Legal Services Corporation
America's Partner For Equal Justice

Program Letter 12-2

TO: All Executive Directors

FROM: James J. Sandman, President

DATE: April 2, 2012

SUBJECT: Compliance Guidance

This Program Letter describes the most common compliance issues observed by LSC staff during compliance oversight visits to legal services programs in 2011.

Fiscal Management Issues

The following are the fiscal internal controls issues requiring corrective action that arose most often during recent on-site reviews:

- Bank statement reconciliations to the general ledger should be conducted on a monthly basis and should be reviewed and approved by a responsible individual. The review must be appropriately documented and signed and dated. *See* Accounting Guide for LSC Recipients (2010 Edition), § 3-5.2.

- Fiscal responsibilities should be segregated in such a way that persons responsible for the assets and the conduct of operations have no part in maintaining, and do not have access to the records that establish accounting control over, the assets and operations. Duties should be divided to minimize the possibility of collusion, perpetration of irregularities, and falsification of accounts. *See* Accounting Guide for LSC Recipients (2010 Edition), Appendix VII.

    - "Accounting duties should be segregated to ensure that no individual simultaneously has both the physical control and the record keeping responsibility for any asset, including, but not limited to, cash client deposits, supplies and property. Duties must be segregated so that no one individual can initiate, execute, and record a transaction without a second independent individual being involved in the process."

      Accounting Guide for LSC Recipients (2010 Edition), § 3-4.3.

- Journal entries should be approved by the Executive Director or other authorized individual. *See* Accounting Guide for LSC Recipients (2010 Edition), § 3-5.6.

- Outstanding checks should be investigated and resolved in accordance with the Accounting Guide for LSC Recipients or the grantee's board-approved policy.

- Bills and invoices should be marked "paid" or otherwise canceled to avoid duplicate payment. *See* Accounting Guide for LSC Recipients (2010 Edition), § 3-5.4.

Specific Regulatory Issues

Pursuant to Grant Assurance Number 1, each LSC grantee assures that it will comply with LSC's regulations. During the Office of Compliance and Enforcement's ("OCE") recent on-site visits, the following regulatory areas were identified as requiring additional attention:

45 CFR Part 1610 - Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity

- Grantees may not accept funds, in the amount of $250.00 or more from any source other than the Corporation unless the grantee provides written notification of the prohibitions and conditions that apply to the donated funds. *See* 45 CFR § 1610.5.

    - The LSC Board of Directors offered the following guidance at the time the final rule was published:

      "Generally, notification should be provided before the recipient accepts the funds. Thus, notice should be given during the course of soliciting funds or applying for a grant or contract. However, for unsolicited donations where advance notice is not feasible, notice should be given in the recipient's letter acknowledging the contribution. For contracts and grants awarded prior to the enactment of the restriction, notice should be given prior to acceptance by the recipient of any additional payments."

      62 Fed. Reg. 27,695 at 27,696 (May 21, 1997). Available on-line at: http://www.lsc.gov/sites/default/files/LSC/pdfs/1997-05-211610FinalRule.pdf

45 CFR Part 1611 – Financial Eligibility

- Grantees must ensure that current financial eligibility policies comply with the revised requirements of 45 CFR Part 1611. OCE is available to review proposed policy changes and provide comments.

- Grantees must screen applicants regarding income prospects and record the responses appropriately, regardless of intake method. *See* 45 CFR § 1611.7(a)(1). *See also*

Office of Legal Affairs ("OLA") Advisory Opinion # AO-2009-1006, available on-line at http://www.lsc.gov/sites/default/files/LSC/lscgov4/AO_2009_1006.pdf.

- Applicants with income between 125% and 200% of the Federal Poverty Guidelines ("FPG") amount must be screened in accordance with board-approved financial eligibility policies pursuant to 45 CFR § 1611.5.

    - The decision to accept an over-income client, including the reasons for the decision, must be clearly documented in the case file or case management system ("CMS").

45 CFR Part 1626 – Restrictions on Legal Assistance to Aliens

- Grantees should ensure that applicants and clients who are seen in person, as well as clients receiving extended services, execute a citizenship attestation or demonstrate alien eligibility. *See* 45 CFR § 1626.6.

    - A person using a telephone in a grantee's branch office to call a centralized intake unit is considered an applicant seen in-person. *See* OLA Advisory Opinion # AO-2009-1002, available on-line at: http://www.lsc.gov/sites/default/files/LSC/lscgov4/AO_2009_1002.pdf.
    - Similarly, persons who walk in to an office and sign up for a later call-back telephone intake interview are regarded as seen in person.
    - VAWA and Trafficking cases allow exceptions. *See* Program Letters 05-2 and 06-2.
    - Grantees must review appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone which does not include continuous representation of a client. A record of this review should be included in each case file or the CMS. Applicants cannot merely attest to alien eligibility. *See* 45 CFR § 1626.7.

45 CFR Part 1627 – Subgrants and Membership Fees or Dues

- LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a grantee or an individual. This prohibition does not apply to the payment of membership fees or dues mandated by a governmental organization to engage in a profession. *See* 45 CFR §§ 1627.4(a) and (b).

- Grantees must obtain LSC approval for a substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10%. Minor changes in a work program or changes in funding of less than 10% require that LSC be notified in writing but do not require preapproval. *See* 45 CFR § 1627.3(b)(3).

45 CFR Part 1635 – Timekeeping Requirement

- Time spent by attorneys and paralegals must be documented by contemporaneous time records that record the amount of time spent on each case, matter, or supporting activity. *See* 45 CFR §§ 1635.3(b)(1) and (2).

Case Service Reporting Issues

LSC's ability to report reliable case data to Congress depends on each grantee's compliance with the requirements of the CSR Handbook (2008 Ed., as amended 2011). Based on OCE's recent on-site visits, the following areas were identified as requiring increased awareness:

- Citizenship status or alien eligibility must be documented in all cases. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5.
    - As previously noted, VAWA and Trafficking cases allow exceptions. *See* Program Letters 05-2 and 06-2.
- Legal assistance provided to a client must be documented in the case file or the CMS in order for a case to be reportable. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.6.
    - *Legal advice* provided to a client can be reported in CSR data, but *legal information* provided to an ineligible applicant cannot be reported. The same advice/information cannot be called legal advice in one place and legal information in another. *See* CSR Handbook (2008 Ed., as amended 2011), §§ 2.2 and 2.3.
- Cases reported to LSC must be closed in a timely manner. *See* CSR Handbook (2008 Ed., as amended 2011), §§ 3.3 and 10.3.

If you have a concern or question regarding compliance with LSC regulations or directives, particularly the compliance areas noted in this Letter, please contact Lora M. Rath, the Acting Director of OCE, at rathl@lsc.gov or 202-295-1524. In addition, OCE is available to provide both Executive Director Orientation and CSR Handbook training upon request. In most cases, training will be done via webcast. Training requests should also be submitted to Ms. Rath.