



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Montana Legal Services Association, Inc.
Case Service Report/Case Management System Review
July 16-19, 2012

Recipient No. 927000

I. EXECUTIVE SUMMARY

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

Finding 2: MLSA's intake procedures and case management system generally support MLSA's compliance related requirements. However, there were exceptions noted with respect to screening for citizenship eligibility and documentation of over-income factors.

Finding 3: Sampled cases evidenced that, with a few exceptions, MLSA substantially complies with the income eligibility documentation requirements 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines (FPG). Additionally, MLSA's income eligibility policy is compliant with 45 CFR § 1611.5.

Finding 4: Sampled cases evidenced that MLSA complies with the asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. MLSA's asset eligibility policy is compliant with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e).

Finding 5: MLSA is in non-compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). There were a limited number of case files that did not contain a citizenship attestation. There were sampled case files reviewed which contained a non-CSR compliant citizenship attestation. Policies reviewed evidenced compliance with 45 CFR Part 1626.

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

Finding 7: Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). However, policies reviewed evidenced compliance with 45 CFR Part 1636.

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

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced that, with one (1) exception, MLSA's application of the CSR case closure categories is consistent with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011).

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.

Finding 13: Review of MLSA's policies and the list of attorneys who have engaged in the outside practice of law, as well as interviews with the Executive Director, one (1) Supervising Attorney, one (1) staff attorney, and all of the attorneys who have engaged in the outside practice of law during the review period, revealed that MLSA is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

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

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

Finding 16: A limited review of MLSA's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities. MLSA generally complies with 45 CFR § 1610.5, however, improvement is necessary.

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

Finding 18: MLSA is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

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

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

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

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

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

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

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

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

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

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

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

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

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).

Finding 32: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1619 (Disclosure of information).

Finding 33: Sampled cases reviewed evidenced compliance questions regarding the documentation requirements of "Special Representative" cases.

Finding 34: A limited review of MLSA's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to Chapter 3-the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2.

II. BACKGROUND OF REVIEW

During the week of July 16 - 19, 2012, staff of the Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) Review at Montana Legal Services Association, Inc. (MLSA). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team of five (5) attorneys, two (2) fiscal analysts, and one (1) LSC Barnett Fellow.

The on site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that MLSA has correctly implemented the 2008 CSR Handbook, as amended 2011. Specifically, the review team assessed MLSA for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1614 (Private attorney involvement)¹; 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of MLSA's upper and middle management, staff attorneys, and support staff. MLSA's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, case file review was conducted. The sample case review period was from January 1, 2010 through May 15, 2012. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on site review, the OCE team selected 514 cases to review on site, which included 39 targeted files. All of the selected cases were reviewed.

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

² On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant visit, LSC's review and enforcement of this regulation was therefore only for the period prior to December 16, 2009.

MLSA currently provides legal services to eligible clients to all 56 counties in Montana including, but not limited to, Beaverhead, Blaine, Broadwater, Carter, Cascade, Daniels, Fallon, Liberty, McCone, Madison, Lake, Lewis and Clark, Liberty, Missoula, Musselshell, Park, Rosebud, Sanders, Sheridan, Richland, Valley, Wheatland, Yellowstone, and Phillips. MLSA provides client services at three (3) offices located in the cities of Helena, Billings, and Missoula. MLSA also employs one (1) attorney that provides client services, whose office is located in a social services agency in the city of Kalispell, and one (1) Tribal Advocate that provides tribal court representation to members of the Crow Tribe, whose office is located on the Crow Reservation. The Tribal Advocate is not an attorney, but is licensed to practice in the Crow Tribal Court as a Tribal Advocate. MLSA's central office is located in Helena, Montana.

MLSA received basic field grant awards from LSC in the amounts of \$1,550,386.00 for 2010, \$1,486,551.00 for 2011, and \$1,066,906.00 for 2012. In its 2011 CSR submission to LSC, the program reported 4,159 closed cases and in its 2010 CSR submission to LSC, the program reported 4,636 closed cases. MLSA's 2011 self-inspection certification revealed a 7.9% error rate in CSR reporting. MLSA's 2010 self-inspection certification revealed a 6.3% error rate in CSR reporting.

By letter dated May 7, 2012, OCE requested that MLSA provide a list of all cases reported to LSC in its 2010 CSR data submission (closed 2010 cases), a list of all cases closed in 2011 (closed 2011 cases), a list of all cases closed between January 1, 2012 and May 15, 2012 (closed 2012 cases), and a list of all cases which remained open as of May 15, 2012 (open cases). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case, and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by MLSA staff and the other for cases handled through MLSA's PAI component. MLSA was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). MLSA was requested to notify OCE promptly, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on site visit. The sample was developed proportionately among 2010, 2011, 2012 closed, and 2012 open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and MLSA agreement of June 18, 2012, MLSA staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality such discussion, in some

instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.³

MLSA's management and staff cooperated fully in the course of the review process. As discussed more fully below, MLSA was made aware of compliance issues during the on site visit. This was accomplished by informing intermediaries, as well as Supervising Attorneys, and the Executive Director, of any compliance issues uncovered during case review.

At the conclusion of the visit, on July 19, 2012, OCE conducted an exit conference during which MLSA was provided with OCE's initial findings and was made aware of the areas in which compliance issues were found. OCE noted substantial compliance in the areas of 45 CFR Part 1611 (Financial eligibility policies); 45 CFR § 1611.9 (Retainer Agreements); CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided); and CSR Handbook (2008 Ed., as amended 2011), Chapters VIII and IX (Case closure categories). Non-compliance was noted in the areas of 45 CFR § 1626.6 (Verification of citizenship) and 45 CFR Part 1636 (Client identity and statement of fact).

By letter dated October 2, 2012, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. MLSA was asked to review the DR and provide written comments. On October 30, 2012 and November 6, 2012, MLSA requested, and received, an extension of the due date for their response to the DR. Pursuant to the extension, MLSA agreed to submit its response to the DR on November 9, 2012. By electronic mail dated November 9, 2012, MLSA submitted its comments to the DR. OCE has carefully considered MLSA's comments and has either accepted and incorporated them within the body of the report, or responded accordingly. MLSA's comments, in their entirety, are attached to this Final Report.

III. FINDINGS

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

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

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, MLSA's ACMS is sufficient to ensure that information necessary for the

³ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

effective management of cases is accurately and timely recorded. All cases reviewed contained information in the file that was consistent with that in the ACMS.

There are no recommendations or corrective actions required.

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

Finding 2: MLSA’s intake procedures and case management system generally support MLSA’s compliance related requirements. However, there were exceptions noted with respect to screening for citizenship eligibility and documentation of over-income factors.

The intake procedures of all MLSA offices were assessed by interviewing the primary intake staff and the Supervising Attorneys in order to ascertain MLSA’s compliance in relation to the intake process. The interviews revealed that intake procedures performed by the intake staff generally support the program’s compliance related requirements with respect to obtaining written citizenship attestations, performing conflict and duplicate checks during the intake process, inquiring as to an applicant’s reasonable income prospects, and considering all authorized exceptions and factors when screening an applicant for income eligibility. However, exceptions were noted with respect to screening for citizenship eligibility and documenting over-income factors.

Walk-in or Telephone Intake

There are three (3) MLSA offices that conduct both walk-in and telephone intake screenings. The telephone intake screenings are conducted via MLSA’s HelpLine, which is housed in MLSA’s central office in Helena and staffed by MLSA’s intake staff. The screening process for both walk-in and telephone applicants is virtually identical. Initially, an applicant may walk into the office during scheduled intake hours. The walk-in intake hours for the Helena office are Monday through Friday, 8:30 a.m. to 4:30 p.m. The intake hours for the Billings office are Monday through Thursday, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m.; and the intake hours for the Missoula office are Monday through Friday, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. The telephone intake hours for the HelpLine are Monday through Friday, 7:30 a.m. to 6:00 p.m. A walk-in applicant is greeted by the receptionist and is provided an Application for Assistance to complete. The Application for Assistance is completed manually by the applicant and obtains the applicant’s background information, such as name, address, household size, case type, adverse party name, etc. The Application for Assistance also contains a citizenship attestation, as well as a verification of alien eligibility. If the intake interview is being done over the telephone, the applicant is asked to verbally verify their citizenship or alien eligibility status. Prior to scheduling the intake interview, or conducting a telephone intake screening, a conflict and duplicate case check is performed. If a potential conflict is identified, the staff member consults with the intake supervisor and/or the Executive Director for further review and determination.

For walk-in applicants, once the Application for Assistance has been completed and a conflict and duplicate checks have been performed, the applicant is informed that their application will be reviewed and an intake staff worker will contact them by telephone to go over their responses to the Application for Assistance and conduct an intake interview. After the intake interview is scheduled, an intake staff worker contacts the applicant and conducts a full intake interview over the telephone. During the intake interview, the applicant's responses on the Application for Assistance are confirmed and more information is elicited by the intake staff worker when necessary. At this time, the information from the Application for Assistance is input into the ACMS. MLSA uses the LEGALSERVER computerized case management system as its ACMS. If the applicant is applying for services over the telephone, the intake screening commences once the conflict and duplicate checks have been performed in LEGALSERVER. As noted above, for all telephone intake screenings, an applicant is asked to verbally verify their citizenship/alien eligibility status.

Intake staff reported that when presented with an applicant who is over-income and/or over-asset, they will verify and document the existence of any authorized factors or exceptions to the income/asset ceiling. According to interviews, intake staff do not conduct group eligibility determinations, pursuant to the requirements of 45 CFR §§ 1611.6 and 1611.7, as all of the applicants who are screened for eligibility are individual applicants, and they have not had a recent occasion to screen a group applicant.

In the Helena office, once the intake screening has been conducted, if the applicant appears eligible for services, and their case type falls within MLSA's priorities, the intake staff worker accepts the case for advice and counsel or brief services only. The client is informed that an intake staff member will schedule an appointment for the applicant to speak with a MLSA staff attorney by telephone, and the client will be notified of the appointment day and time. On the day of the appointment, a staff attorney provides advice and brief services by telephone and will provide extended services when necessary. If a staff attorney decides that the case will require extended services, the staff attorney will make the individual determination to accept the case for extensive service. MLSA's practice is to obtain written citizenship/alien documentation and retainer agreements for all extended service cases.

In the Billings and Missoula offices, after the intake interview is complete, applicants are informed by the intake worker if their case that their case will be reviewed, and that they will be notified as to whether MLSA will be able to accept their case. In these offices, the case files are reviewed on a weekly basis, during a case acceptance meeting, for income, asset, and citizenship eligibility, as well as for case type, by a member of the intake staff, or a staff attorney. Additionally, in these offices, there are at least two (2) attorneys who are assigned to one of the following five (5) legal groups: family law, government benefits, housing, Indian law, and consumer law. Each week, the staff for each legal group convenes by conference call and discusses the applicants from around the state who have applied during the previous week and whose cases are related to that legal group's subject area. During the weekly conference call, the group triages the cases in the following manner: they may reject a case; they may select a case for MLSA to handle in-house; or they may determine the case to be a suitable PAI case, in which case the case is sent to the PAI coordinator for the region of the state where the applicant lives. If the applicant or the case is ineligible, then a denial letter is sent to the applicant. If the

applicant is deemed eligible, then the applicant is informed of case acceptance and the case is sent to a staff attorney within the relevant practice group that is in charge of the applicant's type of legal issue. Applicants are told within one (1) week of the case acceptance meeting whether or not their case has been accepted.

In its response to the DR, MLSA wanted to clarify that, "the intake procedures for all three offices are the same. Once the intake screening has been conducted, the intake staff member accepts the case for advice and counsel or brief services if the applicant appears eligible for services, and their case type falls within MLSA's priorities."

If the applicant's case is a type that is typically handled by MLSA's *pro bono* attorneys, or should otherwise be referred to MLSA's PAI component, the case will be reviewed by a staff attorney, after the initial intake interview has been completed and/or the case acceptance meeting has been conducted, who will determine if referral to MLSA's PAI component is suitable. If the applicant's case is forwarded to MLSA's PAI component for review, the applicant is informed at the conclusion of the staff attorney's review of their case that they will be contacted regarding acceptance/denial of their case once it has been determined if the applicant's case can be serviced by MLSA's PAI component. If the case is successfully referred to MLSA's PAI component, the staff attorney changes the responsible office and case handler codes in the ACMS. The case is then electronically moved from the staff attorney's case list to one (1) of the three (3) PAI coordinators' case lists, according to the geographical location of the client, and the PAI coordinators routinely monitor their list to ensure that all referred cases are timely matched with a volunteer attorney.

In its response to the DR, MLSA wanted to clarify that, "it is a statewide law firm organized into specialty areas providing services in housing, public benefits, Native American issues, consumer, foreclosure and domestic violence. Cases referred by the MLSA HelpLine are reviewed on a weekly basis, during a case acceptance meeting, for income, asset and citizenship eligibility, as well as the case type, by the program assistant and the staff attorneys who specialize in that area of law."

Circuit-Riding to the Crow and Northern Cheyenne Reservations Intake

Every Wednesday, staff from the Billings office travel to the Crow and Northern Cheyenne Reservations to conduct "Circuit-Riding" intake and to perform legal work. In the mornings, from 9:00 a.m. to 12:00 p.m., the staff is at the Crow Reservation; they then travel to the Northern Cheyenne Reservation, where their hours are 1:00 p.m. to 4:00 p.m. Staff members handle each of the following types of matters: civil, tribal court, and domestic violence. MLSA staff and one (1) AmeriCorps State member conduct intake for all of the cases on the Crow and Northern Cheyenne Reservations. The staff has internet capability while on site and is able to log into MLSA's ACMS to conduct the standard MLSA intake procedures, including performing a conflict and duplicate check, verifying citizenship eligibility, and determining income eligibility, prior to providing legal assistance.

A manual intake form is used as a supplement to the computerized intake, for applicants to fill out as a preliminary document before their full information is entered into the computer, or if the

computer system is not working. If the computer system is not working, the applicant is not provided with legal assistance until a full intake screening, including a conflict/duplicate check can be performed. The manual intake form used at the Crow and Northern Cheyenne Reservations requests pertinent information, but does not request all of the information solicited in the above-referenced Application for Legal Assistance.

Online Intake

MLSA has an online application portal which is available at: www.mtlsa.org. The HelpLine staff is responsible processing online applications for everyone in the state who applies online for legal services. The online application form is analogous to MLSA's manual intake form, Application for Assistance. The online intake form provides a section for the applicant to attest to their citizenship status and allows for the applicant to enter all of the requisite eligibility information (*e.g.*, income, assets, income prospects, case type, etc.).

Once the HelpLine staff member receives an online application, the information in the online application is transferred to MLSA's ACMS and the applicant is screened for financial and citizenship eligibility, conflicts, duplicate cases, and legal issues during an intake interview. If the applicant and the case are eligible, then the case is accepted and the intake staff set up a time to speak with one of MLSA's advocates. MLSA is organized into a statewide law firm with specialty areas. As such, MLSA offers the same service regardless of the geographic locations of the client. At that point, the case follows the normal procedures that are enumerated *supra*. If the applicant is ineligible, or if their case cannot be accepted for another reason, the applicant is sent a denial letter and is referred to a social services agency, whenever possible.

In its response to the DR, MLSA wanted to clarify that a HelpLine staff member is "responsible for processing online applications for everyone in the state who applies for legal services. This duty is passed around among the HelpLine members based on workload and availability. At the time of the review, that member was in the Missoula office. MLSA designates staff, and not a specific office, to be responsible for the online applications."

On site review of the intake system indicated that intake staff is consistent in their use of the ACMS to conduct income and asset eligibility screenings, collect demographic information, perform conflict checks, verify citizenship, and store electronic reporting data. The majority of intake staff interviewed demonstrated familiarity with program priorities and the citizenship and alien eligibility requirements of 45 CFR Part 1626. Case acceptance is done by intake staff and staff attorneys on an individual basis or a weekly basis, and the attorneys will communicate case acceptance or rejection to an applicant via telephone and/or written letter. Supervising and staff attorneys generally close their cases the same day advice is provided, and the client is mailed a closing letter.

Cases are reviewed at closing, and at the end of every year, by Supervising Attorneys, who review them for financial eligibility and legal accuracy using a case closure checklist. Errors are located and corrected during this process. Oversight of the supervision of compliance related activities is performed by MLSA's Program Administrator, who performs quarterly quality

control checks of compliance activities by generating ACMS reports and coordinating corrections with staff. If a discrepancy is discovered, the file is reviewed and the error corrected.

Reasonable Income Prospects Screening: Pursuant to the requirements of 45 CFR § 1611.7(a) (1), all intake staff interviewed reported that proper inquiry is made into the reasonable income prospects of applicants. The specific question for reasonable income prospects is asked during the intake screening process by intake staff and the applicant's response is recorded in the notes section of the ACMS. While on site, it was noted that while the ACMS contained fields to record an applicant's reasonable income prospects, the manual intake form did not.

Citizenship and Eligible Alien Status Screening: All intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. Intake staff reported that they verify citizenship status during the intake screening and, when necessary, request documentation of eligible alien status.

Some members of the intake staff interviewed could not demonstrate an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments (VAWA), with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien.

Income Screening: The majority of the intake staff expressed understanding that an applicant will be considered eligible if the applicant's income is under 125% of the Federal Poverty Guidelines (FPG). Additionally, most intake staff indicated that, pursuant to 45 CFR § 1611.5(a)(4), if an applicant's income was between 125% and 200% of the FPG, authorized exceptions and factors could be applied that may render the applicant eligible for services. Intake staff demonstrated an understanding that in certain instances, when an applicant's income exceeded 200% of the FPG, the applicant may still be eligible for services if the requirements of 45 CFR § 1611.5(a) are met. Lastly, intake staff indicated that when reviewing a completed application with an applicant that is a victim of domestic violence, they ensure that all reported income and assets belong solely to the victim and that none of the perpetrator's income and/or assets are included in the financial eligibility calculation.

However, in MLSA's ACMS, two (2) additional factors that are not enumerated in 45 CFR § 1611.5 appeared as factors that could be applied if an applicant's income was between 125% and 200% of the FPG. Those factors were: "non availability of private counsel with the expertise to handle the particular matter and the willingness to do it at a fee which the client can pay may be considered" and "Kennedy Amendment." One (1) intake staff worker indicated that she routinely selects the "non availability of private counsel" factor whenever an applicant's income was between 125% and 200% of the FPG, without verifying the existence of the factor with the applicant or documenting the client's inability to afford private counsel. While on site, this issue was discussed with the Executive Director and it was determined that the two (2) above-referenced factors were inadvertently left in the ACMS when the system was updated to include the current 45 CFR § 1611.5 over-income authorized exceptions. As such, the factors were deactivated during the visit and are no longer able to be selected during an intake screening for a case supported with LSC funds. Additionally, the Executive Director indicated that all intake

staff workers would be trained in the weeks following the visit on how to properly apply the factors enumerated in 45 CFR § 1611.5 for an over-income applicant.

Asset Screening: Interviews revealed intake staff is familiar with the categories of assets that could be excluded by MLSA, as well as the asset ceiling amounts. Additionally, intake staff indicated an understanding of all of the assets that could be excluded from the total asset calculation per MLSA's policy. However, the list of excludable assets contained in MLSA's policy was reviewed for compliance during the visit and will be discussed in further detail in Finding 4.

Conflicts: When MLSA intake staff encounters a potential conflict of interest, the application is reviewed by the Intake Supervisor or the Director of Community Engagement to make a determination as to whether a conflict exists. If either the Intake Supervisor or the Director of Community Engagement determines that a conflict exists, the case is rejected and the client is notified that their case cannot be accepted, due to a conflict of interest.

Outreach: MLSA conducts community education outreach regarding domestic violence, debt collection, consumer scams, and housing/landlord issues. It was explained that all outreach events are informational and that no legal advice is provided to participants.

MLSA also conducts a *pro se* divorce clinic, though its PAI component, on an as-needed basis. A full intake screening, including citizenship/alien eligibility verification, duplicate, and conflict check, is conducted on all attendees prior to their participation in the clinic. Once the applicant has been deemed eligible to participate in the clinic, they are scheduled for the next available clinic date. If the intake screening was done over the telephone, the applicant is required to execute a citizenship attestation, or verify their eligible alien status, prior to being allowed to participate in the clinic. At the clinic, MLSA PAI attorneys assist participants with completing and filing *pro se* divorce forms.

For the past six (6) years, a series of fellows funded by an Equal Justice Works (EJW) grant have been conducting clinics around the state relating to Indian wills. This program ended in September 2012 due to budget cutbacks. When the program was in existence, the EJW fellow would travel to various locations in the state to hold the clinics. They would conduct intake on site by having all applicants complete the Application for Assistance. After receipt of the completed application and reviewing the applicant's responses with the applicant, the fellow would provide legal information on site, and would then return to the office to enter the intake information into MLSA's ACMS system and perform a conflict and duplicate check. Upon confirming no conflict/duplicate, citizenship, financial, and case type eligibility, the fellow would complete the legal work on the case from the fellow's assigned MLSA office.

Intake Forms: The forms provided by MLSA for review were the Application for Assistance, Citizenship Attestation, Retainer Agreements, Closing Case Checklist (Limited Service Cases), Closing Case Checklist (Extended Service Cases), Limited Intake Form (used during circuit rides), and Supervisor Closed Cases Checklist. While on site, these forms were reviewed for compliance and recommendations were made with respect to the Citizenship Attestation, Application for Assistance, and Closing Case Checklists forms.

Prior to the compliance visit, the manual intake form (Application for Assistance) used to screen applicants was not compliant with the requirements of 45 CFR § 1611.7(a)(1), in that it did not contain a section for an applicant to indicate their income prospects. Pursuant to on site discussions with the Executive Director, the manual intake form was revised to meet the requirements of 45 CFR § 1611.7(a)(1). The revised intake document was reviewed by OCE in the weeks following the visit and determined to be compliant. The Executive Director indicated that the approved form would replace the previously used form effective immediately, and that intake staff would receive instructions and training regarding the new form.

Prior to the compliance visit, the citizenship attestation used for PAI cases, which was contained in the PAI retainer agreement, was not compliant with the CSR Handbook (2008 Ed., as amended 2011), § 5.5, in that the attestation was contained in the body of the retainer agreement and did not have its own separate signature line. Pursuant to on site discussions with the Executive Director, the PAI citizenship attestation was revised to comply with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5. The revised intake document was reviewed during the visit and was determined to be compliant. During the compliance visit, the Executive Director indicated that the approved form would replace the previously used form effective immediately, and that intake staff would receive instructions and training regarding the new form.

In its response to the DR, MLSA asserted that it disagreed with the statement that the citizenship attestation used in PAI retainers was contained in the body of the agreement and did not have its own separate signature line. MLSA indicated in its comments that the attestation did have its own separate signature line in the retainer agreement and that it was a separate paragraph in a numbered list with a separate place for the client to sign under that number. Additionally, MLSA stated that there was an additional signature line at the bottom of the page for the whole document. Nonetheless, as “LSC staff found it confusing and non-compliant with the CSR Handbook (2008 Ed., as amended 2011), MLSA staff did agree to revise its retainers rather than argue format with LSC. So, the retainer agreements were revised during the compliance visit and the citizenship attestation now appears at the bottom of the retainer agreement and is not part of the body nor is it a numbered paragraph. MLSA has conducted training for all MLSA case handling staff regarding the new form.”

The aforementioned attestation was determined during the visit to be non-compliant because the signature line and date appeared after Paragraph No. 7, and did not indicate that the signature certification did not apply to the items listed in Paragraphs Nos. 1 through 6. The body of the retainer agreement, in pertinent part, was as follows:

I _____, am working with Montana Legal Services Association (MLSA) for assistance with the following problem_____. I understand and agree to the following:

1. MLSA has not agreed to help me or represent me in any way that is not stated above.
2. I understand there may be different MLSA attorneys, interns..... at no cost to me.

3. **Neither MLSA nor participating volunteers have agreed to represent me in this matter unless a separate retainer agreement is signed with MLSA or a Volunteer Attorney.**
4. I agree to keep MLSA advised of my current address and telephone number. If MLSA...close my case.
5. I have told and will continue to tell MLSA staff.....
6. If I am not happy with MLSA's services, I may ask any staff member for a copy of the MLSA Client Grievance Procedure.
7. I affirm that I am a U.S. Citizen or a Permanent Resident of the United States of America.

Signature

Date

8. I understand that I am responsible for all costs related to my case.....

Date: _____

Signed (Client): _____

Date: _____

Signed (MLSA): _____

During the visit, it was related to the PAI coordinator that in order to comply with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5, the attestation should consist of the phrase "I am a citizen of the United States," not a declaration of citizenship or permanent residency, and that the attestation should not be contained within the document unless there was a separate signature line tied only to the attestation. The retainer agreement as shown above did not consist of the language required by CSR Handbook (2008 Ed., as amended 2011), § 5.5, and it also did not have a separate signature line tied only to Paragraph No. 7. In reviewing the agreement, it appeared that the signature line applied to Paragraph Nos. 1 through 7, and that there was a separate signature certification acknowledging the client's responsibilities and understanding of the agreement's terms. As such, it was communicated while on site that the attestation should be revised to state "I am a citizen of the United States," and not "I affirm that I am a U.S. Citizen or Permanent Resident of the United States of America," and that the signature/date line should appear in such a way that it could only be attributable to the attestation. The revised PAI retainer agreement was reviewed during the visit and was determined to be compliant, as the attestation was relocated to the bottom of the page with a separate signature and date line that was not connected to the immediately preceding paragraphs.

Prior to the compliance visit, the closing case checklists did not contain fields to assess the following: whether a properly executed citizenship attestation/verification of eligibility was included in the file; the timeliness of case closure; whether the case was within MLSA's priorities and was not prohibited; whether the case file contained documentation to support the selected closing code; and whether the case file contained sufficient documentation of the legal advice provided to the client. Pursuant to on site discussions with the Executive Director, as well

as discussions after the visit, the closing case checklists were revised pursuant to the on site recommendations. In the weeks following the compliance visit, the revised documents were reviewed by OCE and were determined to be compliant. The Executive Director indicated that the revised checklists will replace the previously used forms effective immediately.

Based on the above-referenced findings and pursuant to the requirements of 45 CFR Part 1626, the DR recommended that intake staff be provided periodic training regarding timely screening applicants for citizenship or alien eligibility and ensuring proper execution of citizenship attestations prior to providing applicants with legal assistance. This action was recommended to ensure that the required corrective action in Finding 5 *infra* would be accomplished.

In its response to the DR, MLSA offered the following: “This has been done. MLSA management has revised its new staff orientation to ensure that new staff are trained regarding timely screening applicants for citizenship or alien eligibility and ensuring proper execution of citizenship attestations prior to providing legal assistance to an applicant. In addition, MLSA will conduct periodic training for MLSA’s HelpLine staff and attorneys to reemphasize this recommendation.”

The DR instructed MLSA to ensure proper application, by all intake staff, of 45 CFR § 1626.4, Program Letter 06-02, and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance.

In its response to the DR, MLSA offered the following: “This has been done. In response to the preliminary findings, MLSA conducted training for MLSA’s HelpLine intake staff on October 25, 2012, on 45 CF[R] § 1626.4, Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance. MLSA also revised its new employee training to include specific information on these requirements. Information on these requirements is also being distributed to all MLSA staff by memo. In addition, MLSA will conduct periodic training for MLSA’s HelpLine staff and attorneys to reemphasize this corrective action.”

The DR also instructed MLSA to ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR Part 1611 are met, specifically with respect to verifying and documenting the existence of over-income authorized exceptions and identifying exempt assets.

In its response to the DR, MLSA offered the following: “This has been done. MLSA’s Board of Trustees approved the newly revised financial eligibility policy on September 8, 2012. MLSA conducted training with all intake staff on September 20, 2012, and held a follow-up session on September 27, 2012. All [of] MLSA’s staff have received a copy of the revised eligibility policy and signed off acknowledging that they have read the policy. MLSA conducted a brief overview of the revised requirements at an all staff call on October 8, 2012, and will be doing a follow up presentation on November 5, 2012. Information on the revised financial eligibility policy will also be included in a program wide memo. In addition, MLSA has developed a series of questions to help MLSA staff determine and document over-income authorized exceptions that have been posted in the HelpLine wiki. In addition, some questions have been added to the

eligibility determination in Legal Server to help intake workers gather information on over income authorized exceptions if applicable. MLSA's HelpLine staff were trained on determining and documenting the over income authorized exceptions on October 18, 2012. MLSA will conduct periodic training to reemphasize this corrective action."

The DR recommended that the Billings office discontinue its use of the manual intake form used during Circuit-Riding to the Crow and Northern Cheyenne Reservations when the ACMS system is inaccessible. Instead, it was recommended that the Billings office replace this form with the MLSA Application for Assistance for those situations when computerized intake is not possible.

In its response to the DR, MLSA offered the following: "This has been done. The Managing Attorney for the Billings office has assured MLSA Management that the Billings office has discontinued its use of the manual intake form that was being used during Circuit-Riding to the Crow and Northern Cheyenne Reservations. They are now using MLSA's 2012 Application for Assistance form."

Finding 3: Sampled cases evidenced that, with a few exceptions, MLSA substantially complies with the income eligibility documentation requirements 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines (FPG). Additionally, MLSA's income eligibility policy is compliant with 45 CFR § 1611.5.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.⁴ *See* 45 CFR § 1611.3(c)(1) and CSR Handbook (2008 Ed., as amended 2011), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines (FPG) and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements,

⁴ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2008 Ed., as amended 2011), § 4.3.

With a few exceptions, MLSA maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. *See* Case Nos. 09-21044989, 10-1053975, 10-1058496, 11-0097334, 10-0093652, and 08-21038890. These are cases where the case notes indicated that the client's household income was between 125% and 200% of the FPG. While the factor selected in each of these cases was "non availability of private counsel with the expertise to handle the particular matter and the willingness to do it at a fee which the client can pay may be considered," this factor is not a factor enumerated in 45 CFR § 1611.5. Further, there was no documentation in the case file supporting the selection of this factor, or indicating that the client had other significant factors that would affect their ability to afford legal assistance, which is an authorized exception listed in 45 CFR § 1611.5. Specifically, the case notes did not document the client's attempts to obtain private counsel, the amount quoted to the client for representation, or whether the client had resources available to pay the cost of representation.

See also Case No. 09-1046273. In this case file, there was no income information documented in the case file. *See also* Case No. 11-0096453. In this case file, the client's recorded income was above 125% but below 200% of the FPG. The authorized exception selected was "other significant factor;" however, the only additional information entered by the intake worker to support the "other significant factor" selection was "under 200%."

While on site, it was noted that MLSA's financial eligibility policy was not fully compliant with 45 CFR Part 1611. The MLSA policy that was provided for review in advance of the visit was prepared based, in part, on the prior version of 45 CFR Part 1611. As such, it did not incorporate the requirement of 45 CFR § 1611.7(a)(1), which requires the income prospects of all applicants to be checked prior to determining financial eligibility. Pursuant to on site discussions with the Executive Director regarding MLSA's financial eligibility policy, the policy was revised to reflect that income prospects for all applicants would be reviewed prior to case acceptance. The revised income eligibility policy was reviewed during the visit and was determined to be compliant. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

It was also noted during the on site visit that MLSA's financial eligibility policy had not been reviewed and approved by the Board since March 2006. In accordance with the requirements of 45 CFR § 1611.3(a), grantees' governing bodies are tasked with reviewing their financial eligibility policies at least once every three (3) years, and making revisions when needed. During on site discussions with the Executive Director regarding the necessity of reviews every three (3) years, the Executive Director stated that the failure to conduct timely reviews was a management oversight that was addressed in the weeks immediately following the visit by MLSA management reviewing the requirements of 45 CFR § 1611.3(a). The Executive Director further stated that, beginning September 2012, the MLSA Board will review its financial eligibility policy at least once every three (3) years.

As noted in Finding 2 above, the DR directed MLSA to ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR Part 1611 are met, specifically with respect to verifying and documenting the existence of over-income authorized exceptions.

In its response to the DR, MLSA offered the following: “This has been done. MLSA’s Board of Trustees approved the newly revised financial eligibility policy on September 8, 2012. MLSA conducted training with all intake staff on September 20, 2012, and held a follow-up session on September 27, 2012. All [of] MLSA’s staff have received a copy of the revised eligibility policy and signed off acknowledging that they have read the policy. MLSA conducted a brief overview of the revised requirements at an all staff call on October 8, 2012, and will be doing a follow up presentation on November 5, 2012. Information on the revised financial eligibility policy will also be included in a program wide memo. In addition, MLSA has developed a series of questions to help MLSA staff determine and document over-income authorized exceptions that have been posted in the HelpLine wiki. In addition, some questions have been added to the eligibility determination in Legal Server to help intake workers gather information on over income authorized exceptions if applicable. MLSA’s HelpLine staff were trained on determining and documenting the over income authorized exceptions on October 18, 2012. MLSA will conduct periodic training to reemphasize this corrective action.”

The DR also instructed MLSA, pursuant to the requirements of 45 CFR § 1611.3(a), to ensure that its financial eligibility policy is reviewed by its governing body at least once every three (3) years and that changes to the policy are made when necessary.

In its response to the DR, MLSA offered the following: “This is being implemented. MLSA management will ensure that its financial eligibility policy is reviewed by its Board of Trustees at least once every three years and that changes to the policy are made when necessary. MLSA has set up a reoccurring reminder in its Board of Trustees management system to remind MLSA to have its Board of Trustees review the eligibility policy every three years. MLSA has also trained all administrative staff on this requirement.”

Finding 4: Sampled cases evidenced that MLSA complies with the asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. MLSA’s asset eligibility policy is compliant with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e).

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant’s eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁵ *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

⁵ A numerical total value must be recorded, even if it is zero or below the recipient’s guidelines. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

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

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

With one (1) exception, all case files reviewed that contained the documentation to comply with the requirements of 45 CFR § 1611.3(d)(2). *See* Case No. 09-1046273.⁶ In this case file, there was no asset information documented in the case file.

The MLSA asset policy that was provided for review in advance of the visit referred to the terms "liquid asset" and "non-liquid asset" in its determination of financial eligibility, but did not define the terms within the policy. Pursuant to on site discussions with the Executive Director, the policy was revised to ensure that, pursuant to 45 CFR §§ 1611.3(d)(1) and 1611.2(d), only non-excludable assets that are both readily convertible to cash and available to the applicant would be considered when determining whether the asset ceiling has been reached. Specifically, MLSA removed the distinction between non-liquid and liquid assets and amended the policy to reflect that only assets, as defined in 45 CFR § 1611.2(d), would be considered.

With respect to 45 CFR § 1611.3(d)(1) and (e), MLSA's policy that was provided for review in advance of the visit indicated that the following would not be considered assets and would be exempt from all asset calculations:

1. *Household's principal residence*
2. *Vehicles used for transportation*
3. *Personal and household effects*
4. *Trusts from household funds for education, funeral and medical expenses*
5. *Value of farmland essential to employment or self-employment*
6. *Work-related equipment used in employment*
7. *All property including animals used to provide for self sufficiency at a level not to exceed maximum income levels*
8. *Property related to religious or cultural practices*
9. *Cash value of IRA or KEOGH plans*
10. *Assets excluded under the food stamp, FAIM, and SSI programs*

⁶ This case was cited in Finding 3 *supra*.

11. *Value of Native American trust property; and*
12. *Other assets which are exempt from attachment under State or Federal Law*

The list of excludable assets found in 45 CFR § 1611.3(d)(1) is an exhaustive list and cannot be added to. As such, while on site, MLSA was advised to revise the exempt asset list in its financial eligibility policy to include only those items listed in 45 CFR § 1611.3(d)(1). Additionally, it was related that if an asset was deemed excludable pursuant to it being exempt from attachment per a State and/or Federal law, the policy should reflect the specific assets that are exempt, along with a recitation of whether State and/or Federal law authorizes the exemption. Pursuant to on site discussions with the Executive Director, MLSA revised its asset policy to list only those assets found in 45 CFR § 1611.3(d)(1), and included a citation to the specific state law that exempted additional listed assets.

The revised asset eligibility policy was reviewed in its entirety during the visit and was determined to be compliant. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

Based on the above referenced findings, the DR instructed MLSA to ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR Part 1611 are met, specifically with respect to identifying exempt assets.

In its response to the DR, MLSA offered the following: “This has been done. MLSA’s Board of Trustees approved the newly revised financial eligibility policy on September 8, 2012. MLSA conducted training with all intake staff on September 20, 2012, and held a follow-up session on September 27, 2012. All [of] MLSA’s staff have received a copy of the revised eligibility policy and signed off acknowledging that they have read the policy. MLSA conducted a brief overview of the revised requirements at an all staff call on October 8, 2012, and will be doing a follow up presentation on November 5, 2012. Information on the revised financial eligibility policy will also be included in a program wide memo. In addition, MLSA has developed a series of questions to help MLSA staff determine and document over-income authorized exceptions that have been posted in the HelpLine wiki. In addition, some questions have been added to the eligibility determination in Legal Server to help intake workers gather information on over income authorized exceptions if applicable. MLSA’s HelpLine staff were trained on determining and documenting the over income authorized exceptions on October 18, 2012. MLSA will conduct periodic training to reemphasize this corrective action.”

Finding 5: MLSA is in non-compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). There were a limited number of case files that did not contain a citizenship attestation. There were sampled case files reviewed which contained a non-CSR compliant citizenship attestation. Policies reviewed evidenced compliance with 45 CFR Part 1626.

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for

legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed., 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.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁷ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

Sampled cases evidenced non-compliance with the requirements of 45 CFR § 1626.6. There were a limited number of case files reviewed that did not contain an executed citizenship attestation. *See* Case Nos. 09-21052200, 03-1004411, 10-21060049, 10-9057252, 04-2014106, 04-10012073, and 09-9045756. The case notes in these cases indicated that the cases were opened after January 1, 2008, there was in person contact between the client and a MLSA staff worker and/or attorney, and that the client verbally attested to their citizenship prior to receiving legal assistance.

There were sampled case files reviewed that contained a citizenship attestation form that did not comply with the requirements of the CSR Handbook (2008 Ed., as amended 2011), § 5.5. *See* Case Nos. 08-21040379, 09-1051661, 08-21038890,⁸ and 09-21044989.⁹ The case notes in all of these cases indicated that the cases were opened after January 1, 2008, and that there was in person contact between the client and a MLSA staff worker and/or attorney. As discussed in Finding 2 *supra*, during the on site review, MLSA's PAI citizenship attestation was revised so that it was not included in the body of the retainer agreement, but was its own separate statement, with a signature line and date tied only to the citizenship attestation. The revised citizenship document was reviewed during the visit and was determined to be compliant. During the compliance visit, the Executive Director indicated that the approved form would replace the previously used form effective immediately, and that intake staff would receive instructions and training regarding the new form.

⁷ *See* Kennedy Amendment at 45 CFR § 1626.4.

⁸ This case was also cited in Finding 3 *supra*.

⁹ This case was also cited in Finding 3 *supra*.

Additionally, there were sampled case files reviewed that contained untimely executed citizenship attestations. *See* Case No. 09-2047077. This case was opened on April 22, 2009, but the citizenship attestation was signed by the client on October 12, 2010. The case notes indicated that there was in-person contact between MLSA and the client prior to execution of the attestation. *See also* Case No. 06-9026054. This case was opened on May 12, 2006, but the citizenship attestation was signed by the client on October 4, 2010. The case notes indicated that there was in-person contact between MLSA and the client prior to execution of the attestation. *See also* Case No. 11-0096564. This case was opened on April 26, 2011 and closed on April 28, 2011, but the citizenship attestation was signed by the client on May 31, 2011. The case notes indicated that there was in-person contact between MLSA and the client prior to execution of the attestation.

Case review revealed 17 open and closed 2012 files that were wholly supported with tribal funds provided by the Crow tribe, which did not contain citizenship attestations. *See* Case Nos. 07-2032584, 12-0102265, 11-0100752, 11-0100212, 12-0102867, 11-0099742, 10-2058565, 12-0103913, 10-2057524, 11-0101156, 11-0100315, 11-0095922, 12-0101931, 11-0097509, 11-0101391, 11-0101390, and 10-2060141. In addition, most of these files lacked many of the basic LSC client eligibility requirements, including 45 CFR Part 1611 income and asset documentation. Prior to the on site visit, the Executive Director explained that the decision of whether to include cases wholly supported with tribal funds in MLSA's CSR data reporting is made at the end of the year, when each case file is assessed to determine if it is CSR-compliant. As such, the decision of whether to include the above-referenced case files in MLSA's CSR data submission had not been made prior to the on site review.

During the visit, the Executive Director indicated that, pursuant to 45 CFR § 1610.4(a), it was permissible for cases wholly supported with tribal funds to lack documentation of citizenship or alien eligibility. Specifically, it was asserted that the restrictions regarding providing legal assistance to ineligible aliens, as specified in the Omnibus Consolidated Rescissions and Appropriations Act Section 504(a)(11) Pub.L 104-134, 110 Stat. 1321, 1355 (1996), did not apply to cases wholly supported with tribal funds, so long as the funds were used for their intended purpose. It was further offered that the Final Rule of 45 CFR Part 1610 specifically exempted cases wholly funded with tribal funds from complying with § 504 restrictions. The Final Rule, in pertinent part, states:

“...Paragraph [1610.4] (a) sets out an exception included in both the LSC Act and Section 504 for tribal funds. The exception exempts tribal funds from the general prohibition on the use of non-LSC funds, as long as the tribal funds are used for the purposes for which they were provided.”

In order to assess whether the tribal funds were being used for their intended purpose, a copy of the contract between MLSA and the Crow Tribe was reviewed while on site. The contract indicated that, on March 1, 2010, MLSA entered into an agreement to provide the Crow Tribe with trial level representation as a Crow Tribal Public Defender, for eligible defendants, when appointed by the Crow Tribal Court. The contract defined eligible defendants as defendants whose household income does not exceed 125% of the FPG. The contract further stated that MLSA shall provide civil legal assistance to “members of the Crow Tribe, persons married to

members of the Crow Tribe, and to other Indians having strong ties to the Crow Tribe who reside on or near the Crow Reservation.” Pursuant to the terms of the contract, MLSA’s appointment as a Crow Tribal Public Defender would not include representation of persons charged with domestic abuse or stalking. Lastly, the contract provided for compensation to MLSA in the amount of \$4,000.00 per month, provided that MLSA expended a minimum of 120 hours per month in “direct case services or community/legal education.”

Review of the above-referenced tribal cases revealed that the assistance provided was consistent with the purposes enumerated within the contract. All of the tribal case files reviewed concerned a defendant being represented in the Crow Tribal Court by the MLSA Tribal Public Defender. In addition, while on site, preliminary guidance was offered by the Office of Legal Affairs (OLA) that it was permissible for the above-referenced case files to not contain citizenship or alien eligibility documentation, pursuant to 45 CFR § 1610.4(a), which states, “a recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.” OLA further preliminarily advised that the fact that 45 CFR §§ 1626.3 and 1626.4 do not provide an exception for cases wholly supported with tribal funds does not render 45 CFR § 1610.4(a) null. Further guidance from OLA has been requested, in the form of an opinion, to corroborate and confirm the preliminary guidance. Once an opinion has been published, it will be forwarded to the attention of the Executive Director. Additionally, pursuant to the results of the case review, while on site, it was recommended to the Executive Director that MLSA provide training regarding LSC’s eligibility requirements to the tribal advocate providing legal services in tribal court cases, to maximize the amount of cases that MLSA can include in its CSR-data submission.

The citizenship/alien eligibility policy that was provided by MLSA for review in advance of the visit indicated that MLSA could provide services to eligible aliens, but did not list all of the categories of eligibility, or the documentation required to be reviewed in order to determine eligibility. While on site, it was recommended that the policy be revised to include the alien eligibility categories and enumerate those items that must be reviewed prior to rendering legal assistance, pursuant to 45 CFR §§ 1626.5, 1626.6, 1626.7, 1626.10, 1627.11, and Appendix to Part 1626. Additionally, the policy provided in advance of the visit did not list and define all pertinent terms referenced in the regulation. While on site, it was recommended that the policy be revised to include the definitions of those terms identified in 45 CFR § 1626.2

The above-referenced recommended revisions to MLSA’s citizenship/alien eligibility policy were completed and reviewed while on site. Pursuant to on site discussion with the Executive Director, the policy was revised to include the alien eligibility categories, enumerate those items that must be reviewed prior to rendering legal assistance, and list and define all pertinent terms referenced in the regulation. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1626. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

In conjunction with the findings relating to 45 CFR Part 1626 that were discussed in Finding 2 *supra*, the DR instructed MLSA to ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, where appropriate.

In its response to the DR, MLSA offered the following: “This has been done. MLSA management will ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), §5.5 where appropriate. MLSA adopted a new practice starting June 28, 2012, requiring supervisors to review all closed cases. For cases closed prior to June 28, the Program Administrator will conduct a review to determine if the requirements regarding citizenship or verification of alien eligibility have been met. MLSA is requiring casehandlers to review their open cases to ensure that files contain written citizenship attestations, or verifications of alien eligibility where appropriate. In addition, MLSA revised its new employee orientation to ensure new staff are properly trained on 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011). MLSA will periodically train all casehandlers to reemphasize this corrective action.”

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient’s service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a).

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.¹⁰ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Case files reviewed indicated that MLSA is in substantial compliance with the requirements of 45 CFR § 1611.9. There were a limited number of case files reviewed that did not contain a retainer agreement where required, contained an untimely executed retainer agreement, or contained a retainer agreement with an inadequate scope of representation. *See* Case No. 09-21052200.¹¹ This case was closed utilizing closing code “I(b),” Court Decision: Contested, and did not contain an executed retainer agreement. Pursuant to the documentations requirements of 45 CFR § 1611.9, this case file was required to contain a written retainer agreement. *See also* Case No. 09-2047077¹². This case was opened on April 22, 2009, and contained evidence of a court judgment on May 17, 2010. However, a retainer agreement was not completed until October 12, 2010. *See also* Case No. 08-12044452. This case was closed utilizing closing code “I(b),” Court Decision: Contested. The retainer agreement contained in the case file was timely executed; however, it did not address the scope or subject matter of the representation as is required by 45 CFR § 1611.9(a).

¹⁰ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient’s risk management.

¹¹ This case file was also cited in Finding 5.

¹² This case file was also cited in Finding 5.

Based on the above-referenced findings, the DR recommended that MLSA review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file, when required, and contain a detailed scope and subject matter of the representation.

In its response to the DR, MLSA offered the following: “This is in process. MLSA is reviewing all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file and contain a detailed scope and subject matter of the representation. MLSA instituted the requirement that supervisors review all closed cases in June of this year, and so all cases closed after June 28, 2012, will be reviewed by supervisors for compliance with the retainer requirements, among other things. MLSA’s Program Administrator and intake specialists are reviewing all cases closed in 2012 prior to June 28 for compliance with this requirement. MLSA will conduct periodic training for MLSA’s casehandlers to reemphasize this recommendation.”

Finding 7: Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). However, policies reviewed evidenced compliance with 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).

Case files reviewed indicated that MLSA is not compliant with the requirements of 45 CFR Part 1636. There was one (1) case reviewed that did not contain a statement of fact as required. *See* Case No. 08-12044452¹³. This case, which was closed under closing code “I(b),” Court Decision: Contested, involved the enrollment of a foreign judgment in a tribal court. The client was the Plaintiff in the case. Based on a complaint filed by MLSA on behalf of the client, a tribal court issued a ruling enrolling a foreign judgment in the tribal court and MLSA thereafter engaged in post-judgment proceedings, to wit, a garnishment. The MLSA case review intermediary who reviewed this file with the LSC reviewer did not have access to the physical case file and the electronic file was incomplete. As a result, the MLSA intermediary was faxed relevant file documents by the MLSA attorney who provided the representation. It is possible that the statement of fact is in the physical case file. Prior to the exit conference, MLSA was notified that the statement of fact could not be located.

¹³ This case file was also cited in Finding 6 *supra*.

The MLSA policy provided for review in advance of the visit did not indicate that, pursuant to 45 CFR § 1636.2, a separate notice may be provided to a defendant identifying the plaintiff(s), in lieu of identifying each plaintiff in a filed complaint. It was recommended that the policy be revised to reflect that an alternate notice is authorized by 45 CFR § 1636.2. Pursuant to on site discussions with the Executive Director, the policy was revised as such and presented for approval during the visit. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1636. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

Based on the above-referenced findings, the DR directed MLSA to ensure that all case files contain statements of fact pursuant to 45 CFR Part 1636, where appropriate.

In its response to the DR, MLSA offered the following: "This has been done. MLSA management will ensure that all case files contain statements pursuant to 45 CFR Part 1636, where appropriate. MLSA conducted a training on 45 CFR Part 1636 Client Identity and Statement of Facts on October 8, 2012. MLSA also implemented a case closing checklist prior to closing the case to ensure that the files contain the statement where appropriate. In addition, MLSA supervisors review the cases and ensure that everything is properly documented. MLSA began this procedure in June of 2012. MLSA will conduct periodic trainings for all attorneys to reemphasize this corrective action."

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

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

Prior to the visit, OCE was provided a list of MLSA's priorities. MLSA identifies the following types of cases as within their priorities: low income domestic violence survivors, preventing homelessness, employment, juvenile, tenant assistance, repossession and foreclosure for tribal members, consumer debt, healthcare benefits, maximizing the assistance of tribal courts, and education.

Sampled case files reviewed evidenced that MLSA is in substantial compliance with 45 CFR Part 1620. However, there were several cases reviewed that were outside of MLSA's priorities. *See* Case Nos. 11-0094913, 11-0098929, 10-2055534, 10-21052791, 10-21055638, 10-21055500, and 10-0093752. These are closed 2010 and 2011 non-emergency cases where the client was provided legal assistance in the area of employment law, which was not listed as an MLSA priority for 2010 or 2011. *See also* Case Nos. 11-0098000, 10-10055198, and 11-0095478. These are closed 2011 non-emergency cases where the client was provided legal assistance in the areas of estate and probate law, which was not listed as an MLSA priority for 2011. *See also* Case Nos. 10-1060121 and 10-2055122. These are closed 2010 non-emergency

cases where the client was provided legal assistance in the area of family law, which was not listed as an MLSA priority for 2010.

The MLSA policy provided for review in advance of the visit did not indicate that MLSA would adopt a written statement of priorities, pursuant to 45 CFR § 1620.3. The policy also did not incorporate the requirements required to be satisfied prior to accepting cases outside of the established priorities, as detailed in 45 CFR § 1620.4. Additionally, while on site it was discovered that the following areas of law: family, employment, and estate and probate, were erroneously excluded from MLSA's 2010 and 2011 priorities. When this matter was addressed during the visit, the Executive Director stated that, at no time, were these areas of law meant to be excluded from MLSA's priorities and their exclusion was an administrative oversight on the part of MLSA management.

While on site, it was recommended that the policy be revised to incorporate the above-referenced provisions, as well as include all areas of law and case types that constitute MLSA's priorities for 2012. Pursuant to on site discussions with the Executive Director, the policy was revised as such and presented for approval during the visit. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1620. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

Based on the above-referenced findings, the DR recommended that all files be reviewed prior to case acceptance to ensure that only those requests for representation that fall under MLSA's priorities are accepted for the provision of legal assistance.

In its response to the DR, MLSA offered the following: "This has been done. MLSA has developed and instituted case processing procedures to ensure that only those requests for representation that fall under MLSA's priorities are accepted. In addition, MLSA has reviewed its priorities to ensure that they encompass the different types of cases MLSA handles. MLSA will conduct periodic training to reemphasize this recommendation."

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

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

If the applicant's legal problem is outside the recipient's priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2008 Ed., 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.

Case files reviewed indicated that MLSA is in substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6. However, there were several cases closed under closure category “A,” Advice and Counsel, that had no evidence of legal advice documented in the case file. *See* Case Nos. 11-0096412, 11-0094458, 11-0094913, 11-0095179, and 11-0097108. In these cases, the case file notes indicated that the client was provided with general procedural information (*e.g.*, to call the courthouse to determine the hearing date), but did not document an application of the law to the client’s factual situation. *See also* Case No. 11-0094093. In this case, the case file contained a receipt of factual information and a notation of a scheduled advice appointment. However, the client did not appear for the advice appointment and the case file did not contain any legal assistance provided to the client. *See also* Case No. 06-9026054¹⁴. In this case, the case file contained extensive notes and was closed with case closure category “F,” Negotiated Settlement without Litigation, but the MLSA case review intermediary was unable to determine what was negotiated on behalf of the client, or the subject matter of the settlement.

Based on the above-referenced findings, the DR recommended that all case files be reviewed prior to file closing to ensure that the legal assistance provided is properly documented and that case files lacking documented legal assistance are not reported to LSC during the CSR data submission.

In its response to the DR, MLSA offered the following: “This has been done. In June of 2012, MLSA changed its procedures to require case closing reviews by supervising attorneys. MLSA developed a case closing checklist that casehandlers are required to complete, and added a supervisor closing checklist to Legal Server. These procedures were needed to ensure that legal assistance is properly documented, and that the case files lacking documented legal assistance are not reported to LSC. MLSA instituted this requirement prior to the LSC visit. It was not in effect, however, for most of the time period of the LSC file review. MLSA will conduct periodic training and compliance checks to reemphasize this recommendation.”

Finding 10: Sampled cases evidenced that, with one exception, MLSA’s application of the CSR case closure categories is consistent with Chapters VIII and IX, 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.

¹⁴ This case file was also cited in Finding 5.

The files reviewed demonstrated that, with one (1) exception, MLSA's application of the CSR case closing categories is generally consistent with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). *See* Case No. 00-2013578. This case was closed as an "F," Negotiated Settlement without Litigation. The case notes indicated that the responsible attorney attempted to negotiate a settlement but was ultimately unsuccessful and no agreement was reached. As such, the case should have been closed under closing code "B," Limited Action or "L," Extensive Service.

There are no recommendations or corrective actions required.

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

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a).¹⁵ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook, as amended 2011) should be reported as having been closed in the grant year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

Sampled cases reviewed evidenced that MLSA is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3. There were only two (2) cases reviewed that were not closed in a timely manner. *See* Case No. 10-10055198.¹⁶ This case was opened on April 14, 2010, and closed on January 21, 2011, under closure category "A," Counsel and Advice. The last action taken on the case was on April 28, 2010, and there was no indication in the file that further assistance was likely, or that the case should be held open for a specific reason. As such, this case should have been closed on or before December 31, 2010. *See also* Case No. 08-21042009. This case was opened on August 19, 2008, and closed on January 27, 2010, under closure category "A," Counsel and Advice. The last contact with the

¹⁵ The time limitation of the 2001 Handbook that a brief service case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed., as amended 2011), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

¹⁶ This case file was also cited in Finding 8.

client was in October 2008 and there was no indication in the file that further assistance was likely, or that the case should be kept open for a specific reason. Accordingly, this file should have been closed on or before December 31, 2008.

There are no recommendations or corrective actions required.

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

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.

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

When a recipient provides more than one (1) type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2008 Ed., 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 (2008 Ed., as amended 2011), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.4.

Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2.

There are no recommendations or corrective actions required.

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

Finding 13: Review of MLSA's policies and the list of attorneys who have engaged in the outside practice of law, as well as interviews with the Executive Director, one (1) Supervising Attorney, one (1) staff attorney, and all of the attorneys who have engaged in the outside practice of law during the review period, revealed that MLSA 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.

During the compliance visit, MLSA indicated that it had two (2) employees who engaged in pre-approved, outside practice of law. The first individual assisted two (2) separate clients with permissible representation and engaged in the outside practice of law from March 10, 2012 through the date of the compliance visit. This individual indicated that their outside practice of law was currently ongoing and the expected date of completion was unknown. The individual's time and attendance records for the period of February 11, 2012 through June 29, 2012 were carefully reviewed and no exceptions were noted. Additionally, it was related that vacation time is used for any outside practice of law activities that take place during regular work hours; that MLSA resources are not used to engage in outside practice of law activities; and MLSA resources are not used to conduct outside practice of law.

The second individual engaged in outside practice of law works from a home office and has assisted one (1) client with permissible representation. This individual explained that their MLSA timesheet is used solely to document the daily eight (8) hours per day attributable to work performed for MLSA on Monday through Friday; that vacation time is taken for outside practice of law activities that take place during regular work hours (e.g., attending a meeting); that work on the outside practice of law issues is conducted primarily in the evening and on the weekends; and that no MLSA resources are used to conduct outside practice of law.

Based on interviews with the Executive Director, one (1) Supervising Attorney, one (1) staff attorney, and the attorneys on the list provided by MLSA who have engaged in outside practice of law, MLSA is in compliance with the requirements of 45 CFR Part 1604.

The MLSA policy provided for review in advance of the visit defined outside practice of law as “the provision of legal assistance to a client *who is not entitled to receive legal assistance from MLSA; but does not include, for example, teaching, consulting, serving on the Board of Directors of other non-profit organizations, or performing evaluations.*” While on site, the definition contained in 45 CFR § 1604.2(b) was reviewed, and it was concluded that, pursuant to the regulation, the provision of legal assistance can take place with clients who are both eligible and ineligible for legal assistance. It was further noted that the regulation definition only requires that the client not be receiving the same assistance from the attorney's employer. As such, pursuant to on site discussions with the Executive Director, it was suggested that the above-referenced language be replaced with “...to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance...”

It was also related during the visit that, under 45 CFR §1604.2(b), there are no examples of what does not, as a rule, constitute outside practice of law. This is because each request to engage in outside practice of law needs to be reviewed to ensure that the activity does not constitute outside practice of law, even if the title of the request suggests no outside practice of law (e.g., request to consult for Program A). As such, it was suggested during the visit that the examples “teaching, consulting, serving on the Board of Directors of other non-profit organization, or performing evaluations” be removed from the definition.

The policy further indicated that a full time employee may not engage in *gainful* outside employment. As 45 CFR § 1604.5 states that outside practice of law can be either compensated or uncompensated, and there was no definition in MLSA's policy for "gainful," it was recommended that the word "gainful" be removed so the sentence reads, "An employee, whether part-time or full-time, may not engage in outside employment..."

Lastly, the policy provided for review did not indicate that, pursuant to 45 CFR § 1604.4, in order to permit outside practice of law, the Executive Director must first determine that the representation is consistent with the attorney's responsibilities to MLSA's clients. As such, it was recommended that the pertinent sentence should be rewritten as such: "The Executive Director may permit a full-time staff attorney to engage in the outside practice of law only if the Executive Director determines that the representation is consistent with the attorney's responsibilities to MLSA's clients and..."

Pursuant to on site discussions with the Executive Director, the policy was revised to incorporate all of the above-mentioned recommendations and presented for approval in the weeks following the visit. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1604. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

There are no recommendations or corrective actions required.

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

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

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

During the compliance visit, MLSA's Regulation 223, entitled "Prohibited Political Activities," was reviewed. A limited review of various accounting documents (*e.g.*, cash receipts register, cash disbursement journal, various general ledger expense accounts, vendor list, etc.) and supporting documentation for the period of January 1, 2010 through May 15, 2012, as well as interviews with MLSA's Director of Finance and Administration and the Executive Director, disclosed that MLSA does not appear to have expended any grant funds, or used personnel or equipment in prohibited political activities in violation of 45 CFR §§ 1608.3(b) and 1608.4(b).

A comprehensive review of MLSA's pamphlets, brochures, flyers, etc. was conducted during the on site visit. Review of the above-referenced materials revealed that all collected information was found to be free of any prohibited political message, expression, symbol, image, or allusion, and in compliance with 45 CFR Part 1608.

Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies indicated that MLSA is not involved in such activity.

There are no recommendations or corrective actions required.

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

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

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).

The MLSA policy provided for review in advance of the visit for review did not state the accounting requirements for receipts of attorneys' fees, or the procedure for accepting client reimbursement, pursuant to 45 CFR §§ 1609.4 and 1609.5. Pursuant to on site discussions with the Executive Director, the policy was revised to include the required provisions. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1609. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies evidenced compliance with the requirements of 45 CFR Part 1609.

There are no recommendations or corrective actions required.

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

Finding 16: A limited review of MLSA's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities. MLSA generally complies with 45 CFR § 1610.5, however, improvement is necessary.

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees.

Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include:

- i) the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;
- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

See 45 CFR § 1610.8(a); *see also*, OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may

be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

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

A limited review of MLSA's chart of accounts and detailed general ledger (G/L) for specific G/L accounts for January 1, 2010 to May 15, 2012, observations of the physical locations of all offices by the review team, and interviews with staff indicate that MLSA does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues. MLSA does not have contracts with other organizations to provide personnel, accounting, information technology, or other support services that would require compliance with the LSC 45 CFR Part 1610.

45 CFR § 1610.5(a) states that "... no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds." Upon request, the Director of Finance and Administration generated a list of all sources that provided donations to MLSA of at least \$250.00 or greater for the years 2010, 2011, and the first four-and-one-half (4 ½) months of 2012. A sample comprised of four (4) *Cy Pres* awards, one (1) foundation grant, and three (3) donations was selected for an in-depth review.

To satisfy the requirements of 45 CFR § 1610.5(a), MLSA demonstrated that it sent out a thank-you letter/written notification to those sources who donated \$250.00 or more. The written notifications to private donors were reviewed and were found to contain specific language outlining the conditions and prohibitions that governed the use of the funds.

However, a grant from the Sample Foundation for \$10,000.00 did not receive any written notification outlining the conditions and prohibitions that governed the funds. Additionally, an acknowledgement and thank-you letter was sent for one (1) of the four (4) *Cy Pres* awards, but it lacked the required specificity in the body of the letter. Specifically, it failed to mention that the funds may not be used in any manner inconsistent with the Legal Services Corporation Act or

§504 of Public Law 104-134. There was no notification of any kind provided with respect to MLSA's receipt of the three (3) remaining *Cy Pres* awards.

While on site, one of the fiscal reviewers spoke with the Executive Director regarding the list of donations over \$250.00 that was generated by MLSA's Director of Finance and Administration, and the Executive Director indicated that the *Cy Pres* awards and the Sample Foundation grant were wrongly included in the list of donations (due to a coding error) and, as such, did not have a corresponding thank-you letter that explained the LSC prohibitions and conditions that would be placed on the funds. It was also explained that the Sample Foundation grant was mistakenly pulled under the Income code for donations when it really was not a donation, but a grant, that should not have been included on the list of donations of \$250.00 and above. At the exit conference, one of the fiscal reviewers concurred that the *Cy Pres* awards and Sample Foundation grant did not need to receive a thank-you letter, pursuant to 45 CFR § 1610.5(a).

However, upon further review of 45 CFR § 1610.5(a) and Program Letter 12-2, the fiscal reviewer tasked with reviewing 45 CFR § 1610.5(a) compliance, determined that thank-you letters and/or prior written notification outlining LSC restrictions on received funds meeting or exceeding \$250.00, were required for the *Cy Pres* awards and the Sample Foundation grant. Specifically, 45 CFR § 1610.5(a) states that grantees may not accept funds, in the amount of \$250.00 or more, from any source other than LSC, unless the grantee provides written notification of the prohibitions and conditions that apply to the funds, which would include all funds received, not just donations. As such, by electronic mail dated July 31, 2012, MLSA was notified that for grants and other funding sources to which MLSA applies for or solicits funding from (that are equal to or greater than \$250.00), the notice of the restrictions referred to in 45 CFR § 1610.5(a) should be given during the course of the solicitation or application and, when notice of the restrictions is not able to be provided in advance, a thank-you letter, which includes the notification, should be sent upon receipt of the funds.

The DR instructed MLSA to ensure that for grants and other funding sources to which MLSA applies for or solicits funding from (that are equal to or greater than \$250.00), notice of the restrictions referred to in 45 CFR § 1610.5(a) is given during the course of the solicitation or application or, when notice of the restrictions is not able to be provided in advance, an acknowledgement letter, which includes the notification, is sent upon receipt of the funds.

In its response to the DR, MLSA offered the following: "MLSA management will ensure that, where applicable, notice of the restrictions referred to in 45 CFR § 1610.5(a) is given during the course of solicitation or application or, when notice of the restrictions is not able to be provided in advance, a thank-you letter which includes the notification, is sent upon receipt of the funds. In practice, this means that the required notice will be included in all grant applications or requests for funding when possible. When not possible, the notice will be included in a follow up communication such as a thank you letter. In particular, MLSA will include the notice in follow up correspondence sent in response to a *Cy Pres* award."

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

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

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors. *See* 45 CFR §§ 1614.3(a), (b), (c), and (e)(3). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. *See* 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

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

MLSA is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases. Additionally, MLSA is in compliance with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Review of MLSA's PAI schedule disclosed in the Audited Financial Statement for Fiscal Year Ending December 31, 2011 demonstrated sufficient, fiscal compliance with 45 CFR Part 1614.

MLSA's PAI component consists of a network of individual volunteer attorneys. The majority of MLSA's PAI cases primarily deal with family law, estates and probate, and landlord/tenant disputes. There are three (3) PAI coordinators, located in the Missoula, Helena, and Billings offices. The PAI coordinators are not attorneys; their title is program assistant. The PAI coordinators handle oversight for all of MLSA's PAI cases. The Director of Community Engagement, who is an attorney, supervises the PAI coordinator in Missoula; the Managing

Attorney of the Helena office supervises the PAI coordinator in Helena; and the Managing Attorney for the Billings office supervises the PAI coordinator in Billings.

Intake Process: The intake process for a PAI case is identical to the intake process for a staff case, which was discussed herein in Finding 2 *supra*. Once a case is referred to the PAI department, it is assigned to a PAI coordinator who reviews the intake for accuracy, to ensure that all of the critical fields are complete (income, assets, citizenship screening, etc.), and to ensure that there is sufficient information concerning the applicant, the adverse party, and the nature of the case. The PAI coordinator will then contact the applicant and conduct an interview to determine suitability for referral to a private attorney.

Referral Process: If the applicant is accepted for referral to a private attorney for services, cases are placed on a PAI waitlist; cases that have upcoming court dates are given priority and are placed at the top of the wait list. At this time, the client is sent an introductory letter explaining the wait list process and the *pro bono* arrangement, as well as a manual intake form, which contains a citizenship attestation, if they were not screened in person. After placing the case on the waitlist, the responsible coordinator attempts to place the case with a suitable PAI attorney via telephone calls and email. Interviews with PAI coordinators indicated that cases usually can be placed by the responsible coordinator within two (2) to four (4) weeks, depending on the nature of the case. For extended service cases that are within MLSA's priorities, continuous attempts are made to refer the case to a participating private attorney, based on the attorney's reported interest in specific types of cases. Once the responsible coordinator confirms that an attorney is available, the coordinator sends a referral packet to the attorney, which includes a case closure form, client documents, and a completed intake sheet. If, despite repeated attempts, a case is unable to be placed with a private attorney within four (4) weeks of contact attempts, the coordinator will contact the applicant to let them know that their case cannot be placed, and refer the applicant to an appropriate agency, when applicable.

Once a case has been accepted and placed with a private attorney, the responsible PAI coordinator then calls the client and instructs the client to contact the attorney. If the client does not contact the private attorney and ceases communication with the coordinator, the coordinator will review the case closure form provided by the private attorney to determine if any assistance was provided. The case will be de-selected if no assistance was provided. If assistance was provided, the case will be closed as a staff or PAI case, depending upon which case handler provided the legal assistance. If the private attorney fails to remain in contact with the client, every effort will be made to secure another private attorney for the client.

Oversight: Once a case has been placed within the PAI component, the case is routinely monitored for status updates by the responsible coordinator. When requesting status updates, the PAI coordinator telephones and emails the attorney and/or the attorney's assistant to obtain the status of the case. The PAI coordinator may also contact the client to determine the status of the case. The coordinators interviewed indicated that if they are unable to determine the status of the case, the case will be closed based upon the information in the file. Once the responsible coordinator has determined that a case should be closed, either due to inactivity lasting longer than 90-120 days, or resolution of the client's case, the case closure form that was previously sent to the private attorney is requested to be returned. However, this form often does not elicit

from the private attorney sufficient information concerning the legal assistance provided; as a result, this information is often obtained directly from the private attorney by telephone call or email message.

Once the final closing information is obtained, the responsible PAI coordinator will enter the case information into the ACMS, review and ready the case for closing, assign a closing code, prepare a closing letter for the client, and close the case in the ACMS. The PAI files are reviewed by the Pro Bono Coordinator or the Director of Community Engagement at the end of the year for accuracy.

There was one (1) PAI case reviewed that contained an untimely citizenship attestation. *See* Case No. 07-1031936. In this case, the case notes indicated that there was in person contact between the client and a MLSA PAI attorney on May 14, 2007. However, the citizenship attestation contained in the case file was dated September 8, 2008. As such, the attestation is untimely and should have been signed prior to, or at, the in-person meeting between the client and the attorney.

There were a limited number of PAI cases that did not contain a sufficient description of the legal assistance provided. *See* Case No. 07-21032081. This case was closed utilizing closing code “H,” Administrative Decision. The case notes indicated that the client sought assistance with appealing a child support enforcement order. However, there was no indication in the case file as to whether an administrative body issued a ruling for or against the client, or when such a ruling was entered. As such, the description of legal assistance is not sufficient to support the selection of closing code “H.” *See also* Case No. 10-1053975.¹⁷ This case was closed utilizing closing code “I(b),” Court Decision: Contested. The case notes indicated that the client sought assistance with a custody dispute and the private attorney’s case closure form indicated that the case should be closed as a court decision. However, there was no indication in the case file as to whether the court decision was contested or uncontested, or when the decision was made by the court. As such, the description of legal assistance is not sufficient to support the selection of closing code “I(b).” *See also* Case No. 08-21040379.¹⁸ This case was closed utilizing closing code “F,” Negotiated Settlement Without Litigation. The case notes indicated that the client sought assistance with resolving a tax issue and the private attorney’s case closure form indicated that the case should be closed as a negotiated settlement. However, there was no indication in the case file as to whether the settlement was negotiated with or without litigation. Additionally, the case file did not contain documentation of the settlement, as required by the CSR Handbook (2008 Ed., as amended 2011), § 8.3. As such, the description of legal assistance is not sufficient to support the selection of closing code “F.” *See also* Case No. 08-21038890.¹⁹ This case was closed utilizing closing code “I(b),” Court Decision: Contested. The case notes indicated that the client sought assistance with resolving a custody dispute. However, there was no description of legal assistance provided in the case file. The case review intermediary indicated that this case should have been de-selected and not included in MLSA’s CSR data reporting, due to no legal advice being given.

¹⁷ This case was also cited in Findings 3 and 5 *supra*.

¹⁸ This case was also cited in Finding 5 *supra*.

¹⁹ This case was also cited in Findings 3 and 5 *supra*.

There were a limited number of PAI cases reviewed that were untimely closed. *See* Case No. 07-1031936.²⁰ This case was opened May 2, 2007, and closed July 11, 2011. The case notes indicated that the last legal activity occurred in 2008 and that there was no activity in 2009. As such, this case should have been closed on or before December 31, 2009. *See also* Case No. 06-10022527. This case was opened January 23, 2006, and closed May 20, 2011. The case notes indicated that the last legal activity occurred in 2008 and that there was no legal activity in 2009. As such, this case should have been closed on or before December 31, 2009. *See also* Case No. 07-21032081.²¹ This case was opened May 9, 2007, and closed June 24, 2011. The case notes indicated that there was legal activity continuing through 2008. However, there was no legal assistance noted in 2009, 2010, or 2011. As such, this case should have been closed on or before December 31, 2009.

There were a limited number of PAI case files reviewed that contained incorrect closing codes. *See* Case No. 09-21049055. This is a closed 2011 case file that was closed under closing code “L,” Extensive Service. The case notes indicated that the attorney represented the client at a contested hearing for a temporary restraining order, which resulted in an order being granted. As such, the more applicable closing code is “I(b),” Court Decision: Contested. *See also* Case Nos. 09-21050592, 09-21050860, 10-21052736, 09-21050115, 09-21048887, and 09-21051413. These cases were all closed utilizing closing code “L,” Extensive Service. The case notes in each case indicated that the legal assistance provided to the client was participation in a bankruptcy clinic which consisted of two (2) sessions. The first session consisted of providing the clients with instructions on how to complete the *pro se* bankruptcy petition. The second session consisted of a *pro bono* attorney reviewing the client’s completed bankruptcy petition for accuracy. As there was limited involvement by the *pro bono* attorney and the case notes did not indicate a high level of factual complexity, highly sophisticated legal analysis, or significant legal research, the more applicable closing code is “B,” Limited Action. The following CSR FAQ question and answer was used for guidance in making this determination:

Question- We have a question about the appropriate closing code for our *pro se* divorce clinics. We are debating between code B and code L. These are clinics for people with children. At the clinic the participant receives all forms/pleadings to complete a divorce, comprehensive instruction on completing the forms, which they do during the clinic, and instruction on how to file and finalize the divorce. In addition, our staff completes the very complicated child support worksheets for the client in advance of the clinic. The clinics last approximately four hours. Once the client leaves the clinic, they are on their own to complete their divorce, although they are invited to call us back at any time that they may have questions during the process.

Our question is would the divorce clinic cases be closed as code B or code L. We feel that there was extensive service since the client was not simply provided a packet of forms with limited instruction and sent on their way. We also, as noted above, complete for them a complicated child support worksheet, without which they could not file their divorce.

²⁰ This case was also cited *supra* for containing an untimely citizenship attestation.

²¹ This case was also cited *supra* for insufficient description of legal assistance provided.

Answer- This is a judgment call depending on the extent and complexity of the legal work done for the client. “Extensive on-going assistance to clients who are proceeding *pro se*” is one of the types of case that may be closed in Category L. Guidance as to the factors to be considered in whether a case is closed as L are set forth in footnote 54 of the 2008 CSR Handbook:

Factors that favor selection of CSR Closure Category L include but are not limited to: (1) a high level of factual complexity; (2) a highly sophisticated legal analysis; (3) drafting of non-routine original pleadings or legal documents; and (4) significant legal research. Although not controlling, programs may also consider whether a substantial amount of time was charged to the case as evidence of extensive services.

The assignment of B or L code should be determined on a case-by-case basis. It is quite likely that some of these cases would qualify only as code B, while others at the same clinic would qualify as code L, because their fact situation is more complex, or requires more analysis or more complex analysis, or requires more follow up with the client.

Proposed CSR Question

During PAI case review, a particular scenario was described, with the question of whether the scenario could be included in MLSA’s CSR data submission. It was related during the on site review that the Missoula office is currently doing about 40-50 of the below-described cases per year out of their annual caseload of around 200 PAI cases, for a total of approximately 25% of the Missoula office’s PAI caseload. The funding program from which these cases arise is less than a year old, but the Missoula office indicated that the case closure numbers are likely to increase significantly because the court has expressed interest in the program, and the PAI attorneys are particularly willing to do these kinds of cases. As a result, the following scenario was presented to LSC’s CSR Questions Committee for interpretation and guidance:

“First, two parties are court-ordered to submit to settlement of a particular civil issue. Then, one or both of the parties contact MLSA, who is authorized by the court to appoint a *pro bono* settlement master from their pool of PAI attorneys, to arrange for a settlement/mediation conference. According to the PAI coordinator, at the settlement/mediation, the appointed PAI attorney acts as both a settlement master, in that he or she makes legal determinations, but also as an attorney to both parties, by providing both with legal advice (even though they have opposing interests). Additionally, the PAI coordinator indicated to an LSC case reviewer that the settlement masters perform a quasi-judicial function, in that they encourage settlement, but lack the judicial authority to actually resolve a case. Lastly, the coordinator stated that the Montana Rules of Professional Conduct allows for the settlement master to "represents" both parties and "advise" both parties in such a situation, even though they have opposing interests.

In further discussing the scenario with the PAI case reviewer, the PAI coordinator indicated that under Montana rules of professional ethics, the work done by a settlement master constitutes the creation of a client-lawyer relationship (Montana's term for the

concept). The coordinator is certain that the judges assigning these cases to settlement masters would deem the relationship to be governed by that rule, and that the attorneys serving in this role likewise would consider themselves to be bound under their professional ethics as having created a client-lawyer relationship with the two parties. The coordinator also believes that under Montana ethics rules, the settlement master has this client-lawyer relationship with both of the parties; therefore, both qualify as clients from the attorney's and the court's perspective, and legal advice is provided to both.

However, when reviewing the Montana Rules of Professional Conduct, it appears that this scenario may not constitute the creation of an attorney-client relationship, such that the settlement master can advise both parties, without some sort of written opinion to the contrary, or a mutual understanding that the parties submitting to the settlement are the lawyer's clients. Specifically, the pertinent rule states:

Rule 2.3 Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, settlement master, mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform all parties that the lawyer is not representing them. The lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

The PAI coordinator is under the impression that cases such as these may potentially be counted in MLSA's CSR data submission if MLSA is able to demonstrate the following: both parties are deemed financially eligible to receive legal assistance prior to being assisted; all parties receiving legal assistance satisfy the citizenship/alien eligibility requirements prior to being assisted; the case is within MLSA's priorities; the case has been accepted by MLSA; the legal assistance provided meets the criteria of the CSR Handbook (2008 Ed., as amended 2011), § 8.3 (Closure Categories); the legal assistance provided is not prohibited by the LSC Act, regulations, or other applicable law; the legal problems of the parties) are not prohibited by the LSC Act, regulations, or other applicable law; and Montana's Rules of Professional Conduct allows for the creation of an attorney-client relationship between the settlement master and the parties provided with legal assistance during the settlement/mediation conference.

Please provide guidance as to whether this type of scenario can be counted as a CSR-reportable PAI case and, if so, if any additional documentation would be necessary to include in the case file to establish reportability. Thank you in advance for your assistance.”

In response to the proposed question, the Chairperson of the CSR Questions Committee indicated that an answer would be provided during the comment and review period immediately following the issuance of this draft report. Additionally, on September 10, 2012, the Committee indicated that it needed additional information in order to fully address the proposed question. As such, a request was sent to the Executive Director on September 10, 2012, via electronic mail, for supplemental information regarding MLSA's interpretation of Rule 2.3 of Montana's Rules of Professional Conduct. In response to the request for supplemental information, on September 25, 2012, the Executive Director issued the following via electronic mail:

“... we have no more information to pass along to the CSR committee. We agree with [the] interpretation that these pro bono assignments are not reportable to LSC as cases because no attorney client relationship is created under the Montana ethical rules. We will still be coordinating these cases on behalf of the local pro bono committee, but will not report them as LSC eligible cases.”

As such, this question is no longer pending with the CSR Questions Committee, and it is understood that the above-referenced PAI scenario will not be included in MLSA's CSR data submission to LSC.

Based on the above-referenced findings, the DR recommended that MLSA conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure effective PAI case oversight.

In its response to the DR, MLSA offered the following: “This has been done. MLSA management ensures that it is conducting reviews of the case management system and case status reports on open and closed PAI cases to ensure effective PAI case oversight. MLSA is working with its Program Assistants to ensure that timely follow-up is conducted every six (6) months on open PAI cases to determine if the case is ongoing. MLSA is using a case closing checklist prior to closing the case to ensure that PAI files are closed in a timely manner and that only timely closed cases are reported to LSC. In addition, MLSA supervisors review the cases and ensure that PAI cases are timely closed and only timely closed cases are reported to LSC. MLSA began this procedure of June of 2012. MLSA will conduct periodic training to reemphasize this recommendation.”

The DR instructed MLSA to ensure that all PAI cases are timely closed and only timely closed cases are reported to LSC.

In its response to the DR, MLSA offered the following: “This is being implemented. MLSA management will ensure that all PAI cases are timely closed and only timely closed cases are reported to LSC. MLSA is working with its Program Assistants to ensure that timely follow-up is conducted every six (6) months on open PAI cases to determine if the case is ongoing. MLSA is using a case closing checklist prior to closing the case to ensure that PAI files are closed in a timely manner and that only timely closed cases are reported to LSC. In addition, MLSA supervisors review the cases and ensure that PAI cases are timely closed and only timely closed cases are reported to LSC. MLSA began this procedure in June of 2012. MLSA will conduct periodic trainings with MLSA staff to reemphasize this corrective action.”

The DR also instructed MLSA to ensure that, for PAI cases, all case information relating to the provision of legal assistance, pursuant to the requirements of the CSR Handbook (2008 Ed., as amended 2011), Chapters V and VIII, is included in each file.

In its response to the DR, MLSA offered the following: “This has been done. MLSA management will ensure that all case information relating to the provision of legal assistance in PAI cases is included in each file. MLSA Program Assistants will conduct appropriate follow up with PAI attorneys and clients to determine the assistance provided if that information is not furnished in response to MLSA’s case closing procedures. In addition, MLSA is using a case closing checklist prior to closing the case to remind the Program Assistant closing the case, and the Supervising Attorney reviewing the closure to check and make sure that the case information regarding the provision of legal assistance by the PAI attorney is included in the file. These requirements will be reviewed with the Program Assistants coordinating PAI at the next quarterly meeting, and will be disseminated in a memo to all staff as well.”

Finding 18: MLSA is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient’s programmatic activities.²² Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000.00 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2).

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

Subgrants may not be for a period longer than one year, and all funds remaining at the end of the grant period are considered part of the recipient’s fund balance. All subgrants must provide for their orderly termination or suspension, and must provide for the same oversight rights for LSC

²² Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient’s legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient’s clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

with respect to subrecipients as apply to recipients. Recipients are responsible for ensuring that subrecipients comply with LSC's financial and audit requirements. It is also the responsibility of the recipient to ensure the proper expenditure of, accounting for, and audit of the transferred funds. *See* 45 CFR §§ 1627.3(b)(1), (b)(2), (c), and (e).

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

MLSA is a subrecipient of Colorado Legal Services for the development of bankruptcy-related web content. MLSA has received \$6,243.00 from Colorado Legal Services in order to develop the above-mentioned web content. Due to the recent filing by Colorado Legal Services for subgrant approval, compliance with the requirements of 45 CFR § 1627.2(b)(1) cannot be determined at this time. Upon review of all related documentation concerning the subrecipient relationship between MLSA and Colorado Legal Services, a determination of compliance will be issued and communicated directly to MLSA and Colorado Legal Services.

Interviews with the accounting assistant indicated that non-mandatory membership fees or dues are being paid with non-LSC funds. This verbal assurance was corroborated with supporting documentation. The sub-ledger account entitled "membership fees and dues" was obtained for review, which revealed that sample payments were properly identified in the sub-ledger. Additionally, a total of 10 different payments of various membership fees and/or membership dues were reviewed and no exceptions were found. Therefore, MLSA is in compliance with the requirements of 45 CFR § 1627.4(a).

There are no recommendations or corrective actions required.

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

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

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must

satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

A review of eight (8) attorneys' and paralegals' timekeeping records selected from MLSA offices for the pay periods ending February 24, 2012 and March 9, 2012 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter, or supporting activity was recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

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

There are no recommendations or corrective actions required.

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

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.²³ 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 30, 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

²³ The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter10-1 (February 18, 2010).²⁴

A limited review of MLSA fiscal records and the 2010 and 2011 Audited Financial Statements (AFS) and interviews with the Director of Finance and Administration evidenced that there were no attorneys' fees awarded, collected, or retained for cases serviced directly by MLSA that would violate 45 CFR Part 1642.

The sampled files reviewed did not contain a prayer for attorneys' fees, as such MLSA is in compliance with the requirements of 45 CFR Part 1642. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies, further collaborated this finding.

There are no recommendations or corrective actions required.

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

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

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, 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.

A listing was obtained of MLSA employees who performed legislative activities during the time period of January 1, 2010 through May 15, 2012. From that list, a sample was selected of employees who engaged in legislative activities. The sample employees' time records for the time they were engaged in legislative activities were compared against the employees' hours worked, to determine if the employees were paid with LSC funds. Review of the selected sample revealed that the employees were paid with non-LSC funds for their time spent on legislative activities. Based upon review of all relevant materials, it appears that MLSA is in compliance with 45 CFR Part 1612.

The MLSA policy on legislative and administrative advocacy that was provided for review in advance of the on site visit did not provide all of the permissible activities that could be undertaken without violating 45 CFR Part 1612. Additionally, the policy indicated it was permissible to use non-LSC funds make information available to commissions, committees or

²⁴ 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.

advisory bodies, although this exception is not enumerated in the regulation. While on site, it was recommended that the policy be revised to include all permissible activities, as identified in 45 CFR § 1612.5, as well as to identify only those exceptions listed in 45 CFR § 1612.6. Pursuant to on site discussions with the Executive Director, revisions to the policy were made and submitted to the review team prior to conclusion of the visit. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1612. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies and fiscal records, further collaborated this finding.

There are no recommendations or corrective actions required.

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

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

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

None of the sampled files reviewed involved using LSC funds to provide legal assistance with respect to a criminal proceeding, or funds from any source to collaterally attack a criminal conviction. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies, also confirmed that MLSA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

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

“initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).²⁵

The MLSA policy that was provided for review in advance of the visit did not indicate that it is permissible to provide legal assistance to an individual who is seeking to withdraw from, or opt out of, a class in a class action matter. While on site, it was recommended that the policy be revised to reflect the above-referenced provision. Pursuant to on site discussions with the Executive Director, the policy was revised to reflect the permissible activities, pursuant to 45 CFR § 1617.2(b)(2). The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1617. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

None of the sampled files reviewed involved initiation or participation in a class action. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient’s policies and fiscal records, also confirmed that MLSA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

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.

The MLSA policy that was provided for review in advance of the visit misstated the purpose of the regulation, as provided in 45 CFR § 1632.1. While on site, it was recommended that the policy be revised to reflect the regulation’s intended purpose. Pursuant to on site discussions with the Executive Director, the policy was revised to reflect the recommended change. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1632. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient’s policies and fiscal records, also confirmed that MLSA is not involved in this prohibited activity.

²⁵ 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).

There are no recommendations or corrective actions required.

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

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

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 of other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

The MLSA policy that was provided for review in advance of the visit did not indicate that it is impermissible to represent any individual that has been charged with, or convicted of, manufacture of a controlled substance or possession with the intent to distribute a controlled substance, pursuant to 45 CFR § 1633.3(a). While on site, the review team advised MLSA that the policy should be revised to reflect that prohibition. Pursuant to on site discussions with the Executive Director, the policy was revised to reflect the necessary change. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1633. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

None of the sampled files reviewed involved defense of any such eviction proceeding. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies, also confirmed that MLSA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

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

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Sampled files reviewed, interviews with the

Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies also confirmed that MLSA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.²⁶ This restriction has been contained in all subsequent appropriations acts.²⁷ This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

The MLSA policy that was provided for review in advance of the visit did not list all of the permissible activities that do not violate the regulation, as outlined in 45 CFR § 1638.4. While on site, the review team advised MLSA that the policy should be revised to reflect all permissible activities. Pursuant to on site discussions with the Executive Director, the policy was revised to reflect the necessary change. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1638. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

None of the sampled files, including documentation, such as community education materials and program literature, indicated program involvement in such activity. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies and fiscal records, also confirmed that MLSA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

²⁶ See Section 504(a)(18).

²⁷ See Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

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

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

None of the sampled files reviewed involved such activity. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies also confirmed that MLSA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

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

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

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

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Sampled files reviewed, interviews with the Executive Director, one (1) Supervising Attorney, and one (1) staff attorney, and review of the recipient's policies further evidenced and confirmed that MLSA was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or corrective actions required.

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

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

During the compliance visit, the review team requested to see copies of signed written agreements wherein staff acknowledged, among other things, that they have read and are familiar with MLSA's priorities and emergency case acceptance procedures. Pursuant to the request, the Executive Director provided copies of the statements signed by MLSA staff, which were consistent with the requirements of 45 CFR § 1620.6. Additionally, interviews with the Executive Director evidenced that MLSA is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

There are no recommendations or corrective actions required.

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

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1639 (Restrictions on welfare reform).

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

The MLSA policy on welfare reform that was provided for review in advance was developed, in large part, based on the prior version of 45 CFR Part 1639. As such, it contained many outdated

and inapplicable provisions. While on site, MLSA was advised that the policy should be revised to reflect the current version of the regulation, specifically with respect to identifying all permissible and prohibited activities, pursuant to 45 CFR §§ 1639.3 and 1639.4 . Pursuant to on site discussions with the Executive Director, the policy was revised to reflect the necessary changes. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1639. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

There are no recommendations or corrective actions required.

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

Finding 32: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1619 (Disclosure of information).

In accordance with 45 CFR Part 1619, recipients are directed to disclose certain information that is a valid subject of public interest in the recipient’s activities. 45 CFR § 1619.2 requires recipients to adopt a procedure to afford the public appropriate access to the following:

- a. the LSC Act, Corporation rules, regulations, and guidelines;
- b. the recipient’s written policies, procedures, and guidelines;
- c. the names and addresses of the members of the recipient’s governing body; and
- d. other material that the recipient determines should be disclosed.

The MLSA policy on case disclosure that was provided for review in advance of the visit did not indicate that the names and addresses of the members of MLSA’s governing body would be provided to the public, as required by 45 CFR § 1619.2. While on site, it was recommended that the policy be revised to enumerate all information to be disclosed. Pursuant to on site discussions with the Executive Director, the policy was revised to reflect the necessary change. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1619. The revised policy was scheduled to be reviewed and approved by the Board in September 2012.

There are no recommendations or corrective actions required.

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

Finding 33: Sampled cases reviewed evidenced compliance questions regarding the documentation requirements of “Special Representative” cases.

During the on site review, the below-described case type was reviewed for compliance. As it was unclear as to how such cases should be screened for eligibility, the following question was submitted to LSC’s CSR Questions Committee:

“Two (2) cases were reviewed in which MLSA was appointed by a tribal court judge to serve as a “Special Representative” in order to assist in the closing of the estate of a decedent. In both cases, the named Personal Representative was found to have a conflict of interest in serving as the representative of the estate and, therefore, the tribal court appointed an MLSA attorney to assist in the equitable distribution of the estate. MLSA explained that, when appointed to serve as a “Special Representative,” the program reviews the inventory of an estate and drafts a recommendation regarding what it believes would be an equitable distribution of the estate. MLSA’s recommendation is subsequently submitted to the court and, after reviewing MLSA’s recommendation, the court issues a ruling determining the estate’s distribution. For record keeping purposes MLSA utilizes the name of the decedent as its client; however, as there is no individual to screen for eligibility, the program does not conduct a typical intake screening. Furthermore, the program explained that, in practice, these appointments result in a service being provided to both the estate and the court (the attorney’s recommendation is filed in the estate and with the court).

Whenever possible, please determine if this scenario can be counted as a LSC-eligible case and how financial and citizenship eligibility should be documented in the case file.”

In response to the proposed question, the Chairperson of the CSR Questions Committee indicated that an answer would be provided during the comment and review period immediately following the issuance of the DR.

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

On November 15, 2012, the following was provided as a response to the above-referenced questions by the Chairperson of the CSR Questions Committee:

“**Answer** – We do not see how it is possible to establish client eligibility in this case. Section 2.1 of the 2008 CSR Handbook, as amended 2011, provides that:

Legal services programs may record and report the provision of legal assistance as a **case** only if: (a) the client is financially and otherwise **eligible** to receive legal assistance under the LSC Act, regulations and other applicable law ...

Without an eligible client, a case is not eligible to be reported as a CSR case.”

Based on the answer provided, MLSA should not report these cases to LSC. Additionally, MLSA is reminded that no LSC funds can be used to support cases in which eligibility information is not obtained.

Finding 34: A limited review of MLSA’s internal control policies and procedures demonstrated that the program’s policies and procedures compare favorably to Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC’s Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to, LSC Audit Guide for Recipients and Auditors, Accounting Guide For LSC Recipients (2010 Ed.), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity’s governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed.).

The Accounting Guide for LSC Recipients provides guidance on all aspects of fiscal operations and the 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur.

MLSA’s bank account reconciliations for its operating, client trust, and investments accounts, a total of eight (8) bank accounts, were reviewed during the on site visit. The review revealed that all reconciliations were performed timely and accurately. Additionally, a cursory review of MLSA’s Accounting Manual (Financial Procedures Manual) disclosed that it meets the requirements of the Accounting Guide for LSC Recipients (2010 Ed.). The review further disclosed that the Director of Finance and Administration approves the payment of the credit cards and requires that all purchases are for necessary and prudent business purposes and are supported by receipts. Lastly, pursuant to discussions with the Executive Director and the Director of Finance and Administration, review of the Accounting Manual and the G/L indicated that payroll advances are adequately controlled by MLSA.

The alphabetized vendor list from January 1, 2010 to May 15, 2012 was also reviewed during the on site visit. A random sample of 11 vendors from the same timeframe was selected and reviewed for compliance. No exceptions were noted for the vendor list or the sample of invoices.

The completed Internal Control Worksheet revealed a need for stricter internal controls in the areas of property and client trust accounting. These problems appear to stem from the fact that there is a very small accounting staff, only two (2) individuals, and one (1) of them, in addition to assuming the role of Director of Finance, also covers the responsibilities and duties of the Director of Administration position.

Property: An administrative assistant performs two (2) of three (3) property (capital assets) functions. Specifically, the assistant maintains the property inventory records and takes the annual property inventory. These two (2) functions are too closely related and need to be bifurcated so that another MLSA employee can assume one (1) of these two (2) functions.

Client Trust Accounting: The Director of Finance and Administration is responsible for conducting four (4) of the seven (7) functions in this area. These are too many functions for a single individual to be performing. To protect the integrity of segregation of duties, another MLSA employee needs to be incorporated so that they may assume some of the functions currently being handled by the Director of Finance and Administration.

Based on the above-referenced findings, the DR recommended that MLSA strive to implement measures that will strengthen the internal controls of the organization.

In its response to the DR, MLSA offered the following: “This has been done. MLSA management has implemented the following modifications in its procedures for internal control.

- Property: MLSA has bifurcated the property inventory functions so that the Administrative Assistant takes the annual property inventory, and the Director of Finance and Administration is responsible for maintaining the property inventory records.
- Client Trust Accounting. At the time of the LSC Visit, one of MLSA’s Accounting Technician positions was vacant. Since MLSA was short staffed at the time, MLSA did not have the personnel to separate all of the client trust accounting functions. With full staffing, the Accounting Technician- AP is responsible for maintaining the client trust account records, and the Accounting Technician- Payroll is responsible for preparing the monthly client trust bank statement reconciliations.”

IV. RECOMMENDATIONS²⁸

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

1. Pursuant to the requirements of 45 CFR Part 1626, intake staff be provided periodic training regarding timely screening applicants for citizenship or alien eligibility and ensuring proper execution of citizenship attestations prior to providing applicants with legal assistance;

In its response to the DR, MLSA offered the following: “This has been done. MLSA management has revised its new staff orientation to ensure that new staff are trained regarding timely screening applicants for citizenship or alien eligibility and ensuring proper execution of citizenship attestations prior to providing legal assistance to an applicant. In addition, MLSA will conduct periodic training for MLSA’s HelpLine staff and attorneys to reemphasize this recommendation.”

2. The Billings office discontinue its use of the manual intake form that is used during Circuit-Riding to the Crow and Northern Cheyenne Reservations when the ACMS system is inaccessible. Instead, the Billings office should replace this form with the MLSA Application for Assistance for those situations where computerized intake is not possible;

In its response to the DR, MLSA offered the following: “This has been done. The Managing Attorney for the Billings office has assured MLSA Management that the Billings office has discontinued its use of the manual intake form that was being used during Circuit-Riding to the Crow and Northern Cheyenne Reservations. They are now using MLSA’s 2012 Application for Assistance form.”

3. MLSA review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file, when required, and contain a detailed scope and subject matter of the representation;

In its response to the DR, MLSA offered the following: “This is in process. MLSA is reviewing all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file and contain a detailed scope and subject matter of the representation. MLSA instituted the requirement that supervisors review all closed cases in June of this year, and so all cases closed after June 28, 2012, will be reviewed by supervisors for compliance with the retainer requirements, among other things. MLSA’s Program Administrator and intake specialists are reviewing all

²⁸ Items appearing in the “Recommendations” section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

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

cases closed in 2012 prior to June 28 for compliance with this requirement. MLSA will conduct periodic training for MLSA's casehandlers to reemphasize this recommendation."

4. All files be reviewed prior to case acceptance to ensure that only those requests for representation that fall under MLSA's priorities are accepted for the provision of legal assistance;

In its response to the DR, MLSA offered the following: "This has been done. MLSA has developed and instituted case processing procedures to ensure that only those requests for representation that fall under MLSA's priorities are accepted. In addition, MLSA has reviewed its priorities to ensure that they encompass the different types of cases MLSA handles. MLSA will conduct periodic training to reemphasize this recommendation."

5. All case files are reviewed prior to file closing to ensure that the legal assistance provided is properly documented, and that case files lacking documented legal assistance are not reported to LSC during the CSR data submission;

In its response to the DR, MLSA offered the following: "This has been done. In June of 2012, MLSA changed its procedures to require case closing reviews by supervising attorneys. MLSA developed a case closing checklist that casehandlers are required to complete, and added a supervisor closing checklist to Legal Server. These procedures were needed to ensure that legal assistance is properly documented, and that the case files lacking documented legal assistance are not reported to LSC. MLSA instituted this requirement prior to the LSC visit. It was not in effect, however, for most of the time period of the LSC file review. MLSA will conduct periodic training and compliance checks to reemphasize this recommendation."

6. MLSA conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure effective PAI case oversight; and

In its response to the DR, MLSA offered the following: "This has been done. MLSA management ensures that it is conducting reviews of the case management system and case status reports on open and closed PAI cases to ensure effective PAI case oversight. MLSA is working with its Program Assistants to ensure that timely follow-up is conducted every six (6) months on open PAI cases to determine if the case is ongoing. MLSA is using a case closing checklist prior to closing the case to ensure that PAI files are closed in a timely manner and that only timely closed cases are reported to LSC. In addition, MLSA supervisors review the cases and ensure that PAI cases are timely closed and only timely closed cases are reported to LSC. MLSA began this procedure of June of 2012. MLSA will conduct periodic training to reemphasize this recommendation."

7. MLSA strive to implement measures that will strengthen the internal controls of the organization.

In its response to the DR, MLSA offered the following: “This has been done. MLSA management has implemented the following modifications in its procedures for internal control.

- Property: MLSA has bifurcated the property inventory functions so that the Administrative Assistant takes the annual property inventory, and the Director of Finance and Administration is responsible for maintaining the property inventory records.
- Client Trust Accounting. At the time of the LSC Visit, one of MLSA’s Accounting Technician positions was vacant. Since MLSA was short staffed at the time, MLSA did not have the personnel to separate all of the client trust accounting functions. With full staffing, the Accounting Technician- AP is responsible for maintaining the client trust account records, and the Accounting Technician- Payroll is responsible for preparing the monthly client trust bank statement reconciliations.”

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure proper application, by all intake staff, of 45 CFR §1626.4, of Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance;

In its response to the DR, MLSA offered the following: “This has been done. In response to the preliminary findings, MLSA conducted training for MLSA’s HelpLine intake staff on October 25, 2012, on 45 CF[R] § 1626.4, Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance. MLSA also revised its new employee training to include specific information on these requirements. Information on these requirements is also being distributed to all MLSA staff by memo. In addition, MLSA will conduct periodic training for MLSA’s HelpLine staff and attorneys to reemphasize this corrective action.”

2. Ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR Part 1611 are met, specifically with respect to verifying and documenting the existence of over-income authorized exceptions and identifying exempt assets;

In its response to the DR, MLSA offered the following: “This has been done. MLSA’s Board of Trustees approved the newly revised financial eligibility policy on September 8, 2012. MLSA conducted training with all intake staff on September 20, 2012, and held a follow-up session on September 27, 2012. All [of] MLSA’s staff have received a copy of the revised eligibility policy and signed off acknowledging that they have read the policy. MLSA conducted a brief overview of the revised requirements at an all staff call on October 8, 2012, and will be doing a follow up presentation on November 5, 2012. Information on the revised financial eligibility policy will also be included in a program wide memo. In addition, MLSA has developed a series of questions to help MLSA staff determine and document over-income authorized exceptions that have been posted in the HelpLine wiki. In addition, some questions have been added to the eligibility determination in Legal Server to help intake workers gather information on over income authorized exceptions if applicable. MLSA’s HelpLine staff were trained on determining and documenting the over income authorized exceptions on October 18, 2012. MLSA will conduct periodic training to reemphasize this corrective action.”

3. Pursuant to the requirements of 45 CFR § 1611.3(a), ensure that its financial eligibility policy is reviewed by its governing body at least once every three (3) years and that changes to the policy are made when necessary;

In its response to the DR, MLSA offered the following: “This is being implemented. MLSA management will ensure that its financial eligibility policy is reviewed by its Board of Trustees at least once every three years and that changes to the policy are made

when necessary. MLSA has set up a reoccurring reminder in its Board of Trustees management system to remind MLSA to have its Board of Trustees review the eligibility policy every three years. MLSA has also trained all administrative staff on this requirement.”

4. In conjunction with the findings relating to 45 CFR Part 1626 that were discussed in Finding 2 *supra*, ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, where appropriate;

In its response to the DR, MLSA offered the following: “This has been done. MLSA management will ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), §5.5 where appropriate. MLSA adopted a new practice starting June 28, 2012, requiring supervisors to review all closed cases. For cases closed prior to June 28, the Program Administrator will conduct a review to determine if the requirements regarding citizenship or verification of alien eligibility have been met. MLSA is requiring casehandlers to review their open cases to ensure that files contain written citizenship attestations, or verifications of alien eligibility where appropriate. In addition, MLSA revised its new employee orientation to ensure new staff are properly trained on 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011). MLSA will periodically train all casehandlers to reemphasize this corrective action.”

5. Ensure that all case files contain statements of fact pursuant to 45 CFR Part 1636, where appropriate;

In its response to the DR, MLSA offered the following: “This has been done. MLSA management will ensure that all case files contain statements pursuant to 45 CFR Part 1636, where appropriate. MLSA conducted a training on 45 CFR Part 1636 Client Identity and Statement of Facts on October 8, 2012. MLSA also implemented a case closing checklist prior to closing the case to ensure that the files contain the statement where appropriate. In addition, MLSA supervisors review the cases and ensure that everything is properly documented. MLSA began this procedure in June of 2012. MLSA will conduct periodic trainings for all attorneys to reemphasize this corrective action.”

6. Ensure that for grants and other funding sources to which MLSA applies for or solicits funding from (that are equal to or greater than \$250.00), notice of the restrictions referred to in 45 CFR § 1610.5(a) is given during the course of the solicitation or application or, when notice of the restrictions is not able to be provided in advance, a thank-you letter, which includes the notification, is sent upon receipt of the funds;

In its response to the DR, MLSA offered the following: “MLSA management will ensure that, where applicable, notice of the restrictions referred to in 45 CFR § 1610.5(a) is given during the course of solicitation or application or, when notice of the restrictions is not able to be provided in advance, a thank-you letter which includes the notification, is

sent upon receipt of the funds. In practice, this means that the required notice will be included in all grant applications or requests for funding when possible. When not possible, the notice will be included in a follow up communication such as a thank you letter. In particular, MLSA will include the notice in follow up correspondence sent in response to a Cy Pres award.”

7. Ensure that all PAI cases are timely closed and only timely closed cases are reported to LSC; and

In its response to the DR, MLSA offered the following: “This is being implemented. MLSA management will ensure that all PAI cases are timely closed cases are reported to LSC. MLSA is working with its Program Assistants to ensure that timely follow-up is conducted every six (6) months on open PAI cases to determine if the case is ongoing. MLSA is using a case closing checklist prior to closing the case to ensure that PAI files are closed in a timely manner and that only timely closed cases are reported to LSC. In addition, MLSA supervisors review the cases and ensure that PAI cases are timely closed and only timely closed cases are reported to LSC. MLSA began this procedure in June of 2012. MLSA will conduct periodic trainings with MLSA staff to reemphasize this corrective action.”

8. Ensure that, for PAI cases, all case information relating to the provision of legal assistance, pursuant to the requirements of the CSR Handbook (2008 Ed., as amended 2011), Chapters V and VIII, is included in each file.

In its response to the DR, MLSA offered the following: “This has been done. MLSA management will ensure that all case information relating to the provision of legal assistance in PAI cases is included in each file. MLSA Program Assistants will conduct appropriate follow up with PAI attorneys and clients to determine the assistance provided if that information is not furnished in response to MLSA’s case closing procedures. In addition, MLSA is using a case closing checklist prior to closing the case to remind the Program Assistant closing the case, and the Supervising Attorney reviewing the closure to check and make sure that the case information regarding the provision of legal assistance by the PAI attorney is included in the file. These requirements will be reviewed with the Program Assistants coordinating PAI at the next quarterly meeting, and will be disseminated in a memo to all staff as well.”

Montana Legal Services Association

Provide, protect and enhance access to justice.



Alison L. Paul
Executive Director
Montana Legal Services Association
616 Helena Avenue, Suite 100
Helena, MT 59601

Phone: (406) 442-9830 Ext. 15
Fax: (406) 442-9817
Toll Free: (800) 666-6124
E-mail: apaul@mtlsa.org
Web site: www.mtlsa.org

BY ELECTRONIC MAIL

To: rathl@lsc.gov

November 9, 2012

Lora M. Rath, Director
Office of Compliance and Enforcement
3333 K Street, NW 3rd Floor
Washington, DC 20007-3522

**RE: MLSA's Response to the Case Service Report/Case Management System
Review Visit, Recipient No. 927000**

Dear Lora:

The Montana Legal Services Association (MLSA) has reviewed the Legal Services Corporation Office of Compliance and Enforcement (LSC OCE) Draft Report following its July 16-19, 2012 visit. Thank you for the opportunity to comment on the findings reported after OCE's CSR/CMS review. MLSA staff appreciated the OCE Review Visit team's professionalism and the courteous manner in which they conducted the review. MLSA would also like to thank the Review Visit team for their guidance and assistance with regard to necessary updates to our policies. This document is provided to LSC OCE to provide corrections and additional clarifications, and to provide information about corrective actions that MLSA has taken or will soon undertake in order to implement all of the required corrective actions.

Corrections to Report:

There were a few factual errors in the Draft Report which the Montana Legal Services Association requests are corrected for the final report.

- Page 6 (paragraph 1): MLSA would like to clarify that it provides legal services statewide to all 56 counties in Montana.
- Page 6 (paragraph 1, line 7): The report stated that MLSA has one attorney with an office on the Crow reservation that provides tribal court representation to members of the Crow Tribe. MLSA has one Tribal Advocate with an office located on the Crow Reservation that provides tribal court representation to members of the Crow Tribe. She is not an attorney, but is a Tribal Advocate licensed to practice in the Crow Tribal Court.

Administrative Office

616 Helena Ave., Ste 100
Helena, MT 59601
Toll Free: (800) 666-6124
Phone: (406) 442-9830
Fax: (406) 442-9817

Statewide HelpLine Number ☎ 1-800-666-6899

Websites:

www.MontanaLawHelp.org
www.mtlsa.org

Funded in part by:

Montana Justice Foundation
&



- Page 8 (Walk-in or Telephone Intake): MLSA would like to clarify that the walk-in intake hours for the Helena office are Monday through Friday from 8:30 a.m. to 4:30 p.m.; MLSA's HelpLine telephone intake hours are Monday through Friday from 7:30 a.m. to 6:00 pm Monday through Friday. MLSA's HelpLine is housed in the central office located in Helena.
- Page 9 (1st full paragraph): MLSA would like to clarify that the intake procedures for all three offices are the same. Once the intake screening has been conducted, the intake staff member accepts the case for advice and counsel or brief services if the applicant appears eligible for services, and their case type falls within MLSA's priorities.
- Page 9 (2nd full paragraph): MLSA would like to clarify that it is a statewide law firm organized into specialty areas providing services in housing, public benefits, Native American issues, consumer, foreclosure and domestic violence. Cases referred by the MLSA HelpLine are reviewed on a weekly basis, during a case acceptance meeting, for income, asset and citizenship eligibility, as well as the case type, by the program assistant and the staff attorneys who specialize in that area of law.
- Page 10 (1st full paragraph): The report indicated that every Wednesday, staff from the Billings office travel to the Crow and Lame Deer Reservations. MLSA would like to clarify that staff travel to the Crow and Northern Cheyenne Reservations. (There is no Lame Deer reservation, Lame Deer is one of the towns on the Northern Cheyenne Reservation.) MLSA would ask that all references made to the Lame Deer Reservation be changed to the Northern Cheyenne Reservation.
- Page 10 (1st full paragraph, line 5): MLSA would like to clarify that MLSA staff and one AmeriCorps State member conduct intake for all of the cases on the Crow and Northern Cheyenne Reservations.
- Page 10 (3rd full paragraph): MLSA would like to clarify that a HelpLine member is responsible for processing online applications for everyone in the state who applies online for legal services. This duty is passed around among the HelpLine members based on workload and availability. At the time of the review, that member was in the Missoula office. MLSA designates staff, and not a specific office, to be responsible for the online applications.
- Page 10 (4th full paragraph): Once the HelpLine staff member receives an online application, the information in the online application is transferred to MLSA's ACMS. Intake staff then calls the client and the applicant is screened for financial and citizenship eligibility, conflict duplicate cases, and legal issues during an intake interview. If the applicant and the case are eligible, then the case is accepted and the intake staff set up a time to speak with one of MLSA's advocates. [MLSA is organized into a statewide law firm with specialty areas. MLSA offers the same service regardless of the geographic location of the client.]
- Page 11 (1st full paragraph): Oversight of the supervision of compliance related activities is performed by the Program Administrator, a non-attorney, who performs quarterly quality control checks of compliance activities by generating ACMS reports and coordinating corrections with staff.
- Page 12 (Conflicts): MLSA would like to clarify that when MLSA intake staff encounters a potential conflict of interest, the application is reviewed by the Intake

Supervisor or the Director of Community Engagement to make a determination as to whether a conflict exists, not a Supervising Attorney.

- Page 13 (2nd full paragraph): MLSA disagrees with the statement that the citizenship attestation used for PAI retainers was contained in the body of the agreement and did not have its own separate signature line. The citizenship attestation did have its own separate signature line in the retainer agreement. It was a separate paragraph in a numbered list with a separate place for the client to sign under that number. (There was an additional signature line at the bottom of the page for the whole document.) LSC staff found it confusing and non-compliant with the CSR Handbook (2008 Ed., as amended 2011). MLSA staff did agree to revise its retainers rather than argue format with LSC. So, the retainer agreements were revised during the compliance visit and the citizenship attestation now appears at the bottom of the retainer agreement and is not part of the body nor is it a numbered paragraph. MLSA has conducted training for all MLSA case handling staff regarding the new form.
- Page 35 (1st full paragraph): Closed PAI files are reviewed by MLSA's Pro Bono Coordinator, the Program Administrator or the Director of Community Engagement. MLSA doesn't have a PAI Supervising Attorney.

We have detailed below our responses to the recommendations contained in your report. MLSA is primarily addressing the recommendations and corrective actions that are needed through training and education provided to staff, along with follow up compliance checks. MLSA also will circulate the report and its response to all staff and the MLSA Board of Trustees. In addition, MLSA Management will be circulating a memo by mid-November outlining the relevant recommendations and corrective actions so that staff will have a summary in writing of all of the changes.

Response to Recommendations:

1. *Pursuant to requirements of 45 CFR Part 1626, intake staff be provided periodic training regarding timely screening applicants for citizenship or alien eligibility and ensuring proper execution of citizenship attestations prior to providing legal assistance.*

MLSA's Response: This has been done. MLSA management has revised its new staff orientation to ensure that new staff are trained regarding timely screening applicants for citizenship or alien eligibility and ensuring proper execution of citizenship attestations prior to providing legal assistance to an applicant. In addition, MLSA will conduct periodic training for MLSA's HelpLine staff and attorneys to reemphasize this recommendation.

2. *The Billings office discontinue its use of the manual intake form that is used during Circuit-Riding to the Crow and Northern Cheyenne Reservations when the ACMS system is inaccessible. Instead, the Billings office should replace this form with the MLSA application for Assistance for those situations where computerized intake is not possible.*

MLSA's Response: This has been done. The Managing Attorney for the Billings office has assured MLSA Management that the Billings office has discontinued its use of the manual intake form that was being used during Circuit-Riding to the Crow and Northern Cheyenne Reservations. They are now using MLSA's 2012 Application for Assistance form.

3. *MLSA review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file, when required, and contain a detailed scope and subject matter of the representation.*

MLSA's Response: This is in process. MLSA is reviewing all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file and contain a detailed scope and subject matter of the representation. MLSA instituted the requirement that supervisors review all closed cases in June of this year, and so all cases closed after June 28, 2012, will be reviewed by supervisors for compliance with the retainer requirements, among other things. MLSA's Program Administrator and intake specialists are reviewing all cases closed in 2012 prior to June 28 for compliance with this requirement. MLSA will conduct periodic training for MLSA's casehandlers to reemphasize this recommendation.

4. *All files be reviewed prior to case acceptance to ensure that only those requests for representation that fall under MLSA's priorities are accepted for the provision of legal assistance.*

MLSA's Response: This has been done. MLSA has developed and instituted case processing procedures to ensure that only those requests for representation that fall under MLSA's priorities are accepted. In addition, MLSA has reviewed its priorities to ensure that they encompass the different types of cases MLSA handles. MLSA will conduct periodic training to reemphasize this recommendation.

5. *All case files are reviewed prior to closing to ensure that the legal assistance provided is properly documented and that case files lacking documented legal assistance are not reported to LSC during the CSR data submission.*

MLSA's Response: This has been done. In June of 2012, MLSA changed its procedures to require case closing reviews by supervising attorneys. MLSA developed a case closing checklist that casehandlers are required to complete, and added a supervisor closing checklist to Legal Server. These procedures were needed to ensure that legal assistance is properly documented, and that the case files lacking documented legal assistance are not reported to LSC. MLSA instituted this requirement prior to the LSC visit. It was not in effect, however, for most of the time period of the LSC file review. MLSA will conduct periodic training and compliance checks to reemphasize this recommendation.

6. *MLSA conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure effective PAI case oversight.*

MLSA's Response: This has been done. MLSA management ensures that it is conducting reviews of the case management system and case status reports on open and closed PAI cases to ensure effective PAI case oversight. MLSA is working with its Program Assistants to ensure that timely follow-up is conducted every six (6) months on open PAI cases to determine if the case is ongoing. MLSA is using a case closing checklist prior to closing the case to ensure that PAI files are closed in a timely manner and that only timely closed cases are reported to LSC. In addition, MLSA supervisors review the cases and ensure that PAI cases are timely closed and only timely closed cases are reported to LSC. MLSA began this procedure in June of 2012. MLSA will conduct periodic training to reemphasize this recommendation.

7. *MLSA strive to implement measures that will strengthen the internal controls of the organization.*

MLSA's Response: This has been done. MLSA management has implemented the following modifications in its procedures for internal control.

- **Property:** MLSA has bifurcated the property inventory functions so that the Administrative Assistant takes the annual property inventory, and the Director of Finance and Administration is responsible for maintaining the property inventory records.
- **Client Trust Accounting.** At the time of the LSC Visit, one of MLSA's Accounting Technician positions was vacant. Since MLSA was short staffed at the time, MLSA did not have the personnel to separate all of the client trust accounting functions. With full staffing, the Accounting Technician – AP is responsible for maintaining the client trust account records, and the Accounting Technician – Payroll is responsible for preparing the monthly client trust bank statement reconciliations.

Response to Required Corrective Action Plan:

1. *Ensure proper application, by all intake staff, of 45 CFR §1626.4, of Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance.*

MLSA's Response: This has been done. In response to the preliminary findings, MLSA conducted training for MLSA's HelpLine intake staff on October 25, 2012, on 45 CF §1626.4, Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance. MLSA also revised its new employee training to include specific information on these requirements. Information on these requirements is also being distributed to all MLSA staff by memo. In addition, MLSA will conduct periodic training for MLSA's HelpLine staff and attorneys to reemphasize this corrective action.

2. *Ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR Part 1611 are met, specifically with respect to verifying and documenting the existence of over-income authorized exceptions.*

MLSA's Response: This has been done. MLSA's Board of Trustees approved the newly revised financial eligibility policy on September 8, 2012. MLSA conducted training with all intake staff on September 20, 2012, and held a follow-up session on September 27, 2012. All MLSA's staff have received a copy of the revised eligibility policy and signed off acknowledging that they have read the policy. MLSA conducted a brief overview of the revised requirements at an all staff call on October 8, 2012, and will be doing a follow up presentation on November 5, 2012. Information on the revised financial eligibility policy will also be included in a program wide memo. In addition, MLSA has developed a series of questions to help MLSA staff determine and document over-income authorized exceptions that have been posted in the HelpLine wiki. In addition, some questions have been added to the eligibility determination in Legal Server to help intake workers gather information on over income authorized exceptions if applicable. MLSA's HelpLine staff were trained on determining and documenting the over-income authorized exceptions on October 18, 2012. MLSA will conduct periodic training to reemphasize this corrective action.

3. *Pursuant to the requirements of 45 CFR §1611.3(a), ensure that its financial eligibility policy is reviewed by its governing body at least once every three (3) years and that changes to the policy are made when necessary.*

MLSA's Response: This is being implemented. MLSA management will ensure that its financial eligibility policy is reviewed by its Board of Trustees at least once every three years and that changes to the policy are made when necessary. MLSA has set up a reoccurring reminder in its Board of Trustees management system to remind MLSA to have its Board of Trustees review the eligibility policy every three years. MLSA has also trained all administrative staff on this requirement.

4. *In conjunction with the findings relating to 45 CFR Part 1626 that were discussed in Finding 2 supra, ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), §5.5 where appropriate.*

MLSA's Response: This has been done. MLSA management will ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), §5.5 where appropriate. MLSA adopted a new practice starting June 28, 2012, requiring supervisors to review all closed cases. For cases closed prior to June 28, the Program Administrator will conduct a review to determine if the requirements regarding citizenship or verification of alien eligibility have been met. MLSA is requiring casehandlers to review their open cases to ensure that files contain written citizenship attestations, or verifications of alien eligibility where appropriate. In addition, MLSA revised its new employee orientation to ensure

new staff are properly trained on 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011). MLSA will periodically train all casehandlers to reemphasize this corrective action.

5. *Ensure that all case files contain statements pursuant to 45 CFR Part 1636, where appropriate.*

MLSA's Response: This has been done. MLSA management will ensure that all case files contain statements pursuant to 45 CFR Part 1636, where appropriate. MLSA conducted a training on 45 CFR Part 1636 Client Identity and Statement of Facts on October 8, 2012. MLSA also implemented a case closing checklist prior to closing the case to ensure that the files contain the statements where appropriate. In addition, MLSA supervisors review the cases and ensure that everything is properly documented. MLSA began this procedure in June of 2012. MLSA will conduct periodic trainings for all attorneys to reemphasize this corrective action.

6. *Ensure that for grants and other funding sources to which MLSA applies for or solicits funding from (that are equal to or greater than \$250.00), notice of the restrictions referred to in 45 CF§ 1610.5(a) is given during the course of solicitation or application or, when notice of the restrictions is not able to be provided in advance, a thank-you letter, which includes the notification, is sent upon receipt of the funds.*

MLSA's Response: MLSA management will ensure that, where applicable, notice of the restrictions referred to in 45 CFR §1610.5(a) is given during the course of solicitation or application or, when notice of the restrictions is not able to be provided in advance, a thank-you letter, which includes the notification, is sent upon receipt of the funds. In practice, this means that the required notice will be included in all grant applications or requests for funding when possible. When not possible, the notice will be included in a follow up communication such as a thank you letter. In particular, MLSA will include the notice in follow up correspondence sent in response to a Cy Pres award.

7. *Ensure that all PAI cases are timely closed and only timely closed cases are reported to LSC; and*

MLSA's Response: This is being implemented. MLSA management will ensure that all PAI cases are timely closed and only timely closed cases are reported to LSC. MLSA is working with its Program Assistants to ensure that timely follow-up is conducted every six (6) months on open PAI cases to determine if the case is ongoing. MLSA is using a case closing checklist prior to closing the case to ensure that PAI files are closed in a timely manner and that only timely closed cases are reported to LSC. In addition, MLSA supervisors review the cases and ensure that PAI cases are timely closed and only timely closed cases are reported to LSC. MLSA began this procedure in June of 2012. MLSA will conduct periodic trainings with MLSA staff to reemphasize this corrective action.

8. *Ensure that, for PAI cases, all case information relating to the provision of legal assistance, pursuant to the requirements of CSR Handbook (2008 Ed., as amended 2011), Chapters V and VIII, is included in each file.*

MLSA's Response: This has been done. MLSA management will ensure that all case information relating to the provision of legal assistance in PAI cases is included in each file. MLSA Program Assistants will conduct appropriate follow up with PAI attorneys and clients to determine the assistance provided if that information is not furnished in response to MLSA's case closing procedures. In addition, MLSA is using a case closing checklist prior to closing the case to remind the Program Assistant closing the case, and the Supervising Attorney reviewing the closure to check and make sure that case information regarding the provision of legal assistance by the PAI attorney is included in the file. These requirements will be reviewed with the Program Assistants coordinating PAI at the next quarterly meeting, and will be disseminated in a memo to all staff as well.

Please let us know if you have any questions or need any further information regarding your report or this response. And thank you for the additional time to complete this response.

Sincerely,



Alison L. Paul

ALP:tap

cc: MLSA Board of Trustees
Tracie Poindexter
Lisa Heimbach