).

*Income, Work and Health Practice Group:*

The Income, Work and Health Practice Group is comprised of 22 staff assigned full or part-time to the group; all but 10 are LASSO employees. Two of the LASGC employees are Managing or Senior Attorneys with no supervisor, of the remaining eight, one is supervised by a LASSO Senior Attorney (Steve Buckley, paralegal, is supervised by Col Owens, LASSO Senior Attorney). In addition, one LASSO staff attorney (Sarah Smith) is supervised by a LASGC Managing Attorney (Trey Daly) and three LASSO paralegals are supervised by LASGC staff (Desiree Garcia and Deanna White, LASSO paralegals, are supervised by Trey Daly, LASGC Senior Attorney; and Julie Honican, LASSO paralegal, is supervised by David Cramer, LASGC Senior Attorney).

Although there is cross-program supervision, the Executive Director stated that the supervisory structure was developed to ensure that there was no LASGC supervision of restricted work. Within the Housing and Consumer Practice Group, there are only three LASGC employees. None of them work on consumer fraud and predatory lending issues, which are governed by a law that permits the award of attorneys' fees.<sup>29</sup> If an undocumented person requested assistance in the Housing and Consumer Practice Group, staff would ensure that it is not assigned to an LASGC staff member. Interviews reveal that given the public visibility of housing and consumer issues, it is extremely rare for that group to receive requests for

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<sup>29</sup> Angela Rouden, LASGC paralegal, works on Emergency Mortgage Assistance fund issues, Cicely Tingle works on landlord-tenant issues and Terry Willacker works on the National Neighborhood Works project, which does not permit court filings.

assistance from undocumented persons. The Income, Work and Health Practice Group does not represent undocumented persons and the work does not involve areas of law which permit the award of attorneys' fees. The majority of the Family and Immigration Practice Group's work involves domestic violence issues and therefore these clients are eligible pursuant to the Kennedy Amendment and related exceptions to the LSC alienage restrictions. Cases for persons who are not eligible under these exceptions are assigned to LASSO staff members who are supervised by LASSO Senior Attorneys (Olivas and Gedling). The Children and Education Practice Group does not handle attorneys' fees cases. There is a potential for the court to assign an undocumented child to a group member pursuant to the guardian ad litem contract; however, LASSO staff exclusively work on this contract. The two LASGC staff members working for this group would not be assigned any cases with undocumented clients.

c. Work is collaborative and organized between the programs, resulting in joint projects with cross-program supervision. The Cincinnati Child Health Law Partnership, started in August 2008, is a medical-legal partnership in which staff receives referrals from doctors, residents and social workers who have been trained by LASGC and LASSO staff to identify legal issues. The project staff keeps part-time office hours at the Cincinnati Children's Clinic. Staff consists of a full-time LASGC staff attorney, Donita Parrish; a part-time LASSO paralegal, Deanna White who is supervised by LASGC attorney Parrish. The project is supervised by the LASSO Managing Attorney for the Children's Education.

d. All staff work for and are paid entirely by one program or the other except for the Managing Attorney of the Family and Immigration Practice Group, Kelly Malone, who works 50-50 for each program and receives two checks, one from LASGC and one from LASSO. The pre-tax amount of both checks is the same; however, one check is less due to tax withholding. Her office is located in LASGC space.

Ms. Malone handles cases, coordinates work within the practice group and with other practice groups, represents LASGC at community group meetings, and provides direct supervision of the family law work of three LASSO staff attorneys, one LASGC staff attorney, one LASSO volunteer attorney, one LASGC volunteer attorney, one LASSO paralegal and one LASGC legal assistant. The PIKA system allows staff to only record time to the program that they work for. Accordingly, Ms. Malone's time is recorded to LASGC; accordingly, she is paid 50-50 based upon an arbitrary determination that half of her time is spent on each program. No test of this determination has been conducted.

Ms. Malone does not file timekeeping certifications required of attorneys who work part-time for organizations that engage in restricted activities (45 CFR § 1635.3(d)), *see* below). This is a violation of the regulation.

It is noted that the Executive Director stated that she is inclined to reassign Ms. Malone from the 50-50 status to an LASGC employee. She stated that it is likely that she will make this change in the weeks after the OCE review.

e. All staff keeps time. The Legal Secretary work is allocated to a Legal Support Pool, Administrative work is allocated to a Managerial Support Pool and other work is considered "direct" time. Direct time and costs associated directly to a case is used to determine a ratio between the two programs and such ratio is used to allocate the pools of time to each program. Due to programming in the PIKA system, staff is able only to record time to the program for which they work. Accordingly, because of the practice group structure referenced above, the supervision time for LASGC staff who supervises LASSO staff is recorded to LASGC. The exception is that the Managing Attorney of the Family and Immigration Practice Group is paid 50-50 by each program, regardless of actual time, because she is unable to charge time to two programs.

f. The LASGC Executive Director is the hiring authority for staff of both programs in her capacity as an LASGC employee. Hiring recommendations are made by hiring committees, unique for each position. The composition of the committees is determined by the LASGC Executive Director and usually includes staff of both programs.

During discussions with OCE, the Executive Director stated that positions for both programs are advertised as LASGC. Applicants are interviewed as prospective LASGC employees but are “assigned” by her to LASGC or LASSO. Staff is also advised that if hired, they may be transferred to a different entity in the future. Except for the transfer of one Managing Attorney early in the creation of LASSO, staff has not been transferred from one program to another.

The LASGC Executive Director also must sign off on all firing decisions though this has not occurred since April 2007.

## 2. *Separate accounting and timekeeping records*

### a. Accounting Records.

#### *Combined Accounting System:*

LASGC has established a combined accounting system for LASGC and LASSO utilizing Sage MIP fund accounting software, defining them as separate “companies” within the same organization.<sup>30</sup> This means that either separate or combined financial reports may be run (and combined reports are generated for audit and board purposes). This treatment is unlike a second wholly owned corporation, Community Legal Services Real Estate Co., Inc. (CLC) whose accounting file on the MIP software system is maintained as a separate organization.<sup>31</sup>

LASGC was asked to provide a written explanation for their current accounting system. In response LASGC provided LASGC a letter dated July 15, 2009, which included a letter dated July 13, 2009, addressing their LASGC’ current accounting system. The letter states that the current accounting structure enables them to enter accounts payable expenses which would be have to be allocated between companies at one time. The current structure further allows them to accurately allocate expenses electronically, and provides them with the ease and accuracy of separate and consolidated reports.

A separate letter dated July 13, 2009, which was prepared by BKD, LLP, LASGC’s audit firm, was also sent to LSC in response to our request for further clarification and explanation of their current accounting system. The letter from BKD states that Sage MIP is a widely-used accounting program, designed for the not-for-profit industry, which provides for separate accounting of companies, using a segment titled “corporations,” under one organizational license. The letter further states that within their MIP structure, both the LASC, d/b/a LASGC, and LASSO have their own distinct and separate ledgers which are each divided into areas of legal practice as well as grant projects. The BKD letter also states that using separate corporation segments within one MIP organization component has allowed LASC to maintain accounting separation by preventing the transfer of any LSC funds from LASC to its affiliate (LASSO) engaging in restricted activities.

#### *Bank Accounts:*

There are currently 15 open individual operating and reserve bank accounts maintained for either LASGC or LASSO. All accounts are managed by the LASGC Controller. A review of the signers of the accounts,

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<sup>30</sup> See Electronic files and Chart of Accounts for LASGC/LASSO.

<sup>31</sup> See Electronic files and Chart of Accounts for CLC.

reflects that there are both LASGC and LASSO personnel (as well as LASGC Board Members in some cases) listed as signers on 13 of the accounts.<sup>32</sup>

For example the PNC Bank LASGC Operating Account has as signers Mary Asbury (LASGC), Nancy Hopper (LASGC), John Schrider (LASSO), Elaine Fink (LASSO), David Philips (LASGC Board) and Donald Klekamp (LASGC Board). The PNC Bank LASSO Operating Account has the same signers except that Donald Klekamp is replaced by Sara Straight Wolf (LASGC Board). Since all checks require two signatures, this can result in staff of one organization providing expense authority for the other during the review/check signing process.

*Financial Reports:*

Financial reports reflecting Income and Expense compared to Approved Budget received and reviewed by the LASGC Audit Committee and presented to the LASGC Board reflect the combined and unsegregated expenses of LASGC and LASSO.<sup>33</sup>

*Annual Audits:*

The LASGC Annual Audits for 2007 and 2008 incorporate consolidated financial statements for LASGC, its wholly owned subsidiary CLC, and its single-member limited liability company LASSO.<sup>34</sup> A separate audit is not prepared for LASSO; however the report does provide a break out of LASSO, LASGC and CLC Real Estate Co.

b. Time-keeping Records:

Timekeeping for payroll purposes for both LASGC and LASSO are maintained on the PIKA Case and Time Management System utilizing a single database for both LASSO and LASGC staff.<sup>35</sup> Though payroll for each organization is prepared separately, it is based on time from the PIKA system. Payroll is managed by LASGC staff with a cost for service allocation to LASSO, and is processed for both organizations by the same outside payroll contractor based on the information supplied by LASGC staff.<sup>36</sup>

3. *Degree of separation from facilities in which restricted activities occur*

The restricted activities that LASSO engages in include: representation of undocumented persons on a full-range of legal issues; and participation in cases where attorneys' fees are requested.<sup>37</sup>

a. Cincinnati Office:

LASGC and LASSO occupy the second, third, fourth and fifth floors of the Cincinnati office at 215 East Ninth Street. The main reception and intake area is located on the second floor and occupied by LASGC. This is the only floor that the general public has access to without an elevator key card. The third floor is separated in to areas one side is occupied by LASSO and the other is occupied by LASGC. The fourth

<sup>32</sup> See List of Cash and Investment Accounts LASGC reflecting authorized signatures.

<sup>33</sup> See Sample, Budget Report for April 2009 prepared for LASGC Audit Committee.

<sup>34</sup> See Electronic files, 2007 and 2008 Annual Audits.

<sup>35</sup> As presented by the Program Database Administrator, Joe Hornbaker, the PIKA Case and Time management database as used by LASGC/LASSO is a single entity. Cases and staff are designated in the system as either LAS(GC) or LAS(SO).

<sup>36</sup> See Electronic files, Payroll allocation analysis for LASGC and LASSO for period ending April 30, 2009.

<sup>37</sup> At the time of the review, LSC recipients were prohibited from claiming or collecting and retaining attorneys' fees in most situations. Congress lifted that prohibition in December of 2009 and LSC lifted the regulatory restriction in early 2010. While cases involving attorneys' fees were relevant regarding Part 1610 compliance at the time of the review, they are no longer prohibited and are not relevant to LASGC's corrective action.

floor is occupied by LASGC administrative staff who handle work for both entities. The fifth floor is occupied by LASSO except for the three offices which are occupied by LASGC support staff who handle work for both entities. The second floor reception area in the Cincinnati office has a “Legal Aid Society” sign above the reception desk. The building directory has LASGC listed on the 2<sup>nd</sup> floor, and LASSO listed on the fifth floor. Except for the office space on the third floor which is clearly divided into separate areas but lacks any signage that identifies the two entities, each program is clearly identified by name with prevalent signage in the building.

b. Hamilton Office:

The Hamilton Office is designated to LASSO with the exception of the office spaces allocated to the LASGC support staff that work out of that office and only provide support to LASSO. The building directory lists Legal Aid Society of Southwest Ohio, LLC as the sole occupant of the third floor.

4. *Signs and other forms of identification which distinguish the recipient from the organization:*

- a. The signage for both the Cincinnati and Hamilton offices are discussed above.
- b. Staff use the term “Legal Aid” to interchangeably refer to LASGC and LASSO when answering the phone, on telephone overflow messages, in pamphlets, on a joint website and during discussions with the team.
- c. LASGC and LASSO have different letterhead, envelopes, and Business cards.
- d. LASGC and LASSO have separate pamphlets unique to each organization. At times LASGC sends out pamphlets from LASSO and other legal aid entities.
- e. LASSO does not have its own website. All of the information and sites relating to LASSO are within the LASGC website.
- f. LASGC and LASSO have separate published mailing addresses.

5. *Other factors:*

- a. As discussed above, LASGC board minutes reflect discussions regarding LASSO case work, administration and budget. Alternating with LASGC, LASSO staff makes presentations regarding LASSO cases.<sup>38</sup>

LASGC has a 26-member Board of Trustees. LASSO, as an LLC, is managed by a three-member Board Managers. The three members of the Board of Managers are members of the LASGC Board of Trustees. LASGC Board minutes were requested and reviewed for January 2006-April 2009. Minutes reveal that as the parent company to LASSO, the board discusses issues related to LASSO. In addition, staff of LASSO provides presentations to the entire LASGC Board regarding case work. *See* for example August 26, 2008, LASGC minutes reflecting a presentation by John Schrider, LASSO Director, regarding a LASSO lawsuit filed against Deutsche Bank and others.

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<sup>38</sup> The LASSO Board holds separate meeting and reports on their development to during the LASGC Board meeting. Separate minutes for LASSO was not provided at the time of the review.

b. Fundraising proceeds are directed entirely to LASGC; no funds are specifically solicited or raised for LASSO.

An interview with the Development Director reveals that all funds are raised for LASGC. Traditionally LASGC has not held fundraising events; however, in 2008 LASGC was 100 years old. Accordingly, to commemorate the special occasion, LASGC held a large dinner as a fundraising event. Money was solicited from law firms, individuals, corporation and foundations and, if they donated a certain large amount, they received a table at the event. Otherwise, individual tickets could be purchased for \$125. The event was very successful; over 600 people attended.

Traditionally funds are solicited either through direct solicitations by the program, usually through a board member.

All funds are raised in the name of LASGC which controls the distribution of funds.

c. LASGC and LASSO have the same mission statement, "To resolve serious legal problems of low-income people, promote economic and family stability, and reduce poverty through effective legal assistance."

d. LASGC and LASSO conducted a joint needs assessment.

e. LASGC and LASSO have the same program priorities. The statement complies with the provisions of 45 CFR Part 1620.

f. LASGC and LASSO have separate Standards of Practice and Supervision. The LASSO version is basically the same as that of LASGC absent provisions on prohibited work.

g. The PIKA case management system used by LASGC and LASSO is not partitioned, but VLP cases are partitioned from LASGC and LASSO. Staff of both programs can access the cases of the other program. A conflict for one program is considered to be a conflict for the other program. PIKA automatically assigns a program specific prefix to the case number when it is opened, according to which program the case handler assigned the case works for.<sup>39</sup>

The Data Systems Administrator sets up the LASGC and LASSO new hires' user accounts on the network, e-mail and telephone systems. He provides them with a code sheet which sets forth the user names and initial passwords. Part of the setup includes setting access rights. For example, advocates have different rights than intake staff. Intake staff cannot open or close cases. LASGC and LASSO case handlers do not have rights to open and close VLP cases.

h. LASGC support staff closes all LASSO cases.

Two LASGC staff, the Central Support Coordinator/Receptionist (Gladys Reid) and an Intake Paralegal (Natalie Brown) close all of the cases for LASGC and LASSO. No other staff has access rights to close cases.<sup>40</sup> Case handlers select closing and outcome codes on a written goldenrod colored closing sheet which is attached to a printed goldenrod colored intake sheet.

i. All grants and contracts are awarded to LASGC and LASGC determines how such funds are assigned to LASSO. For example, the GAL contracts are awarded to LASGC but are assigned to LASSO and LASSO

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<sup>39</sup> See sample printouts of PIKA screens.

<sup>40</sup> All of the Intake Paralegals were interviewed except Natalie Brown who was on vacation during the OCE visit.

staff performs all of the work. The Executive Director during discussions with OCE referred to her “assignment” of funds to LASSO.

j. The Operating Agreement and the Methodology for Accounting Separation of Subsidiaries are the only documents that control the existing relationship between LASGC and LASSO. There are no other contracts, leases or sub-leases between the two entities.

**Finding 2: LASGC is in compliance with 45 CFR § 1610.4, which requires a recipient receiving public or IOLTA funds to use them in accordance with the specific purposes for which they were provided, but not for any activity prohibited by or inconsistent with Section 504.**

LASGC is a recipient of public funding from the Ohio Legal Assistance Fund (OLAF), receiving over Three million in 2008. In addition to direct assistance, OLAF also has a loan repayment assistance program which provides loan reimbursements of up to \$10,000 a year to attorneys working for legal assistance organizations in repaying law school loans. These payments go directly from OLAF to attorney recipients and are tax free. OLAF requires annual reporting including expenditure to outcome analysis. LASGC provided OLAF with a report for 2008 for the “Legal Aid Society of Greater Cincinnati and its affiliate Legal Aid Society of Southwest Ohio, LLC. Budgets included in the report reflect LASGC as the Applicant and LASSO as the Subrecipient. Review of documentation reflects no activity prohibited by Section 504.<sup>41</sup>

**Finding 3: LASGC is in compliance with 45 CFR § 1610.5 which requires that a recipient of LSC funds provide to the source of funds, unless the amount is less than \$250, with written notification of the prohibitions and conditions which apply to the funds.**

45 CFR § 1610.5(a) Provides that no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds. A recipient is not required to provide such notification for receipt of contributions of less than \$250.

LASGC has an extensive and successful fundraising activity with unrestricted contributions of over half a million dollars reported in 2008.<sup>42</sup> LASGC provides potential donors with envelopes for making contributions to the LASGC. The envelopes, used for a variety of fundraising activities, contain a statement that “All private donation income is used in support of our mission to resolve serious legal problems of low-income people, and in accordance with Legal Services Corporation and other funder regulations.”<sup>43</sup> The same statement is printed in a highlighted box in the LASGC Annual Report which is mailed to all donors in the current year.<sup>44</sup>

**Finding 4: LASGC is in compliance with the requirements of 45 CFR § 1610.7, which applies the prohibitions and requirements of 45 CFR Part 1610 to both LSC funds transferred and to the non-LSC funds transferred.**

Section 1610.7 states that if a recipient transfers LSC funds to another person or entity, the prohibitions and requirements referred to in this part, will apply both to the LSC funds transferred and to the non-LSC funds of the person or entity to whom those funds are transferred. LASGC provides all of the funding utilized by

<sup>41</sup> See 2008 Annual Report to OLAF.

<sup>42</sup> See Electronic files, and LASGC 2008 Annual Audit.

<sup>43</sup> See Sample Donor Envelope.

<sup>44</sup> See Copy of 2008 Annual report of LASGC (110<sup>th</sup> Anniversary).

LASSO through transfers (subgrants, etc.) Review of LASGC's utilization of LSC funding reflected no transfers of LSC funds to or on behalf of LASSO.<sup>45</sup>

**Finding 5: LASGC is in compliance with 45 CFR § 1610.9 which requires that funds received by a recipient from a source other than the Corporation is accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.**

Examination of the LASGC/LASSO Chart of Accounts, and Annual Audit reports reflect that funds received from sources other than LSC are accounted for separately in both recording as income and for the expenditure thereof.<sup>46</sup>

**Finding 6: LASGC does not comply with 45 CFR § 1635.3(d) certification requirements.**

The regulation requires attorneys and paralegals who work part-time for the recipient and an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. This requirement does not apply to a *de minimis* action relation to a restricted activity. Certifications are required on a quarterly basis.

The Managing Attorney of the Family and Immigration Practice Group, is LASGC's only employee who receives two checks, one from LASGC and one from LASSO. She is paid 50-50 from each organization. The pre-tax amount of both checks is the same; however, one check is less due to tax withholding.

The Executive Director stated that at the time of LASSO's creation, two Managing Attorneys were 50-50 employees. She stated that the other Managing Attorney, Managing Attorney of the Income, Work and Health Practice Group, left the program and her replacement is a 100% LASGC employee.

Because LASGC is the parent company of LASSO, the Executive Director stated that Ms. Malone has not filed the timekeeping certifications required by 45 CFR § 1635.3(d)). This is a violation and the Executive Director's argument demonstrates how the distinction between the two programs is blurred.

It is noted that the Executive Director stated that she is inclined to reassign the Managing Attorney of the Family and Immigration Practice Group from the 50-50 status to an LASGC employee. She stated that it is likely that she will make this change in the weeks after the OCE review. If this occurs, no corrective action is necessary. Otherwise, it is necessary for LASGC to comply with 45 CFR § 1635.3(d).

In response to the DR, LASGC stated that it does not dispute this finding. LASGC stated Ms. Malone became a full-time employee of LASGC on January 1, 2009. There are currently no part-time LASGC attorneys or paralegals who work for another organization that engages in restricted activities. LASGC further stated that if, in the future, there are any such attorneys or paralegals, it will complete the required certifications. As such there is no corrective action for this finding.

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<sup>45</sup> See Electronic Files, 2008 Audit Supplemental Schedule of Activities, LSC Fund Distribution 2008.

<sup>46</sup> See Electronic files, 2007 and 2008 Annual Audits.

## V. RECOMMENDATIONS<sup>47</sup>

In view of the foregoing, OCE recommends that LASGC:

There are no recommendations at this time.

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<sup>47</sup> Items appearing in the “Recommendations” section are not enforced by LSC. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the recipient with items addressed in the report. Often recommendations address potential issues and may assist a recipient in avoiding future compliance errors. By contrast, the items listed in the “Required Corrective Actions” section must be addressed by the recipient, and will be enforced by LSC.

## VI. REQUIRED CORRECTIVE ACTION

Based on the forgoing, LASGC is required to take the following corrective actions:

1. Comply with the requirements of 45 CFR § 1610.8 by either ceasing all restricted activities by LASSO or contacting LSC to further develop a plan for providing sufficient separation between LASGC and LASSO.<sup>48</sup>

In response to the DR, LASGC stated that while it does not agree that they are out of compliance with the requirements of 45 CFR § 1610.8(a)(3) (physical and financial separation), LASGC is willing to take additional steps to achieve a greater degree of separation between LASGC and LASSO. LASGC further stated that, it intends to contact LSC to further develop a plan for providing additional separation between LASGC and LASSO, such that LSC will conclude that LASGC is in compliance with the requirements of 45 CFR § 1610.8. Additionally, LASGC stated that LSC should consider that as a result of Congressional action on the “attorneys’ fees” restriction, and subsequent changes in 45 CFR Parts 1642 and 1609, the extent of LASSO’s “restricted activity” is greatly reduced. LASGC believes that this development should affect the weighing of factors as LASGC and LSC move forward to develop a mutually-acceptable degree of separation between LASGC and LASSO. *See* § 1610.8(a)(3)(iii).

This intent was confirmed during a conversation with the ED on May 13, 2010. In accordance with that discussion LASGC will be submitting a plan by July 30, 2010, which will list its proposed changes in accordance with the earlier discussion between LSC and LASGC on March 12, 2010. Each item listed in its plan will have an anticipated date of completion. This proposal will be reviewed by LSC and LASGC will be informed if their proposal is sufficient to bring them into compliance with 45 CFR § 1610.8.

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<sup>48</sup> On March 12, 2010, LSC had a detailed discussion with the LASGC Executive Director regarding this corrective action. LASGC has indicated that LASSO may consider the option of eliminating all restricted activities. LSC and LASGC’s Executive Director had a detailed discussion regarding steps that could be taken to provide for sufficient separation between LASGC and LASSO if LASSO decides to continue its current activities.

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Washington, DC 20007-3522

**RE: Program Integrity Review, Recipient #436040**

Dear Mr. Cardona:

I write to provide comments on the Legal Services Corporation's Draft Report for the June 15-19, 2009 on-site Program Integrity Review of the Legal Aid Society of Greater Cincinnati (LASGC). It is my intention to make a brief overall response to the required Corrective Actions, and provide a few updates relevant to the Findings and Recommendations in the Report.

Corrective Actions

First, with respect to Corrective Action options for compliance with §1610.8, it is LASGC's intention to contact LSC to further develop a plan for providing additional separation between LASGC and LASSO, such that LSC will conclude that LASGC is in compliance with the requirements of 45 CFR §1610.8.

With respect to 45 CFR §1635.3(d), LASGC will have all covered employees complete the required Certifications. LASGC does not dispute the finding that it was out of compliance with 45 CFR §1635.3(d) at the time of the site visit. At the time that LASSO was created, two attorneys transferred to LASSO on a 50% FTE basis. One of these attorneys resigned in 2008. At the time of the site visit in 2009, one attorney, Kelly Malone, remained working for LASGC on a 50% FTE basis and for LASSO on a 50% FTE basis. Both attorneys should have filed §1635.3(d) certifications. Ms. Malone became a full-time employee of LASGC on January 1, 2009. There are currently no part-time LASGC attorneys or paralegals who work for another organization that engages in restricted activities. If, in the future, there are any such attorneys or paralegals, they will complete the required certifications.

APPOINTMENTS  
AVAILABLE

Batavia  
Cincinnati  
Georgetown  
Hamilton  
Hillsboro  
Lebanon  
Middletown  
Wilmington



### Findings and Recommendations

Regarding LSC's discussion of concerns about legal separation of the two organizations, there may be some confusion, and possibly disagreement, as to the source of law that we should look to in determining whether or not LASGC and LASSO are "legally separate entities." (§1610.8(a)(1)) LASGC's view is that the legally separate entity question would be determined by Ohio law, and a single, member, limited liability company is a separate legal entity from the "single member." However, in light of LSC's determination of "No Finding" on the legal entity separation, and its emphasis of the physical and financial separation issues, we do not see a need to more fully address the legal separation issue at this time.

Regarding transfer and subsidization (§1610.8(a)(2)), LASGC, of course, agrees that it does not transfer or subsidize restricted activities with LSC funds.

While LASGC does not agree that it is out of compliance with the requirements of 45 CFR §1610.8(a)(3) (physical and financial separation), LASGC is willing to take additional steps to achieve a greater degree of separation between LASGC and LASSO.

Regarding "separation" updates since the 2009 site visit, LASSO has applied for and received its own Employee Identification Number and associated separate payroll tax account. This change was effective July 1, 2009. As a result, and also simply due to the passage of time, there is a growing file of LASSO documentation over John Schrider's signature in his capacity as Director of LASSO.

Most significantly, as a result of Congressional action on the "attorneys fees" restriction, and subsequent changes in 45 CFR §1642 and §1609, the extent of LASSO's "restricted activity" is greatly reduced. This development will affect the weighing of factors as LASGC and LSC move forward to develop a mutually-acceptable degree of separation between LASGC and LASSO. See §1610.8(a)(3)(iii).

As indicated in the Draft Report, LASGC's Executive Director has discussed with LSC staff, the OCE conclusion that "the weight of the factors against physical separation from LASGC is heavier than those that indicate separation." LASGC is optimistic that it can reach an agreement with LSC, to create an acceptable degree of separation without adding unnecessary administrative cost. Also, LASGC will count on LSC to consider that, along with maintaining separate identities for LASGC and LASSO in the Southwest Ohio area, there is a compelling need to communicate to the public that both organizations are legitimate, coordinated legal aid programs. This is not a theoretical concern. LASGC has had to protect its client community from bogus "legal aid" programs through litigation in federal court to enjoin these scam operations. Therefore, LASGC will strive to develop a plan that allows us to present an accurate picture to the public, i.e., that LASGC and LASSO are separate, but affiliated organizations, that they both provide free civil legal services, that their activities are coordinated with each other, and that these entities are to be

Danilo Cardona, Director

May 6, 2010

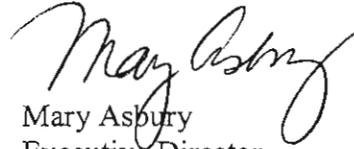
Page 3

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distinguished from other so-called legal aid programs that may trick low-income residents and may damage the reputation of both LASGC and LASSO in the community.

Following receipt of the Final Report, I will contact your office to clarify the next steps and timetable for working with LSC to develop a mutually-agreeable plan.

Sincerely,



Mary Asbury

Executive Director

(513) 362-2800 Direct-Dial

MA/paa