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MEMORANDUM

TO: Victor Fortuno
President

FROM: Jeffrey E. Schanz
Inspector General

SUBJECT: Audit of LSC's Technology Initiative Grant Program

DATE: December 8, 2010

Attached is the Office of Inspector General's final report on the audit of LSC's Technology Initiative Grant (TIG) Program. The report makes one overall recommendation and 35 other recommendations to strengthen internal controls over TIG program operations in the following three areas:

- Legal Interpretation Issues (6 recommendations);
- Award and Administration Issues (22 recommendations);
- Regulatory Compliance Issues (7 recommendations).

Your response to the draft report describes actions planned to address the recommendations. Management actions planned are considered responsive to 26 of the recommendations (the overall recommendation and 25 of the recommendations to strengthen internal controls). The OIG considers actions planned for the ten other recommendations to be non-responsive because Management's response did not specifically indicate whether or not the recommended action would be implemented. The OIG considers all recommendations open until LSC management completes action on each recommendation and the OIG evaluates such action.

If you have any questions or need additional information, please contact me on extension 1677. Thank you and your staff for the cooperation and courtesy extended to the OIG audit team.

Attachment

LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL

AUDIT OF

LEGAL SERVICES CORPORATION'S TECHNOLOGY INITIATIVE GRANT PROGRAM

Report No. AU-11-01

December 2010

www.oig.lsc.gov

EXECUTIVE SUMMARY

Senator Charles E. Grassley, Ranking Member of the Committee on Finance, requested that the Inspector General conduct an audit of the Legal Services Corporation's Technology Initiative Grant (TIG) program. The Senator indicated his office had received a number of concerns regarding the TIG program and requested an audit of the mechanisms used to monitor and evaluate the program.

Audit Objective: The objectives of the audit were to determine whether the TIG program had appropriate internal controls in place and were properly following them, and whether the TIG program was in compliance with applicable laws, regulations, and LSC policies. The OIG reviewed the internal control system used to provide both program and financial oversight. This included control activities over applying the legal framework for the TIG grant program, awarding grants, monitoring grant performance, terminating grants, and complying with applicable laws and regulations.

Results In Brief: Taken as a whole, the control deficiencies identified in this report constitute a material weakness in the TIG program's internal control system. A material weakness in an internal control system may result in impairments to the effectiveness and efficiency of operations; misstatements in financial and performance information; or violations of laws and regulations not being prevented, detected or corrected by management or staff in the normal course of business in a timely manner. In our opinion, LSC Management does not have adequate assurance that funds spent on TIG projects meet stated goals, meet planned timelines, or adhere to established budgets.

While the TIG program has consistently been credited with achieving its end goal of increasing access to legal representation, the processes for awarding and administering grants need improvement. Appropriate internal control activities were not in place to provide adequate program or financial oversight; in some instances, LSC regulations were not followed, and procedures and processes were not in place to ensure compliance with all LSC laws and regulations.

LSC inconsistently interprets and applies the statutory framework authorizing TIG grants, and the process for making TIG awards does not adequately provide for competition among vendors performing major TIG functions. Policies and procedures governing the award and administration of TIG grants are not adequately documented and lack necessary internal controls, having a negative impact on the selection of TIG grant recipients; the monitoring of grantee's performance and expenditures; and the termination of TIG grants in a timely manner. Finally, in some cases, LSC is not requiring compliance with LSC regulations dealing with sub-grants and not sufficiently monitoring TIG recipients' compliance with LSC regulations.

Recommendations: The OIG made one overall recommendation and 35 specific recommendations to address the issues identified and to strengthen internal controls over the TIG program. Overall, the OIG recommended that LSC consider suspending

the award of TIG grants until an adequate internal control system is designed and implemented.

The OIG made 35 other recommendations to strengthen the internal controls over TIG program operations. These included recommendations to LSC Management in the following 3 areas:

Legal Interpretation Issues (6 recommendations). These include recommendations to:

- Ensure that LSC consistently interprets and applies the statutory framework authorizing TIG grants
- Ensure that vendors who receive a significant portion of TIG funding are selected based on competitive processes that ensure best value

Award and Administration Issues (22 recommendations). These include recommendations to ensure that specific policies and procedures that govern the management and administration of the TIG program are fully documented and establish adequate internal controls and processes to be followed. Areas of emphasis include:

- Documenting award decisions
- Monitoring performance reporting
- Terminating non-performing grants
- Monitoring TIG grantee expenditures
- Evaluating TIG grantee sustainability plans
- Addressing conflicts of interest

Regulatory Compliance Issues (7 recommendations). These include recommendations to:

- Identify TIG grants subject to LSC's subgrant regulations and, for these grants, ensure that subgrant rules are followed
- Develop processes to detect and prevent violations of restriction by transferees and to monitor program integrity issues on TIG projects

Summary of LSC Management Comments:

In response to the overall recommendation, the LSC President indicated that he suspended awarding all 2010 TIGs pending a rigorous review and would "…consider awarding some critical TIGs in which failure to do so would result in shutting down technology projects that provide crucial support to vital ongoing activities." The President further indicated the remaining TIG awards would resume "…only when I am confident that sufficient progress has been made in improving internal controls and that doing so will not unreasonably put LSC funds at risk."

LSC Management provided a response to each of the other 35 recommendations describing actions planned or taken. For most recommendations, LSC Management

provided comments in addition to the specific response to the recommendation. LSC Management's response to the recommendations and the additional comments are included verbatim in the body of the report except where specifically noted. The full text of LSC Management's response and comments to the draft report is Appendix I of this report.

OIG Evaluation of LSC Management's Response:

LSC Management's planned actions to address the overall recommendation are responsive. The OIG's evaluation of LSC Management's response to the other 35 recommendations is included in the body of the report and summarized below.

The OIG considers LSC Management's planned actions to be responsive to 25 recommendations in the following areas:

- Consistently interpreting and applying the statutory framework
- Developing policies and procedures governing award and administration
- Documenting award decisions
- Monitoring TIG grantee performance
- Monitoring TIG grantee expenditures
- Evaluating TIG grantee sustainability plans

The OIG considers LSC Management's planned actions as not responsive to 10 recommendations. This is because rather than implementing the recommendation, LSC Management will review the issue further and then decide what specific actions to take. The OIG will review the specific action ultimately taken by Management. The OIG considers Management actions to be not responsive in the following areas:

- Selecting vendors based on competition
- Terminating non-performing TIG grants
- Addressing conflicts of interest
- Establishing adequate oversight over subgrants
- Monitoring restricted activities by transferees and program integrity issues on certain TIG projects

The OIG considers all recommendations open until LSC Management completes action on each recommendation and provides written notification to the OIG that all actions have been completed.

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INTRODUCTION

In a January 2009 letter to the Legal Services Corporation Inspector General, Senator Charles E. Grassley, Ranking Member of the Committee on Finance, requested an audit of the Technology Initiative Grant (TIG) program. The Senator indicated his office had received a number of concerns regarding the TIG program and requested an audit of the mechanisms used to monitor and evaluate the program.

BACKGROUND

LSC Technology Initiative Grant (commonly referred as TIG or TIG grant) program was established in LSC's FY 2000 appropriation. The legislation specified that program funds be used to enhance "client self-help and information technology." Subsequent LSC appropriations have affirmed that TIG funds should be used for these same purposes. From 2000 through 2009, LSC has made 414 TIG grants totaling approximately $33 million.

LSC established the following objectives for grants issued under its TIG program:

- Providing direct legal information through websites;
- Creating and improving self-help materials and guidance;
- Increasing advice and brief services with centralized intake;
- Reaching geographically isolated clients through video conferencing;
- Ensuring that TIG grantees and the national community possess the technological infrastructures required to successfully implement projects; and,
- Providing grantees with technical assistance to augment their ability to effectively implement cutting edge technologies.

The TIG program is administered by the Office of Program Performance (OPP). The TIG program has three staff members and one intern devoting all of their time to managing grants. An additional OPP staff member is dedicating a percentage of his time on the evaluation plans and reports of the projects. In August 2010, TIG management added a new member to their team to specifically address the needs of the TIG Program.

The award of TIG grants occurs annually and, depending on the established focus of the technology needs that year, different types of projects are awarded. From the beginning of the TIG program cycle in 2000 through 2005, full applications were sent to LSC to be reviewed by a panel of outside knowledgeable individuals (external reviewers) as well as TIG staff. After analyzing all information, the TIG staff recommended projects to be awarded TIG grants to LSC Management officials who

selected the projects that most adequately addressed the technology priorities identified for that year. Starting in 2006, LSC changed the application process by soliciting Letters of Intent. Letters of Intent, which briefly outline a proposed project, were instituted because many grantees spent a lot of time and effort putting together a full application only for it to be rejected in the end. TIG program officials also moved away from using external reviewers, and instead, use internal staff to conduct the primary review of Letters of Intent. The TIG staff then invites grantees with the most promising proposals to submit full applications. TIG staff members evaluate the applications and compile a list of recommended projects for management review and approval. In FY 2009, approximately 90% of the full applications submitted were selected for funding.

The TIG program requires that once grants are awarded TIG staff members are to receive a series of milestone and quarterly reports detailing the progress of on-going grants. After an initial payment of a maximum of 40 percent of the total award, the grant is separated into a set number of payment periods, with of milestones to be accomplished during each period. The grantee must submit a report demonstrating that the specific milestones were met in order for the payment to be made to the grantee. Lastly, the structure of the TIG program requires a final evaluation report to show the impact and effectiveness the finished project had on increasing client access as well as on augmenting capacity to serve at the grantee and/or legal aid community level.

Before the 2010 grant cycle, TIG staff members used two systems called Pearl and Worksite to document and track the TIG projects' progress. Beginning with the 2010 TIG grant cycle, TIG staff members began using a section of LSC's grants management system specifically designated for TIG grants.

OBJECTIVES

The objectives of the audit were to determine whether an appropriate internal control system was in place and properly followed, and whether the TIG program was in compliance with applicable laws, regulations, and LSC policies. To accomplish our objectives, the OIG reviewed the internal control system used to provide both program and financial oversight. This included control activities over applying the legal framework for the TIG grant program, awarding grants, monitoring grant performance, terminating grants, and complying with laws and regulations.

SCOPE AND METHODOLOGY

To accomplish the objectives the OIG obtained an understanding of the internal control system by reviewing LSC policies and procedures, including all relevant manuals, guidelines, website information, memoranda, emails, and directives setting forth current TIG grant management. The OIG interviewed TIG program officials and Office of Financial and Administration (OFAS) officials to obtain an understanding of the internal control framework and the officials' knowledge and understanding of the processes in place. Applicable laws and regulations pertaining to the TIG program were also reviewed.

A judgmental sample of TIG grants awarded during the period FY 2000 through FY 2009 was selected and reviewed. A sample of 13[1] TIG awards, representing just over 10 percent of the $29,343,239 (373 separate grants) awarded during the period FY 2000 to FY 2008 were initially reviewed. Additional grants were selected to evaluate based on specific aspects identified in the initial sample of 13 TIG grants. For example, 57[2] TIG grants that were primarily carried out by third party contractors during the period FY 2000 to FY 2009 were reviewed. In addition, the OIG reviewed 22 grants that had particularly long outstanding balances, some of which had been terminated.

The OIG was provided with a spreadsheet of all TIG awards and a database that contained documentation related to each TIG awarded. The documentation in the database included proposal requests, proposed budgets, award documents, milestone reports and payment schedules. Audit tests were not performed on the general or application controls over the automated systems, Worksite and Pearl, which produced this information. The system was an electronic filing system of documents pertaining to each grant. We believe that the documents retrieved from this system provided the OIG with the same level of reliability as a paper filing system and thus was adequate to support our conclusions.

The OIG also was provided two Access databases that contained quarterly reports and milestone reports as of February 2010. In addition, TIG staff members provided an electronic file containing emails between TIG grantees and TIG staff members called Tech Grants. TIG staff indicated that some TIG related emails were not included in Tech Grants because a long time TIG staff member resigned from LSC in 2008 and had not always forwarded relevant emails to the Tech Grants electronic file. The OIG based its conclusions on the documentation provided.

[1] The OIG had initially planned to review 30 grants. The OIG modified its sampling plan to look at grants that had specific characteristics identified in the review of the initial 13 grants.

[2] After the issuing the draft report, the OIG made minor revisions to the number and dollar amounts of grants reviewed and the number of grants included as support for some findings. All affected numbers were adjusted accordingly in the final report. The changes did not impact the findings in the report.

This performance audit was conducted in accordance with generally accepted government auditing standards. Those standards require that the OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The evidence obtained provides a reasonable basis for the OIG's findings and conclusions based on the audit objectives. The OIG conducted audit field work from November 2009 to July 2010.

OVERALL EVALUATION

Taken as a whole, the control deficiencies identified in this report constitute a material weakness in the TIG program's internal control system. A material weakness in an internal control system may result in impairments to the effectiveness and efficiency of operations; misstatements in financial and performance information; or violations of laws and regulations not being prevented, detected or corrected by management or staff in the normal course of business in a timely manner. In our opinion, LSC Management does not have adequate assurance that funds spent on TIG projects meet stated goals, meet planned timelines, or adhere to established budgets as discussed in detail below.

While the TIG program has consistently been credited with achieving its end goal of increasing access to legal representation, the processes for awarding and administering grants need improvement. Appropriate internal control activities were not in place to provide adequate program or financial oversight. In some instances, LSC regulations were not followed, and procedures and processes were not in place to ensure compliance with all LSC laws and regulations.

LSC inconsistently interprets and applies the statutory framework authorizing TIG grants, and the process for making TIG awards does not adequately provide for competition among vendors performing major TIG functions. Policies and procedures governing the award and administration of TIG grants are not adequately documented and lack necessary internal controls, having a negative impact on the selection of TIG grant recipients; the monitoring of grantee's performance and expenditures; and the termination of TIG grants in a timely manner. Finally, in some cases, LSC is not requiring compliance with LSC regulations dealing with sub-grants and not sufficiently monitoring TIG recipients' compliance with LSC regulations. Detailed findings are included in three sections of the report and are summarized below.

I. Legal Interpretation Issues

LSC inconsistently interprets and applies the statutory framework for the TIG program. It structures grants to appear compliant with restrictive guidance in a conference report[3] with respect to certain aspects of the program (eligibility for TIG grants) but not with respect to other aspects (type of projects funded), where it takes advantage of the less restrictive statutory language. The conference report is not controlling and the language of the statute would allow LSC to make awards directly to vendors based on competition rather than awarding TIGs to LSC grantees "on behalf of" these vendors without the use of competition (see page 7). LSC's decision to award TIG grants exclusively to existing LSC grantees resulted in its issuing approximately 14 percent of its grants, valued at $4.5 million, to various grantees with requirements that the majority of these funds be passed through to two third-party vendors, preselected by LSC, to accomplish the purposes of these grants (see page 9). Also, performance data, such as the number of LSC grantees receiving TIG grants, may be misleading when such a large number of grants were awarded simply to pass the money through to two specific vendors.

II. Award and Administration Issues

Controls were either not properly implemented or not established. LSC established grant award criteria tied to objectives of the TIG program, created a milestone and quarterly reporting system, and introduced a project evaluation system requiring the reporting of how well programs were able to meet their targets. However, the policies and procedures implementing these measures were not adequately documented, were not always enforced, and did not include all of the necessary internal controls (See page 17). As a result, LSC did not provide proper oversight over the process as a whole and has no assurance that:

- ***Award decisions are in line with established criteria.*** LSC publicized that TIG grants would be awarded based on specific, weighted criteria but did not document that it employed the criteria in making award decisions. (See finding page 18)
- ***Performance is effectively monitored***. TIG recipients did not consistently meet performance reporting requirements and LSC did not take sufficient measures to

[3] A conference report is produced by a committee of Representatives and Senators, charged with negotiating language for a final proposed bill to be voted on in both the House and Senate. The report contains the final version of the bill as well as a section by section analysis of that bill. See C-Span Congressional Glossary. The conference report is the "most authoritative single source of legislative history...." U.S. General Accounting Office, Principles of Federal Appropriations Law (3d ed.), vol. 1, 162-163.

ensure more timely reporting, thereby limiting LSC's ability to monitor the performance of the projects. (See page 22)

- ***Grants are terminated when warranted***. LSC TIG termination procedures were not sufficiently developed thereby causing delays in terminating non-performing grants and preventing unused funds from being used for other TIG grants. (See page 24)
- ***TIG funds are being used as required in the grants.*** LSC does not monitor the actual expenditures incurred by TIG recipients on TIG projects. (See page 30)
- ***Only appropriate sustainability plans are approved.*** LSC inappropriately approved a sustainability plan for a third party entity rather than for an LSC grantee. (See page 35.
- ***Apparent conflicts of interest are identified.*** LSC awarded TIG grants with apparent conflicts of interest between the grantees and third party entities. (See page 39)

III. Enforcement of Regulatory Compliance Issues

LSC did not properly apply its sub-grant rule when grantees paid TIG funds to third parties. These rules require that sub-grants be submitted in writing to LSC for approval and contain certain terms specified by regulation, including terms that ensure compliance with LSC rules. The lack of sub-grant agreements makes it difficult to ensure that activities are consistent with LSC restrictions (see page XX). In the case of parties receiving transfers from TIG funds, many of the LSC restrictions would apply, while in the case of grants or projects intended to facilitate cooperation and collaboration with other legal service providers, the program integrity rule would apply. However, based on an OIG review of TIG program files, LSC did not establish adequate oversight to ensure that LSC regulations were followed by those ultimately receiving TIG grant funds. (See page 50)

OVERALL RECOMMENDATION

Recommendation 1. The President of LSC should consider suspending the award of TIG grants until an adequate internal control system is designed and implemented. The internal control system should address the entire TIG grant making process and include specific control activities for program and financial oversight, and processes to ensure that compliance with LSC regulations and restrictions is enforced.[4]

[4] Management recently reported, that based on the progress in addressing the issues contained in this report, 30 new TIG awards have been made. The OIG has not evaluated the new system of controls implemented as a result of this review.

Management Response.[5] In response to the recommendation by the OIG, I have suspended awarding all 2010 TIGs pending rigorous further review in light of the recommendations in the Draft Report. Management considers strong internal controls to be a vital part of all of its grants management and oversight operations, and is incorporating the recommendations of the OIG, as discussed in detail below, into a process of designing and implementing a revised system of internal control for the TIG Program that began last year. I will consider awarding some critical TIGs in which the failure to do so would result in shutting down technology projects that provide crucial support to vital ongoing activities. I will resume making the remaining TIG awards only when I am confident that sufficient progress has been made in improving internal controls and that doing so will not unreasonably put LSC funds at risk.

Evaluation of Management Response. Management's actions taken and planned are responsive to the recommendation. However, Recommendation 1 will remain open until an adequate control system is designed and implemented.

AUDIT FINDINGS

I. Legal Interpretation Issues

Pass-through grants were not awarded on a competitive basis in part because the appropriations language needed to be clarified and policies needed to be developed. The OIG identified two areas that need improvement:

A. Inconsistent Application of the Statutory Framework

B. Selection of Mandated Vendors Not Competitive

A discussion of each area is presented below and the corresponding recommendations are presented at the end of the section.

A. Inconsistent Application of the Statutory Framework

LSC's interpretation and application of the statutory framework is inconsistent. In practice, LSC follows the language of the statute and ignores conference report language with respect to certain aspects of the TIG program but adheres to the more restrictive guidance in the conference report with respect to other aspects of the program.

[5] Unless otherwise noted, the paragraphs entitled "Management Response" or "Management Response and Comment" are direct quotes from LSC Management's written response to the draft report.

In FY 2000, Congress first appropriated money for the TIG program, earmarking funds "for client self help and information technology" in the appropriations act. The conference report associated with this appropriation explained that Congress intended TIG funds "to be used to improve pro se clinic methods and acquire computerized systems that make basic legal information and court forms accessible to pro se litigants." In subsequent years, Congress continued to make appropriations "for client self help and information technology," but provided no further explanation of congressional intent. Conference reports in these subsequent years merely restate the language of the associated appropriations acts. The language of the conference report in FY 2000 likely does not represent an authoritative statement of the scope of the TIG program.

From the beginning of the TIG program, LSC applied the language of the statute and did not follow the more restrictive conference report language when deciding what sort of projects to fund. In addition to pro se projects, TIG grants have funded some projects that pertain to infrastructure, technical assistance, and certain website activities that can not be characterized as assisting pro se litigants.

LSC more strictly adhered to the expressions of Congressional intent in the FY 2000 conference report with respect to other limitations on the TIG program. Specifically, LSC appears to have more rigorously followed the direction in the FY 2000 conference report that TIG funds be used to "provide… grants to Legal Service Corporation grantees."[6] LSC chose to award its TIG funds as grants rather than contracts, and the OIG's review did not identify any instance in which a TIG grant was awarded to an organization that was not already an LSC grantee. For each year of the TIG program, however, multiple grants have been awarded to LSC grantees with the intent that grant funds be passed through to fund activities carried out by a few select other entities. For example, multiple grants were awarded to LSC grantees that applied for a TIG grant "on behalf of" an entity that was not an LSC grantee**.** (See Section I B *Selection of Mandated Vendors Not Competitive* for a further discussion of this issue.) This practice may weaken LSC's ability to secure the best value for its TIG funds and oversee compliance with its regulations and restrictions.

[6] The FY 2000 conference report also directed that TIG grants be "made with the understanding, as stated in the Legal Services Corporation budget request, that the grantees make a commitment to include in their budgets for future years amounts sufficient to maintain and upgrade their equipment." While there is some evidence in the grant files reviewed by the OIG that LSC sought to encourage such sustainability, it was difficult to determine conclusively whether any TIG grants were made to maintain or perpetuate projects funded by prior TIG grants. Accordingly, the OIG does not intend to opine in this area.

It is not certain why LSC drifted from the language of the FY 2000 conference report with respect to the sorts of projects to be funded by the TIG program, but strictly adhered to that language with respect to both the disposition of TIG funds as grants rather than contracts and the use of only current LSC grantees as being eligible for TIG grants. It has been suggested by LSC officials that LSC's practice in this regard reflected its sense of the political realities underlying the appropriations process.

Regardless of the cause, such inconsistent application of the TIG statutory framework has resulted in the development of questionable arrangements to accomplish the aims of the TIG program as LSC has envisioned them. Clarification of the statute may allow for a more transparent and efficient administration of the TIG program.

B. Selection of Mandated Vendors Not Competitive

LSC's decision to award TIG grants exclusively to existing LSC grantees resulted in its issuing approximately 14% ($4.5 million out of $33 million) of its grants (40 grants) to various grantees with requirements that the majority of these funds be passed through to third-party vendors, preselected by LSC to accomplish the purposes of these grants. The two preselected vendors have never been subjected to any grant or contract competition processes by LSC.

Since the FY 2000 grant cycle, LSC has awarded 40 TIG grants (many of which involved statewide websites) to grantees with the express purpose of having the grantee pass-though the full or a portion of the grant amount to the vendors mandated by LSC. One of those vendors has received approximately $2.6 million and another vendor has received approximately $2 million[7] in TIG funds. LSC grantees submit a grant application on behalf of the vendor. In a majority of the cases the grant application appears to have been prepared by the vendor. The vendor then corresponds directly with TIG staff during implementation, and in some instances, submits the milestones and final reports directly to LSC. The TIG grant included funds, approximately 2% of the total grant award (usually $2,000), to be used by the grantee for fiscal, administrative, and compliance oversight of the vender.

In the case of statewide websites, although a TIG official stated that four grantees received TIG grants and did not ultimately use one of the two mandated vendor's website templates, the OIG noted that LSC took measures to attempt to enforce this requirement on at least one occasion. During the review of our sampled grant files, we noted where LSC threatened to terminate a grant if the recipient did not contract with one of the LSC's preselected vendors for website development. An email from a TIG official stated in part,

[7] In addition, at least one of these two vendors participated with several other vendors on seven other TIG grants totaling approximately $600,000.

> The purpose of the statewide website portion of the TIG grant is for [the grantee] to adopt and implement one of the two LSC-approved templates…. If it is not [the grantee's] intention to use the [mandated vendor] template than [sic] the portion of this grant designated to fund the statewide website will be rescinded and $50,000.00 will be deducted from subsequent payments.

On the other hand, another grantee's final report for its initial statewide website grant, which was written and submitted by the pass-through entity, indicated that it was not using either of the two mandated templates. This entity received the majority of the funds from four website grants valued at over $600,000. There is no evidence in the grant files of the attempt to enforce the requirement for this grantee.

The use of LSC grantees as intermediaries between the Corporation and the entities actually performing grant functions by-passes LSC's contracting processes, which could have been used to award large dollar contracts on a competitive basis. Such a process could have helped to ensure that LSC received best value for its TIG dollars. In addition to what is essentially a lack of competition among the ultimate recipients of pass-through TIG funding, the minimal administration fee paid to grantees may be insufficient to ensure appropriate contracting and oversight controls at the grantee level given the complex nature of the projects undertaken by third party vendors.

The OIG was unable to determine the specific reasons for LSC's selection of the vendors it required because documentation was not available, but discussions with TIG management officials provided an outline of the selection process, which was largely non-competitive. TIG management officials stated that stateside website templates developed by the two vendors for the FY 2000 grant cycle were analyzed as part of the evaluations of proposals received from grantees. After selecting these grants and their proposed vendors for award, LSC started mandating the use of either of these two approved vendors for statewide website projects. The vendors were selected without going through LSC's competitive bidding process for contracts. A TIG official also stated a preference for awarding TIGs to LSC grantees and not having to open the awards process to public vendors that likely would yield a large number of applications, despite the fact that competition among a robust pool of applicants is ordinarily thought of as a mechanism for securing best value.

Grants disposing of approximately $4.5 million dollars in TIG funding were structured to funnel LSC money through nominal grantees to two preselected vendors. By adopting this grant structure, LSC denied itself the benefits of a competitive grant-making process with respect to these funds.

Recommendations. The President of LSC should:

Recommendation 2. Ensure that LSC consistently interprets and applies the statutory framework authorizing TIG grants.

Management Response and Comment.
Response: Management will ensure that LSC consistently interprets and applies the statutory framework authorizing TIGs under applicable cannons of statutory construction. LSC's Office of Legal Affairs (OLA) will review the statutory framework authorizing the TIG Program under applicable law involving appropriations, statutory interpretation, report language, statutory history, established principles of statutory interpretation, and the budget request process.

Comment: Management takes very seriously its obligation to ensure compliance with the statutory framework that governs all of LSC's operations and works closely with its oversight and appropriations committees in both the House and the Senate to ensure that Congress is kept fully appraised of LSC operations. Management agrees with the OIG that "LSC follows the language of the statute" in operating the TIG Program, and has always been of the view that the TIG structure and operation have been fully consistent with the relevant statutory language.

If as used in the draft report, "statutory framework" is meant to refer to both the statutory language in LSC's appropriations act and the FY 2000 conference report language regarding TIG funding, Management has been of the view that it has properly interpreted and applied the "statutory framework" but we nonetheless commit to closely reviewing and giving serious consideration to the argument made by the OIG on this point in the Draft Report.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 2 will remain open until all actions are completed and the OIG is notified of the results.

Recommendation 3. Seek clarifying language in LSC's appropriation to either restrict TIG grants to LSC program grantees or allow TIG grants and/or contracts to be made directly with non-LSC grantees and vendors.

Management Response and Comment.
Response: Management will review this issue with input from OLA, OPP and the Office of Government Relations and Public Affairs (GRPA) to determine whether clarifying language would be needed for LSC's administration of the TIG Program, and if so, Management will seek such clarification.

Comment: At the inception of the TIG program, Management made the decision to award TIGs only to existing LSC program recipients[8] based on a variety of factors including the statutory language, the conference report, communications with Congress, grant management priorities, LSC staffing, fostering continued support for TIG funding and the relative advantage of awarding these funds to LSC program recipients who were already familiar with LSC's extensive rules and restrictions. Management agrees with the OIG that a different structure would have presented some advantages, but Management determined in its discretion that the trade-offs and disadvantages outweighed those benefits at the time.

Evaluation of Management Response. Management's planned actions are not responsive to the recommendation. The response amounts to a commitment to conduct a review at a later date to decide whether and to what extent Management will seek clarifying language. Recommendation 3 will remain open until Management's review is complete and the OIG is notified of the specific actions taken in response to this recommendation.

Recommendation 4. Ensure that grant applications submitted with the intent to pass a significant portion of the requested grant funding to third parties detail the reason or plan for selecting the third-party entities in question, the justification for using third-parties to accomplish grant purposes, and the applicants' proposed methods for overseeing performance by the third parties.

Management Response and Comment.
Response: Management will require that for any TIG application submitted in which a significant portion of the grant would be used to hire a third party to assist in attaining grant purposes, the application must provide the reason or plan for selecting the third party, the justification for using the third party to accomplish the grant's goals and objectives, and the applicant's proposed methods for overseeing performance by third parties.

Comment: Currently, substantial information regarding third-party entities (including all project partners, proposed contracts and consultants, program capacity and project staffing, and the qualifications of the project team and partners) is furnished in TIG applications and considered by Management.

Evaluation of Management Response and Comment. Management's planned actions are responsive to the recommendation. However, Recommendation 4 will remain open until all actions are completed and the OIG is notified of the results.

[8] (This is Management's footnote to its Comments.) In this document, "LSC program recipients" refers to entities receiving LSC basic field, migrant, or Native American grants.

While Management stated in its Comment that proposed contracts are "furnished in TIG applications and considered by Management," many contracts are not included in grant applications but rather executed at a later date. Sometimes these contracts are submitted and reviewed as they are required milestones, and other times contracts are not required for submission and review. TIG staff indicated that typically only large-dollar contracts have been subject to review.

Recommendation 5. Establish procedures to ensure that grantees who submit grant applications follow proper contracting processes in selecting vendors to accomplish the tasks required by the grant, including using appropriate competition and maintaining adequate documentation; and have the skills necessary to fully monitor contract performance.

Management Response and Comment.

Response: Management will evaluate what additional contracting processes would be warranted for TIG grantees, including consideration of appropriate competition, adequate documentation and monitoring requirements and determine how to adopt any appropriate requirements or raise them with LSC's Board of Directors.

Comment: Management notes that TIG funds as stated in the TIG award letters, have always been subject to LSC rules, regulations, guidelines, and directives, including 45 C.F.R. Part 1630 regarding allowable costs and the Property Acquisition and Management Manual. Management will determine whether additional procedures need to be implemented to ensure TIG grantees follow these requirements.[9]

Evaluation of Management Response and Comment. Management's planned actions are not responsive to the recommendation. Management states in its response that it will evaluate what additional contracting processes would be warranted for TIG grantees. The recommendation is for LSC Management to establish procedures it should use to ensure that proper contracting processes are actually followed by grantees. Recommendation 5 will remain open until the TIG policies and procedures have been completed and evaluated by the OIG.

Regarding Management's Comment, the issue is not whether grantees have been notified that all TIG funds are subject to all LSC rules, regulations, guidelines and directives. The issue is that LSC had not established adequate procedures to provide grant oversight, whether through LSC's existing regulations or otherwise, to ensure that

[9] (This is Management's footnote to its Comments.) Management disagrees with the Draft Report's characterization that LSC is "bypassing" its contracting process by awarding TIGs only to LSC program recipients. The characterization appears to imply the decision was intended to circumvent LSC's contacting process when instead the decision to award TIGs entirely to existing LSC program recipients was made based on consideration of a variety of legal, programmatic and practical considerations as discussed in response to Recommendation 3 above.

recipients of TIG funds are in fact following all LSC rules, regulations, guidelines and directives. As for Management's footnote to its comments (footnote 9), the OIG is not attributing intent. The OIG is pointing out that by using available contracting processes LSC could have provided better oversight of TIG funds. The OIG was given no evidence of adequate oversight by LSC Management of the contracting processes used by the grantees to obtain the services of a third party. It is the OIG's opinion that many of these grants are in fact pass-through grants that should be subject to subgrant regulations. This interpretation is bolstered by Management's response to Recommendation 6, where it references ". . . TIGs that involve paying a significant portion of the requested grant funding to another organization that is fulfilling the grant goals and objectives. . . ." At a minimum, however, given that operating personnel state that the arrangements with third parties are contracts, procedures should be in place for LSC Management to provide adequate oversight of the contracting processes used by the grantees.

Recommendation 6. Discontinue the practice of paying an administration fee to grantees that act as the vehicle to pass TIG funds to other organizations in the absence of an administration/oversight plan in the grant application and continued assurances that this plan is being carried out during the grant period.

Management Response. Management will not pay an administrative fee to grantees on TIGs that involve paying a significant portion of the requested grant funding to another organization that is fulfilling the grant goals and objectives, without an administration/oversight plan (which may be provided in the grant application). Management will require reporting on the actual implementation of that plan.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 6 will remain open until the TIG policies and procedures have been completed and a copy provided to the OIG.

Recommendation 7. Should LSC continue mandating specific vendors, establish an open competition process to ensure best value, or adopt an alternative model for securing the same or similar products through LSC's contracting procedures, which would similarly secure best value.

Management Response and Comment.
Response: Management is reviewing appropriate contracting procedures regarding TIG grantee expenditures as per the responses to Recommendations 5, 6 and 34. LSC does not believe that it has mandated specific vendors for any TIG Program awards. However, should Management ever decide to mandate specific vendors in the future, it will evaluate appropriate contracting processes including open competition options to determine the most effective method of securing the best value for the funds expended.

Comment: Management's Comment remarks regarding this recommendation are lengthy. The OIG has quoted some portion of Management's comment and then summarized the remarks. The full text of Management's Comment can be found at Appendix I, page 5. Management stated:

> This comment provides additional information to clarify the situations involving the third parties that appear to be the source of the concerns referenced in the Draft Report ….LSC always encourages TIG grantees to obtain the most economical and effective services from their staff or from vendors.
>
> …. LSC never mandated that TIG grantees use a particular *vendor*. "Templates" refer to the software platform used to run the website …. Rather than paying repeatedly for platform development of websites for individual LSC program recipients, LSC determined that limited TIG funds would be better used if it awarded TIGs to develop two website templates to make available to all LSC recipients….

Management then describes the process by which it arrived at two approved templates, one using an open source template and a limited cost vendor and the other using a template developed by a non-profit organization that "appears to be one that the Draft Report refers to as 'mandated.'" Management further notes that it determined it would be best for "all the LSC program recipients in a state participate in one statewide website with other providers of legal information and services," and that "[s]ome of the 41 TIGs referenced by the OIG therein included projects in which grantees had proposed using a non-profit vendor for support or enhancements to existing statewide websites that already used that vendor's template." According to Management's comment, other grants that fall within the group discussed in the OIG's reports "involve[ed] making technical expertise available for free to all LSC grantees that would be tailored to their needs including a technical resource website, consulting, and in-person trainings" and a "partnership [that] was established between TIG grantees and a non-profit vendor" to maintain an "automated document assembly website system."

Evaluation of Management Response and Comment.

Response: Management's planned actions are responsive to the recommendation. While the recommendations cited in its response mainly pertain to grantee contract procedures, Management has committed to evaluating appropriate contracting processes to determine the most effective method of securing the best value for the funds expended. However, Recommendation 7 will remain open until the TIG policies and procedures have been completed and a copy provided to the OIG.

Whether the type of arrangement with vendors described by LSC Management in its Comment remarks is considered a mandate or the exercise of an option for grantees to use LSC-identified vendors, the fact is that two vendors have provided $4.5 million in

similar services to 41 grantees with no documented evidence of competition maintained at the headquarters level. To ensure that LSC is receiving the best value for TIG funds, LSC Management needs to implement recommendations to establish open competition for vendors providing the same or similar types of service to multiple TIG grantees. More open competition and more robust contracting oversight will not only help ensure best value procurement, but also allow for fresh perspectives and approaches to enter the TIG initiative's market as it enters its second decade of awards.

Management's extensive comment provides a putative explanation for many of the third-party payments that provide a basis for the discussion in the Report. Without rehashing the findings and the evidence upon which they are based, the OIG observes that the cases discussed in Management's comments are not as straightforward as those comments would make them appear. In at least one instance evidenced by email, a grantee believed it was being "required" to "subgrant" money to a third-party entity. An example already cited in the finding shows at least one case where LSC Management steered a grantee to a specific open-source template supported by a particular provider, threatening to reduce the grant award. The amount of money paid to a limited number of third-party entities suggests that grant funds are being directed in some way to particular third-party entities. Regardless of the mechanisms involved, the process by which third-parties became involved in the TIG program resulted in a limited number of entities receiving a large proportion of available TIG funds. Given this situation, LSC should exercise more active oversight to ensure that it and its grantees receive the best available value for the funds expended.

II. Award and Administration Issues

LSC needs to fully document its policies and procedures over the award and administration of TIG grants and establish controls to ensure that they are followed. Specifically, the OIG identified that:

A. TIG Policies and Procedures Were Not Fully Documented;
B. Award Decisions Were Not Fully Documented;
C. Performance Reporting Was Not Sufficiently Monitored;
D. Formal Termination Procedures Were Not Adequately Established;
E. Actual Expenditures Incurred By Grantees Were Not Monitored;
F. Third-party Sustainability Plan Was Inappropriately Funded; and
G. Apparent Conflicts of Interest Were Not Identified.

Detailed findings in each area are presented below. Recommendations addressing these findings are presented at the end of the section.

A. TIG Policies and Procedures Not Fully Documented

Specific policies and procedures governing management of the TIG program were not fully documented. While the TIG program did have a user's manual, this documentation was technical in focus and did not spell out necessary or desirable internal controls and specific grant administration procedures.

As an internal control best practice, the "Guide to Opportunities for Improving Grant Accountability" compiled by members of the Grant Accountability Project[10], identifies the preparation of policies and procedures before issuing grants as one of four important internal controls. The guide states that internal control systems that are not adequately designed or followed make it difficult for managers to determine whether funds are properly used and whether projects funded achieve intended results.

Neither the current OPP Office Procedures Manual nor the TIG Procedures Manual fully documents the policies and procedures to be observed in administering the TIG program. The OPP Office Procedures Manual provides some background and overview of the TIG program and makes reference to a TIG Procedures Manual. The TIG Procedures Manual only provides a brief overview of the TIG program and instructions for managing the grantee database. According to a TIG official, the TIG Procedures Manual was created for the use by rotating TIG interns to accomplish administrative tasks. Neither manual describes the specific policies and procedures to be followed in administering the TIG program such as:

- Evaluating Proposals and Awarding Grants - No procedures exist to systematically evaluate proposals in line with stated Notice of Availability of Funds criteria. (See finding, "Award Decisions Not Fully Documented")
- Monitoring Project Performance - No procedures exist to ensure projects are completed within established time frames. (See finding, "Performance Reporting Not Sufficiently Monitored")
- Terminating Grants - No formal procedures exist to ensure that delinquent projects are terminated in a timely manner. (See finding, "Termination Procedures Not Established")
- Monitoring Grant Funds and Budgets - No policy and procedures exist for grantee reporting and LSC monitoring of actual expenditures incurred. (See finding, "Actual Expenditures Incurred by Grantees Not Monitored")
- Ensuring Program Integrity and Sub Grant Compliance - No policy and procedures exist for LSC monitoring of TIG grantees' compliance with LSC regulations. (See finding, "Subgrant Rules Not Properly Applied)

[10] The Grant Accountability Project is a collection of Federal, State, and local organizations tasked by the Comptroller General of the United States Domestic Working Group to offer suggestions for improving grant accountability.

As a result of not fully documenting the policies and procedures to be followed for the TIG program, LSC does not maintain consistent and adequate internal control over the administration of the TIG program. Not having an adequate internal control system could result in program objectives not being achieved and could also result in fraud, waste or abuse.

Recommendation 8. The President of LSC should ensure that specific policies and procedures that govern the management and administration of the TIG program are fully documented. These policies and procedures should establish adequate internal control activities and processes to be followed by TIG office personnel.

Management Response and Comment.
Response: Management has already prepared a draft TIG Policies and Procedures Manual that compiles into one document the existing policies and procedures used for the management and administration of the TIG Program, and adds new policies and procedures addressing issues covered by these responses to the Draft Report. These include all internal control activities to be followed by TIG personnel for grant awards, monitoring and oversight.

Comment: Management notes that while specific policies and procedures used to administer the TIG Program have been in place, and some were documented in the OPP Office Procedures Manual and the TIG Procedures Manual, they had not previously been compiled in a single integrated manual.

Evaluation of Management Response and Comment. Management's planned actions are responsive to the recommendation. However, Recommendation 8 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

In regard to Management's Comment, the TIG Policies and Procedures Manual referenced in the response had not been created at the time of our field work, November 2009 to June 2010. Apparently, according to Management's comment, some policies and procedures were in place, but they were not documented in either the OPP Office procedures manual or the TIG Procedures Manual provided to the OIG, nor were they mentioned when the OIG inquired about policies and procedures.

B. Award Decisions Not Fully Documented

TIG staff did not maintain adequate documentation to fully support decisions on awarding TIG grants. Although specific criteria[11] were developed to evaluate a

[11] For each grant award cycle, LSC's Notice of Availability Funds (NOAF) for Technology Initiative Grants, Review Criteria outlines the guidelines for evaluating each TIG proposal. The Review Criteria section includes the TIG application review criteria and the relative weight of each criterion. The NOAF states that reviewers will evaluate and rate each application using the stated criteria.

proposed project's potential for success, TIG staff does not document how the criteria were used or what other information was used in making decisions to award TIG grants.

From the 2000 though 2006 TIG grant award cycles, external review panelists were contracted to conduct evaluations of the TIG applications during the pre-award process. External reviewers used scorecards to tally points for each criterion and then made comments based on the established criteria. TIG staff stated they used these evaluations as one piece of data to help with funding decisions. The request for proposals indicated that the published criteria were the primary basis for awarding grants.

Starting with the 2007 TIG grant award cycle, LSC instituted a new system of reviewing applications. Grantees interested in receiving a TIG grant were required to submit a two page "Letter of Intent" outlining the project's objectives. TIG officials reviewed these letters of intent and determined the strongest applicants, which were then invited to prepare a full application. According to a TIG official, this process is meant to eliminate the weaker proposals, so grantees do not waste time putting together a full application that is not likely to be funded.

Our review of TIG files revealed that the rationale supporting decisions to award grants was not adequately documented. In our initial sample of 13 TIG projects, 1 project was awarded under the letter of intent system and 12 were awarded under the review panel system. For the one under the letter of intent system, the grant files contained no documentation to support how published criteria were applied to the grant application. For the 12 other projects sampled, no documentation was on file to explain how the external reviewers' detailed scorecards and comments were used by the TIG staff in making award decisions or what other information was used in making the final decision.

For TIG grants awarded, TIG staff makes an entry in the automated system[12] as to why the project was chosen. However, most entries are short and vague, and do not indicate how the criteria were applied. The following are two examples of the entries made for two grants.

- This grant adds the capacity for pro se individuals to save pertinent legal information to personal web pages called 'personal case account managers' to the existing website.

[12] The Pearl system is a comprehensive database designed to organize information for each TIG grant. It has the capabilities to allow documents related to each project to be attached to that specific TIG grant file.

- We are recommending this grant. This project has strong court involvement, training, audio, and translation components.

Neither of these entries constitutes adequate documentation of the selection process or how the published criteria were applied.

One TIG official stated that all LSC reviewers do not use the review criteria and the relative weight of each criterion to rate TIG applications. Another TIG official stated that the criteria is kept in the back of his/her mind while reviewing the application but did not document how the criteria were applied.

The lack of adequate documentation was caused in part by the fact that the TIG program has not established adequate written policies and procedures that define what constitutes adequate documentation. Also, formal policies and procedures have not been developed to establish how to use and apply the published criteria in making grant award decisions.

Adequately documenting the award decisions, including disclosing all criteria used and applying the criteria in a consistent and transparent manner, helps ensure fair and open competition for applicants vying for limited TIG funds.

Recommendations. The President of LSC should ensure that policies and procedures are developed and implemented to:

Recommendation 9. Adequately document TIG grant award decisions.

Management Response and Comment.
Response: Management has already developed and implemented an enhanced review system beginning with the 2010 grant cycle for all TIG applications, including Letters of Intent, using LSC's grant management software that thoroughly documents the review and award decision process. Each step of this review system is fully set out in the TIG Policies and Procedures Manual referenced in Recommendation 8.

Comment: Management conducts thorough reviews of all competitive TIG applications according to the selection process outlined in LSC's Notice of Availability of Funds for Technology Initiative Grants. Each proposal is reviewed to determine how well an applicant addresses the Review Criteria as outlined in the Notice. Per the Notice, additional factors that may be used include a program's funding scope, the eligibility of costs included in an application's budget, and the extent to which an application complements or duplicates projects previously funded or under consideration by LSC or other federal programs.

Much of this review process is conducted in meetings between TIG staff, the OPP Director, the Vice President for Programs and Compliance, and finally, with the LSC President. Management agrees with the OIG's recommendation that better documentation of what we believe is an exhaustive review and award decision process is appropriate, and we have already implemented changes we believe fully address the issue. In 2009, TIG staff prepared a 45-page report detailing its review process and documenting their analysis based on each review criteria. In 2010 this documentation process was incorporated into the new LSC grants management system, which stores reviewer assessments for each review criteria as well as the other factors outlined above and documents the review comments and award recommendation of the Director of the Office of Program Performance, the Vice President for Programs and Compliance and the LSC President.

Evaluation of Management Response and Comment. Management's planned actions are responsive to the recommendation. However, Recommendation 9 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG, and all other planned actions are implemented.

Regarding Management's Comment, while Management expressed the belief that there was an exhaustive review and award decision process, Management also agreed with the OIG's recommendation that better documentation of the process is necessary. Management has reported taking actions to improve the documentation of the review and award decision process starting with the 2010 grant cycle for all TIG applications. These steps include implementing a new grant management software system. The steps taken are positive and should address the documentation issues identified in this report. Once the draft TIG Policies and Procedures Manual is finalized and implemented, the OIG will review the manual and the new software system to ensure that all reasonable documentation requirements are met.

Recommendation 10. Evaluate all TIG grant applications, including Letters of Intent, in a consistent manner, based on established criteria.

Management Response. Management has already prepared a draft TIG Policies and Procedures Manual for the management and administration of the TIG Program that outlines and documents the evaluation of all TIG applications and Letters of Intent, including how to use and apply the published review criteria, to ensure that reviews and funding recommendations are conducted in a consistent manner, based on the established criteria. In addition, the review system developed in LSC's grants management system provides documentation of the step-by-step review and evaluation procedures throughout the grant application and award process. LSC will also examine the Notice of Availability of Funding, which publishes the review criteria, to ensure that it appropriately reflects the written policies and procedures for applying the published criteria in making grant award decisions.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 10 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG, and all other planned actions are implemented.

C. Performance Reporting Not Sufficiently Monitored

While each TIG grant is awarded with performance reporting requirements, in practice, LSC does not ensure that these requirements are met. Milestone reporting is often delinquent, adjustments to milestones are not always requested, and when adjustments are requested by grantees, they largely occur after the milestone date has passed. Where required by LSC, quarterly reports are frequently not submitted, and if submitted are largely delinquent. Final grant reporting often occurs well after the grant term's scheduled expiration.

TIG grant assurances for some grants state that, within 30 days of the end of a payment period, milestone completion reports should be submitted and that within 30 days of the end of each quarter, the recipient shall submit a quarterly report. Milestone changes, due date modifications, significant problems, or plan modifications also must be communicated to and approved by TIG staff in a timely manner.

According to a TIG January 2010 presentation to the LSC Board of Directors, typical projects last 12 to 24 months plus an additional 3 months for final report submission. LSC monitors the progress of TIGs by reviewing milestone reports and quarterly reports (quarterly reports are only applicable for TIGs issued from 2002 through 2008[13]) submitted by TIG recipients.

For the 13 grants in our sample, 10 missed filing 1 or more milestone reports required by the established payment period due dates. Overall, 30 of 53 possible payment periods had late milestone report submissions (57%), by an average of 10.5 months late. Furthermore, the procedure to request milestone adjustments was not always carried out in advance of the milestones' due dates. Only two of the five grants receiving milestone adjustments had documentation available concerning the request and approval of the adjustment.[14] Only one of the two grants which had a milestone adjustment request was received in advance of the milestone due date.

[13] For the last two grant cycles in 2009 and 2010, TIG has opted to create milestone schedules with more finite, incremental tasks. OMB's Chief Performance Officer cites this practice of "breaking projects down into manageable chunks with well-defined milestones to make sure they deliver tangible benefits to end users" as one of 5 best practices that can reduce the risk, cost and length of IT projects." While the TIG staff has adopted a promising practice, TIG needs to develop procedures to rigorously enforce the timely completion of milestone report submissions.

[14] No request documentation was evident in the email directory provided to us by TIG; TIG officials informed us that due to staff turnover and the fact that emails were stored in different places at times, all emails were likely not included in the grant files and thus, not provided.

The quarterly reporting requirement is often ignored. Many such reports arrive late and only after multiple reminders. Of the eight grants in our sample subject to quarterly reporting requirements, three grant files indicated that no quarterly reports were ever submitted. For the remaining five grants subject to quarterly reporting, four submitted all reports on time and one submitted all quarterly reports after the grant term had ended.

Overall for the 13 sampled TIG grant files, 7 grants were completed on time, 4 grants were completed 2 years late on average, and 2 grants were terminated. While delays are inevitable with some technology innovation projects, ensuring that required reports are received in accordance with grant assurances helps provide oversight of the grants, ensures that projects are being accomplished within a reasonable time frame, and helps identify and address problems as early as possible.

Recommendation 11. The President of LSC should develop formal written procedures for ensuring that all reports required by grant assurances are received in a timely manner. These procedures should include provisions for grantees to submit milestone adjustment requests using the online grants management system, along with TIG staff's approval of such requests as well as for enforcing penalties, including initiating termination processes, if reports are not received timely.

Management Response. Management has already prepared a draft TIG Policies and Procedures Manual for the management and administration of the TIG Program that includes formal written procedures for ensuring that all reports required by grant assurances are received in a timely manner. We are working on building the capability in LSC's online grants management system to allow TIG grantees to submit milestone adjustment requests via the online system and for LSC to send automated email reminders to TIG grantees about reporting deadlines. TIG staff will continue sending email reminders until the automated system is developed. Training on reporting requirements is conducted for new TIG grantees at the TIG Conference and via online webinars. LSC will conduct an additional online reporting requirements training webinar prior to the TIG grantees' first reporting deadline, and will record it and post it on the TIG website. Reporting policies and procedures for TIG grantees will be posted online, outlining their responsibilities and the penalties, including termination procedures, for non-performance on TIG projects.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 11 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

D. Formal Termination Procedures Not Established

Formal termination procedures have not been adequately established for TIG grants and LSC's regulations do not define binding termination procedures for the TIG program. While the TIG Procedures Manual refers to termination notices in two sections, it does not provide comprehensive or adequate termination procedures. The lack of adequate termination procedures results in non-performing grants not being terminated timely, and when some of the grants are terminated, the funds obligated have not been made available to other viable projects in a timely manner.

LSC's general termination regulation does not establish binding termination procedures for TIG grants because it is limited to reductions in a "recipient's level of financial assistance," where "financial assistance" refers to "annualized funding … for the direct delivery of legal assistance to eligible clients." *Compare* 45 C.F.R. §1606.3(a)(1) *with* 45 C.F.R. § 1600.1. The TIG Procedures Manual (undated) does not fill this gap in LSC's regulations. While this manual does include a section entitled "Processing a Termination Letter," this section covers clerical details such as the officials to whom copies of letters should be provided and how to process the mailing of termination letters. Another section of the TIG Procedures Manual, entitled "Welcome to the TIG Department," contains a three sentence paragraph that indicates that a 60-day email will be sent to the grantee warning that the grantee needs to show dramatic improvement and a good reason for LSC not to terminate the grant. This section also states if the grantee fails in this regard, the grantee will receive a 30-day termination letter notifying it of LSC's decision to terminate the grant. While not a written procedure contained in the TIG Procedures Manual, TIG staff indicated that starting in August 2008 the LSC President instituted the requirement that the LSC President approve a memo to the Comptroller indicating the grant is terminated and specifying the financial terms of the terminations.

Measures currently taken to terminate TIG grants are ad-hoc and informal, with no set time periods or written guidelines for determining when to: consider termination; send the 60-day email warning the grantee of potential termination; or follow up with the 30-day termination letter. When termination was initiated, the TIG program did not have a formal process to ensure that all required actions were taken to release funds for other viable projects. The TIG program has no formal policy providing for: the potential for reallocation of property purchased with TIG funds in the event of a termination; a final evaluation of a terminated TIG grant; or a final accounting for TIG funds previously disbursed to terminated grantees. The TIG Grant Assurances do not contain any reference to a mandatory close-out procedure like that required of basic field grantees. Finally, the TIG program has no formal policy assigning decision-making authority to specified officials to terminate TIG grants or reserving final decision-making authority to the LSC President or designee.

As a result of the TIG program's ill-defined termination policies, LSC did not always take all required actions in a timely manner to release the funds of terminated grantees for other viable projects. TIG officials routinely informed grantees that they would be allowed to keep TIG funds already disbursed and items purchased with TIG funds without obtaining any final accounting or following any closeout process. In some instances, a memorandum authorizing the reallocation of funds from a terminated grant was not timely sent to the LSC President for approval so that the Comptroller could close out the remaining balance and reallocate the funds to the TIG account to be used for future TIG grants.

LSC's financial statement audit for FY 2009 reported unexpended TIG balances of $2.78 million for 75 grants. This prompted the TIG staff in December 2009 to consider termination proceedings for 17 outstanding grants. At that time, two of the grantees had already been sent termination letters in June of 2007, but the final termination memo, which would have authorized the unspent funds to be released for future use, had not been signed by the LSC President. As of August 2010, LSC was in various stages of the termination process for the 17 grants[15].

For the two grantees identified above, termination letters were sent by the TIG staff in June 2007. According to a December, 2009 memo from an OPP official, only the LSC President's review and signature on the grant termination/reduction memos to the LSC Comptroller remained to complete the process. Neither grant files reviewed contained any financial or analytical support for the decision to not require any further action by the grantees nor an accounting for the funds spent under the grant.

a. A review of the documentation for one of the grants showed that LSC decided not to seek reimbursement for any of the $15,037 in funds paid to the grantee prior to the termination, without any final accounting to support that decision. The grantee ceased being an LSC basic field grantee in September of 2007. A termination letter dated June 19, 2007, indicated that $7,000 remained on the grant to be paid out. Due to the termination, the unexpended funds would be reallocated back to the LSC's TIG account and made available to other TIG applicants, and "LSC will not be seeking reimbursement for funds already expended on [the] project."

b. For the other grant, an April 2010 note in the TIG program's data base reported that the grant funds not disbursed to the grantee ($57,500) had not yet been reallocated to the general TIG account, but that a memorandum authorizing the reduction had just been drafted and was awaiting the President's approval. As in the case of the first example, TIG officials communicated to the grantee LSC's intention not to seek reimbursement for any of the $111,603 in funds already paid under the grant.

[15] During the audit, one of the grantees completed the majority of the TIG project for which it received grant funds. While the grant was not terminated, unspent monies for the portion of the grant activity not accomplished remained assigned to the grant. A memo to reduce the amount for the grant was prepared by the TIG staff in June 2010.

A full accounting of all expenditures made on terminated TIG projects is necessary to ensure that LSC funds have been properly used. However, LSC's stated practice is to obtain an accounting of expenditures for only the most recent payment to the grantee, and that practice has been followed inconsistently. In some instances, such as those described above, even this limited accounting was omitted.

In addition to the 17 grants referenced above, the OIG reviewed 5 grants that had been terminated previously. These grants totaled $818,030 in TIG funds, of which $168,596 was available for reallocation by LSC to its TIG account. Based on available grant files, the OIG found financial documentation supporting the grantee's most recent payment expenditures for only two of the five terminated grants and no financial documentation supporting the grantee's expenditures of any other payments received.

Recommendations. The President of LSC should:

Recommendation 12. Develop detailed termination procedures including timeframes to complete each significant action associated with terminating TIG grants such as reallocating unexpended funds back to the TIG account for use in making other TIG grants. These procedures should require periodic reporting by TIG staff to LSC senior management of the status of each grant in the process of being terminated. Also, the procedures should require the Office of Legal Affairs' involvement when terminating grants to ensure that LSC's interests are properly protected.

Management Response and Comment.

Response: Management is developing detailed termination procedures and will carefully consider these suggestions. These procedures will clearly distinguish among terminations, voluntary relinquishments, expirations, and extensions of deadlines. Once these procedures are adopted, Management will incorporate them into the TIG Policies and Procedures Manual. Termination procedures may require rulemaking by the LSC Board of Directors. Thus, Management will determine which procedures Management can put in place and which procedures will require Board action to promulgate.

Comment: Management has had in place basic procedures that it has followed to close out a TIG project when a TIG grantee has not submitted documentation in a timely manner or a grant term has expired at the end of the grant term period (usually 12 or 18 months).[16] Because of the structure of the TIG Program, LSC is able to retain control of most TIG funds pending performance by the TIG grantee. After the initial payment, funds are held by LSC and not released until the TIG grantee submits required reports. Thus, even without any formal close out or termination, the grantee cannot receive most

[16] (This is Management's footnote to its Comments.) Management agrees with the OIG that the LSC termination regulation, 45 C.F.R. Part 1606, applies to annualized grants and not to TIG awards.

of the grant funds awarded until it has demonstrated the required progress on the project for which the grant was made.

Furthermore, Management has not involuntarily terminated any TIGs under those procedures. A termination would occur when LSC ends a grant prior to the expiration of the grant term. Rather, certain TIGs have been voluntarily surrendered or relinquished by grantees who found that they could not complete the project for which the grant was made, or LSC has used these "termination" procedures to functionally grant extensions after the end of the grant term period. Although the TIGs had expired, and LSC had no obligation to provide extensions, LSC used these procedures to provide grantees additional opportunities and deadlines to complete the work and reporting in order to obtain the remaining funds from the grant when LSC determined that doing so was in the best interest of the TIG Program and the goals of the individual grant.

Evaluation of Management Response and Comment. Management's planned actions are responsive to the recommendation. However, Recommendation 12 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

Management's additional comments which include the statement that "A termination would occur when LSC ends a grant prior to the expiration of the grant term" has little applicability for TIG grants, as our review indicated a high likelihood of TIG grants routinely going beyond their grant terms. The OIG questions the extreme latitude afforded grantees from LSC's practice of using "these "termination" procedures to functionally grant extensions after the end of the grant term period" and "to provide grantees additional opportunities and deadlines to complete the work and reporting in order to obtain the remaining funds from the grant." The following case in point demonstrates the pitfalls of using "termination" procedures in this manner.

A TIG grantee completed its first and second milestones (out of 4) for a statewide website in October 2003. No more milestones were completed in 4 years and a termination letter was sent to the grantee in April 2008. The grantee sent an email in early 2009 to see if it was eligible for a 2009 renewal website grant. A February 2009 email response from TIG staff indicated that "while you received the 30 day letter, the grant has not actually been terminated yet." The email said that if the final reporting could be done within 30 days, the grantee could receive the final $10,000 of the 2001 grant, and thus be eligible to apply for a renewal website grant for the 2009 TIG cycle. The final evaluation reporting for the 2001 grant was never submitted, however, and a termination letter was sent again in April 2010. As of November 2010, this grant is listed in TIG's online system as suspended and the $10,000 balance remains. While LSC Management indicates that basic procedures are in place that have been followed to close out a TIG project when a TIG grantee has not submitted documentation in a timely manner or a grant term has expired at the end of the grant term period, at least in

the example above the procedures and/or their application have not always been effective in doing so.

Recommendation 13. Ensure that clear authorities are established for terminating grants. Since the President of LSC awards the TIG grants, we suggest that the President of LSC or designee approve terminating grants.

Management Response and Comment.
Response: Management will include clear authorities for terminating TIGs in the actions taken in response to Recommendation 12 above. Management will include the suggestion regarding the role of the President in the review and recommendations.

Comment: The current TIG procedures regarding terminations (which have been in place since August 2, 2007) require that the President of LSC approve any and all TIG terminations. As discussed above in response to Recommendation 12, these procedures will be reviewed and revised (possibly subject to formal rulemaking). As with 45 C.F.R. Part 1606, LSC's termination regulation for annualized grants, the role of the President might be reserved for review on final appeal rather than for making the termination decision.

Evaluation of Management Response and Comment. Management's planned actions are responsive to the recommendation. However, Recommendation 13 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

Regarding Management's Comment, the finding indicates that the termination procedures were not well defined. For example, the report states the termination procedures did not require a final accounting of the TIG funds spent and did not have a formal process to ensure that all required termination actions were taken to release funds for other viable TIG projects. The report also includes examples where termination letters were sent to grantees in June 2007 and the unspent funds had not been released for use for other TIG awards as of December 2009. Neither of the files contained in these examples contained an accounting of the TIG funds spent.

Recommendation 14. Develop specific procedures when terminating grants to require grantees to account for all funds and items purchased to ensure that the money was spent in accordance with the grant terms. These procedures should include requirements to recover unspent funds and to determine if the items purchased can be used by other grantees receiving TIG grants.

Management Response and Comment.
Response: Management will consider specific procedures regarding TIG grant terminations to require TIG grantees to account for all funds and items purchased to ensure that the money was spent in accordance with the grant terms. In developing any

such procedures, Management will include consideration of requirements to recover unspent funds and making determinations whether items purchased can be used by other LSC program recipients receiving TIG awards.

Comment: Management notes that all TIG funds have always been subject to all LSC rules, regulations, guidelines and directives, as stated in TIG award letters. This would include 45 C.F.R. Part 1630 regarding allowable costs and the Property Acquisition and Management Manual. As such, Management's review will determine if additional procedures are needed for TIG terminations based on the nature of the TIG Program and whether recommendations to the Board are in order for additional rulemaking.

Evaluation of Management Response and Comment. Management's planned actions are not responsive to the recommendation. The OIG recommended that specific procedures be developed, not simply to consider such procedures, to require that grantees account for all funds and items purchased when a TIG grant is terminated. The recommendation was intended to increase oversight of LSC grant funds. Recommendation 14 will remain open until Management completes all actions and notifies the OIG of the actions taken.

Regarding Management's Comment, the issue is not whether TIG funds are subject to all LSC rules, regulations, guidelines and directives. The issue is that LSC had not established adequate procedures to provide grant oversight to ensure that recipients of TIG funds are in fact following all LSC rules, regulations, guidelines and directives.

Recommendation 15. Require a lessons learned report be prepared by the grantee so that the circumstances that caused the grant to be terminated can be avoided or at least can be identified as early as possible in order to conserve scarce TIG funds.

Management Response. Management will require a lessons-learned report by the TIG grantee as part of the procedures associated with TIG terminations. If the grant is being terminated for incomplete reporting or if LSC determines that a lessons-learned report will not be forthcoming from the grantee, TIG staff will prepare and document a lessons-learned report.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 15 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

Recommendation 16. Amend the TIG grant assurances to reflect the need for a final accounting and a lessons learned report in the event the TIG grant is terminated.

Management Response. Beginning with 2010 TIG awards, Management will include in the TIG Grant Assurances the requirement for a final accounting and a lessons-learned report, as described above, in the event the TIG award is terminated.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 16 will remain open until all actions are completed.

Recommendation 17. Publish termination policies and procedures to provide TIG grantees with adequate notice of applicable rules.

Management Response. As described in response to Recommendations 12-16 above, Management is working to develop detailed policies and procedures applicable to TIG award terminations, voluntary relinquishments and expirations, to be included in the TIG Policies and Procedures Manual. Once adopted, the policies and procedures affecting the TIG grantees (as opposed to internal LSC procedures) will be published on the TIG website to provide TIG recipients with adequate notice of applicable rules.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 17 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

E. Actual Expenditures Incurred by Grantees Not Monitored

A method to perform financial oversight of TIGs was not established by LSC. Although TIG recipients prepared budgets detailing how TIG funds were to be used, they were not required to report the actual expenditures incurred on the TIGs. Also, when the amount of the grant awards differed from the amount proposed, TIG staff did not document the adjustments to the proposed budgets. Thus without the reports of expenditures and accurate budgets, TIG staff were not able to perform financial oversight by comparing actual expenditures incurred by grantees to budget estimates.

Out of the 13 grants reviewed, none documented that the TIG staff examined expenditures incurred by grantees. Grantees did not report to LSC on actual expenditures compared to budgeted amounts incurred related to TIG projects.[17] Currently, grantees maintain all financial information supporting grant expenditures on site. The TIG staff conducts very few site visits due to staff size limitations, and when visits do occur, the objectives of the visit do not include the review of documentation supporting actual expenditures. Also, there is no requirement to prepare a written report on what was done or what was found during a TIG site visit. The OIG was

[17] During the course of our audit we reviewed over 150 grant files based on specific attributes in addition to our comprehensive review of documentation related to our primary same of 13 grants. Our review only identified 3 cases of actual expenditure documentation included in the files.

informed by TIG officials that the only time grantees may be asked to provide an accounting of grant funds is if the grant is terminated prior to completion, in order to determine how much, if any, is owed back to LSC from the most recent payment period.

For all 13 grants reviewed, there was no evidence of a final approved budget or adjustments to the proposed budgets. For three grants reviewed, the proposed budgets submitted by the grantees were not changed even though the grants were awarded for different amounts than requested.. The amount awarded was less than the amount requested for two grants and increased for the remaining grant. For example, one grantee submitted a proposal for $500,000. The award amount was only for $451,818, which represented a $48,182 decrease. Another grantee submitted a proposed budget of $500,000, but only $391,270 was awarded. There were no adjusted budget documents for either of these projects showing how the decrease affected the proposed budget line items.

For the third grantee, the TIG grant was awarded for $451,855. Four years later and a year after the original grant term's expiration, LSC added an additional $50,000 to the grant. There were no adjusted budget documents for this project showing how the increase affected the proposed budget line items. Adjusted budgets were not documented or readily available for review.

To assist grantees applying for TIG awards, LSC issued "***Guidelines for Preparing Applications***". This document instructs applicants how to submit an application and includes requirements for a proposed budget and narrative showing how they are going to spend the awarded grant funds. According to this document, if the project and related application are accepted, TIG staff may approve the budget or make adjustments they deem necessary. LSC grant assurances state: "All Funds disbursed by LSC pursuant to this grant shall be used solely for the project for which this grant is being made." However, as explained above, adjustments to the budgets were not always documented.

The main reason budgeted amounts were not compared to actual expenditures was that there is no policy in place requiring grantees to report on actual expenditures. By not monitoring actual expenditures, LSC cannot tell whether all TIG grant funds awarded are being spent in accordance with budgets or the intent of the grant.

Recommendations. The President of LSC should establish written requirements to ensure that:

Recommendation 18. An adequate system of financial oversight is established for TIGs.

Management Response and Comment.
Response: Management has already prepared a draft TIG Policies and Procedures Manual for the management and administration of the TIG Program that outlines and documents all financial oversight activities for TIGs.

Comment: Management notes that TIGs have always been subject to the LSC fiscal oversight system and all LSC rules, regulations, guidelines, and directives, including 45 C.F.R. Part 1630 regarding allowable costs and the Property Acquisition and Management Manual. Additional financial oversight procedures have been implemented and are discussed in Responses/Comments to Recommendations 19-22. Management will also determine whether still additional procedures are needed.

Evaluation of Management Response and Comment. Management's planned actions are responsive to the recommendation. However, Recommendation 18 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

In regard to Management's Comment, the issue is not whether TIG funds are subject to all LSC rules, regulations, guidelines and directives. The issue is that LSC had not established adequate procedures to provide grant oversight to ensure that recipients of TIG funds are in fact following all LSC rules, regulations, guidelines and directives.

Recommendation 19. A final budget is prepared and approved for each project that agrees with the amount of the award. Anytime adjustments are made to the award amount or approved budgets, new budgets should be formulated and approved.

Management Response and Comment.
Response: Each 2010 TIG award package will include an approved budget that corresponds with the amount of the award. LSC has updated the online grants management system to capture the submission and approval of final budgets. LSC will add a new TIG grant assurance, modeled on a similar provision in the Federal "common grant rule,"[18] to the 2010 TIG awards to require TIG grantees to submit and receive approval of a new budget any time adjustments are made to the award amount or approved budgets.

Comment: TIG applications are already required to include a detailed budget listing all proposed expenditures in 15 categories, broken down by the funding source for these expenditures (TIG award, program contribution, other LSC-funded partners and non-

[18] (This is Management's footnote to its Comments.) The "common grant rule" is the colloquial term for regulations issued by the Office of Management and Budget formally entitled Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organization. 2 C.F.R. Part 215, (which replaced former OMB Circular A-ll0). The particular section Management is looking to for the new grant assurance is §215.25, Revision of budget and program plans.

LSC funded partners). In addition, the budget narrative portion of the application form requires additional details on each item in the budget, such as who is covered by personnel costs or equipment to be purchased. After the funding decision is made by the LSC President, TIG staff works with the applicant to revise the budget if the award amount is not what was requested, or if any budget revisions were recommended during the review process. Any such revisions will be documented in the grants management system.

Evaluation of Management Response and Comment. Management's planned actions are responsive to the recommendation. Recommendation 19 will remain open until the new TIG grant assurance similar to the Federal "common grant rule" is actually created and included in the grant assurances, and all other planned actions are implemented.

Regarding Management's Comment, while the applicants are required to submit budgets with applications for TIG grants, LSC did not have a method to perform financial oversight. Actual expenditures of TIG funds were not required to be reported to LSC. As indicated in the finding, when amounts differed between the budgeted amount and the awarded amount, the file contained no information as to which and by how much each line item in the budget was impacted. In one of the files reviewed, LSC added $50,000* to a TIG grant, a year after the original TIG grant expired, but the grant file did not contain an approved line item budget as to how the additional TIG funds were going to be used.

Recommendation 20. TIG grantees adhere to budgets. This can be done along with the milestone reports by setting budgets for each milestone and require reporting of actual expenditures by milestone.

Management Response. Management will establish written requirements to ensure that TIG grantees adhere to budgets. LSC will also add a new TIG grant assurance to the 2010 TIG awards that requires actual budget expenditures be submitted with the final payment request. In addition, LSC will hold back at least 20 percent of the grant amount as the final payment to ensure compliance.

Evaluation of Management Response. Management's planned actions are responsive. However, Recommendation 20 will remain open until the TIG Policies and Procedures Manual is completed, the new TIG grant assurance is added, and the OIG is provided a copy of each.

Recommendation 21. TIG funding is not increased without the written approval of the President of LSC or designee.

**The original version of this report incorrectly indicated that $450,000 had been added to a TIG grant instead of $50,000, the correct amount.*

Management Response and Comment.
Response: Since August 2, 2007, the approval of the President of LSC has been required to increase or decrease any TIG award. This requirement will be continued and has been incorporated into the draft TIG Policies and Procedures Manual.

Comment: Management notes that page 19 of the Draft Report [page 31 of this report] discusses an instance where LSC added an additional $50,000 to a grant, apparently without any formal budget documentation showing how the budget increase affected the proposed budget line items. It should be noted, however, that although there was no formal budget documentation, there were emails, a payment schedule and milestones that fully documented the transaction, which were filed in the requisite TIG grant folder. Under the new procedures, this type of situation will be more formally handled as a modification of the affected grants.

Incidentally, the transaction occurred when the initial TIG grantee determined that it could not complete the milestones to develop a software tool to benefit self-represented clients. Because LSC believed this software tool had national implications, it worked with another grantee to ensure that the project could be completed. Thus, LSC "transferred" the funds allocated to the initial grantee to the new grantee who agreed to complete the project.

Evaluation of Management Response and Comment. Management's planned actions are responsive. However, Recommendation 21 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

Regarding Management's Comment, Management acknowledges that in the case of the TIG grant cited in the report receiving $50,000, there was no formal documentation showing how the budget increase affected the proposed budget line items. Management also states that the file did contain emails, a payment schedule and milestones that fully documented in the transaction. The OIG does not agree with this conclusion. The payment schedule is not tied to the budget or the expenditure of TIG funds by the grantee. The milestones are what trigger the payment of TIG funds from LSC to the grantee. The milestones are also not tied to the budget. While these document provide a schedule of how much and when money will be paid to the grantee, as used by LSC they do not constitute adequate financial oversight.

Recommendation 22: Include as part of all LSC oversight visits the option to review and validate TIG grant information.

Management Response and Comment.
Response: The Office of Program Performance will include the review of outstanding TIG projects as a part of its on-site Program Quality Visits. In addition, there will be an increase in the number of visits by TIG staff specifically to review and validate TIG

project information. The Office of Compliance and Enforcement will include TIG expenditures as a part of their onsite fiscal reviews of LSC funds.

Comment: Management added a new TIG Program Counsel position in August, 2010, which will enable TIG staff to conduct more onsite program visits.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 22 will remain open until planned actions have been fully implemented and documented into the various offices' policies and procedures.

F. Third-Party Sustainability Plan Inappropriately Funded

One third-party entity was provided TIG funds and used a portion to develop a plan for its own sustainability; the LSC grantee acting as a pass through did not use TIG funds to develop a plan to sustain the TIG project independent of TIG funding. As with all TIG grants, the LSC grantee was required to provide a sustainability plan to demonstrate how it could continue the project independently, that is without TIG funding in the future. The requirement for a sustainability plan is outlined briefly in the annual "Notice of Availability of Funds," which states that every grant application needs to include a sustainability plan for the purposes of continuing the project without TIG funding and that grant reviewers will be looking for the sustainability plan in the grant application. No further direction or guidance for how a sustainability plan should be structured is included.

The sustainability plan identified in this finding was submitted by the grantee, as required by the grant, but written by and for the benefit of a third-party entity rather than the TIG grantee. The grantee applied for and received a 2008 TIG grant on behalf of the third-party entity for the purposes of conducting technical training classes and technology planning sessions in 2008. To meet the requirement for a sustainability plan, the third-party entity was provided $15,000 of TIG funds (approximately 18% of the grant) to pay a financial consultant to explore ways that the third-party entity, rather than the grantee, could become financially independent of TIG funding.[19] The final evaluation report for the grantee's 2008 TIG grant included recommendations made by this financial consultant to the third-party's Board of Directors. The chairman of the third-party entity's Board of Directors is an employee of the LSC grantee which was awarded the TIG grant in question and the LSC grantee employee who signed the grant application. (See finding below on apparent conflicts of interest.) The financial consultant recommended pricing models and other business tactics to make the third-party entity more attractive to the consumer, primarily LSC grantees and others, so that

[19] In its application for a 2007 TIG, the grantee included time for the third-party entity to seek a financial consultant in its grant application. The final report for the grantee's 2007 project indicated that the third-party entity did, in fact, spend time interviewing potential financial consultants. However, there is no indication of how much TIG money was expended in the search.

the third-party entity would be able to survive independently of TIG funding. Specific examples of recommendations contained in the sustainability plan include the following:

> [1] Immediately **start charging for courses.** Begin charging $35 per course immediately…. Start building an individual membership demand that can be leveraged to sell an organization. Collect organization name for all who attend any training to establish good targets for organizational memberships.
>
> [2] Launch **Technology planning service.** Reach out to LSC-funded organizations that have grant deadlines pending this year and are required to have a technology plan to meet the LSC Baseline Requirements. Five organizations interviewed indicated a need for this kind of service from [the third party entity] and a willingness to pay for it, some at a statewide level for all their organizations.

The sustainability plan contained four other recommendations, all of which related to how the third-party entity could improve its financial position.

LSC was provided a copy of this sustainability plan with the finalized recommendations, but the OIG found no evidence that LSC officials objected to or questioned the use of TIG funds for this purpose. Nor did LSC have any evidence that the grantee, purportedly charged with overseeing the third-party entity's use of its grant funds, questioned this expenditure. In the case of this grant, the third-party entity used LSC funds to plan for its own financial survival with no options in the report to sustain the training for grantees other than through the third-party entity. This use of TIG funds is at odds with the apparent purpose of requiring each TIG grantee to prepare a sustainability plan. Accordingly, the OIG will refer the $15,000 as a questioned cost to LSC Management pursuant to 45 C.F.R. Part 1630.

Lastly, concerning sustainability plans in general, we discovered two instances where the milestones requiring submission of a sustainability plan were waived. We did not find documentation to support the reasonable justification of these waivers in the grant files.

Recommendations. The President of LSC should:

Recommendation 23. Develop a more detailed description of what is expected from TIG grantees when preparing a sustainability plan required by TIG grants.

Management Response and Comment.
Response: A detailed description of what is expected from TIG grantees when preparing a sustainability plan, when such a plan is required by a TIG project, has been incorporated into the draft TIG Policies and Procedures Manual.

Comment: It should be noted, however, that while TIG applicants are required to address project sustainability (one of the review criterion) in their TIG applications, formal sustainability plans have been required only for approximately two percent of TIG projects. In those limited instances, due to the national scope of the TIG project, the development of a sustainability plan (that can cost an additional $15,000-$20,000) has been requested or added to the grant. Sustainability plans have the goal of making the functions of the project sustainable without additional TIG funding, and are not to make any individual entity that might provide services in support of those functions "sustainable."

LSC funded a few of the TIG grantees managing these national projects that support LSC program recipients' essential infrastructures to work on developing formal sustainability plans for these projects, regardless of which entities would manage them. In fact, over the course of the TIG Program, some of these projects have moved from one entity to another and have been managed by different TIG grantees. In at least one instance, a project has successfully become self-sustaining, continuing to provide valuable technology services to legal aid programs without any additional TIG funding.

Evaluation of Management Response and Comment. Management's planned actions are responsive to the recommendation. Recommendation 23 will remain open until the TIG Policy and Procedures Manual has been completed and a copy provided to the OIG.

Regarding Management's Comment, the OIG is concerned that this response appears to minimize the extent to which LSC financial support for sustainability planning overlaps with financial support for the long term sustainability for third party entities. Management states that the goal of a sustainability plan is to make the "functions of the project sustainable" and not any "individual entity," but by financially supporting the sustainability of an entity's project, LSC must with the same money be supporting the long term sustainability of the entity itself, particularly where the entity in question exists in large measure to perform TIG projects. Aiding in the sustainability of one of the entity's projects or the entity as a whole are inappropriate uses of LSC funds where the sustainability plan developed provides for the survival of the third party entity's project at the expense of LSC's legal services grantees. As in the case cited in the finding, a financial consultant was hired to improve the financial standing of a vendor, not LSC or its grantees. In such cases, the distinction LSC attempts to draw in its Comment between sustainability of projects or of entities is largely irrelevant because the plan is developed with LSC money. Even if the project is self-sustaining and continues to provide valuable technology services to legal aid programs, the use of LSC funds to

make the project and/or the entity self-sustaining is in the interest of the entity, not necessarily LSC or its grantees.

Recommendation 24. Develop procedures to formally review and evaluate sustainability plans, including a requirement to fully document such reviews and evaluations.

Management Response. Procedures for the formal review and evaluation of sustainability plans, and for documenting these reviews and evaluations, have been incorporated into the draft TIG Policies and Procedures Manual.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. Recommendation 24 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

Recommendation 25. Require that the grantee, rather than third-party entities receiving the TIG grant funds, develop and submit the sustainability plan in accordance with established guidance.

Management Response. Those TIG grantees that are required to develop and submit project sustainability plans will be reminded that they are required do so in accordance with established guidelines. Specific guidelines for the development and submission of sustainability plans have been incorporated into the draft TIG Policies and Procedures Manual. These guidelines provide that the TIG grantee may seek and incorporate input from third-party entities with relevant expertise in the development of the sustainability plan, but that the TIG grantee itself is ultimately responsible for the development and submission of this plan.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. Recommendation 25 will remain open until the TIG Policies and Procedures Manual has been completed and a copy provided to the OIG.

Recommendation 26. Suspend awarding new grants to grantees which have not submitted acceptable sustainability plans in a timely manner.

Management Response. Management will implement a policy to suspend awarding new grants to any TIG grantee if, at the time of the award decision, the TIG grantee is overdue on submitting an acceptable sustainability plan, when required, on a prior TIG project.

Evaluation of Management Response. Management's planned action is responsive. Recommendation 26 will remain open until the TIG policies and procedures have been completed and a copy provided to the OIG.

G. Apparent Conflicts of Interest Not Identified

Apparent conflicts of interest existed between LSC grantees awarded TIG grants and the third-party entities that received the grant funds as a pass–through. Because one of the third-party entities identified had a long standing relationship with the LSC TIG program and was one of two LSC mandated vendors, which over the years received almost $2 million dollars in TIG funds via pass-throughs from TIG grantees, LSC should have identified the apparent conflicts and should have developed control activities to prevent, detect, and resolve such conflicts. Unless proper control activities are established, future conflicts could occur.

a. Apparent conflicts of interest existed between LSC TIG grantees and the third-party entity with a long standing relationship with the LSC TIG program. A review of the entity's website disclosed that 7 of the 11 current Board members are employed by LSC grantees. Two apparent conflicts of interest are described below.

1. Over the period 2007 through 2009, one LSC grantee submitted, and was awarded, three TIG grants valued at $241,500 to be passed through to the same third-party entity. The grant applications were signed by the LSC grantee's Deputy Director of Grants and Administration. A review of the third-party entity's IRS Forms 990, Return of Organization Exempt From Income Tax, for 2007 and 2008, and a review of the third-party's website revealed that the LSC grantee employee who signed the grant applications was the Chairman of the Board of Directors for the vendor. As a result of the apparent conflicts of interest, the OIG is questioning $226,500; the full amount of the three grants identified less the $15,000 already questioned in the previous finding. Accordingly, the OIG will refer the $226,500 to LSC Management pursuant to 45 C.F.R. Part 1630.

2. Another LSC grantee has two open TIG grants valued at $141,500 with the same third-party entity identified above. The executive director for the LSC grantee is currently a board member for the third-party entity. The executive director signed the application for both grants. While the entity's website did not identify the exact date the executive director became a board member for the third-party entity, the website indicated the individual was a board member at least since September 2009. However, the executive director is listed as the point of contact for the LSC grantee on both grants and would be involved in monitoring the performance of the third-party entity on both grants. Because of the apparent conflict of interest, the OIG is questioning the value of both grants. Accordingly, the OIG will refer $141,500 to LSC Management as a questioned cost pursuant to 45 C.F.R. Part 1630.

b. In another instance, an LSC grantee was awarded a TIG grant of $503,673 to pass through the majority of the awarded funds to a third-party entity. Although the grantee's executive director signed the grant application, the employee listed as the

point of contact for the grant was the Director of Development for the LSC grantee, and would most likely have been involved in preparing the application for the grant. Also, in the grant application, this employee was included in the "Qualification of Project Staff" for the third party entity and identified as the third party entity's board president. This information, which revealed apparent conflicts, was readily available in the grant application file, but there was no indication that this issue was considered. Accordingly, the OIG will refer the $503,673 as questioned costs to LSC Management pursuant to 45 C.F.R. Part 1630.

Recommendations. The President of LSC should:

Recommendation 27. Establish procedures to identify and prevent or resolve conflicts of interests for all TIG grants. These procedures should address actual and well as the appearance of conflicts of interest.

Management Response and Comment.
Response: Management will examine this issue and consider standards and procedures for actual and apparent conflicts of interest that would be appropriate for TIG grantees providing TIG funds to third parties, and will determine and follow the best course of action.

Comment: Management takes very seriously concerns about potential conflicts of interest regarding TIG grantees and third parties to whom they pay LSC funds. Management notes that the Draft Report does not identify what definitions, standards or procedures the OIG used in reaching its conclusions. Additionally, the situations referenced in the Draft Report involve two non-profit third parties in which the individuals referenced served in unpaid volunteer positions. Management believes that these may be factors to consider in a discussion of these specific situations and the appropriate steps to address these types of issues.

Evaluation of Management Response and Comment. Management's planned actions are not responsive. Management's response only commits to examining the issue of conflicts of interest in terms of standards and procedures that "…would be appropriate for TIG grantees providing TIG funds to third parties," rather than establishing procedures to prevent and resolve actual or potential conflicts of interest for all TIG grants. Recommendation 27 will remain open until the Management's examination of the issue has been completed and a copy of the results provided to the OIG.

Regarding Management's Comment, the OIG believes the report speaks for itself. LSC Management contends that the money passed through to third-party vendors is done through contracting actions. In the three examples in the finding, the individual who works for the grantee (the organization contracting for services) is the individual largely responsible for obtaining the funding from LSC, awarding the contract, and/or

monitoring the services received from the contractor. The same individual is also a member of the board of directors for the vendor (the organization awarded the contract). In contracting actions, it is self-evident that the same individual cannot represent both the contracting organization and the contractor. While Management states that the individuals referenced in the finding served in unpaid volunteer positions, it does not state how this would mitigate an apparent conflict of interest.

Recommendation 28. Establish procedures to take appropriate action should a conflict of interest, that is not disclosed and resolved, be discovered during the grant period.

Management Response. Management will consider establishing such procedures in the review and actions in response to Recommendation 27.

Evaluation of Management Response. Management's planned actions are not responsive. Rather than establishing procedures to take appropriate action should such a conflict not be discovered, Management indicated that it would consider establishing such procedures. The OIG considers Recommendation 28 as open pending the results of Management's consideration of the issue and establishment of appropriate procedures.

III. Enforcement of Regulatory Compliance

Subgrant rules were not properly applied when grantees provided TIG funds to third parties to accomplish the purpose of the grant and procedures were not established to provide adequate oversight of regulatory compliance by those ultimately receiving TIG funds. Our specific findings and recommendations follow.

A. Subgrant Rules Not Properly Applied

LSC did not properly apply its subgrant rule when grantees provided TIG funds to third parties, 45 C.F.R. Part 1627, Subgrants And Membership Fees Or Dues. On 58 occasions, grant files reviewed by the OIG contain evidence that TIG grant money was paid to third parties in a manner that would ordinarily require compliance with Part 1627, but there was no evidence that the requirements of Part 1627 were followed.

LSC regulations define a subgrant as "any transfer of Corporation funds from the recipient" where the entity receiving the transfer "agree[s] to conduct certain activities specified by or supported by the [original] recipient related to the recipient's programmatic activities."[20] The regulation defines programmatic activities as those that "might otherwise be expected to be conducted directly by the recipient itself ...."[21] The

[20] 45 C.F.R. § 1627.2(b)(1).

[21] Id.

text of Part 1627 is not limited in application to grants directly supporting the provision of legal services. It extends to all grants and contracts made to "carry out the purposes"[22] of the LSC Act. Most, if not all, subgrants also qualify as transfers under Part 1610, subjecting the recipients of these payments to the restrictions outlined therein.[23] Pursuant to Part 1627, subgrants must be submitted in writing to LSC for approval, and subgrant agreements must contain certain terms specified by regulation, including terms that make explicit LSC's rights to oversee the subgrant and assure compliance with LSC rules.[24]

LSC's subgrant rule applies to all payments made by TIG grantees to third parties that then carry out some or all of the activities that "might otherwise be expected to be conducted directly by the recipient" of a TIG grant made for the purposes specified in the grant documents. The TIG grants specify programmatic purposes other than the direct provision of legal services, namely the implementation of certain technological improvements. Payments by TIG grantees to third parties for services that fall within these purposes amount to subgrants within the meaning of LSC's regulations as currently written and should be administered consistent with the requirements of Part 1627.

While there were instances in which such subgrant payments were made for limited purposes, some cases involved pass-through grants, in which substantially all of the grant funds were paid to a third-party entity that performed most or all of the activities called for in the grant documents. Sometimes, LSC was instrumental in directing funds to the third-party entity.[25]

For example, four TIG grants were awarded where nearly all of the grant funds were paid by the grantee to a third-party entity. In exchange, the third-party entity agreed to meet nearly all of the milestones set out in the original grant documents, including the submission of a final report directly to LSC. These four files contained written agreements between the grantee and the third-party entity that purported to characterize the third party entity's work as non-programmatic, but in practice the third-party entity performed or agreed to perform most of the substantive work the TIG grants in question were intended to support. As structured, all of 57 grants identified should have been treated as entailing sizeable subgrants in the amount of the pass-through payments because the third-party entities receiving these payments were intended to

[22] 45 C.F.R. 1627.2(a); LSC Act sec. 1006(a)(1)(B) & (a)(3) (explicitly including grants to provide "training and technical assistance").

[23] 45 C.F.R. §§ 1610.2(b) & (g) and 1610.7.

[24] 45 C.F.R. § 1627.3.

[25] In one instance, LSC threatened to reduce the grant amount already awarded if the grantee did not engage one of the specific third-party entities designated by LSC TIG.

carry out the principal programmatic activities for which the grant was awarded. 45 C.F.R. §1627.2(b)(1).

Notwithstanding LSC's Office of Legal Affairs (OLA) December 2002 internal opinion that appears to have given a narrower scope to the subgrant rule than the OIG believes is justified,[26] many of the payments to third parties identified above would still qualify as subgrants under this narrower reading. OLA's memorandum suggests, for example, that recipients could not provide an entire grant to another entity to perform the activities called for in grant documents without subjecting the third party entity to LSC restrictions. Even according to OLA's narrower reading, pass-through grants should have been treated as transfers and subgrants. The OIG identified 43 such grants. OLA also acknowledged in its opinion that at a minimum, content development is generally programmatic. The OIG identified seven grants (five of these grants are also included in the 42 grants identified as meeting OLA's criteria) in which funds appear to have been paid to third parties in part for content development. Under OLA's interpretation, 44 of the 57 grants the OIG identified above as subgrants should still have been treated as subgrants.

The remaining 13 grants identified above as subgrants by the OIG but not falling within OLA's narrower reading of the term, at a minimum, should have been subject to the ordinary contracting process. OMB Circular No. A-133 § 210(f), for example, notes the responsibility of recipients "to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements." The TIG program did not have a process in place to ensure that payments of this sort were made pursuant to adequate contracting procedures and did not collect documentation reflecting such contracting procedures. In some cases, it appears that LSC TIG officials even overrode ordinary contracting procedures by requiring grantees to use a particular third-party provider.

In addition to violating LSC's regulation, the practice of not requiring and approving written subgrant agreements or following other subgrant procedures weakens LSC's control and oversight over its grant money and results in compliance with LSC laws and regulations not being enforced. TIG staff indicated that LSC largely left compliance oversight of such grants to the nominal grantee. The decision to not treat the payments discussed above as subgrants may also deprive the third party entity of adequate warning concerning compliance with LSC restrictions. Adherence to subgrant procedures would make LSC's oversight role more clear and ensure that the requirement to comply with LSC laws and regulations is formally established and enforceable.

[26] It should be noted that also in December 2002, the OIG informed OLA via memorandum of concerns it had identified in a draft of OLA's internal opinion. In part, the OIG advised that "[i]f LSC is providing a grant to build and administer or participate in the building or administering of a website, then that is the programmatic activity."

The lack of explicit subgrant agreements also makes it difficult to trace in the grant files how money was spent, what activities third party entities were performing, and whether these activities were consistent with LSC restrictions. At least one email concerning a pass-through grant suggests that LSC has little information concerning the use of pass-through grant funds once they are paid to the nominal grantees but instead relies on these nominal grantees to track the use of funds intended to pass to the outside entities.

The OIG noted in its review that the programmatic purposes of some TIG grants appeared to overlap the sort of business services that might not be treated as subgrants in other contexts. There is a degree of ambiguity in the application of LSC's subgrant rule to grants with relatively narrow, technological programmatic purposes, as was the case with some TIG grants. Part 1627 draws a distinction between payments to third parties to carry out activities "related to the [grantee's] programmatic activities," which must be treated as subgrants, and services provided by "vendors or consultants in the normal course of business," which need not be treated as subgrants when the services "would not be expected to be provided directly by the [grantee] itself." The subgrant rule appears to have been written with the LSC's principal legal service grants in mind, such that ordinarily, programmatic activities consist of the provision of legal services, and business services can easily be classified as ancillary. This division is not as easy to make in the case of TIG grants, and the rule does not seem to have anticipated this problem. To the extent that LSC attempted to resolve the difficulties in application of its subgrant rule to TIG grants by declining to classify payments to third parties as subgrants, it likely weakened its ability to oversee the spending of its grant funds and ensuring compliance with LSC laws and regulations.

Recommendations. The President of LSC should:

Recommendation 29. To the extent that the subgrant rule does not adequately account for the unique features of TIG grants, initiate a process to amend LSC regulations to account for these features and provide for workable oversight of TIG funds paid to third parties.

Management Response. Management will review the subgrant rule at 45 C.F.R. Part 1627 to determine whether it adequately accounts for the unique features of TIGs and, if not, Management will determine what recommendations would be appropriate to make to the LSC Board of Directors regarding these features and any improvements to the existing rule that would improve oversight of TIG funds paid to third parties by TIG grantees.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. Management's response, however, appears to contemplate only changes to 45 C.F.R. Part 1627. It is important to note that the OIG's recommendation is not confined to such changes. Rather, the OIG recommended that

LSC engage in rulemaking to ensure adequate oversight of TIG funds paid to third parties to the extent these payments are not adequately addressed in Part 1627. This rulemaking could include creation of a new TIG-specific rule. Recommendation 29 will remain open until all actions are completed and the OIG is notified of the results.

Recommendation 30. Require OLA to review all open and pending grants to determine which grants should be subject to LSC's subgrant regulation and obtain subgrant agreements where needed.

Management Response and Comment.
Response: OLA will conduct this review on all open and pending TIGs and LSC will obtain the subgrant agreements where needed.[27]

Comment: Management notes that the subgrant rule at 45 C.F.R. Part 1627 has always applied to all TIGs. The OLA review will determine whether any payments of TIG funds to third parties by TIG grantees ("vendor contracts") in open or pending TIGs should be classified as subgrants. The subgrant rule provides for prior approvals and does not address reclassification of an existing contract as a subgrant where a misclassification had occurred. Management will determine the best way to handle such reclassification in these situations based on the framework of the subgrant rule and the existing contractual obligations of TlG grantees. Generally, as part of the TIG application, LSC requires applicants to identify all significant potential vendor arrangements, which are then examined by LSC as part of the review process prior to determining whether to award the grant.

Management notes that the Draft Report makes assertions that are not necessarily consistent with LSC's longstanding interpretation and application of the subgrant rule. The review will give serious consideration to these comments in the Draft Report. Management also disagrees with the Draft Report's statement that LSC resolved "difficulties in application of its subgrant rule to TIG grantees by declining to classify payments to third parties as subgrants .... " LSC did not "decline to classify" any payments that it thought should have been subgrants. Rather, in the OLA opinion referenced, Management consulted with OLA regarding the specific distinction between programmatic subgrants and non-programmatic expenditures for goods and services involving administrative functions of statewide websites, content development, and support services (such as translation of content to foreign languages). Management and OLA carefully considered the language of the regulation and the overall history of LSC's application and enforcement of it in order to make careful and precise regulatory determinations based on the specific facts and circumstances presented.

[27] (This is Management's footnote to its Comments.) OLA provides legal interpretations regarding the meaning of the LSC regulations that provide the framework for compliance determinations by both Management and the OIG. [The OIG notes that the OIG legal counsel provides interpretations of the regulations that also guide its compliance determinations.]

The Draft Report also references two categories of potential misclassification regarding vendor contracts: ones that the OIG believes conform to the existing interpretation of the subgrant rule but which the OIG disagrees with, and ones that the OIG states do not conform to that interpretation. The OLA review will take into account this distinction and the OIG's views, and Management will consider them in determining the appropriate course of action for correcting any misclassified arrangements.

Evaluation of Management Response and Comment. Management's planned actions are responsive. Recommendation 30 will remain open until all Management actions are completed and the OIG is notified of the results of the review.

However, Management's Comment section gives rise to significant doubt about its commitment to the reclassification of third party payments. In its Comment on Recommendation 30, Management mentions a "longstanding," "carefully considered" interpretation of the subgrant rule that purportedly supports the past practice of the TIG program. Management omits mention of the fact that the OIG alerted OLA to serious defects in that interpretation when it was being formulated. At that time, the OIG's input was disregarded and a reading of the subgrant rule at odds with the plain language was adopted instead. In its Comment on Recommendation 32 below, Management contends that "subgrant requirements have always applied to all TIGs" and that LSC has "consistently made clear to TIG grantees that *any subgrants as defined in the regulation* must follow the normal subgrant procedures" (emphasis added). Given these Comments, it appears that Management does not anticipate a need to obtain subgrant agreements in a large number of open or pending TIG grants.

Recommendation 31. Based on the grants identified by OLA in Recommendation 30 above, ensure that subgrant agreements are executed and approved by LSC before authorizing additional payments.

Management Response. Management will ensure that for the situations identified in Recommendation 30 above (i.e. where OLA determines that the payment of TIG funds to a third party is a subgrant), subgrant agreements will then be executed and approved by LSC prior to permitting the TIG grantee to provide further funds to the third party as an allowable payment.

Evaluation of Management Response. Management's planned actions are responsive to the recommendation. However, Recommendation 31 will remain open until all actions are completed and the OIG is notified of the results.

Recommendation 32. Develop procedures to ensure subgrant requirements for future grants are identified for each applicable TIG grant and that obtaining LSC approval for the subgrant is a condition that must be met before TIG funds are provided.

Management Response and Comment.
Response: Management will review its procedures to determine what improvements can be developed and implemented to ensure that for future subgrants in TIGs all subgrant requirements, including prior approvals, are met prior to permitting the TIG grantee to provide funds to the third party as an allowable payment.

Comment: Management notes that the subgrant requirements have always applied to all TIGs consistent with LSC's overall grants management and oversight activities. The questions raised by the OIG in the Draft Report go to the issue of the classification of payments to third parties as vendor contracts rather than as subgrants. Management has consistently made clear to TIG grantees that any subgrants as defined in the regulation must follow the normal subgrant procedures including seeking prior approval before making a subgrant.

Evaluation of Management Response and Comment. Management's planned actions are not responsive. The response amounts to a statement that Management will conduct a review at a later date to decide whether and to what extent it will develop the recommended procedures. Until Management makes that determination as to what if any improvements can be made and the OIG is notified of the results, Recommendation 32 will remain open.

Regarding Management's Comment, the OIG is concerned because Management appears to downplay the need to develop the sort of procedures recommended by the OIG. Management gives the impression that there is very little that it can do at the LSC headquarters level pertaining to subgrants and that LSC Management has to rely on the grantees to follow the subgrant rules, stating in its Comment section:

> Management has consistently made clear to TIG grantees that any subgrants as defined in the regulation must follow the normal subgrant procedures including seeking prior approval before making a subgrant.

While on the surface this would seem to be a reasonable approach, Management's comment is misleading, belying the control Management has over its own grant-making and grant oversight process. Because of the grant application process, TIG staff often knows with precision who is getting the TIG funds, what those funds will be used for, and how they will be transferred. Management could easily make a determination as to which grants fall under subgrant procedures and make the subgrant mandatory in order to receive the TIG award. By saying that it consistently makes clear to the grantee the need to follow the normal subgrant procedures, LSC Management surrenders its oversight responsibility to the grantee. LSC Management is in the perfect position to exercise oversight to ensure proper application of the subgrant rules. Management also asserts in its Comment that OIG's findings relate to the proper "classification of payments to third parties" rather than the application of subgrant requirements. Where

there is apparent widespread misclassification as described in the Report, the distinction cited by Management is of little practical effect because the misclassification at issue short-circuits application of the subgrant requirements. Taken as a whole, Management's Comment on the Recommendation 32 appears to minimize the need to develop the sort of procedures recommended by the OIG.

Recommendation 33. Establish procedures to ensure that subgrantees are following subgrant requirements and are in compliance with applicable LSC laws and regulations.

Management Response and Comment.
Response: Management will review its procedures to determine the extent to which improvements are warranted, consistent with LSC's overall grants administration, to ensure that TIG subgrantees are following subgrant requirements and are in compliance with applicable LSC laws and regulations.

Comment: As stated in TIG award letters, TIG grantees are subject to all LSC rules, regulations, guidelines and directives, which of course include those requirements that apply to subgrantees. As noted in the response to Recommendation 32 above, the Draft Report questions the categorization of payments as vendor contracts rather than subgrants. Management notes that there are no instances identified in the Draft Report in which a payment had been treated as a subgrant and the subgrantee failed to comply with these requirements. Rather, the Draft Report reflects the fact that the subgrantee requirements go hand-in-hand with the determination whether or not a payment is a subgrant.

Evaluation of Management Response and Comment. Management's planned actions are not responsive. The response amounts to a statement that Management will conduct a review at a later date to decide whether and to what extent it will develop the recommended procedures. There are no procedures pertaining to TIG grants to ensure grantees are following subgrant requirements and are in compliance with applicable LSC laws and regulations. As the OIG indicated above, LSC Management has sufficient information at the outset of each TIG grant to identify most if not all transfers that are subgrants and must follow subgrant requirements. (See Evaluation of Management Response for Recommendation 32 above). Thus Management should develop and put in place the procedures to do so. LSC Management comments would have one believe that everything is working as designed for subgrants. Until Management makes that determination as to what if any improvements can be made and the OIG is notified of the results, Recommendation 33 will remain open.

Regarding Management's Comment, LSC Management states that "there are no instances identified in the Draft Report in which a payment had been treated as a subgrant and the subgrantee failed to comply with these requirements." This implies that the system is working. Quite the contrary is true. The OIG did not identify instances in which a payment was treated as a subgrant and the subgrantee failed to

comply with subgrant requirements because the OIG did not identify any payment that had been treated as a subgrant. Very few, if any, of the pass-through payments identified are treated by LSC or its TIG grantees as subgrants. The reason there are very few subgrants is because LSC Management is neither providing adequate oversight over TIG grants nor making subgrants a condition of receiving the grant funds as warranted. As was the case with Management's Comment to Recommendation No 32, Management's Comment to Recommendation 33 appears to downplay the need to develop the sort of procedures recommended by the OIG.

Recommendation 34. To the extent that current or future subgrant requirements do not apply, put in place a process to ensure that the grantees follow an adequate contracting process, including competing high dollar contracts and maintaining adequate documentation for all contracted services.

Management Response and Comment.
Response: For situations in which payments by TIG grantees to third parties are not subgrants, Management will review its procedures to determine the extent to which improvements are warranted, consistent with LSC's overall grants administration, including consideration of enhancement of requirements for adequate documentation for contracted services, of appropriate contracting procedures and of competition options for high-dollar contracts.

Comment: TIG funds have always been subject to all LSC rules regulations, guidelines and directives. Management's review will determine if additional procedures are needed based on the nature of the TIG Program and whether recommendations to the Board for additional rulemaking are in order. Management notes that page 26 of this section of the Draft Report contains serious assertions regarding the TIG program and TIG grantee contracting, but Management is unable to comment on these assertions without further details.

Evaluation of Management Response and Comment. Management's planned actions are not responsive. Improvements are warranted and necessary to provide adequate oversight of TIG grants. The audit found that the TIG program did not have a process in place to ensure adequate contracting procedures on the part of grantees and that the TIG program "did not collect adequate documentation" concerning the grantee's contracting decisions. Recommendation 34 will remain open until all actions are completed and the OIG is notified of the results.

Regarding Management's Comment, the issue is not whether TIG funds are subject to all LSC rules, regulations, guidelines and directives. The issue is that LSC had not established adequate procedures to provide grant oversight to ensure that recipients of TIG funds, including the ultimate recipients of those funds, are in fact following all LSC rules, regulations, guidelines and directives. Management also contends that it is "unable to comment" on assertions in the Audit Report regarding TIG grantee

contracting "without further details." Among its findings concerning grantee contracting, the Audit Report states that the TIG program does not have a process in place to ensure adequate contracting procedures on the part of grantees and that the TIG program "did not collect adequate documentation" concerning the grantee's contracting decisions. These findings speak to basic requirements for adequate grant administration. Given that LSC administers the TIG program, it is not unreasonable to expect that it is in a position to comment on its own procedures and the documentation it collects.

B. Regulatory Compliance Not Adequately Monitored

LSC did not have a process in place to oversee regulatory compliance and program integrity as part of its ordinary oversight of TIG grants. The OIG found instances where third party entities likely engaged in restricted activities as well as a potential program integrity violation.

Because at least 58 of the grants reviewed by the OIG involved either payments to third parties who performed the principal functions of the grants or projects intended to facilitate cooperation and collaboration with other legal service providers, the OIG intended to review grant files for information concerning third party entity compliance with LSC regulations. In the case of parties receiving transfers from TIG funds, many of LSC's restrictions would apply, while in the case of third-party entities, the program integrity rule would apply. 45 C.F.R. Part 1610. The OIG found little if any evidence in the grant files concerning such compliance issues, and there seems to be little indication that LSC actively pursued oversight in this area

Regulatory Compliance by Third-Party Entities

Third-party entities that received or likely received a transfer may have engaged in restricted activity. LSC did not have the controls in place to detect and prevent transferees from engaging in restricted activities. The OIG was unable to determine the extent of violations, if any, because the TIG program did not maintain adequate documentation.

Many of LSC's regulations apply not only to its grantees but also to entities that receive transfers of LSC funds from grantees.[28] A transfer occurs where a there is "a payment of LSC funds by a recipient to a person or entity for the purpose of conducting programmatic activities." 45 C.F.R. § 1610. 2(g). The recipient of such a transfer would

[28] TIG grant file #03030 contains an email to TIG staff: "Does LSC require or provide for any specific contractual language to be used between its grantee and a non-LSC program performing activities under a TIG grant? We are ready to transfer the initial payment from [redacted grantee] to [redacted contractor], and would like to take care of any necessary documentation, including LSC requirements, before we do." The OIG could not find a response to the question in our file review.

then be subject to the requirements identified in Part 1610, including restrictions on lobbying and certain other legislative activities. 45 C.F.R. 1610.2(b)(2) & 1610.7(a).
In one instance, an LSC grantee reported that it "out-sourced the development of [its] website to [a third party entity]." The website was intended to "make available materials for people to represent themselves as well as provide materials for attorneys that have agreed to represent low-income individuals." The development of such a website would necessarily entail the sort of substantive work that falls within the programmatic purpose of the TIG grant in question. To the extent that the "out-sourcing" in question involved the payment of LSC funds to the third-party entity, it would amount to a "transfer," within the meaning of LSC regulations, subjecting the third party entity to many of LSC's restrictions.

The third party entity's website contains numerous examples of activity that would fall within the prohibition on lobbying and certain other legislative activities if conducted by an entity that received a transfer of LSC funds. Because procedures were not established to detect or prevent violations by transferees, the OIG was unable to determine conclusively whether LSC funds were paid to the third-party entity as part of the outsourcing described above and whether the third-party entity engaged in the sort of activities that are now featured prominently on its website while it was in receipt of LSC funds. The OIG will be referring the matter to Management for further inquiry and follow-up.

The OIG detected similar problems with certain grants from the 2004 to 2005 time-frame. A majority of funds from these grants were paid to a single third-party entity to perform all or most of the work called for in the grant. As in the case above, these payments are best characterized as transfers. 45 C.F.R. § 1610.10.2(g). A review of this third-party entity's website revealed activity in 2009 that would likely be prohibited by LSC regulation had it received LSC funds in that year. While not conclusive, this information does raise concerns about regulatory compliance in connection with the grants that resulted in transfers to this third party entity in the 2004 to 2005 time-frame. The OIG will also be referring these grants to Management for further inquiry and follow-up.

Program Integrity in Collaborative Projects

With respect to TIG projects intended to facilitate cooperation and collaboration with other legal service providers, the OIG was unable to reliably assess compliance with the program integrity rule on the basis of information available in the grant files. The program integrity rule sets out standards to ensure that LSC's grantees maintain "objective integrity and independence" from collaborators who engage in restricted activities. 45 C.F.R. §1610.8. The rule is of particular interest where a grantee collaborates with entities that do not receive LSC grants and, hence, are not subject to LSC restrictions, as in the case of some statewide website projects. There was little, if

any, information in the grant files reviewed by the OIG that reflected active monitoring of program integrity issues with respect to collaborative projects.

The OIG identified some evidence that LSC has in the past had access to the private, advocacy side of some statewide websites,[29] where collaboration among legal service providers may occur. A TIG official, however, indicated that the TIG program has no systematic process for securing access to statewide websites, maintaining passwords, and monitoring program integrity relative to these websites. The OIG did review two such password protected sites to which a TIG official secured access with the voluntary cooperation of the grantee. A review of one of these websites revealed at least two instances of problematic activity. In one instance, the website published voter registration material, potentially violating C.F.R. § 1608.6 and the associated statutory provision. In the other instance, the website published what appeared to be training materials relative to the representation of undocumented aliens. Publication of these materials appears to have violated 45 C.F.R. § 1612.8(4) (training) in combination with LSC's 1996 Appropriations Act, Pub. L. 104-134 §504(a)(11) (legal assistance to aliens). The OIG will refer these instances of apparent violations to Management for further inquiry, but in the absence of more systematic access to statewide websites, the OIG was unable to assess compliance with the program integrity rule vis-à-vis advocacy websites.

Recommendations. The President of LSC should:

Recommendation 35. Develop processes to detect and prevent violations of restrictions by transferees, including adequate documentation of the oversight process.

Management Response and Comment.
Response: Management will review its procedures to determine the extent to which improvements are warranted to ensure that TIG funding transferees, as defined by 45 C.F.R. Part 1610, are following all applicable restrictions and that oversight is adequately documented consistent with LSC's overall grants management and oversight.

Comment: As stated in TIG award letters, TIG grantees are subject to all LSC rules, regulations, guidelines and directives, which of course include those requirements that apply to transferees. As with the issue of subgrants discussed in the response to Recommendation 33 above, the Draft Report only questions the categorization of payments as vendor contracts and not as transfers. Management notes that there are no instances identified in the Draft Report in which a payment had been treated as a transfer and the transferee failed to comply with these requirements. Rather the Draft Report reflects the fact that the restrictions on transferees go hand-in-hand with the

[29] TIG-funded statewide websites often include a password protected section that allows for collaboration among legal advocates working in the legal services community or providing pro bono services.

determination whether or not a payment is a transfer. The one situation discussed in the Draft Report will be reviewed upon referral.

Evaluation of Management Response and Comment. Management's planned actions are not responsive. Improvements are warranted. Procedures are not in place for TIG grant staff to identify and prevent violations of restrictions by transferees. Because of the vast amount of information available as a result of the TIG grant application process, TIG staff has an opportunity to detect and prevent potential violations of restrictions by transferees before grants are awarded. At the very least, it has enough information to identify high-risk transferees and follow-up. However, no procedures or requirements are in place to do so. Recommendation 35 will remain open until all actions are completed and the OIG is notified of the results.

It should be noted that in its Comment on Recommendation 35, Management references a distinction between misclassification of transfers and non-application of rules applicable to transferees that parallels the distinction drawn in its Comment on Recommendation 33. As the OIG observed in connection with Management's Response to Recommendation 33, this distinction is of limited usefulness because widespread misclassification of transfers effectively short-circuits the rules that would ordinarily apply to transferees. Indeed, the above referenced case of potential noncompliance by an apparent transferee highlights the risk associated with widespread misclassification. As mentioned in the finding, the absence of adequate documentation made it difficult to determine the extent of similar noncompliance.

Recommendation 36. Develop processes to monitor program integrity with respect to TIG projects intended to facilitate cooperation and collaboration with other legal service providers.

Management Response and Comment.
Response: With respect to TIG projects intended to facilitate cooperation and collaboration with other legal service providers, Management will review its procedures to determine the extent to which improvements regarding monitoring program integrity, as required by 45 C.F.R. § 1610.8 and consistent with LSC's overall grants management and oversight, are warranted.

Comment: Management has made clear to TIG grantees from the inception of the program that they must comply with all applicable LSC laws and regulations. Management takes very seriously the issue of enforcement of the Part 1610 program integrity rule, especially in light of the ongoing litigation regarding this rule in both the Second and the Ninth Circuits. All LSC program recipients, including those that have TIG awards, are required by the rule to provide annual certifications of compliance with program integrity. Over the past fourteen years both the OIG and the OCE have conducted specific on-site program integrity reviews of LSC program recipients to ensure compliance with 45 C.F.R. § 1610.8. The Draft Report does not provide a

description of how the facts identified relate to the detailed factors set forth in the three-part program integrity requirement at 45 C.F.R. § 1610.8 (the rule includes making determinations "on a case-by-case basis…based on the totality of the facts").

Additionally, this section of the Draft Report appears to reflect a misunderstanding of the structure and operation of statewide websites. Statewide websites are vehicles for providing and exchanging information, similar to libraries, working groups, taskforces, etc. Statewide websites are not entities that themselves provide legal services. For example, individuals seeking legal help can go to a statewide website to try to find appropriate services or legal information. The website can direct eligible clients to LSC-funded programs, direct non-eligible clients to other programs and provide legal information to *pro se* materials. Information about LSC program recipients can be distinguished from information about other entities that engage in restricted activities. Management also notes that the materials identified in the Draft Report do not necessarily implicate restricted activities. For example, the Draft Report references materials relating to representation of undocumented aliens, but does not note that Congress has explicitly permitted LSC program recipients to provide representation to certain undocumented aliens including victims of abuse, violence and trafficking. Management will review the concerns raised by the OIG regarding this issue and determine if additional measures regarding program integrity and these types of TIGs are warranted.

Evaluation of Management Response and Comment. Management's planned actions are not responsive. Procedures are not in place and need to be developed for TIG grant staff to monitor program integrity with respect to TIG projects intended to facilitate cooperation and collaboration with other legal service providers. As stated in this report, TIG grant files contained little, if any information that reflected active monitoring of program integrity issues. Thus, the OIG was unable to reliably assess compliance with the program integrity rule on the basis of information available in the grant files. Recommendation 36 will remain open until all actions are completed and the OIG is notified of the results.

At least two aspects of Management's Comment also give the OIG pause in assessing the adequacy of Management's Response. First, Management's assertion that "[o]ver the past fourteen years both the OIG and the OCE have conducted specific on-site program integrity reviews of LSC program recipients," is somewhat misleading in the context of this audit of TIG. The statement does not make reference to review of projects funded with TIG funds, such as statewide websites. While it is true that the OIG has conducted specific on-site program integrity reviews, none involved TIG funded projects. Also, while OCE also has conducted program integrity reviews, the OIG knows of none specific to TIG funded projects. If OCE has conducted such reviews of TIG funded projects, it is the exception and does not constitute a systematic approach in the overall administration of TIG grants as Management comments may imply. Second, much of Management's Comment on Recommendation 36 seeks to minimize

the limited evidence the OIG was able to adduce on the subject and excuse the conduct suggested by that evidence. To the OIG's knowledge, Management did not, however, actually examine the evidence itself or undertake a more detailed investigation. The Report indicates that the OIG will be referring this evidence to Management for further inquiry, but Management's rush to marginalize the evidence, gives rise to concerns about the quality of the inquiry that Management will make based upon the OIG's referral. Taken as a whole, Management's comment appears to be an attempt to excuse past practice in the area of program integrity rather than an attempt to address the program integrity concerns identified in the Report and move forward to ensure that such violations do not occur.

LSC

Legal Services Corporation
America's Partner For Equal Justice

September 30, 2010

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Re: LSC Management's Response to OIG Draft Report–AU-10-06 Audit of LSC's Technology Initiative Grant Program

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Louisville, KY

Thomas R. Meites
Chicago, IL

Laurie Mikva
Evanston, IL

Hon. Sarah M. Singleton
Santa Fe, NM

Dear Mr. Merryman:

Thank you for providing LSC Management with a copy of the Office of Inspector General's (OIG) Draft Report–Audit of Legal Services Corporation's Technology Initiative Grant (TIG) Program, Report No. AU-10-06 ("Draft Report"). We appreciate being given the opportunity to respond and comment on the specific concerns raised in the report. We take very seriously our obligation to ensure that TIG awards support the economical and effective delivery of legal assistance and look forward to working with you to improve this important program.

As you will see below, Management has already implemented some of the recommendations in the Draft Report and is in the process of implementing others as part of the ongoing process of improving the operation of the TIG Program. Management will address the specific recommendations of the Draft Report by providing a brief response to each recommendation, along with any applicable comments. Management's comments do not address each and every item discussed in the narrative of the Draft Report, and Management does not necessarily agree with every characterization of the TIG Program provided therein. Rather, we focus our attention on those significant items that we feel are mischaracterized and upon clarifying our understanding of several recommendations.

Additionally, Management notes that, as per the "Objectives" stated in the Draft Report, the audit review was limited to LSC's internal control system for the TIG Program and its compliance with applicable LSC laws, regulations and policies. The OIG did not review the substance of the TIG awards and the technological advances that it has produced towards improving the delivery of legal services and information to low-income persons across the United States.

Overview of the TIG Program

The TIG Program, one of LSC's most successful initiatives, was established in 2000 with the goal of expanding access to justice through promoting technological innovations in

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legal services delivery and pro se assistance. From its inception through grant year 2009, TIG has made 414 grants totaling more than $33 million in support of projects seeking to, among other things: develop, test and replicate self-help legal websites; expand access to the low-income population through online intake, telephone hotlines and video conferencing; and improve the technological infrastructure of recipients generally.

For example, TIG funding made possible the development of the widely acclaimed I-CAN!® E-File program, which enables low-income taxpayers to prepare and file their returns online free of charge. Since its launch in 2002, I-CAN!® E-File has helped more than 194,000 taxpayers obtain over $308 million in tax refunds. TIG funding was also critical to the creation of LawHelp Interactive (LHI), an online database that allows legal services providers and *pro se* litigants in 25 states to create, post and share automated legal forms using HotDocs document assembly software. LHI currently boasts 2,000 automated legal forms, and is projected to assemble over 200,000 documents in 2010.

Today, TIG is an essential component of LSC's overall grant-making program to ensure the provision of high quality legal services to the low-income population. It is administered by a staff of five, including two Program Counsels and a Program Analyst for Grants Oversight, a part-time equivalent Program Analyst for Grants Evaluation, and a Grants Coordinator. The three TIG staff with primary grants management oversight responsibilities recently completed the first course in a Grants Management certification program designed for federal grant managers. TIG staff members are part of the Office of Program Performance (OPP) and subject to the supervision of the OPP Director, the Vice President for Programs and Compliance and the LSC President.[1]

Because of the TIG Program's success in increasing access and expanding legal services to the poor, Congress expressly encouraged LSC to seek increased funding for the program in its 2011 appropriation request. Accordingly, LSC sought $6.8 million, double the amount of the 2010 appropriation for TIG, and LSC is hopeful that it will receive additional funding to expand this important program.

Responses and Comments to Recommendations

Overall Recommendation

Recommendation 1. *The President of LSC should consider suspending the award of TIG grants until an adequate internal control system is designed and implemented. The internal control system should address the entire TIG grant making process and include specific control activities for program and financial oversight, and processes to ensure that compliance with LSC regulations and restrictions is enforced.*

Response: In response to the recommendation by the OIG, I have suspended awarding all 2010 TIGs pending rigorous further review in light of the recommendations in the Draft Report. Management considers strong internal controls to be a vital part of all of its grants management and oversight operations, and is incorporating the recommendations of the OIG, as discussed in detail below, into the existing process of designing and implementing a

[1] Management notes that while the OIG interviewed some TIG staff, they did not interview any of the OPP management or LSC executives who oversee operation of the TIG Program.

revised system of internal control for the TIG Program that began last year. I will consider awarding some critical TIGs in which the failure to do so would result in shutting down technology projects that provide crucial support to vital ongoing activities. I will resume making the remaining TIG awards only when I am confident that sufficient progress has been made in improving internal controls and that doing so will not unreasonably put LSC funds at risk.

I. Legal Interpretation Issues

Recommendation 2. *The President of LSC should: Ensure that LSC consistently interprets and applies the statutory framework authorizing TIG grants.*

Response: Management will ensure that LSC consistently interprets and applies the statutory framework authorizing TIGs under applicable cannons of statutory construction. LSC's Office of Legal Affairs (OLA) will review the statutory framework authorizing the TIG Program under applicable law involving appropriations, statutory interpretation, report language, statutory history, established principles of statutory interpretation, and the budget request process.

Comment: Management takes very seriously its obligation to ensure compliance with the statutory framework that governs all of LSC's operations and works closely with its oversight and appropriations committees in both the House and the Senate to ensure that Congress is kept fully appraised of LSC operations. Management agrees with the OIG that "LSC follows the language of the statute" in operating the TIG Program, and has always been of the view that the TIG structure and operation have been fully consistent with the relevant statutory language.

If as used in the Draft Report, "statutory framework" is meant to refer to both the statutory language in LSC's appropriations act and the FY 2000 conference report language regarding TIG funding, Management has been of the view that it has properly interpreted and applied the "statutory framework" but we nonetheless commit to closely reviewing and giving serious consideration to the argument made by the OIG on this point in the Draft Report.

Recommendation 3. *The President of LSC should: Seek clarifying language in LSC's appropriation to either restrict TIG grants to LSC program grantees or allow TIG grants and/or contracts be [sic] made directly with non-LSC grantees and vendors.*

Response: Management will review this issue with input from OLA, OPP and the Office of Government Relations and Public Affairs (GRPA) to determine whether clarifying language would be needed for LSC's administration of the TIG Program, and if so, Management will seek such clarification.

Comment: At the inception of the TIG Program, Management made the decision to award TIGs only to existing LSC program recipients[2] based on a variety of factors including the statutory language, the conference report, communications with Congress, grant management priorities, LSC staffing, fostering continued support for TIG funding and the relative advantage of awarding

[2] In this document, "LSC program recipients" refers to entities receiving LSC basic field, migrant, or Native American grants.

these funds to LSC program recipients who were already familiar with LSC's extensive rules and restrictions. Management agrees with the OIG that a different structure would have presented some advantages, but Management determined in its discretion that the trade-offs and disadvantages outweighed those benefits at the time.

Recommendation 4. *The President of LSC should: Ensure that grant applications submitted with the intent to pass a significant portion of the requested grant funding to third parties detail the reason or plan for selecting the third-party entities in question, the justification for using third-parties to accomplish grant purposes, and the applicants' proposed methods for overseeing performance by the third parties.*

Response: Management will require that for any TIG application submitted in which a significant portion of the grant would be used to hire a third party to assist in attaining grant purposes, the application must provide the reason or plan for selecting the third party, the justification for using the third party to accomplish the grant's goals and objectives, and the applicant's proposed methods for overseeing performance by third parties.

Comment: Currently, substantial information regarding third-party entities (including all project partners, proposed contracts and consultants, program capacity and project staffing, and the qualifications of the project team and partners) is furnished in TIG applications and considered by Management.

Recommendation 5. *The President of LSC should: Establish procedures to ensure that grantees who submit grant applications follow proper contracting processes in selecting vendors to accomplish the tasks required by the grant, including using appropriate competition and maintaining adequate documentation; and have the skills necessary to fully monitor contract performance.*

Response: Management will evaluate what additional contracting processes would be warranted for TIG grantees, including consideration of appropriate competition, adequate documentation and monitoring requirements and determine how to adopt any appropriate requirements or raise them with LSC's Board of Directors.

Comment: Management notes that all TIG funds, as stated in TIG award letters, have always been subject to all LSC rules, regulations, guidelines and directives, including 45 C.F.R. Part 1630 regarding allowable costs and the Property Acquisition and Management Manual. Management will determine whether additional procedures need to be implemented to ensure TIG grantees follow these requirements.[3]

Recommendation 6. *The President of LSC should: Discontinue the practice of paying an administration fee to grantees that act as the vehicle to pass TIG funds to other organizations in*

[3] Management disagrees with the Draft Report's characterization that LSC is "bypassing" its contracting process by awarding TIGs only to LSC program recipients. The characterization appears to imply the decision was intended to circumvent LSC's contracting process when instead the decision to award TIGs entirely to existing LSC program recipients was made based on consideration of a variety of legal, programmatic and practical considerations as discussed in response to Recommendation 3 above.

the absence of an administration/oversight plan in the grant application and continued assurances that this plan is being carried out during the grant period.

Response: Management will not pay an administrative fee to grantees on TIGs that involve paying a significant portion of the requested grant funding to another organization that is fulfilling the grant goals and objectives, without an administration/oversight plan (which may be provided in the grant application). Management will require reporting on the actual implementation of that plan.

Recommendation 7. *The President of LSC should:[sic] Should LSC continue mandating specific vendors, establish an open competition process to ensure best value, or adopt an alternative model for securing the same or similar products through LSC's contracting procedures, which would similarly secure best value.*

Response: Management is reviewing appropriate contracting procedures regarding TIG grantee expenditures as per the responses to Recommendations 5, 6 and 34. LSC does not believe that it has mandated specific vendors for any TIG Program awards. However, should Management ever decide to mandate specific vendors in the future, it will evaluate appropriate contracting processes including open competition options to determine the most effective method of securing the best value for the funds expended.

Comment: This comment provides additional information to clarify the situations involving the third parties that appear to be the source of the concerns referenced in the Draft Report (based on additional TIG identifying information provided by the OIG at Management's request). TIG applicants provide proposals regarding how they will complete the work often including information regarding vendors that the applicant proposes using. There are numerous instances in which TIG grantees have switched from vendors identified in their applications to different vendors based on TIG project needs. LSC always encourages TIG grantees to obtain the most economical and effective services from their staff or from vendors.

The narrative section of the Draft Report discusses statewide website TIGs awarded from 2001–2005 that required the use of one of two "approved website *templates*." LSC never mandated that TIG grantees use a particular *vendor*. "Templates" refer to the software platform used to run the website, essentially a "website in a box," not to vendors who could provide or support them. Rather than paying repeatedly for platform development of websites for individual LSC program recipients, LSC determined that limited TIG funds would be better used if it awarded TIGs to develop two website templates to make available to all LSC recipients.

LSC program recipients, working with national legal aid partners, conducted an extensive and competitive process to identify and develop two templates that offered functionality targeted specifically for a statewide legal aid website, avoided the expense of repeated development costs and improved the efficiency of implementing statewide websites across the country. LSC Management then reviewed the two grantee developed templates for the necessary functionality and features and subsequently approved them.

One approved template was created using a web application platform built on open source software, meaning that the software is free. Any LSC program recipient, whether seeking TIG funding or not, could download the template for free and implement it on their own servers using either program staff or vendors of their choosing to do so. Since many LSC program recipients

lacked technical staff with the expertise to do this, LSC worked with a vendor to make this option available to LSC program recipients for a cost of no more than $10,000. The vendor was available to them but was not mandated.

The second approved template was built specifically for legal aid organizations by a non-profit organization that had already developed platforms for pro bono attorneys. This vendor appears to be one that the Draft Report refers to as "mandated." While this template was tied to the organization that developed it, no grantee was required to use it. Also, the organization did not exercise exclusive control of the software, as demonstrated in the case discussed in the Draft Report and characterized as one state not using either of the two approved templates. In that situation the grantee wanted to expand and improve this template. This TIG grantee entered into an agreement with the organization that developed the second template so that the code used for the organization's template could be used for the state's website without hiring the vendor and any code the state developed could be used to improve the organization's template. This was done in consultation with and with the approval of LSC. At no time did LSC require TIG grantees to use this template or vendor as the exclusive means of implementing a statewide website grant.

In addition to approving templates with appropriate functionality, rather than having each LSC program recipient build its own website, LSC determined it would be more cost effective and less confusing for clients to have all the LSC program recipients in a state participate in one statewide website with other providers of legal information and services. This approach is what led to the current nationwide system of statewide websites.

Some of the 41 TIGs referenced by the OIG therein included projects in which grantees had proposed using a non-profit vendor for support or enhancements to existing statewide websites that already used that vendor's template. As such, the TIG applications proposed using this vendor for support or enhancements, but LSC had not mandated that choice.

For some of the other TIGs referenced in this section there appears to be some confusion regarding the nature of the third-party entity and the grants in question. These grants began in 2001 involving making technical expertise available for free to all LSC grantees that would be tailored to their needs including a technical resource website, consulting, and in-person trainings. With a single free resource, LSC grantees would not need to each hire different technical advisors who might repeatedly reinvent solutions to the same problems. Originally the work on this project was handled by staff of an LSC program recipient. Long-term sustainability became a priority for this project and in 2006 the project was incorporated as a separate non-profit organization. LSC has not required that any TIGs use this non-profit as a third party contractor.

Other TIGs referenced in this section involved an automated document assembly website system based on the well recognized HotDocs software. As part of earlier TIGs, LSC recipients had secured the donation from LexisNexis of both a server and software licenses to enable LSC recipients throughout the country to create automated legal documents available to low-income persons through statewide websites and through court-based self-help centers. Unfortunately no LSC program recipient was prepared to continue handling the hardware and administrative responsibilities for operating this system, so a partnership was established between TIG grantees and a non-profit vendor to keep this system operational. LSC has never mandated the use of this vendor but it has functionally become the only entity providing this service at this time.

II. Award and Administration Issues

Recommendation 8. *The President of LSC should ensure that specific policies and procedures that govern the management and administration of the TIG program are fully documented. These policies and procedures should establish adequate internal control activities and processes to be followed by TIG Office personnel.*

Response: Management has already prepared a draft TIG Policies and Procedures Manual that compiles into one document the existing policies and procedures used for the management and administration of the TIG Program, and adds new policies and procedures addressing issues covered by these responses to the Draft Report. These include all internal control activities to be followed by TIG personnel for grant awards, monitoring and oversight.

Comment: Management notes that while specific policies and procedures used to administer the TIG Program have been in place, and some were documented in the OPP Office Procedures Manual and the TIG Procedures Manual, they had not previously been compiled in a single integrated manual.

Recommendation 9. *The President of LSC should ensure that policies and procedures are developed and implemented to: Adequately document TIG grant award decisions.*

Response: Management has already developed and implemented an enhanced review system beginning with the 2010 grant cycle for all TIG applications, including Letters of Intent, using LSC's grant management software that thoroughly documents the review and award decision process. Each step of this review system is fully set out in the TIG Policies and Procedures Manual referenced in Recommendation 8.

Comment: Management conducts thorough reviews of all competitive TIG applications according to the selection process outlined in LSC's Notice of Availability of Funds for Technology Initiative Grants. Each proposal is reviewed to determine how well an applicant addresses the Review Criteria as outlined in the Notice. Per the Notice, additional factors that may be used include a program's funding scope, the eligibility of costs included in an application's budget, and the extent to which an application complements or duplicates projects previously funded or under consideration by LSC or other federal programs.

Much of this review process is conducted in meetings between TIG staff, the OPP Director, the Vice President for Programs and Compliance, and finally, with the LSC President. Management agrees with the OIG's recommendation that better documentation of what we believe is an exhaustive review and award decision process is appropriate, and we have already implemented changes we believe fully address this issue. In 2009, TIG staff prepared a 45-page report detailing its review process and documenting their analysis based on each review criteria. In 2010 this documentation process was incorporated into the new LSC grants management system, which stores reviewer assessments for each review criteria as well as the other factors outlined above and documents the review comments and award recommendation of the Director of the Office of Program Performance, the Vice President for Programs and Compliance and the LSC President.

Recommendation 10. *The President of LSC should ensure that policies and procedures are developed and implemented to: Evaluate all TIG grant applications, including Letters of Intent, in a consistent manner, based on established criteria.*

Response: Management has already prepared a draft TIG Policies and Procedures Manual for the management and administration of the TIG Program that outlines and documents the evaluation of all TIG applications and Letters of Intent, including how to use and apply the published review criteria, to ensure that reviews and funding recommendations are conducted in a consistent manner, based on the established criteria. In addition, the review system developed in LSC's grants management system provides documentation of the step-by-step review and evaluation procedures throughout the grant application and award process. LSC will also examine the Notice of Availability of Funding, which publishes the review criteria, to ensure that it appropriately reflects the written policies and procedures for applying the published criteria in making grant award decisions.

Recommendation 11. *The President of LSC should develop formal written procedures for ensuring that all reports required by grant assurances are received in a timely manner. These procedures should include provisions for grantees to submit milestone adjustment requests using the online grants management system, along with TIG staff's approval of such requests as well as for enforcing penalties, including initiating termination processes, if reports are not received timely.*

Response: Management has already prepared a draft TIG Policies and Procedures Manual for the management and administration of the TIG Program that includes formal written procedures for ensuring that all reports required by grant assurances are received in a timely manner. We are working on building the capability in LSC's online grants management system to allow TIG grantees to submit milestone adjustment requests via the online system and for LSC to send automated email reminders to TIG grantees about reporting deadlines. TIG staff will continue sending email reminders until the automated system is developed. Training on reporting requirements is conducted for new TIG grantees at the TIG Conference and via online webinars. LSC will conduct an additional online reporting requirements training webinar prior to the TIG grantees' first reporting deadline, and will record it and post it on the TIG website. Reporting policies and procedures for TIG grantees will be posted online, outlining their responsibilities and the penalties, including termination procedures, for non-performance on TIG projects.

Recommendation 12. *The President of LSC should: Develop detailed termination procedures including timeframes to complete each significant action associated with terminating TIG grants such as reallocating unexpended funds back to the TIG account for use in making other TIG grants. These procedures should require periodic reporting by TIG staff to LSC senior management of the status of each grant in the process of being terminated. Also, the procedures should require the Office of Legal Affairs' involvement when terminating grants to ensure that LSC's interests are properly protected.*

Response: Management is developing detailed termination procedures and will carefully consider these suggestions. These procedures will clearly distinguish among terminations, voluntary relinquishments, expirations, and extensions of deadlines. Once these procedures are adopted, Management will incorporate them into the TIG Policies and Procedures Manual. Termination procedures may require rulemaking by the LSC Board of Directors.

Thus, Management will determine which procedures Management can put in place and which procedures will require Board action to promulgate.

Comment: Management has had in place basic procedures that it has followed to close out a TIG project when a TIG grantee has not submitted documentation in a timely manner or a grant term has expired at the end of the grant term period (usually 12 or 18 months).[4] Because of the structure of the TIG Program, LSC is able to retain control of most TIG funds pending performance by the TIG grantee. After the initial payment, funds are held by LSC and not released until the TIG grantee submits required reports. Thus, even without any formal close out or termination, the grantee cannot receive most of the grant funds awarded until it has demonstrated the required progress on the project for which the grant was made.

Furthermore, Management has not involuntarily terminated any TIGs under those procedures. A termination would occur when LSC ends a grant prior to the expiration of the grant term. Rather, certain TIGs have been voluntarily surrendered or relinquished by grantees who found that they could not complete the project for which the grant was made, or LSC has used these "termination" procedures to functionally grant extensions after the end of the grant term period. Although the TIGs had expired, and LSC had no obligation to provide extensions, LSC used these procedures to provide grantees additional opportunities and deadlines to complete the work and reporting in order to obtain the remaining funds from the grant when LSC determined that doing so was in the best interest of the TIG Program and the goals of the individual grant.

Recommendation 13. *The President of LSC should: Ensure that clear authorities are established for terminating grants. Since the President of LSC awards the TIG grants, we suggest that the President of LSC or designee approve terminating grants.*

Response: Management will include clear authorities for terminating TIGs in the actions taken in response to Recommendation 12 above. Management will include the suggestion regarding the role of the President in the review and recommendations.

Comment: The current TIG procedures regarding terminations (which have been in place since August 2, 2007) require that the President of LSC approve any and all TIG terminations. As discussed above in response to Recommendation 12, these procedures will be reviewed and revised (possibly subject to formal rulemaking). As with 45 C.F.R. Part 1606, LSC's termination regulation for annualized grants, the role of the President might be reserved for review on final appeal rather than for making the termination decision.

Recommendation 14. *The President of LSC should: Develop specific procedures when terminating grants to require grantees to account for all funds and items purchased to ensure that the money was spent in accordance with the grant terms. These procedures should include requirements to recover unspent funds and to determine if the items purchased can be used by other grantees receiving TIG grants.*

Response: Management will consider specific procedures regarding TIG grant terminations to require TIG grantees to account for all funds and items purchased to ensure that the money was spent in accordance with the grant terms. In developing any such procedures,

[4] Management agrees with the OIG that the LSC termination regulation, 45 C.F.R. Part 1606, applies to annualized grants and not to TIG awards.

Management will include consideration of requirements to recover unspent funds and making determinations whether items purchased can be used by other LSC program recipients receiving TIG awards.

Comment: Management notes that all TIG funds have always been subject to all LSC rules, regulations, guidelines and directives, as stated in TIG award letters. This would include 45 C.F.R. Part 1630 regarding allowable costs and the Property Acquisition and Management Manual. As such, Management's review will determine if additional procedures are needed for TIG terminations based on the nature of the TIG Program and whether recommendations to the Board are in order for additional rulemaking.

Recommendation 15. *The President of LSC should: Require a lessons learned report be prepared by the grantee so that the circumstances that caused the grant to be terminated can be avoided or at least can be identified as early as possible in order to conserve scarce TIG funds.*

Response: Management will require a lessons-learned report by the TIG grantee as part of the procedures associated with TIG terminations. If the grant is being terminated for incomplete reporting or if LSC determines that a lessons-learned report will not be forthcoming from the grantee, TIG staff will prepare and document a lessons-learned report.

Recommendation 16. *The President of LSC should: Amend the TIG grant assurances to reflect the need for a final accounting and a lessons learned report in the event the TIG grant is terminated.*

Response: Beginning with 2010 TIG awards, Management will include in the TIG Grant Assurances the requirement for a final accounting and a lessons-learned report, as described above, in the event the TIG award is terminated.

Recommendation 17. *The President of LSC should: Publish termination policies and procedures to provide TIG grantees with adequate notice of applicable rules.*

Response: As described in response to Recommendations 12–16 above, Management is working to develop detailed policies and procedures applicable to TIG award terminations, voluntary relinquishments and expirations, to be included in the TIG Policies and Procedures Manual. Once adopted, the policies and procedures affecting the TIG grantees (as opposed to internal LSC procedures) will be published on the TIG website to provide TIG recipients with adequate notice of applicable rules.

Recommendation 18. *The President of LSC should establish written requirements to ensure that: An adequate system of financial oversight is established for TIGs.*

Response: Management has already prepared a draft TIG Policies and Procedures Manual for the management and administration of the TIG Program that outlines and documents all financial oversight activities for TIGs.

Comment: Management notes that TIGs have always been subject to the LSC fiscal oversight system and all LSC rules, regulations, guidelines, and directives, including 45 C.F.R. Part 1630 regarding allowable costs and the Property Acquisition and Management Manual. Additional

financial oversight procedures have been implemented and are discussed in Responses/Comments to Recommendations 19-22. Management will also determine whether still additional procedures are needed.

Recommendation 19. *The President of LSC should establish written requirements to ensure that: A final budget is prepared and approved for each project that agrees with the amount of the award. Any time adjustments are made to the award amount or approved budgets, new budgets should be formulated and approved.*

Response: Each 2010 TIG award package will include an approved budget that corresponds with the amount of the award. LSC has updated the online grants management system to capture the submission and approval of final budgets. LSC will add a new TIG grant assurance, modeled on a similar provision in the Federal "common grant rule,"[5] to the 2010 TIG awards to require TIG grantees to submit and receive approval of a new budget any time adjustments are made to the award amount or approved budgets.

Comment: TIG applications are already required to include a detailed budget listing all proposed expenditures in 15 categories, broken down by the funding source for these expenditures (TIG award, program contribution, other LSC-funded partners and non-LSC funded partners). In addition, the budget narrative portion of the application form requires additional details on each item in the budget, such as who is covered by personnel costs or equipment to be purchased. After the funding decision is made by the LSC President, TIG staff works with the applicant to revise the budget if the award amount is not what was requested, or if any budget revisions were recommended during the review process. Any such revisions will be documented in the grants management system.

Recommendation 20. *The President of LSC should establish written requirements to ensure that: TIG grantees adhere to budgets. This can be done along with the milestone reports by setting budgets for each milestone and require reporting of actual expenditures by milestone.*

Response: Management will establish written requirements to ensure that TIG grantees adhere to budgets. LSC will also add a new TIG grant assurance to the 2010 TIG awards that requires actual budget expenditures be submitted with the final payment request. In addition, LSC will hold back at least 20 percent of the grant amount as the final payment to ensure compliance.

Recommendation 21. *The President of LSC should establish written requirements to ensure that: TIG funding is not increased without the written approval of the President of LSC or designee.*

Response: Since August 2, 2007, the approval of the President of LSC has been required to increase or decrease any TIG award. This requirement will be continued and has been incorporated into the draft TIG Policies and Procedures Manual.

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[5] The "common grant rule" is the colloquial term for regulations issued by the Office of Management and Budget formally entitled Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organization, 2 C.F.R. Part 215, (which replaced former OMB Circular A-110). The particular section Management is looking to for the new grant assurance is §215.25, Revision of budget and program plans.

Comment: Management notes that page 19 of the Draft Report discusses an instance where LSC added an additional $50,000 to a grant, apparently without any formal budget documentation showing how the budget increase affected the proposed budget line items. It should be noted, however, that although there was no formal budget documentation, there were emails, a payment schedule and milestones that fully documented the transaction, which were filed in the requisite TIG grant folder. Under the new procedures, this type of situation will be more formally handled as a modification of the affected grants.

Incidentally, the transaction occurred when the initial TIG grantee determined that it could not complete the milestones to develop a software tool to benefit self-represented clients. Because LSC believed this software tool had national implications, it worked with another grantee to ensure that the project could be completed. Thus, LSC "transferred" the funds allocated to the initial grantee to the new grantee who agreed to complete the project.

Recommendation 22. *The President of LSC should establish written requirements to ensure that: [sic] Include as part of all LSC oversight visits the option to review and validate TIG grant information.*

Response: The Office of Program Performance will include the review of outstanding TIG projects as a part of its on-site Program Quality Visits. In addition, there will be an increase in the number of visits by TIG staff specifically to review and validate TIG project information. The Office of Compliance and Enforcement will include TIG expenditures as a part of their onsite fiscal reviews of LSC funds.

Comment: Management added a new TIG Program Counsel position in August, 2010, which will enable TIG staff to conduct more onsite program visits.

Recommendation 23. *The President of LSC should: Develop a more detailed description of what is expected from TIG grantees when preparing a sustainability plan required by TIG grants.*

Response: A detailed description of what is expected from TIG grantees when preparing a sustainability plan, when such a plan is required by a TIG project, has been incorporated into the draft TIG Policies and Procedures Manual.

Comment: It should be noted, however, that while TIG applicants are required to address project sustainability (one of the review criterion) in their TIG applications, formal sustainability *plans* have been required only for approximately two percent of TIG projects. In those limited instances, due to the national scope of the TIG project, the development of a sustainability plan (that can cost an additional $15,000-$20,000) has been requested or added to the grant. Sustainability plans have the goal of making the functions of the project sustainable without additional TIG funding, and are not to make any individual entity that might provide services in support of those functions "sustainable."

LSC funded a few of the TIG grantees managing these national projects that support LSC program recipients' essential infrastructures to work on developing formal sustainability plans for these projects, regardless of which entities would manage them. In fact, over the course of the TIG Program, some of these projects have moved from one entity to another and have been managed by different TIG grantees. In at least one instance, a project has successfully become

self-sustaining, continuing to provide valuable technology services to legal aid programs without any additional TIG funding.

Recommendation 24. *The President of LSC should: Develop procedures to formally review and evaluate sustainability plans, including a requirement to fully document such reviews and evaluations.*

Response: Procedures for the formal review and evaluation of sustainability plans, and for documenting these reviews and evaluations, have been incorporated into the draft TIG Policies and Procedures Manual.

Recommendation 25. *The President of LSC should: Require that the grantee, rather than third-party entities receiving the TIG grant funds, develop and submit the sustainability plan in accordance with established guidance.*

Response: Those TIG grantees that are required to develop and submit project sustainability plans will be reminded that they are required do so in accordance with established guidelines. Specific guidelines for the development and submission of sustainability plans have been incorporated into the draft TIG Policies and Procedures Manual. These guidelines provide that the TIG grantee may seek and incorporate input from third-party entities with relevant expertise in the development of the sustainability plan, but that the TIG grantee itself is ultimately responsible for the development and submission of this plan.

Recommendation 26. *The President of LSC should: Suspend awarding new grants to grantees which have not submitted acceptable sustainability plans in a timely manner.*

Response: Management will implement a policy to suspend awarding new grants to any TIG grantee if, at the time of the award decision, the TIG grantee is overdue on submitting an acceptable sustainability plan, when required, on a prior TIG project.

Recommendation 27. *The President of LSC should: Establish procedures to identify and prevent or resolve conflicts of interests for all TIG grants. These procedures should address actual and [sic] well as the appearance of conflicts of interest.*

Response: Management will examine this issue and consider standards and procedures for actual and apparent conflicts of interest that would be appropriate for TIG grantees providing TIG funds to third parties, and will determine and follow the best course of action.

Comment: Management takes very seriously concerns about potential conflicts of interest regarding TIG grantees and third parties to whom they pay LSC funds. Management notes that the Draft Report does not identify what definitions, standards or procedures the OIG used in reaching its conclusions. Additionally, the situations referenced in the Draft Report involve two non-profit third parties in which the individuals referenced served in unpaid volunteer positions. Management believes that these may be factors to consider in a discussion of these specific situations and the appropriate steps to address these types of issues.

Recommendation 28. *The President of LSC should: Establish procedures to take appropriate action should a conflict of interest, that is not disclosed and resolved, be discovered during the grant period.*

Response: Management will consider establishing such procedures in the review and actions in response to Recommendation 27.

III. Enforcement of Regulatory Compliance

Recommendation 29. *The President of LSC should: To the extent that the subgrant rule does not adequately account for the unique features of TIG grants, initiate a process to amend LSC regulations to account for these features and provide for workable oversight of TIG funds paid to third parties.*

Response: Management will review the subgrant rule at 45 C.F.R. Part 1627 to determine whether it adequately accounts for the unique features of TIGs and, if not, Management will determine what recommendations would be appropriate to make to the LSC Board of Directors regarding these features and any improvements to the existing rule that would improve oversight of TIG funds paid to third parties by TIG grantees.

Recommendation 30. *The President of LSC should: Require OLA to review all open and pending grants to determine which grants should be subject to LSC's subgrant regulation and obtain subgrant agreements where needed.*

Response: OLA will conduct this review on all open and pending TIGs and LSC will obtain the subgrant agreements where needed.[6]

Comment: Management notes that the subgrant rule at 45 C.F.R. Part 1627 has always applied to all TIGs. The OLA review will determine whether any payments of TIG funds to third parties by TIG grantees ("vendor contracts") in open or pending TIGs should be classified as subgrants. The subgrant rule provides for prior approvals and does not address reclassification of an existing contract as a subgrant where a misclassification had occurred. Management will determine the best way to handle such reclassification in these situations based on the framework of the subgrant rule and the existing contractual obligations of TIG grantees. Generally, as part of the TIG application, LSC requires applicants to identify all significant potential vendor arrangements, which are then examined by LSC as part of the review process prior to determining whether to award the grant.

Management notes that the Draft Report makes assertions that are not necessarily consistent with LSC's longstanding interpretation and application of the subgrant rule. The review will give serious consideration to these comments in the Draft Report. Management also disagrees with the Draft Report's statement that LSC resolved "difficulties in application of its subgrant rule to TIG grantees by declining to classify payments to third parties as subgrants . . . ." LSC did not "decline to classify" any payments that it thought should have been subgrants. Rather, in the OLA

[6] OLA provides legal interpretations regarding the meaning of the LSC regulations that provide the framework for compliance determinations by both Management and the OIG.

opinion referenced, Management consulted with OLA regarding the specific distinction between programmatic subgrants and non-programmatic expenditures for goods and services involving administrative functions of statewide websites, content development, and support services (such as translation of content to foreign languages). Management and OLA carefully considered the language of the regulation and the overall history of LSC's application and enforcement of it in order to make careful and precise regulatory determinations based on the specific facts and circumstances presented.

The Draft Report also references two categories of potential misclassification regarding vendor contracts: ones that the OIG believes conform to the existing interpretation of the subgrant rule but which the OIG disagrees with, and ones that the OIG states do not conform to that interpretation. The OLA review will take into account this distinction and the OIG's views, and Management will consider them in determining the appropriate course of action for correcting any misclassified arrangements.

Recommendation 31. *The President of LSC should: Based on the grants identified by OLA in Recommendation 30 above, ensure that subgrant agreements are executed and approved by LSC before authorizing additional payments.*

Response: Management will ensure that for the situations identified in Recommendation 30 above (i.e. where OLA determines that the payment of TIG funds to a third party is a subgrant), subgrant agreements will then be executed and approved by LSC prior to permitting the TIG grantee to provide further funds to the third party as an allowable payment.

Recommendation 32. *The President of LSC should: Develop procedures to ensure subgrant requirements for future grants are identified for each applicable TIG grant and that obtaining LSC approval for the subgrant is a condition that must be met before TIG funds are provided.*

Response: Management will review its procedures to determine what improvements can be developed and implemented to ensure that for future subgrants in TIGs all subgrant requirements, including prior approvals, are met prior to permitting the TIG grantee to provide funds to the third party as an allowable payment.

Comment: Management notes that the subgrant requirements have always applied to all TIGs consistent with LSC's overall grants management and oversight activities. The questions raised by the OIG in the Draft Report go to the issue of the classification of payments to third parties as vendor contracts rather than as subgrants. Management has consistently made clear to TIG grantees that any subgrants as defined in the regulation must follow the normal subgrant procedures including seeking prior approval before making a subgrant.

Recommendation 33. *The President of LSC should: Establish procedures to ensure that subgrantees are following subgrant requirements and are in compliance with applicable LSC laws and regulations.*

Response: Management will review its procedures to determine the extent to which improvements are warranted, consistent with LSC's overall grants administration, to ensure that TIG subgrantees are following subgrant requirements and are in compliance with applicable LSC laws and regulations.

Comment: As stated in TIG award letters, TIG grantees are subject to all LSC rules, regulations, guidelines and directives, which of course include those requirements that apply to subgrantees. As noted in the response to Recommendation 32 above, the Draft Report questions the categorization of payments as vendor contracts rather than subgrants. Management notes that there are no instances identified in the Draft Report in which a payment had been treated as a subgrant and the subgrantee failed to comply with these requirements. Rather, the Draft Report reflects the fact that the subgrantee requirements go hand-in-hand with the determination whether or not a payment is a subgrant.

Recommendation 34. *The President of LSC should: To the extent that current or future subgrant requirements do not apply, put in place a process to ensure that the grantees follow an adequate contracting process, including competing high dollar contracts and maintaining adequate documentation for all contracted services.*

Response: For situations in which payments by TIG grantees to third parties are not subgrants, Management will review its procedures to determine the extent to which improvements are warranted, consistent with LSC's overall grants administration, including consideration of enhancement of requirements for adequate documentation for contracted services, of appropriate contracting procedures and of competition options for high-dollar contracts.

Comment: TIG funds have always been subject to all LSC rules regulations, guidelines and directives. Management's review will determine if additional procedures are needed based on the nature of the TIG Program and whether recommendations to the Board for additional rulemaking are in order. Management notes that page 26 of this section of the Draft Report contains serious assertions regarding the TIG program and TIG grantee contracting, but Management is unable to comment on these assertions without further details.

Recommendation 35. *The President of LSC should: Develop processes to detect and prevent violations of restrictions by transferees, including adequate documentation of the oversight process.*

Response: Management will review its procedures to determine the extent to which improvements are warranted to ensure that TIG funding transferees, as defined by 45 C.F.R. Part 1610, are following all applicable restrictions and that oversight is adequately documented consistent with LSC's overall grants management and oversight.

Comment: As stated in TIG award letters, TIG grantees are subject to all LSC rules, regulations, guidelines and directives, which of course include those requirements that apply to transferees. As with the issue of subgrants discussed in the response to Recommendation 33 above, the Draft Report only questions the categorization of payments as vendor contracts and not as transfers. Management notes that there are no instances identified in the Draft Report in which a payment had been treated as a transfer and the transferee failed to comply with these requirements. Rather the Draft Report reflects the fact that the restrictions on transferees go hand-in-hand with the determination whether or not a payment is a transfer. The one situation discussed in the Draft Report will be reviewed upon referral.

Recommendation 36. *The President of LSC should: Develop processes to monitor program integrity with respect to TIG projects intended to facilitate cooperation and collaboration with other legal service providers.*

Response: With respect to TIG projects intended to facilitate cooperation and collaboration with other legal service providers, Management will review its procedures to determine the extent to which improvements regarding monitoring program integrity, as required by 45 C.F.R. § 1610.8 and consistent with LSC's overall grants management and oversight, are warranted.

Comment: Management has made clear to TIG grantees from the inception of the program that they must comply with all applicable LSC laws and regulations. Management takes very seriously the issue of enforcement of the Part 1610 program integrity rule, especially in light of the ongoing litigation regarding this rule in both the Second and the Ninth Circuits. All LSC program recipients, including those that have TIG awards, are required by the rule to provide annual certifications of compliance with program integrity. Over the past fourteen years both the OIG and the OCE have conducted specific on-site program integrity reviews of LSC program recipients to ensure compliance with 45 C.F.R. § 1610.8. The Draft Report does not provide a description of how the facts identified relate to the detailed factors set forth in the three-part program integrity requirement at 45 C.F.R. § 1610.8 (the rule includes making determinations "on a case-by-case basis . . . based on the totality of the facts").

Additionally, this section of the Draft Report appears to reflect a misunderstanding of the structure and operation of statewide websites. Statewide websites are vehicles for providing and exchanging information, similar to libraries, working groups, taskforces, etc. Statewide websites are not entities that themselves provide legal services. For example, individuals seeking legal help can go to a statewide website to try to find appropriate services or legal information. The website can direct eligible clients to LSC-funded programs, direct non-eligible clients to other programs and provide legal information and *pro se* materials. Information about LSC program recipients can be distinguished from information about other entities that engage in restricted activities. Management also notes that the materials identified in the Draft Report do not necessarily implicate restricted activities. For example, the Draft Report references materials relating to representation of undocumented aliens, but does not note that Congress has explicitly permitted LSC program recipients to provide representation of certain undocumented aliens including victims of abuse, violence and trafficking. Management will review the concerns raised by the OIG regarding this issue and determine if additional measures regarding program integrity and these types of TIGs are warranted.

Closing

In closing, I appreciate the hard work and thought that went into this audit and I believe that, combined with the efforts already underway, it will contribute to an even stronger TIG Program. I look forward to receiving your final report and feedback on our implementation of your recommendations.

Sincerely,

Victor M. Fortuno
President