

ADVISORY

TO: All Executive Directors

FROM: Helaine M. Barnett 

DATE: December 18, 2008

SUBJECT: Compliance Guidance

This year, in response to the Government Accountability Office (GAO) report entitled *Legal Services Corporation: Improved Internal Controls Needed in Grants Management and Oversight* (December 2007, GAO-08-37), the Legal Services Corporation (LSC) undertook a review of our grantee oversight activities. The purpose of this review was to ensure that our grantee oversight activities further LSC's responsibility to ensure the delivery of effective and efficient high quality legal services in conformity with the mandates of Congress.

That review indicated that opportunities exist for LSC to provide additional guidance, primarily on compliance issues to grantees. In the future, LSC will be doing more to provide this additional guidance in several ways. We will be using training opportunities at the national, state and regional meetings, such as the Equal Justice Conference, NLADA Annual Conference and project directors meetings, to discuss ongoing compliance issues.

In addition, LSC will continue its practice of using advisory groups of grantee staff to work with LSC on particular issues of concern. These issues include private attorney involvement allocations, program fiscal operations, board governance responsibilities, and other issues as they develop. LSC will also use program letters and advisory memoranda, such as this one, to share important information on compliance and program quality issues that affect program operations.

This particular Advisory focuses on recurrent issues seen by LSC staff when engaged in compliance oversight visits and identifies the most frequent and several of the most serious compliance issues to alert programs to be attentive to those issues. As you know, because of our current funding levels, typically several years elapse between LSC compliance visits to programs. This Advisory attempts to bridge some of that time span by calling your attention to those compliance issues. None of these issues or required activities is of first impression and many if not most of you already are handling these issues appropriately. This is a reminder.

LSC encourages you to use this Advisory to review these selected aspects of your program operations and ensure that you have systems, policies and procedures in place that address each of these frequently seen issues.

Fiscal Management Issues

The GAO Report focused significant attention on fiscal internal controls both in LSC's oversight activities and at local grantee programs. Responsibility for setting the "tone at the top" belongs to both the grantee board of directors and the management of the program.

As the leadership of your programs, you are expected to create and nurture a climate of compliance and attention to internal controls, i.e., the "control environment." This means that you and your staff are vigilant about the implementation and use of essential fiscal policies and procedures, consistent with the appropriate guidance documents such as the LSC Accounting Guide, your program's accounting manual, and accepted fiscal management practices.

The following items are noted to remind programs that these are critical components of appropriate internal controls procedures. These are not the only internal control issues, but they do represent those issues that LSC most often observes and finds in need of correction during on-site visits. LSC grantees are reminded to give particular attention to these issues.

- **Segregation of duties.** Duties in the program's fiscal operation must be segregated to ensure that no one individual simultaneously has both the physical control and the recordkeeping responsibility for any asset, including, but not limited to, cash, client deposits, supplies and property. No individual should be able to initiate, execute, and record transactions without a second independent individual being involved in the process. (LSC Accounting Guide, §3-4).

In smaller programs with a minimal number of fiscal staff, additional guidance on how to achieve appropriate segregation of duties should be sought from your auditor.

- **Bank statement reconciliations.** Bank statement reconciliations to the general ledger should be done on a monthly basis to ensure timeliness and accuracy. The reconciliations should be reviewed and signed off on by a responsible individual, duly documented by signature, and date. Bank reconciliations should be conducted by an individual who has no access to cash, is not a check signer, and has no cash bookkeeping duties. (LSC Accounting Guide, §3-5.2).

These procedures should increase the likelihood that irregular disbursements and recording errors, if any, are timely discovered.

- **Private attorney involvement accounting.** Your auditor should only take into consideration the LSC annualized Basic Field Grant when calculating the percentage of PAI expenditures. (45 CFR § 1614.1(a)).

Your program's Accounting Manual should document the method for allocating common costs including support staff costs for PAI.

- **Outstanding checks.** All checks outstanding for more than six months should be investigated to resolve pending payment status.

- **Client Trust accounts.** Client trust accounts should be reconciled monthly as required by the Accounting Guide for LSC Recipients. (LSC Accounting Guide, §§ 2-2.3 and 3-5.7)
- **Business travel policy.** Every program should have a business travel policy. Your policy should specifically require that original documents be presented for reimbursement of travel expenses. The travel policy should be included in your accounting manual.

Case Service Reporting Issues

The ability of LSC to report reliable case data to Congress rests with the accuracy of grantees' application of the LSC CSR Handbook 2008 Edition requirements. Given the importance of this data collection function, LSC notes the following areas for special vigilance.

- Legal assistance provided to a client must be documented in the case file. Without this documentation, the case cannot be reported to LSC. (CSR Handbook 2008 Edition, § 5.6). Grantee staff must be trained on the proper closing code categories of the CSR Handbook 2008 Edition, § 6.1.
- All program intake forms, e.g., local, unit or specialty intake forms, and the case management system should sufficiently track all income and asset questions, as required by your program's intake policy. (CSR Handbook 2008 Edition, §§ 5.3 and 5.4)

Specific Regulations Issues

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

- For donated amounts greater than \$250, grantees' "thank you" letters or solicitations to donors must include the requirements of 45 CFR § 1610.5(a), including the prohibition and conditions which apply to donated funds.

45 CFR Part 1611 – Financial Eligibility

- Staff responsible for intake screening should be trained to ensure they consistently screen applicants where income is between 125% and 200% of the Federal Poverty Guidelines in accordance with your governing body established financial eligibility policies.
- When a decision is made to provide legal assistance supported with LSC funds to a client whose gross income exceeds 125% of the Federal Poverty Guidelines, the case file should document the reasons for the decision. (45 CFR §1611.5(b))

45 CFR Part 1614 – Private Attorney Involvement

- Time spent on PAI activities must be captured and appropriately allocated as PAI costs. This regulation requires that any direct or indirect time of staff attorneys or paralegals that is allocated as a cost to PAI must be appropriately documented via time sheets. (45 CFR §1614.3(e)(1)(i))

- As noted above, a system needs to be in place to determine an appropriate formula to allocate indirect costs related to PAI activities. Your program's accounting manual should document the method for allocating common costs including support staff costs for PAI. (45 CFR §1614.3(e)(1)(i))
- PAI case oversight and follow-up procedures should be established to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of grantee resources. While there is no one way of achieving case oversight, LSC does expect that grantees will be able to demonstrate how their case oversight procedures meet the requirements of this regulation. (45 CFR §1614.3(e)(3))

45 CFR Part 1626 – Restrictions on Legal Assistance to Aliens

- Grantees should ensure that applicants or clients who are seen in person or who receive extended services execute a citizenship attestation. (45 CFR §1626.6)¹
- Applicants cannot attest to non-citizenship. Grantees must review documentation presented by applicants to determine eligibility for the provision of legal services. Retainer agreements or intake forms that allow applicants to attest to non-citizenship must be changed. (45 CFR §1626.7)

45 CFR Part 1627 – Subgrants and Membership Fees or Dues

- Grantees must ensure that LSC funds are not used to pay membership fees or dues to any private or non-profit organization, whether on behalf of a grantee or an individual. The sole exception is the payment of membership fees or dues mandated by a governmental organization to engage in a profession which can be paid with LSC funds. (45 CFR § 1627.4)

Finally, we hope that you find this reminder of selected compliance issues instructive. Please feel free to consult with staff in OCE regarding any questions that you have about these or other compliance issues.

Thank you for your continued work in support of access to justice for low-income individuals and families. We are confident that you continue to be responsible stewards of congressionally appropriated funds and that the quality legal services you are providing is making a difference in confronting the justice gap.

¹ See also LSC Program Letter 06-2, *Violence Against Women Act 2006 Amendments* (February 21, 2006); and LSC Program Letter 05-2, *Eligibility of Immigrant Victims of Severe Forms of Trafficking and Family Members for Legal Services* (October 6, 2005).