Office of Massachusetts Attorney General
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Local Consumer Aid Fund Program
Standards and Responsibilities

For Face to Face Mediation
and
Local Consumer Programs

Fiscal Year 2014

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Massachusetts General Law Chapter 12 § 11G "There shall be established within the department of the attorney general a local consumer aid fund, which may receive and expend monies as may be appropriated to said fund by the general court, as well as additional monies which may be made available from sources other than the General Fund. The purpose of said fund shall be to provide financial assistance to eligible, local or regional agencies which deal with the resolution of consumer problems. The attorney general shall determine the standards for eligibility in order for such agencies to receive financial assistance. No more than ten per cent of said fund may be expended for administrative purposes."

Pages 2-6 contain standards and responsibilities applicable to all programs.

Requirements:

1. Use of Funds: The Local Consumer Aid Fund ("LCAF") grant funds shall only be used for expenses involved with the intake, resolution, administration of consumer complaints and outreach concerning consumer topics.

2. Each Program[1] (Local Consumer and Face-to-Face Mediation) will provide service to the designated geographic area as specified in the Notice of Grant Award.

3. Pursuant to M.G.L. c. 12, §8(F)(J), all charitable organizations, except those organized exclusively for religious purposes, which are eligible for tax exempt status under 26 U.S.C. §50l(c)(3) must register, file annual financial reports, and be up to date with all reporting requirements of the Non-Profit Organization/Public Charities Division of the Attorney General's Office (AGO) in order to be eligible to receive grant funding from the AGO.

4. It is the duty of all grant funded programs to immediately notify the AGO if your organization is the subject of any investigation, complaint, or lawsuit by any federal, state, or local law enforcement or regulatory agency.

5. Unemployment Insurance The AGO requires that LCAF grant recipients choose the "contributory" rather than the "reimbursable" method of financing unemployment benefits as allowed under the Employment Security Law (151A, §14A). LCAF grant monies may be used for the quarterly contributions to the unemployment insurance fund. However, under no circumstances can LCAF grant monies be used to pay unemployment benefits.

6. As a condition of grant award, each Program agrees that representatives of the AGO may at any time review the financials, records, and filing system of the Program to ensure compliance with the terms of the grant award. Such inspection, review and/or audit by representatives of the AGO may occur at any time, with or without notice to the Program.

7. Failure to comply with any portion of the Notice of Grant Award or Standards and Responsibilities may result in:
    - Suspension or termination of grant program; or
    - Forfeiture of grant monies not yet disbursed and/or reimbursement of previous monies awarded.

[1] For the purpose of these Standards and Responsibilities, the term "Program" shall mean both Local Consumer Programs and Face-to-Face Mediation Programs unless specified otherwise.

Relationship to the AGO:

1. At any time reference is made to the Program's affiliation with the AGO (in writing or verbally,) use the statement "working in cooperation with the Massachusetts Attorney General's Office."

2. The Program agrees to identify the AGO as a funding source for the consumer mediation program in any printed or electronic materials.

3. The primary point of contact for the Program in the AGO is Aaron Kravitz, Director of New Media and Publications in the Communications Division, (617) 963-2096 or aaron.kravitz@state.ma.us.

Minimum Standards of Performance

1. Each Program is responsible for providing a minimum of 30 hours per week of operations. Operations may include but are not limited to: mediations both in court and/or in office and outreach events. Additionally, each Program must have an answering machine or voicemail system to receive calls outside of hours of business. When a call cannot be answered during business hours, calls must be routed to an answering machine or voicemail system.

2. Notice of all office closings must be submitted to the Aaron Kravitz, Director of New Media and Publications, at aaron.kravitz@state.ma.us, at least **seven** business days in advance.
    a. In the event of an office closing, the office's voicemail must indicate that the office is closed, when the office will reopen, and a number for immediate assistance.
    b. In the event of an unanticipated closure, i.e. storm closure, utilize your best judgment as to whether the office will be opened. If the decision is to close, please send notification to the email address listed above.

3. No Program shall close for consecutive business days without advance written notice to and approval from the AGO.

4. At least one staff member from the Program must attend the regularly scheduled in-person or telephone conference calls scheduled by the AGO.

5. Each Program agrees to accept for its service area mediation referrals from the AGO and complaints filed directly with its office regardless of the location of the parties. These complaints should be mediated or referred to another agency as appropriate with consideration being given to the consumer's request regarding the geographic location.

Education and Outreach:

1. Programs are encouraged to organize four (4) education, training, or outreach activities in their communities with the funds they receive from the LCAF per grant year.

2. In the outreach or education efforts, Programs may only discuss the process of mediation and general consumer related topics. Under no circumstances are the Program staff members to discuss specific mediations, companies, or consumers.

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Press Inquiries

1. All inquiries from the press related to information concerning consumer complaints and/or practices of a business must be referred to the press office of the AGO. The press staff may direct the media to the Programs as appropriate, but will first notify the Program director and will discuss the nature of the request and the type of information he/she is at liberty to discuss.
   a. Program Directors may not to talk to the media about complaint-related information until they have received clearance from the AGO press office or other Attorney General staff. The AGO's Press Office can be reached at 617-727-2543.
   b. Upon approval from the AGO's Press Office, the Program may discuss generally with the press the type of service it provides and the kinds of complaints the program typically handles.
   c. In any press contact, the Program should mention that it is a recipient of funds disbursed by the AGO and that it works in cooperation with the AGO.
   d. If a Program has a regularly scheduled appearance on or in the local media, the AGO shall be notified as soon as each occurrence is scheduled and the topic to be discussed. A prescheduled list of occurrences, topics and dates is also acceptable.

Public Records Requests/Records Retention:

Maintenance and release of records made pursuant to this grant award will be done in compliance with the provisions of the Massachusetts Public Records Law and Massachusetts Statewide Record Retention schedules.

By accepting grant funds, each Program agrees to cooperate with the Attorney General's Office to comply with records retention and public records requests.

The AGO will be responsible for responding to all public record requests. Under the Massachusetts Public Records Law, requests for inspection or copying of records must be responded to. Regardless of whether the request is made to the Program or to the AGO, the AGO must respond within ten (10) calendar days within the initial receipt of the request.

1. A record is defined as: any document, whether in electronic or paper format, including complaints, correspondence, emails, memos and any notes that are included in or related to a case file.

2. Records Retention:
   a. For **LCP**: All consumer complaints and associated files shall be retained and accessible for **ten years**. Requests to shred or otherwise destroy files older than 10 years must be made in writing (email is acceptable) to the AGO for submission to the Records Conservation Board for destruction permission. Records **may not** be shredded or otherwise destroyed until the AGO confirms in writing that such permission has been granted.
      i. Note: Records containing personal information, i.e. social security or credit card numbers, must be destroyed by shredding in accordance with M.G.L. c. 93I, § 2.
   b. For **FTF**: Please consult the Administrative Office of the Trial Court for clarification and further information.

3. Requests for the Number of Complaints Filed Against a Business**:** If asked for the number of complaints filed against a particular business refer the caller to the AGO Hotline.

4. Public Records Requests made directly to the Program: The Public Records Law requires a response to oral as well as written requests. These requests will be reviewed and responded to by the AGO in compliance with the Public Records Law.

    a. Oral Requests: Each program may ask that all requests be put in writing for the purpose of clarity and directed to the Office of the Attorney General, Public Inquiry and Assistance Center. If the person making the request declines to do so in writing, forward the following information to PIAC immediately:
        i. Date of Request
        ii. Requestor's contact information – mailing and email address, phone number, etc.
        iii. Language used by requestor
        iv. Types of Documents Requested, i.e. complaints only, all additional records.

    b. Written Requests for Records: Written requests for records or other information received by or relative to any of the Program's work as it pertains to consumer assistance must be forwarded to the Deputy Director/Public Records Officer at (617) 727-3265 (fax). These written requests will be reviewed and responded to by the AGO in compliance with the Public Records Law.

5. Public Records Requests directly made to PIAC: The AGO will contact Programs for information. Programs must provide the information requested by the AGO in the course of a Public Records Request.

Reporting Requirements:

For Program Specific Reporting Requirements, please review the program's information.

On a Quarterly Basis

1. ***All quarterly reports must be submitted electronically to aaron.kravitz@state.ma.us.***
2. Programs must submit the financial and programmatic reporting forms by:
   October 11th, 2013, January 10th, 2014, April 11th, 2014 and July 11th, 2014.

Documentation (such as vouchers, pay stubs, receipts or copies of receipts) should not be attached to the financial reporting form, but must be made available to the AGO upon request. Failure to provide such documentation may result in the loss of the remaining funds, and/or the remittance of funds for which appropriate documentation cannot be provided.

Computer Standards

1. Each Program must have a functioning computer with internet access, word-processing, PDF, spreadsheet capability, and access to a printer.
2. The computer must have an Antivirus and a Firewall program(s) installed and updated regularly.
3. Each Program must have a valid email address for communications with the AGO.
    a. NOTE: Email is not an acceptable form of mediation therefore mediation should not be conducted in this manner.

Legal Representation:

The AGO is not permitted to provide legal representation to Programs, volunteers and/or paid staff of Programs who are sued, subpoenaed, or deposed with respect to mediations handled pursuant to these awards.

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Disbursement of Funds to a Grantee:
Disbursements of grant award funding will be made on a **quarterly basis**. These disbursements are contingent upon meeting the report due dates noted above in the "Reporting Requirements" section on page 5. Please note that disbursements are made after the submission and review of your reports. For LCPs, this includes the timely and complete submission of your headers and closers (H/C).

Confidentiality/Conflict of Interest:

1. Information the Program gains through its affiliation with the AGO is a record. Such information includes but is not limited to: internal memos, lists and discussions of pending investigations, as well as trends or cases being reviewed by the AGO.

2. Under no circumstances may any Program elicit or attempt to elicit any information from the consumer, other than that pertinent to the resolution of the consumer's complaint.
   a. Note: Face-to-Face Mediation Programs must also comply with M.G.L. c. 233 § 23C (Work product of mediator confidential; confidential communications; exception; mediator defined)

3. Program staff/volunteers will not disclose any information related to or obtained in the course of mediation to any person other than the participant or the employees of the AGO, without the explicit authorization of the participants.
   a. This authorization is given by the consumer upon signing the AGO complaint form, though it may be prudent to remind consumers of this prior to release of information.

4. Conflict of Interest**:** M.G.L., Chapter 268A (Conduct of Public Officials and Employees) may be applicable in some cases.

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Face-to-Face Mediation Program

Face-to-Face Mediation Programs Minimum Standards of Performance:

1. Face to Face Mediation Programs (FTFMPs) must adhere to "The Uniform Rules on Dispute Resolution" as set forth by the Trial Court Standing Committee on Dispute Resolution.

2. FTFMPs may not charge for any cases mediated via this grant, including those referred by the AGO, LCP or Court.

3. Mediation should be made available to disputants at times other than the standard hours of operation.

Face-to-Face Mediation Process:

1. Once a referral is made, staff should contact the parties by phone or letter to provide an explanation of the face-to-face mediation process.
   a. *A case should be counted as a "referral" if at least one party has actively contacted the program***.**

2. An "Agreement to Participate" form must be signed, in accordance with M.G.L. c. 233, § 23C of the General Laws, by all parties before mediation.

3. All referrals should receive an I.D. # and be entered into a master log.

4. Terms of agreement should be clearly written on an agreement form; each party should receive a copy. One copy should remain in the case folder. Staff should follow-up on the settlement until all the terms are completed if possible. If no agreement is reached, the parties should be sent back to the referring agent or to small claims court.

5. At the conclusion of each mediation, mediators and clients should fill out post mediation evaluation forms.

6. An agreement should be reported as upheld on the monthly report form if the majority of the term(s) are met.

7. A mediation case folder should contain:
   a. an intake form;
   b. a *signed* Agreement to Participate form;
   c. a client contact sheet with dates/content of actions taken and intake notes;
   d. post mediation evaluation forms;
   e. a signed copy of the mediated agreement if in writing;
   f. notes confirming that the agreement has been upheld and completed (if applicable)

8. Complete case notes shall be kept in the case folder for each complaint. Personal opinions of the mediator or any staff shall not be recorded.

Reporting Requirements:

1. ***All reports must be submitted electronically to aaron.kravitz@state.ma.us.***

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Local Consumer Program

Local Consumer Program Minimum Standards of Performance:

1. LCP shall not charge consumers a fee for any services rendered under a LCAF grant.

2. Any complaints sent to an LCP by the AGO in error should be returned to the AGO within a timely manner, with a note indicating the reason for the return. Contact the Deputy Director or Senior Mediator to inform them of the return.

3. The AGO may request a sample LCP complaint form or other letters used in order to verify that necessary information is obtained.

4. A consumer request for assistance must be in written form and is deemed appropriate for mediation if it is:
   a. Between an individual and a for-profit business; and
   b. The consumer is seeking specified relief – rescission of the contract, return of funds, etc.

5. An LCP will not mediate disputes:
   a. between two private parties;
   b. between two businesses;
   c. where any previous court judgment has been entered;
   d. in which the consumer is represented by an attorney;
   e. relating to a charitable organization's execution of its charitable mission (refer these to the AGO Non-Profit/Public Charities Division or a complaint may be mediated if the complaint pertains to a business transaction and does not relate to the performance of the organizations charitable purpose)
   f. relating to a state agency (refer these to the appropriate oversight agency, listed in the Mass State Services guide, http://www.sec.state.ma.us/cis/ciscig/guide.html or by calling the Mass State Service phone number, 617-727-7030).

Many of these types of cases (with the exception of complaints against a state agency or against a charity) may be appropriate for Face to Face Mediation. In these instances, please contact the FTFMP in your area.

Mediation Process:

1. If consumer initiates contact via email, response may be sent indicating that all future communications must be completed via telephone, in-person or mail.

2. Consumer complaints may be initiated in person via walk-in, through a written complaint or letter received by mail, e-complaint or by referral from the AGO hotline.

3. Complaints received directly at the LCP may be referred to another appropriate agency within a timely manner. The consumer shall be notified by telephone and in writing of the referral and the reasons therefore. LCP will notify the AGO of such referral in their monthly header information.

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4. Within **five (5) business days** of the receipt of any complaint (either from the AGO or made directly to the LCP), a LCP staff person or mediator shall make an initial contact with the consumer to assess the status of the complaint and confirm any information necessary prior to commencing mediation efforts on the case. The initial communication between mediator and consumer should identify the LCP, provide the mediator's contact information to the consumer, and explain the services to be provided and the procedures involved. The mediator may ask the consumer for additional information or documentation at this time, such as invoices, receipts, bills, or contracts.

5. If a consumer does not reply to the initial phone call and/or letter within **five (5) business days**, a 10 day letter may be sent to the consumer indicating that the complaint will be closed, and provide information on how to open the case in the future if the consumer so desires. The case may be marked as closed until further response from the consumer.

6. Under no circumstances shall an LCP contact the merchant in any way prior to contacting the consumer. Before contacting the merchant, mediators should carefully review the complaint. It is important to understand the complaint and the desired resolution prior to any attempt at mediation.

7. Within **two (2) business days** of a consumer indicating he or she would like to pursue mediation, an LCP staff person or volunteer must contact the merchant, explain the mediation process and make an initial determination about whether the merchant is interested in participating in mediation. If requested, the merchant may be provided with a copy of the complaint.

8. Mediation and resolution shall not be conducted solely through form letters.

9. Case notes should be kept in the case file for each complaint. To the extent possible, it is preferred that case notes be word-processed during the mediation and printed at the end. If hand-written, case notes must be legible and should include the date and content of each conversation, and/or steps taken. The file should also include copies of any letters received or mailed to either the consumer or the merchant. **Case notes may be determined to be "work product" and therefore not subject to disclosure under the Public Records Law in part or in their entirety. Subjective or personal opinions of the mediator or any staff should not be recorded concerning the mediation.**

10. Upon closing the case, review the list of PIAC Mediation Closing Disposition Codes and submit a closer, noting the value of any positive resolution along with a one or two sentence narrative.

11. Referrals to Small Claims Court:
    a. Thirty day demand letters sent prior to filing a claim in Small Claims Court must be written by the consumers themselves and cannot be sent on the letterhead stationery of the LCP. The LCP may supply a template letter for language purposes.
    b. If the consumer is requesting the assistance of a private attorney, the LCP may refer the Consumer to the Massachusetts Bar Association Lawyer Referral Service at (617) 542-9103/(800) 392-6164, the Boston Bar Association's Lawyer Referral Service at (617) 742-0625, or other local or county bar association referral services. Consumers should not be referred to individual attorneys.

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Reporting Requirements:

1. ***All reports must be submitted electronically to***
    a. Quarterly Reports - aaron.kravitz@state.ma.us,
    b. Headers and Closers – Melissa.armstrong@state.ma.us.

2. **Header and Closer Reporting:** Within **seven (7) calendar days** of the last day of each month, LCPs must report the cases opened and closed. Monthly reporting must use the supplied forms and be submitted electronically. LCPs may decide to report this information on a more frequent basis such as every week or every other week.
    a. "**Header**" information must include:
        i. If case is referred from PIAC, the PIAC Intake #
        ii. Date Opened at the LCP
        iii. Consumer name, and street address
        iv. Business Name
        v. Complete only if PIAC information is different
            1. Consumer city, state, zip code and phone number
            2. Business mailing address and phone number
            3. Business and complaint codes
        vi. A brief, 2-3 sentence explanation of the complaint.
    b. "**Closer**" information must include:
        i. If case is referred from PIAC, the PIAC Intake #
        ii. Consumer name, and street address
        iii. Business Name
        iv. Complete only if PIAC information is different
            1. Consumer city, state, zip code and phone number
            2. Business mailing address and phone number
            3. Case disposition/resolution using PIAC Mediation Disposition Codes
        v. Case disposition/resolution using PIAC Mediation Disposition Codes
        vi. Brief 2-3 sentence description of resolution.

Closed Case Records Retention

Three months after the end of each calendar year, LCP Programs shall complete an inventory for all closed cases. There shall be a printed Excel spreadsheet for each box of complaints detailing what files are in that box. There shall also be an electronic version of the listing for each box which will be forwarded to the Public Records Officer in PIAC to identify where the consumer complaint file is located. By the end of the fourth quarter, each program shall submit an inventory of closed case files for the previous calendar year. A sample inventory sheet will be provided by PIAC.

Boxes of closed cases shall be organized in the following manner:

1. By the calendar year in which the consumer complaint was received.
2. By Merchant name.
3. By Consumer name within the merchant grouping (if there is more than one by that Merchant name).

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