



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued July 7, 2016

Massachusetts Legal Assistance Corporation

For the period July 1, 2013 through June 30, 2015





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Making government work better

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Mr. Lonnie A. Powers, Executive Director
Massachusetts Legal Assistance Corporation
7 Winthrop Square, Second Floor
Boston, MA 02110

Dear Mr. Powers:

I am pleased to provide this performance audit of the Massachusetts Legal Assistance Corporation. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2013 through June 30, 2015. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Massachusetts Legal Assistance Corporation for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

COSO	Committee of Sponsoring Organizations of the Treadway Commission
ICP	internal control plan
IOLTA	Interest on Lawyers' Trust Accounts
LSO	legal-service organization
MLAC	Massachusetts Legal Assistance Corporation
OSC	Office of the State Comptroller

EXECUTIVE SUMMARY

The Massachusetts Legal Assistance Corporation (MLAC) is a not-for-profit corporation that gives financial support to legal-service programs providing services in connection with noncriminal proceedings to low-income individuals in Massachusetts who otherwise could not afford such services.

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of MLAC for the period July 1, 2013 through June 30, 2015. We reviewed MLAC's activities to determine its compliance with applicable laws, regulations, policies, and procedures, as well as the terms and conditions of its state contracts, in the areas reviewed.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 6	MLAC did not award grants to local programs in proportion to the current numbers of eligible clients in their service areas.
Recommendation Page 7	MLAC should base its funding distributions on the most current data available.
Finding 2 Page 8	MLAC did not submit an annual report of its activities to the Legislature and the Governor by the statutory deadline of September 28 for fiscal years 2014 and 2015.
Recommendation Page 8	MLAC should file its statutorily required reports on time with the clerk of the House of Representatives, the clerk of the Senate, and the Governor.
Finding 3 Page 9	MLAC's internal control plan (ICP) does not include a complete risk assessment.
Recommendation Page 9	MLAC should perform a comprehensive risk assessment and develop an updated ICP based on current best practices for risk management.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Legal Assistance Corporation (MLAC) is a corporation created in 1983, under Chapter 221A of the Massachusetts General Laws, that oversees and funds civil legal aid programs in Massachusetts. According to its website, MLAC “is the largest funding source for civil legal aid programs in Massachusetts” and “provides leadership and support for the improvement of legal aid to low income people statewide.” MLAC’s programs and services are administered by an executive director who is appointed by an 11-member board of directors. Ten members of this board are appointed by the Supreme Judicial Court, and the 11th is the Chief Justice for Administration and Management of the Trial Court. MLAC has approximately 15 employees and is located at 7 Winthrop Square in Boston.

MLAC makes grants to civil legal aid programs and nonprofit legal-service organizations (LSOs) that in turn provide free legal advice and assistance to indigent or disadvantaged Massachusetts residents with civil (noncriminal) legal problems. To qualify for assistance, clients must be elderly or have incomes below 125% of the federal poverty line. According to MLAC, approximately 200 attorneys and 50 paralegals at MLAC-funded programs closed 24,225 cases in fiscal year 2014 and 23,231 in fiscal year 2015, primarily in the areas of housing, income maintenance, and family law (see Appendix).

For fiscal years 2014 and 2015, MLAC recorded approximately \$20.2 million and \$21.9 million in revenue, respectively. During these periods, more than 80% of MLAC’s revenue was attributed to annual general-support appropriations and money received through the Massachusetts Interest on Lawyers’ Trust Accounts (IOLTA) program.¹ The general-support appropriations were pursuant to a contract with the Supreme Judicial Court, under which MLAC awards grants to qualifying civil legal aid programs and LSOs and administers the grantee application, award, and monitoring processes. The IOLTA revenue was from interest earned by the IOLTA program. Additional sources of revenue included a two-year, \$5.5 million grant contract from the Massachusetts Attorney General’s Office under that office’s foreclosure-prevention and borrower-support initiative, HomeCorps; income from court and bar-association fees; and miscellaneous other income.

1. According to the program’s website, it requires that “lawyers holding funds on behalf of a client must place the funds either in an account which pays interest to the client or in an IOLTA account.”

MLAC Revenue Summary*

Revenue Source	Fiscal Year 2015		Fiscal Year 2014	
	Amount	Percent of Fiscal Year Total	Amount	Percent of Fiscal Year Total
Commonwealth of Massachusetts Contract	\$14,731,500	67%	\$13,000,000	65% [†]
IOLTA	3,712,441	17%	3,481,026	17%
Revenue Subtotal	<u>18,443,941</u>	<u>84%</u>	<u>16,481,026</u>	<u>82%</u>
Other	<u>3,497,436</u>	<u>16%</u>	<u>3,702,279</u>	<u>18%</u>
Total	<u>\$21,941,377</u>	<u>100%</u>	<u>\$20,183,305</u>	<u>100%</u>

* Source: MLAC audited financial statements.

† Minor discrepancies in percentages are due to rounding.

During fiscal years 2015 and 2014, MLAC provided \$13.1 and \$10.9 million, respectively, in general support to civil legal aid programs and nonprofit LSOs in a foreclosure-prevention and borrower-support effort. In addition, MLAC administered the grant for the HomeCorps initiative and designated approximately \$4.1 million per year for three special projects: the Domestic Violence Legal Assistance Project, the Disability Benefits Project, and the Medicare Advocacy Project.

MLAC Expense Summary*

Expense	Fiscal Year 2015		Fiscal Year 2014	
	Amount	Percent of Fiscal Year Total	Amount	Percent of Fiscal Year Total
General Support	\$13,083,441	58%	\$10,971,243	54%
HomeCorps Grant	2,300,904	10%	2,305,577	12% [†]
Grants Subtotal	<u>15,384,345</u>	<u>68%</u>	<u>13,276,820</u>	<u>66%</u>
Domestic Violence Legal Assistance Project	2,437,264	11%	2,437,264	12%
Disability Benefits Project	1,178,896	5%	1,178,896	6%
Medicare Advocacy Project	446,980	2%	446,980	2%
Projects Subtotal	<u>4,063,140</u>	<u>18%</u>	<u>4,063,140</u>	<u>20%</u>
Administrative Expenses	<u>3,159,013</u>	<u>14%</u>	<u>2,911,213</u>	<u>14%</u>
Total	<u>\$22,606,498</u>	<u>100%</u>	<u>\$20,251,173</u>	<u>100%</u>

* Source: MLAC audited financial statements.

† Minor discrepancies in percentages are due to rounding.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Legal Assistance Corporation (MLAC) for the period July 1, 2013 through June 30, 2015.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did MLAC ensure that grantees tracked client eligibility and case acceptance?	Yes, but see <u>Other Matters</u>
2. Did MLAC annually ensure that grantees covered all geographic areas of the Commonwealth?	Partially; see <u>Finding 1</u>
3. Did MLAC file a report of its activities with the Legislature and the Governor within 90 days after the end of each fiscal year?	No; see <u>Finding 2</u>
4. Did MLAC review grant recipients each year to ensure that they complied with its performance standards for agencies?	Yes
5. Did MLAC review subgrantees each year to ensure that they complied with its performance standards for agencies?	Yes

In addition, in the course of our work, we noted that MLAC's internal control plan (ICP) lacked a complete risk assessment (Finding 3) and that another entity had filed as a Massachusetts corporation using MLAC's identity (Other Matters).

To achieve our audit objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls.

To assess the reliability of MLAC's data, we reviewed selected controls over the grantee monitoring, award, and peer-review processes with knowledgeable MLAC personnel. We determined that we would not rely on computer-processed data for work related to our audit objectives. Instead, we relied on MLAC's source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions. Based on our analysis, we concluded that the data used were sufficiently reliable for the purposes of our report.

In addition, we performed the following procedures:

- We reviewed all of the laws, rules, regulations, policies, procedures, and contract terms applicable to our audit objectives. In addition, we reviewed MLAC's audited financial statements for fiscal years 2014 and 2015.
- We reviewed our prior audit report (No. 2010-1300-3A) to determine whether any weaknesses in internal controls had been identified that pertained to our current audit objectives.
- We reviewed the American Bar Association Standards for the Provision of Civil Legal Aid, dated August 2006, and Legal Services Corporation² Performance Criteria Referencing ABA Standards, 2007 Edition.
- We reviewed MLAC's contract with the Supreme Judicial Court for the provision of legal aid for fiscal years 2014 and 2015.
- We reviewed ICPs that were applicable to our audit objectives using the evaluation criteria in the Office of the State Comptroller's Internal Control Guide.
- We reviewed the board of directors' meeting minutes, and reports to the board, from our audit period.
- We interviewed MLAC's management regarding oversight and monitoring procedures.
- We computed amounts for MLAC's grantee awards using the data available from the United States Census Bureau's American Community Survey at the time the awards were made and compared the results to amounts awarded by MLAC.

We did not use statistical sampling during our review. In general, the population sizes were so small that we tested 100% of the documents related to our review.

2. Legal Services Corporation was established by the federal government in 1974. According to its website, it "is the single largest source of funds for civil legal assistance to the nation's poor."

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Massachusetts Legal Assistance Corporation did not award grants in proportion to the current numbers of eligible clients.

The Massachusetts Legal Assistance Corporation (MLAC) did not award grants to local programs in proportion to the current numbers of eligible clients in their service areas.

Annually, MLAC performs a calculation, based on census data, to determine the income demographics in the service areas of the programs it funds. From this calculation, MLAC determines the level of funding for each program. The census data used by MLAC is obtained from the United States Census Bureau publication *American Community Survey 5-Year Estimates*. During our audit period, MLAC based its funding levels on data from the *American Community Survey 5-Year Estimates 2006–2010*. The surveys that were applicable, and should have been used, for our audit period were the *American Community Survey 5-Year Estimates* for the periods 2007–2011 and 2008–2012.

During our 24-month audit period, use of the outdated survey resulted in the combined overfunding of two programs by approximately \$158,000 and the combined underfunding of two other programs by the same amount.³

Authoritative Guidance

MLAC's enabling legislation, Section 9 of Chapter 221A of the Massachusetts General Laws, states,

In each fiscal year at least eighty per cent of [MLAC's] financial assistance shall be distributed to local programs on a basis proportionate to the number of eligible clients within the service areas of such local programs.

To meet this requirement effectively, MLAC must use the most recent data available.

Reason for Noncompliance

MLAC officials told us that in the interest of providing stability to local programs for budgeting purposes, the corporation decided to change its funding levels only when there were significant shifts in the numbers of eligible clients in local programs' service areas. The officials stated that they did not believe there had been significant shifts in those numbers since the *American Community Survey 5-Year Estimates 2006–2010* that would have necessitated a recalculation of the funding distributions.

3. We based our calculation on the statutorily required minimum allocation of at least 80% of grants to local programs.

Recommendation

MLAC should base its funding distributions on the most current data available.

Auditee's Response

The Board of the Massachusetts Legal Assistance Corporation (Board) appropriately exercised its discretion when deciding which set of census data to use in allocating general support funding for FY2014 and FY2015. As required by the MLAC statute each year the Board determines the grant allocations for the 80% of general support funding that is distributed based on the population of eligible clients in the service areas of the MLAC grantee programs serving defined geographic areas. When the decennial Census stopped collecting poverty information in 2010, the Board had to turn elsewhere for its data. A task force of MLAC staff and Board reviewed the most nearly equivalent alternative information: the 2005 through 2009 five-year estimates based on American Community Survey (ACS) data. Though the data is less reliable than the Census, as it is based on sampling, the task force recommended that the Board use the ACS 5-year average estimates as the basis for making changes more frequently than before—every 5 years. The task force also recommended that the Board consider the option of adjusting the distribution every three years if the data indicated significant change (the federal Legal Services Corporation made a similar decision at the same time). The Board voted, in its discretion, to accept the task force's recommendation. Beginning with the FY2013 allocation and continuing through Fiscal Years 2014 and 2015, the MLAC Board discussed the span of years to use, and how the choice of fiscal years it made would affect the programs and the communities they serve, especially in terms of sudden funding changes. After gaining sufficient experience with the American Community Survey, for Fiscal Year FY2016, MLAC staff analyzed shifts in the population of eligible clients in Massachusetts for a number of prior years. Based on that analysis, the staff determined that making annual adjustments would not unduly disrupt programs, so long as programs were aware of any changes to the allocations well in advance of the new fiscal year. The Board decided, after considering the staff's recommendation, to make changes to the funding distributions each year based on the most current Census data (for FY16 that was the ACS 2009–2013 five year average estimates). The Board will review the then current ACS five year average estimate each December to determine the percentage allocations of general support funds for the fiscal year that will begin on July 1 of the next calendar year. The Board's decision is consistent with the recommendation of the State Auditor.

Auditor's Reply

We do not dispute that MLAC can use its discretion in determining what data to use in establishing its levels of grant funding. However, we believe that MLAC should base its funding distributions on the most current data available. Based on its response, MLAC is taking measures to address our concern in this area.

2. MLAC did not submit an annual report of its activities to the Legislature and Governor by the required date for fiscal years 2014 and 2015.

MLAC did not submit a report of its activities⁴ for each fiscal year to the Legislature and the Governor by the statutory deadline of September 28. It did make the reports available to the public each year after that date, on its website and in public literature, but did not file it with the appropriate government parties on time. According to agency records, the last time MLAC filed this annual report with the government was 2011. Therefore, the Legislature and the Governor may not have been adequately informed of MLAC's activities; this could result in funding that is disproportionate to MLAC's operations.

Authoritative Guidance

Section 10 of Chapter 221A of the General Laws states,

[MLAC] shall annually submit a complete and detailed report of its activities within ninety days after the end of the fiscal year [on September 28] to the clerk of the house of representatives, to the clerk of the senate, and to the governor.

Reason for Noncompliance

MLAC officials told us that the corporation had not completed its annual report of activities on time because of competing business priorities and that it had overlooked filing its report with the above-named parties.

Recommendation

MLAC should file its statutorily required reports on time with the clerk of the House of Representatives, the clerk of the Senate, and the Governor.

Auditee's Response

MLAC staff was remiss in not submitting required annual reports to the Governor and the Legislature on time. MLAC has now filed the required reports, and will continue to do so in a timely manner.

4. According to Section 10 of Chapter 221A of the General Laws, this report is to include "descriptions of all programs funded, an evaluation of the performance of each program, a summary of the public monies expended, and descriptions of the individuals served by such programs."

3. MLAC's internal control plan does not include a complete risk assessment.

MLAC's internal control plan (ICP) does not include a complete assessment of all internal control risks. Without a comprehensive ICP, including a risk assessment, MLAC may not be able to achieve its mission and objectives effectively; efficiently; and in compliance with applicable laws, rules, and regulations. Also, without assessing risks in terms of impact and likelihood, management may not have sufficient controls in place to respond to identified risks.

Authoritative Guidance

The Office of the State Comptroller's (OSC's) Internal Control Guide represents guidance for all state agencies. The 2007 Internal Control Guide, the version effective during our audit period, states that agencies' internal controls "must be prioritized and summarized into a departmental internal control plan based on a risk assessment." While MLAC is not a state agency and accordingly is not subject to OSC's directives, the Internal Control Guide is based on standards promulgated by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and its framework for enterprise risk management that ties risk to strategic planning, which represent best business practices for all public and private organizations. Further, the concepts of risk management as defined by COSO have also been incorporated into the federal Government Accountability Office's publication *Standards for Internal Control in the Federal Government*. That guide (known as the Green Book) notes that it "may also be adopted by state, local, and quasi-governmental entities, as well as not-for-profit organizations, as a framework for an internal control system."

Reason for Issue

MLAC officials told us that they believed their current Financial Risk Assessment Policy was sufficient. This document discusses risk in general terms, but is not a risk assessment in itself.

Recommendation

MLAC should perform a comprehensive risk assessment and develop an updated ICP based on current best practices for risk management (such as the current OSC Internal Control Guide and Green Book).

Auditee's Response

While we appreciate that risk assessment helps an organization to be more effective and efficient, the ICP MLAC uses to assess risk provides appropriate benefit to the organization. In order to ensure that the grantee programs funded by MLAC are using the funds granted to them

to provide civil legal assistance to financially eligible residents of the Commonwealth, MLAC requires that grantee programs submit annual applications for funding setting forth the purposes for which they will use the funds during the fiscal year for which they have requested funding and that grantee programs file an annual report at the end of fiscal year detailing how they actually used the fund. Using experienced legal aid practitioners from other states, we conduct a peer review of all grantee programs every third year which assess programs against organizational performance standards adopted by the MLAC Board, and includes a financial review and review of program audits by our Fiscal department staff. MLAC Board and staff interact frequently with the executive directors and other program staff members about their work. In all these ways we have developed and continue to obtain detailed knowledge of the operations of the programs.

Additionally, the programs receiving local funding have an average of over 30 funding sources. Though MLAC is the largest single source, it is by no means the only source which conducts thorough examinations of the programs. The three local programs, Community Legal Aid, Northeast Legal Aid and South Coastal Counties Legal Services, which also receive [Legal Services Corporation, or LSC] funding, are required to file extensive applications with LSC and to undergo multiple on-site visits. We have access to documentation on those visits which provides us with additional information about the work of the organizations.

In light of this recommendation, the MLAC Finance Committee will review our current ICP and discuss with our auditors the recommendations contained in this Audit Report to determine whether MLAC should adopt other methods to assess and respond to risks.

Auditor's Reply

We acknowledge that MLAC has processes in place to ensure that it effectively administers its grant program. However, in the opinion of the Office of the State Auditor, these processes do not obviate the need for a comprehensive risk assessment, as provided for in OSC's Internal Control Guide. Such an assessment would identify and manage risks that might affect all aspects of MLAC's operations and provide reasonable assurance regarding the achievement of its objectives.

OTHER MATTERS

Monitoring Procedures

The Massachusetts Legal Assistance Corporation (MLAC) monitors the activities of grantees through review of annual activity reports and annual audited financial statements that grantees are required to file with MLAC. In addition, each grantee is subject to a triennial peer review by an independent organization. The triennial review is designed to determine grantees' adherence to MLAC's performance standards for MLAC-funded programs.

While reviewing grantees' annual reports, we noted a lack of consistency in the metrics reported. For example, while all grantees track the number of cases accepted, they do not all track the number of aid applicants who do not receive service. In addition, when applicants do not receive service, the grantees' reports do not always explain why. MLAC's senior management stated that this information was requested from grantees each year, but was not always reported because of competing time demands and a lack of administrative resources.

We encourage MLAC to consider requiring grantees to report the number of aid applicants who are refused service, as well as the reason/s that services were not provided. Review of this information may help identify emerging service issues as well as issues related to the appropriation of funds.

Corporate Identity

MLAC was established in 1983 under Chapter 221A of the Massachusetts General Laws. As an entity established by law, MLAC was not required to file incorporation papers with the Secretary of the Commonwealth's Office. In the course of our audit, we became aware of an entity registered through that office that was operating under the name "Massachusetts Legal Assistance Corporation." We obtained and reviewed the articles of incorporation for this organization and found that it was incorporated by a Massachusetts resident on February 1, 2011, "to advocate for the legal rights of all Massachusetts citizens and to educate Massachusetts citizens of their rights under the law." We discussed this matter with MLAC's executive director, who stated that MLAC had retained counsel to resolve this matter. MLAC officials further stated that the matter had come to their attention in 2013

but had not been resolved.⁵ We recommend that MLAC work toward resolving this matter to protect its identity from potential misuse.

5. MLAC received a notice from the Secretary of the Commonwealth, dated February 29, 2016, that this entity was dissolved on April 11, 2011.

APPENDIX

Cases Closed by Type for Fiscal Years 2014 and 2015

Case Type	Fiscal Year 2015		Fiscal Year 2014	
	Number of Cases Closed	Percent of Total	Number of Cases Closed	Percent of Total
Consumer	770	3.3%	935	3.9%
Education	982	4.2%	442	1.8%
Employment/Unemployment	479	2.1%	456	1.9%
Family	2,701	11.6%	3,140	13.0%
Health	796	3.4%	877	3.6%
Housing	7,659	33.0%	7,834	32.3%
Income Maintenance	3,686	15.9%	4,058	16.7%*
Individual Rights	2,345	10.1%	2,259	9.3%
Juvenile	293	1.3%	188	0.8%
Miscellaneous	494	2.1%	818	3.4%
Statewide (All Types) [†]	3,026	13.0%	3,218	13.3%
Total	<u>23,231</u>	<u>100.0%</u>	<u>24,225</u>	<u>100.0%</u>

* Minor discrepancies in percentages are due to rounding.

† These are programs handled by statewide organizations rather than local service organizations.