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OIG OFFICE OF AUDIT SERVICES

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NOV 25 1997

Our Reference: Common Identification Number A-03-97-00516

Kevin T. Casey, Executive Director
Pennsylvania Protection and Advocacy, Incorporated
116 Pine Street, Suite 102
Harrisburg, Pennsylvania 17101

Dear Mr. Casey:

This Office of Inspector General (OIG) final audit report provides you with the results of our review of selected financial management practices and internal controls of the Pennsylvania Protection and Advocacy, Incorporated (PP&A). Our review was conducted to determine the strength of PP&A's practices in light of weaknesses identified at other Protection and Advocacy programs.

Our review disclosed that PP&A's financial management practices were generally sufficient to ensure that expenditures charged to Federal grants were allowable, allocable, and reasonable. We noted, however, that PP&A:

- Did not report program income generated through the use of Federal funds on financial status reports (FSRs) submitted to the Administration on Developmental Disabilities (ADD) and Center for Mental Health Services (CMHS) for fiscal years (FYs) 1995 and 1996 (October 1, 1994 through September 30, 1996).

- Did not require, as of the end of FY 1996, its two subcontractors--Disabilities Law Project (DLP) and the Education Law Center, Incorporated (ELC)--to report program income attributable to the Federal grants, or how the program income was to be expended;

- Charged $13,059 in unallowable costs to the ADD, CMHS, Rehabilitation Services Administration (RSA), and Assistive Technology (AT) grants in FYs 1995 and 1996;

- Could not reconcile FYs 1995 and 1996 FSRs to financial statements and general ledgers; and

- Did not have adequate written policies and procedures related to travel, and time and attendance.

We are recommending that PP&A:

1. Determine the program income attributable to the Federal programs for FYs 1995 and 1996 and submit revised FSRs to the Federal awarding agencies;

2. Establish policies and procedures requiring subcontractors to report the amount of program income generated by the use of Federal funds, and how these funds will be used in accordance with approved program alternatives;

3. Refund $13,059 in unallowable costs to the applicable programs;

4. Establish adequate written policies and procedures relating to travel, and time and attendance.

By letter dated September 24, 1997, (Appendix), PP&A responded to our draft audit report. Based on this response, we have made changes to this report. The PP&A generally agreed with our recommendations contained in this report, and described some of the internal control improvements made in response to our recommendations. A summary of PP&A's response along with OIG comments is found later in this report.

BACKGROUND

The PP&A is a private non-profit corporation providing protection and advocacy services to people with disabilities as described in Federal statute. The mission of PP&A is to assist all eligible persons who have a disability obtain the rights and benefits to which they are entitled as residents of the Commonwealth of Pennsylvania.

During FY 1996 PP&A received $2,047,986 in Federal funds from three sources.

- ☞ $1,019,852 from the Department of Health and Human Services (HHS), ADD. The ADD funds the Protection and Advocacy for Persons with Developmental Disabilities (PADD) program. The PADD was created by the Developmental Disabilities Assistance and Bill of Rights Act of 1975. Grantees are required to pursue legal, administrative, and other appropriate remedies to protect and advocate for the rights of individuals with disabilities under all applicable Federal and State laws.

- ☞ $766,927 from HHS, Public Health Service, CMHS. The CMHS funds the Protection and Advocacy for Individuals with Mental Illness (PAIMI) program which was established in 1986. Grantees are mandated to protect and advocate

the rights of individuals with mental illness and investigate reports of abuse and neglect in facilities that care for these individuals.

- ☞ $261,207 from the Department of Education's RSA. The RSA funds the Protection and Advocacy for Individuals Rights (PAIR) program which was established under the Rehabilitation Act of 1993. The program was established to protect and advocate for the legal and human rights of persons with disabilities.

The PP&A also received an $85,774 AT contract from the Department of Education, passed through Temple University.

SCOPE

Our review was conducted in accordance with generally accepted government auditing standards. The objectives of our limited review were to evaluate PP&A's financial management practices and examine fiscal records and expenditures. To accomplish our objectives, we:

- ○ Obtained an understanding of how PP&A's accounting system functioned, and how program income was earned and reported. We requested that PP&A's two subcontractors identify the amount of program income earned for FYs 1995 and 1996 through the use of Federal funds, but we did not validate their response. We also did not determine how two subcontractors spent program income or how PP&A monitored this spending.

- ○ Identified all credit cards maintained by PP&A and reviewed all credit card charges made in FYs 1995 and 1996 for allowability, allocability, and reasonableness.

- ○ Reviewed various financial reports including the FSRs, audited financial statements, and the general ledger.

- ○ Judgmentally selected a sample of transactions to ensure that PP&A's system of internal controls permitted only allowable, allocable, and reasonable costs to be charged to Federal grants.

- ○ Judgmentally selected a sample of travel transactions and determined if the charges were: (1) in accordance with approved policies; (2) grant related and not of a personal nature; (3) allowable and allocable to the grant; and (4) properly accounted for.

- ○ Reviewed time and attendance policies to determine if procedures were being followed to ensure that time and attendance was correctly maintained.

We performed our review during February and March 1997 at the office of PP&A in Harrisburg, Pennsylvania.

RESULTS OF AUDIT

The PP&A's financial management practices were generally sufficient to ensure that expenditures charged to the ADD and CMHS grants were allowable, allocable, and reasonable. The PP&A, however, did not report on its FYs 1995 and 1996 FSRs program income earned by two subcontractors, and did not require the subcontractors to report the amount of program income earned through the use of Federal funds. We also noted that PP&A: (1) incurred unallowable costs relating to lobbying, local meals, personal expenses, travel expenses, and parking charges; (2) could not reconcile its FSRs submitted to ADD and CMHS for FYs 1995 and 1996 to its financial statements and general ledger; and (3) did not have written policies related to travel, and time and attendance.

PROGRAM INCOME

The PP&A did not report on its 1995 and 1996 FSRs, submitted to ADD and CMHS program officials, program income earned by its two subcontractors--DLP and ELC--who provided legal services to PP&A clients. In addition, PP&A did not require the two subcontractors to report the amount of program income earned through the use of Federal funds. The program income was earned by DLP and ELC in the form of attorney fees.

The 45 Code of Federal Regulations (CFR) §74.2 defines program income as the gross income earned by a recipient of Federal funds that is directly generated by a supported activity or earned as a result of the Federal award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under the award, license fees and royalties on patents and copyrights, and interest on loans made with award funds.

The 45 CFR §74.24 states that program income is to be retained by the recipient and, in accordance with the terms and conditions of the award, be used in one or more of the following methods:

1. Added to funds committed to the project or program and used to further eligible project or program objectives.

2. Used to finance the non-Federal share of the project or program.

3. Deducted from the total project or program allowable costs in determining the net allowable costs on which the Federal share is based.

In the event that the awarding agency does not specify how the program income is to be used, the program income will be deducted from the allowable costs as shown in method 3.

The terms and conditions of the PADD grant indicate that program income should be used in accordance with method 1 and/or 3. The terms and conditions additionally state that all program income must be reported on the FSR and must be used to further the overall objectives of the Protection and Advocacy program. The terms and conditions for the PAIMI grant state that program income should be used in accordance with method 1 above, and that it should be reported on the FSR. The program income must be used to further the objectives of the Protection and Advocacy program.

Program Income Not Reported on the FSRs

Our review showed that PP&A did not report on its FYs 1995 and 1996 FSRs program income generated through the use of Federal funds. We believe this resulted from the fact that PP&A did not know how much program income to report since it did not require its two subcontractors to report program income earned under the Federal awards. The PP&A did require, however, that the subcontractors use program income to serve eligible clients. Specifically the PP&A's agreement with the two subcontractors states:

> *"If a Contractor generates program income (such as attorney fees), consistent with the Federal award to PP&A, Inc. and in proportion to the funds used from this Agreement, the income will be treated as cost-sharing and shall be accounted for in the audit. (Cost sharing by its definition states that any program income generated by the use of funds from this Agreement will be reinvested by serving clients eligible under this Agreement)."*

Although the two subcontractors were not required to report the program income earned through the use of Federal funds, they did include on their financial statements the total amount of program income earned by all funding sources, including both Federal and non-Federal sources. We, therefore, requested the two subcontractors to provide detailed information on the reported program income. The subcontractors reported the following.

PROGRAM INCOME EARNED BY SUBCONTRACTORS			
Subcontractor	FY 1995	FY 1996	Total
DLP			
DD Attorney Fees	$92,143	$101,775	$193,918
PAIMI Attorney Fees	76,917	30,102	107,019
PAIR Attorney Fees	32,795	51,803	84,598
Other (Unrestricted)	50,823	66,040	116,863
Total	$252,678	$249,720	$502,398
ELC			
PP&A (DD)	$ 88,091	$116,200	$204,291
Gen. Spec. Ed.	56,321	59,861	116,182
Regular	33,225	21,661	54,886
Total	$177,637	$197,722	$375,359
GRAND TOTAL	$430,315	$447,442	$877,757

As shown above, a significant portion of the total program income reported by the two subcontractors can be attributed to the Federal awards. The DLP, for example, reported that only $116,863 (23 percent) of the program income was unrestricted, indicating that the remaining $385,535 (77 percent) was program income likely earned under the Federal awards.

This program income, however, was not included in the budgets or expenditure reports submitted to PP&A by the subcontractors, leaving PP&A without information on how much program income was generated by the Federal grants, and how and when the program income was to be used to serve eligible clients. The subcontractors' reports accounted only for the Federal funds awarded. This lack of reporting pertained to other assets that may have reflected past program income earnings. For example, DLP's FY 1995 financial statements show $533,157 in investments in marketable securities, consisting of Treasury notes and mutual funds, and $266,331 in temporary cash deposits with the Vanguard group and cash and cash equivalents. The ELC reported $39,877 in investments in marketable securities, and $753,887 in cash and cash equivalents. There was no indication as to whether these assets resulted from past program income generated by Federal funds.

We believe that the PP&A needed to better control the program income earned by the two subcontractors, first by determining the amount earned under the Federal awards and then by determining how the program income is to be used. The PP&A should also revise its FSRs for FYs 1995 and 1996 to account for the program income earned by its subcontractors.

UNALLOWABLE COSTS

The PP&A incurred $14,184 in unallowable costs charged to Federal grants. These costs included local meals, personal expenses, travel expenses, special assessment dues to the National Association of Protection and Advocacy Systems (NAPAS) for lobbying activities, and the Executive Director's parking charges. Since the PP&A's independent auditor identified $1,125 of these unallowable charges in its audit of the FY 1996 financial statements,we have eliminated $1,125 from the unallowable amounts included in this report. The $1,125 of unallowable costs should be resolved through the normal audit resolution process of the independent auditor's report.

The following chart shows a summary of these costs. Appendix A to this report allocates the unallowable costs to the Federal grants.

UNALLOWABLE COSTS			
Cost	**1995**	**1996**	**Total**
Lobbying	$1,637	$0	$1,637
Local Meals	2,942	1,670	4,612
Personal	1,938	673	2,611
Travel	1,708	1,126	2,834
Parking	0	1,365	1,365
TOTAL	$8,225	$4,834	$13,059

The following chart shows how the $13,059 in remaining unallowable costs were allocated to the PP&A's various grants and contracts.

UNALLOWABLE COSTS CHARGED TO GRANTS					
FY	**ADD**	**CMHS**	**RSA**	**AT**	**TOTAL**
1995	$3,227	$4,121	$517	$360	$8,225
1996	2,099	2,125	498	112	4,834
TOTAL	$5,326	$6,246	$1,015	$472	$13,059

Lobbying

The PP&A allocated $1,637 in unallowable lobbying costs to its Federal grants. This was a "special dues assessment" to the NAPAS. A NAPAS cover letter to the invoice requesting the funds clearly indicates, in our opinion, the lobbying nature of the request. The letter stated:

> *... To address these concerns and enhance NAPAS' legislative ability for the months ahead the Board of Directors voted unanimously to issue .01%* [sic] *special assessment. "*[NAPAS Secretary] *moved to support a .1% special dues assessment to address the challenges to all our programs and lay the basis for a long term strategic public relations mechanism". (Name deleted) seconded. No opposition. To every extent possible, these monies should come from non-federal sources. Programs with the ability to provide more resources, are encouraged to do so in order to ensure that sufficient funds are available. It is estimated that NAPAS needs a minimum of $50,000 to adequately respond to the challenges ahead.*
>
> *NAPAS will use these funds for a three pronged response: 1) increased presence on Capitol Hill, 2) development of a comprehensive grassroots network and strategy for dissemination of an advanced technical assistance pieces, and 3) operation of a broad based public relations and education campaign....*

We believe the use of these funds as indicated in the above letter clearly violates the provisions of OMB Circular A-122, Attachment B Paragraph 21, which states that any attempt to influence Federal or State legislation is unallowable. The PP&A should refund the $1,637 in lobbying costs allocated to the Federal grants.

Local Meals

There were $4,612 in unallowable costs associated with local meals. The OMB Circular A-122, Paragraph 51, Travel Costs, states that meals can be allocated to a Federal grant when an employee is in travel status due to work being done concerning that grant. Travel status means that the employee is out of the local area for legitimate business purposes. We identified expenditures of $4,612 for meals incurred when an employee was not out of the local area. The PP&A should refund this amount which was allocated to the Federal grants.

Personal Expenditures

There were $2,611 in unallowable costs associated with personal expenses. The OMB Circular A-122 states that a cost is allocable to a particular grant in accordance with the relative benefit received. These unallowable costs included items such as department store purchases, flowers, cellular phones and other expenses for which documentation could not be

provided. The PP&A should refund $2,611 in personal expenses allocated to the Federal grants.

Travel

The PP&A's travel controls were not adequate to ensure that employees complied with established policies. The PP&A established policies and procedures to be followed by employees when in travel status. The procedures, however, did not require employees to submit a voucher for their travel expenses. Instead employees generally used a PP&A credit card to charge their expenses, and the PP&A paid the balance shown on the credit card bill.

This practice precluded PP&A from detecting all instances where an employee exceeded the per diem limit that it had established. We identified payments totaling $2,834 that were made to employees in excess of the per diem limit. The PP&A should refund this amount to the Federal government. We also noted many instances where an employee charged meals for several individuals but failed to name them. While we did not questions the costs involved, since the unnamed individuals may have been PP&A employees, this is a poor internal control.

We believe the failure to detect overpayments to employees and meal payments made for unidentified people could have been avoided had employees been required to submit travel vouchers supporting their claimed costs. We recognize that some employees traveled frequently for short durations and that individual vouchers for individual trips may not be practical. An alternative would be use of a voucher that would cover, for example, all travel expenses incurred for a week or a month, but would also include detailed explanations of the expenses claimed.

Parking

There were $1,365 in unallowable costs associated with the Executive Director's personal parking while in the Harrisburg office. The OMB Circular A-122 states that a cost is allocable to a particular grant in accordance with the relative benefit received. Since no Federal benefit was derived from this expenditure, this cost is unallowable. The PP&A should refund $1,365 in unallowable costs associated with the Executive Director's parking.

FINANCIAL STATUS REPORTS

We could not reconcile PP&A's FSRs to its general ledgers and audited financial statements. This was a result of the individual who was responsible for preparing these reports not retaining the supporting documentation used in preparing the FSRs. This individual has since left the organization and was unavailable to provide an explanation. Discussions with PP&A management officials indicated they understood the problem and will use their independent auditing firm to prepare the FSRs. The PP&A

should prepare corrected FSRs for FYs 1995 and 1996 and submit them to the appropriate Federal agencies.

TIME AND ATTENDANCE POLICIES

The PP&A needed to establish written policies and procedures over time and attendance. The actual procedures in effect, although not in writing, were adequate in that the actual hours an employee spent on each program were captured. Time and attendance records were maintained through use of a bi-weekly time sheet kept by each employee. This report covered a 2-week, 75-hour period and was signed by the employee. Time spent by the employee working on each program was accounted for.

To maintain good internal controls, these procedures should be documented in writing. In our discussions with PP&A management officials concerning policies and procedures, they confirmed that PP&A policies and procedures need to be updated and they plan on updating them.

CONCLUSIONS AND RECOMMENDATIONS

The PP&A's financial management practices were generally sufficient to ensure that expenditures charged to Federal grants were allowable, allocable, and reasonable. We did, however, note several areas that should be changed or improved. Specifically, PP&A: (1) did not report program income generated through the use of Federal funds on FSRs; (2) did not require, as of the end of FY 1996, its two subcontractors to report program income attributable to the Federal grants, or how the program income was to be expended; (3) charged $13,059 in unallowable costs to the Federal grants; (4) could not reconcile FYs 1995 and 1996 FSRs to financial statements and general ledgers; and (5) did not have adequate written policies and procedures related to travel, and time and attendance.

We, therefore, recommend that PP&A:

1. Determine the program income attributable to the Federal programs for FYs 1995 and 1996, and submit revised FSRs to the Federal awarding agencies;

2. Establish policies and procedures requiring subcontractors to report the amount of program income generated by the use of Federal funds, and how these funds will be used in accordance with approved program alternatives;

3. Refund $13,059 in unallowable costs to the applicable programs;

4. Establish adequate written policies and procedures relating to travel, and time and attendance.

PP&A RESPONSE AND OIG COMMENTS

By letter dated September 24, 1997, (Appendix), PP&A responded to our draft audit report. Based on this response, we have made some changes to this report, specifically in the section dealing with program income. We have summarized PP&A's response below and have included our comments where appropriate. In general, we believe the actions taken by PP&A are responsive to our recommendations, and will improve its controls over the use of Federal funds and the program income generated by these funds.

Program Income

The PP&A recognized the reporting problems associated with program income but emphasized that it had always required its subcontractors to use program income in accordance with approved alternatives. The PP&A also stated that it had implemented new policies and procedures requiring more extensive reporting and control of program income to ensure that records are maintained which demonstrate that all program income is reinvested for the program. The new procedures require an annual budget projecting the amount of program income that will be expended; and a quarterly reporting of program income earned. The PP&A maintained that subcontractors could retain program income for future use.

We have deleted from this report our recommendation that PP&A require subcontractors to return program income. We believe that the new policies and procedures, if fully implemented, should enable PP&A to better control the use of program income by the subcontractors, and to accurately report program income on FSRs.

Unallowable Costs

The PP&A generally agreed with our findings on unallowable costs and agreed to make the recommended refunds with one exception--lobbying costs. The PP&A also requested some language changes in the finding on travel. We have made language changes in the finding on travel to take into account PP&A comments. As noted below, we believe our finding on lobbying costs is valid.

The PP&A disagreed with our conclusion that $1,637 identified as "special dues assessment" for NAPAS were lobbying costs and, therefore, an unallowable charge to Federal contracts. The response indicated that PP&A was assured by NAPAS that monies received from PP&A were not used for lobbying. The response contained a letter from NAPAS dated September 22, 1997, indicating that the funds were not used for lobbying purposes.

We did not audit NAPAS so we cannot comment on this letter dated about 2 years after the payment was made. We did audit PP&A. Their records showed that at the time the payment was made using Federal funds, there was every indication from NAPAS that the

funds would be used for lobbying purposes. We continue to believe that Federal funds should not have been used in this instance.

Financial Status Reports

The PP&A agreed with the finding. It stated that, with the help of its independent auditing firm, it will submit corrected FSRs for FYs 1995 and 1996.

Travel and Time and Attendance Policies

The PP&A agreed with our finding on time and attendance, and stated that written policies and procedures would be developed by December 1997. The PP&A also generally agreed with our finding on travel (it agreed in full with the recommendation for refund) but questioned the need for individual travel vouchers for every trip. The PP&A also described the new procedures in effect.

We have modified the language in this report to show that individual travel vouchers are not necessary for each trip but that all expenses, regardless of the number of trips, should be documented. For example, a single travel voucher covering trips made within a set time period of a week or a month would be acceptable if all expenses claimed for the period are documented.

*** *** *** *** ***

Final determinations as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HHS/OIG Office of Audit Services reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and general public to the extent information contained therein is subject to exemptions in the Act, which the Department chooses to exercise. (See Section 5.71 of the Department's Public Information Regulation, dated August 1974, as revised.)

To facilitate identification, please refer to Common Identification Number A-03-97-00516 in all correspondence relating to this report.

Sincerely yours,

Thomas J. Robertson
Regional Inspector General
for Audit Services

Direct Reply to HHS Action Official

Joseph E. Cook
Director, Division of Audit Resolution
Office of Grant and Contract Financial Management
Department of Health and Human Services
W. J. Cohen Building - Room 1067
330 Independence Avenue SW
Washington, D. C. 20201

Appendix

Kevin T. Casey *Executive Director*
Hikmah Gardiner *President*

PENNSYLVANIA PROTECTION AND ADVOCACY, INC.

September 24, 1997

Thomas J. Robertson
Regional Inspector General for Audit Services
P.O. Box 13716 Mail Stop 9
Philadelphia, PA 19101

CIN: A-03-97-00516

Dear Mr. Robertson:

Enclosed is Pennsylvania Protection and Advocacy, Inc.'s (PP&A) response to your draft report of July 31, 1997 regarding the Department of Health and Human Services, Office of the Inspector General's Results of Review.

We appreciated the professional demeanor and attitude of Craig Cohen, Chris Mattioni, Mary Pilong and Jim Maiorano throughout the process of this review. Should you have any questions regarding this response, please do not hesitate to contact me. Thank you.

Sincerely,

Kevin T. Casey
Executive Director

KTC/lkb

cc: PP&A Finance Committee
Ilene Shane, DLP
Janet Stotland, ELC

Pennsylvania Protection and Advocacy, Inc.
Response to the Department of Health and Human Services Office of the Inspector General's Results of Review

INTRODUCTION

This is the response of Pennsylvania Protection and Advocacy Inc. ("PP&A") to the Department of Health and Human Services' Office of Audit Services Letter dated July 31, 1997 ("Letter").

The Letter raises the following issues: (I) whether PP&A's reporting and use of program income (primarily attorneys' fees) was sufficient (see the first and second bullet points on p. 1); (II) whether PP&A charged certain unallowable costs (see the third bullet point); (III) whether PP&A can reconcile financial status reports for ADD and CMHS (see the fourth bullet point); and (IV) whether PP&A has updated policies and procedures regarding travel time and attendance (see the fifth bullet point).

The Letter recommends that PP&A take the following actions with regard to these issues:

1. determine the share of attorneys' fees attributable to the federal programs for 1995 and 1996 and submit revised financial status reports to the programs (page 2 of Letter);
2. establish policies and procedures that will require contractors to use and report program income generated by the use of Federal funds in accordance with approved program alternatives (page 2 of Letter);
3. recover all funds from contractors that were earned using Federal funds, and unspent (page 2 of Letter);

4. refund $13,059 in unallowable costs to the applicable programs; and (page 2 of Letter); and

5. update its policies and procedures relating to travel, and time and attendance (page 2 of Letter).

This response will address each of these issues below. The purpose of this response is to indicate the actions PP&A has taken to (i) demonstrate that appropriate policies, procedures, controls and/or records were previously in place (and provide the historical back-up documentation) or (ii) demonstrate that appropriate new policies, procedures or controls are being put in place, and that such policies are legally sufficient and programmatically necessary.

Each of the issues raised will be addressed under a separate heading below.

ISSUE I: PROGRAM INCOME

A. PP&A HAS ALWAYS REQUIRED SUBCONTRACTORS TO USE PROGRAM INCOME IN ACCORDANCE WITH APPROVED ALTERNATIVES AND, REPORTING ISSUES ASIDE, SUCH PROGRAM INCOME HAS BEEN USED BY THE SUBCONTRACTORS CONSISTENT WITH APPROVED PROGRAM ALTERNATIVES BY THE SUBCONTRACTORS

The Letter states that PP&A did not report, and did not require its subcontractors to "return," program income, and recommends (in recommendation 1) that past program income be determined and revised FSRs be submitted (page 2 of Letter).

PP&A's contract with its subcontractors expressly provides:

> If a contractor generates program income (such as attorneys' fees), consistent with the federal award to PP&A, Inc. and in proportion to the funds used from this agreement, the income shall be treated as cost sharing and shall be accounted for in the audit. (Cost sharing by its definition states that any program income generated by the use of funds from this

> agreement will be reinvested by serving clients eligible under this agreement.)
>
> When personnel of PP&A Inc. are used as attorneys, paralegals or law clerks in support of this agreement, and program income is generated for such work in connection with legal representation on behalf of PP&A Inc. or its clients, PP&A Inc. will be reimbursed for time and expenses. (Contract, ¶S.)

The contract expressly provides that the contractor must reinvest program income by serving clients eligible under the contract and also provides that PP&A itself is to be reimbursed a portion of the program income under certain specific circumstances ("when personnel of PP&A Inc. are used as attorneys, paralegals or law clerks. . .and program income is generated"). Thus, the relevant agreements explicitly require that program income (such as attorneys' fees) shall be (1) used to reimburse PP&A, Inc. for its time and expenses where PP&A personnel helped to generate the program income, or (2) where PP&A personnel did not help generate the income, retained by the contractor and "reinvested by serving clients eligible under this agreement." This is expressly in accordance with 45 C.F.R. § 74.24(b)(1) (sometimes referred to as the additional cost alternative) and is expressly authorized by the HHS Grants to PP&A.[1]

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[1] Paragraph #3 of the terms and conditions of the Center for Mental Health Services, Protection and Advocacy Formula Grant Program states:

> All of the proceeds realized by Protection and Advocacy Systems through court action that meet the criteria of 45 CFR 74.41(a) and 74.42(a) or 45 CFR 92.25 must be classified and treated as program income. General program income received, including court judgements, should be reported on the financial status report and used under the additional costs alternative and must be used to further the objectives of the Protection and Advocacy statute.

Paragraph #7 of the terms and conditions of the Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, Protection and Advocacy Grant Program states:

Reporting issues, which are addressed in the next section, may have obscured the fact that PP&A's contractors have always properly used program income and met the contractual and regulatory requirements concerning such income. Attached hereto at TAB 1 is an accounting by DLP and ELC demonstrating their use of program income for 1995 and 1996.[2]

PP&A believes that its current requirements comport with recommendation 1 made in the audit report (page 2 of Letter).

B. PP&A IS IMPLEMENTING POLICIES AND PROCEDURES REQUIRING MORE EXTENSIVE REPORTING AND CONTROL OF PROGRAM INCOME TO ENSURE THAT RECORDS ARE MAINTAINED WHICH DEMONSTRATE THAT ALL PROGRAM INCOME IS REINVESTED FOR THE PROGRAM.

The Letter states that PP&A did not require "return" of program income and recommends (in recommendation 2) that new reporting policies and procedures be implemented and (in recommendation 3) that unspent program income be "recovered" (page 2 of Letter).

As discussed above, the Letter seems to conclude -- as a result of reporting problems -- that contractors were not being required to "return" program income. PP&A

Private Non-Profit entities: All of the proceeds realized by private non-profit Protection and Advocacy agencies that meet the criteria of 45 CFR 74.41(a) and 74.42(a) must be classified and treated as program income. General program income may be used in accordance with: a) deduction alternative; b) additional cost alternative; or c) a combination of both, as outlined in 45 CFR 74.42.

[2] The auditor made clear in the exit interview that the Audit Report lists all of the attorneys' fees earned by PP&A's sub-recipients, DLP and ELC (the PP&A legal back-up centers) during FY 1995 and 1996, and makes no attempt to break out those fees generated with PP&A funds and thus which constitute program income. The auditor stated that this was because the details regarding DLP's and ELC's reinvestment of program income were maintained at the sub-contractor level, and the auditor did not review those records.

recognizes the reporting problems; however, as demonstrated immediately above, program income has always been either (1) reimbursed to PP&A, where PP&A personnel were used or, (2) where PP&A personnel were not used, retained by the contractor and reinvested in the program. PP&A has attached at TAB 1 the data regarding the use of this income. It believes that the historic data at TAB 1 satisfies recommendation 3 for past periods and that the updated policies for reporting of program income satisfy this recommendation on a prospective basis.

Attached hereto at TAB 2 are updated policies and procedures which PP&A is in the process of adopting to ensure that contractors continue to use and report all program income in accordance with approved program alternatives. These policies provide a procedure and format for contractors to report program income to PP&A. They also provide that PP&A will monitor and approve the reinvestment of that program income into approved program alternatives in accordance with the regulations and the grant. The relevant data regarding program income will also be incorporated into the FSRs.

The contractors' historic use of program income in accordance with PP&A's requirement that it be "reinvested by serving clients eligible under this agreement," coupled with the update to PP&A's policies, will continue to ensure that program income is reinvested in the program. This income will also be reported to HHS.

PP&A believes that the clarification and continued enforcement of these policies and procedures, which provide a double check on contractors' reinvestment of program income to serve PP&A clients, fully implements recommendations 2 and 3 in the audit.

C. PP&A'S MONITORING AND APPROVAL OF THE REINVESTMENT OF PROGRAM INCOME CONSTITUTES "RECOVERY" OF THAT INCOME.

As noted above, PP&A requires either reimbursement (to it) or reinvestment of program income. This constitutes recovery of that income, and PP&A need not go further.

1. PP&A Is Insuring The Reinvestment Of Program Income

PP&A has retained, and continues to retain, full control over the program income generated by PP&A legal back-up centers to insure that the income is used in accordance with the additional cost alternative. PP&A has codified this requirement in contracts with its sub-recipients (see discussion above) and, since FY '97, has specifically approved the use of program income by amount and by specific program on an annual basis to the sub-recipients[3] in order for them to maintain their level of work on behalf of the beneficiaries of the DD and PAMII Acts. PP&A is implementing a procedure by which the PP&A Board will receive regular reports on program income generated by PP&A legal back-up centers. By these methods, PP&A is insuring that program income is reinvested in the PP&A program.

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[3] To the extent that the Audit Report suggests that these controls are not sufficient, and that PP&A must obtain physical refunds of this program income, PP&A submits that the suggestion goes too far. No regulation or other legal authority is cited for this recommendation, and it contradicts the Audit Letter's earlier findings that the "additional cost alternative" is an appropriate way to treat program income and that PP&A is authorized to apply this method to its grants. Indeed, 45 CFR § 74.24(b) expressly allows program income to be retained, and reinvestment of this income in the program by DLP and ELC clearly furthers program objectives. Moreover, HHS Program Instruction No. ADP-PI-86-3 (October 31, 1986) provides that:

> Under the additional cost alternative, the Funds [program income in the form of attorneys' fees] may be used for costs which would otherwise be unallowable under the Protection and Advocacy Program. However, such funds must be used to further the broad objectives of the Protection and Advocacy Statute.

Id., p. 3 (emphasis added). That is exactly what is being done here.

Moreover, it is regular practice among other PP&As nationally, and among other HHS grantees, to permit "sub-recipients" to hold program income, so long as the recipient retains control through such methods as those used by PP&A. For example, the Legal Services Corporation, which is also subject to the requirements of 45 C.F.R. Section 74.24, permits recipients to enter into agreements with sub-recipients

> to conduct certain activities specified or supported by the recipient related to the recipient's programmatic activities, ... such as representation of eligible clients or which provide direct support to a recipient's legal assistance activities..."

At Section 1626.1(b)(I). Those sub-recipients are automatically entitled to keep as part of their fund balance 10 percent of the additional income derived from an LSC grant, and that 10 percent ceiling can be waived by the Director of the Office of Field Services [at Sections 1628.3(a) and 1628.4(b)]. Clearly, there is no federal impediment to sub-recipients like PP&A legal back-up centers maintaining program income generated through recipient's grant -- so long as the recipient assures that it is used in accordance with applicable procedures, in this case the additional cost alternative.[4] Accordingly, PP&A was and is permitted to require reinvestment of program income by legal back-up centers directly, and need not require physical refunds of this income so long as PP&A monitors and controls its use by the back-up centers to further the objectives of the statute.

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[4] Obviously, the 10 percent restriction is a creation of the Legal Services Corporation's regulations, and does not apply to recipients and subrecipients under the DD and PAMII Acts.

2. PP&A's Requirement That The Legal Back-Up Centers Reinvest The Program Income Is Good Policy Because The Back-Up Centers Need Reserves To Pursue Complex Multi-Year Litigation.

In the late 1970's and early 1980's, PP&A selected DLP and ELC to act as its legal back-up centers to pursue litigation on behalf of PP&A-eligible clients. Since that time, the PP&A legal back-up centers have consistently reinvested all program income generated through PP&A's funding. This reinvestment has significantly expanded the back-up centers' legal services to PP&A clients. Absent this program income, the PP&A legal back-up centers would not only need to reduce the number of PP&A clients served, but would be forced to cut back on the multi-year complex class action litigation which has so significantly benefitted PP&A clients directly and indirectly.[5]

PP&A legal back-up centers maintain and account for the unused portions of their program income as "reserve." These reserves are restricted and can be used only to further PP&A activities. The retention of reserves, and the unimpeded access to those reserves, are critical for several reasons.

First, the amount of program income PP&A legal back-up centers generate can vary dramatically from year to year, and there certainly is no guarantee that they will earn substantial -- or even any - fees each year. For example, in 1993, ELC earned only $6,446 in attorneys fees. During that fiscal year, however, ELC needed to use $163,978 in attorneys' fees reserves to maintain its level of advocacy for PP&A clients. Since PP&A legal back-up centers rely on program income to fund from one-quarter to one-third of their programs, it is essential to

[5] A review of the NAPAS National Docket of Significant Protection and Advocacy Cases reveals that 27% of the Housing cases and 22% of the cases under the Americans with Disabilities Act in the country were litigated by PP&A's contractor, the Disabilities Law Project.

maintain reserves from which they can draw to maintain program stability and uninterrupted client services in the event that they fail to earn sufficient fees to fund their programs in a particular year.

When the legal back-up centers often initiate litigation which has the potential for fees under Section 1988 of the Civil Rights Act, the amount of fee income received in any particular fiscal year is subject to great uncertainty. In order for fees to be awarded, the legal back-up centers must prevail in the litigation, an outcome which is by no means assured no matter how meritorious a particular lawsuit may seem to the PP&A and its clients. In addition, even in cases where the legal back-up center is a prevailing party,[6] the fee claim itself is subject to further, separate litigation. Finally, even when fees are awarded, the amount of fees may be reduced significantly compared to the originally projected fee claim. Thus, the complexity of the underlying litigation and fee claim litigation affects the timing of the actual receipt of funds. Accordingly, DLP and ELC have no choice but to use money from their reserves each year as an advance against anticipated - but not guaranteed - program income. For these reasons, prudence requires that amount equal to one fiscal year's budgeted income from fees must be available to each back-up center at the beginning of each fiscal year.

Second, the costs of litigation (e.g., experts, witness fees, deposition transcription costs) are notoriously difficult to predict at the outset of a case. When a case is filed, there is no way to know whether it will settle quickly or proceed through extensive discovery and trial. The

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[6] Obviously, where the PP&A client is the prevailing party in a lawsuit -- even before fees are awarded under the statute -- the PP&A legal back-up center has already vindicated the legal rights of that client. Thus, to the extent that attorneys' fee awards have been received, this underscores the fact that the back-up legal centers have been successfully advancing the rights of a PP&A client or class of PP&A clients.

litigation costs which PP&A legal back-up centers must pay will vary dramatically in any particular fiscal year depending on when and how the case is reserved. Thus, a part of the reserve is a Litigation Cost Reserve, which must be available to provide the fiscal confidence and stability needed to file important, complex, and usually costly lawsuits. This reserve assures that the costs of the litigation can be met even if they are greater than initial expectations as reflected in the annual budget.

Third, and most importantly, PP&A contracts with its legal back-up centers to litigate significant complex, multi-year litigation. The centers have consistently met this expectation, filing cases of national significance benefitting thousands of persons with disabilities. However, these types of significant cases are costly in terms of both staff time and expenses.

When these cases are filed, PP&A legal back-up centers take on an ethical obligation to PP&A clients to represent them zealously (Pennsylvania Rule of Professional Conduct 1.3). The lawyers cannot withdraw as counsel if doing so would result in a material adverse effect on PP&A's clients' interests (Pennsylvania Rule of Professional Conduct 1.16(b)). Moreover, when class actions are filed, the courts certify that counsel for the plaintiffs will represent the class competently and vigorously, and attorneys cannot withdraw without court approval. In order to undertake complex class-based litigation which spans years, PP&A legal back-up centers require a reserve to assure that, in the event of a funding crisis, they have the financial wherewithal to continue pending lawsuits and thus fulfill their ethical obligations. Without a reserve, the legal back-up centers could neither commit to nor finance the very type of litigation to benefit persons with disabilities which the PP&A contracts contemplate.

D. PP&A'S DECISION TO PERMIT THEIR LEGAL CONTRACTORS TO MAINTAIN LITIGATION RESERVES IS A LOCAL CHOICE; HAS PRODUCED THE BEST RESULTS FOR ITS CONSTITUENCY FOR TWO DECADES; AND IS CONSISTENT WITH APPLICABLE LAW.

For more than 20 years, PP&A has relied upon one or more of its legal contractors to bring the type of complex, systemic, and multi-year litigation for which PP&A and its legal subcontractors have become nationally known (and which Pennsylvania consumers have come to expect). The success and importance of this collaboration has been acknowledged and ratified annually by PP&A's Board of Directors since PP&A was founded. The Board has always understood and respected the legal contractors need for reliable litigation reserves — while also understanding that the Board has a duty and a need to monitor the expenditure of those reserves and to make sure that they are spent for protected activity. As mentioned above, to the extent that the auditors have pointed out legitimate gaps in the reporting and monitoring scheme, PP&A and its contractors have promptly taken steps to correct these deficits.

These local decisions as to how best to serve consumers in Pennsylvania should be respected by federal authorities in the absence of clear legal requirements to the contrary; no such authority (that is, no legal requirement that the PP&A physically hold the program income in question) was cited in the Audit Report, and none was referred to by the auditor in the exit interview. We appreciate the auditor's statement that neither he nor others in the Inspector General's Office is seeking to impede PP&A's successful litigation strategy on behalf of its constituency, but PP&A asserts that the current recommendation will do just that.

PP&A has strengthened its reporting and control procedures with respect to program income. It does not wish to recover physically the program income from its legal subcontractors,

but wants to continue its historic practice of permitting litigation reserves, subject to clear and effective reporting and control procedures. In the absence of legal authority forbidding this practice, PP&A respectfully asks that its decision be respected.

ISSUE II: UNALLOWABLE COSTS

The Results of Review states that PP&A charged $13, 059 in unallowable costs to certain grants in fiscal years 1995 and 1996. These costs were summarized as $1,637 for Lobbying; $4,612 for Local Meals; $2,611 for Personal; $2,834 for Travel; and $1,365 for parking.

A. Lobbying

PP&A disagrees with the Inspector General's findings regarding the $1,637 "special dues assessment" for NAPAS. NAPAS has assured PP&A that monies received from P&As who submitted these dues using federal funds were specifically not used for lobbying activities. (See documentation at Tab #3.) We therefore disagree that $1,637 should be reimbursed to the federal agencies.

PP&A recognizes and agrees that if the monies were spent on lobbying activities that those costs would be unallowable under OMB Circular A-122.

B. Local Meals

PP&A agrees with the Inspector General's findings regarding local meals with the exception of the definition of "travel status" (i.e., "Travel status means that the employee is staying overnight away from home for legitimate business purposes"). Additionally, we request a definitive policy regarding "local meals." Meetings with State Administration officials in informal settings, such as during meals, advance the agency's mission, provide a legitimate form

of advocacy to meet the needs of persons with disabilities, and that they are important and appropriate.

PP&A has significantly strengthened its internal controls with respect to reimbursement for travel and for meals. PP&A has updated its travel policies which also relate to meal allowances. (Please refer to "Travel" below.)

C. Personal

PP&A agrees with the Inspector General's findings regarding Personal expenses and that the $2,611 should be reimbursed to the appropriate federal agencies. PP&A has significantly strengthened its internal controls with respect to the use of agency credit cards. We have strengthened procedures requiring receipts for all reimbursement. VISA expense forms submitted without receipts are billed to the employee and reimbursement to the agency is required. Also, staff is required to strictly adhere to policies on allowable expenditures for travel and associated costs (e.g., meals). Excess amounts will not be reimbursed.

D. Travel:

PP&A agrees with the Inspector General's findings regarding Travel expenses and that the $2,834 should be reimbursed to the appropriate federal agencies with the exception of the statement that staff did not submit separate travel vouchers accounting for the travel performed.

Our only disagreement with the above statement is that it appears to indicate that a separate voucher must be submitted upon completing each trip. Because PP&A staff travels, in most cases, several days per week, submission of separate vouchers would prove administratively excessive and one detailed statement per month is appropriate.

PP&A has significantly strengthened its internal controls with respect to travel expenses. The updated policies, which became effective on January 24, 1997 and March 31, 1997, permit staff to receive reimbursement for meals when the staff has traveled outside of a fifty (50) mile radius of the office and has either worked more than eight (8) hours that day, or is on overnight travel. Pennsylvania is a large state requiring much staff travel. Many employees opt to travel and work ten (10) to fourteen (14) hour days and return home at night rather than to have overnight travel. Staff working extended hours should be reimbursed for appropriate meals. Allowing reimbursement only when on overnight travel would result in more overnight expenses than we currently incur.

The implementation updated policies and procedures with respect to detailed documentation of expenditures has dramatically improved the provision of documentation for expenses. VISA expense forms submitted without receipts are billed to the employee and reimbursement to the agency are required. Also, staff is required to strictly adhere to policies on allowable expenditures for travel and associated costs (e.g., meals). Excess amounts are not reimbursed. Staff is required to document any expenditures involving more than one person (e.g., if more than one staff travel together and their meal is charged by one of the staff on their VISA, the staff submitting the expenses must list the other person's name on their travel voucher).

Few instances of requiring staff to reimburse the agency for undocumented expenses have occurred. The Board of Directors and members of the Board's Advisory Councils have also received updated copies of policies related to expenditures and reimbursement.

Additionally, the Personnel Committee of the Board and the agency's corporate counsel are reviewing staff recommendations for changes to the agency's Personnel Policies. These proposals will be submitted to the Board for their approval at the December 1997 Board meeting.

E. Parking

PP&A agrees with the Inspector General's findings regarding the Executive Director's parking and that the $1,365 needs to be reimbursed to the appropriate federal agencies.

PP&A, Inc. believes that this fully addresses recommendation number 4 of the report.

ISSUE III: RECONCILIATION of FINANCIAL STATUS REPORTS

The Letter states that PP&A could not reconcile certain financial status reports to its financial statements and general ledgers.

As stated in the Letter, this was the result of a former staff member who was responsible for preparing the reports not retaining the supporting documentation. With the assistance of our independent auditing firm, PP&A financial staff has begun to file the FSRs and our independent auditing firm will review all such filings on a timely basis. The financial staff, with the independent auditing firm, will be submitting corrected FSRs for fiscal years 1995 and 1996 to the appropriate federal agencies..

ISSUE IV: TIME and ATTENDANCE POLICIES

The Letter states that PP&A had not adequately documented its policies and procedures related to time and attendance.

We agree with the Inspector General's findings regarding the need to update policies and procedures related to time and attendance. As stated in the review report, PP&A adequately maintains a computerized system that reflects the actual hours each employee spends on each

program which became operative in October 1996, but the procedures have not been documented in our written policies and procedures manuals. The Personnel Committee of the Board and the agency's corporate counsel are reviewing staff recommendations for changes to the agency's Personnel Policies and these changes incorporate the time and attendance procedures. These policies will be submitted to the Board for their approval at the December 1997 Board meeting. PP&A, Inc. believes that this fully implements recommendation number 5 of the report.

Tab 1

Education Law Center
Calculation of PP&A Program Income

Per Audit Reports for the Years Ending:	9-30-96		9-30-95		9-30-94		9-30-93	
DD	332,000		340,000		324,000		294,522	
PAMI	18,460		21,000		20,000		15,000	
PAIR	4,960		5,000		0		0	
PIAT	18,000		18,000		0		0	
Total PP&A Current Year Grants	373,440		384,000		344,000		309,522	
Program dollars needed to balance	82,911		143,087		216,025		163,978	
Total PP&A Applied	456,351	83%	527,087	84%	560,025	92%	473,500	86%
Non PP&A grants	95,292	17%	97,717	16%	46,500	8%	74,000	14%
Total Expenses to Cover	551,643	100%	624,804	100%	606,525	100%	547,500	100%
Beginning PP&A program fund balance	345,840		358,139		401,792		548,198	
Less: Program income needed to balance	(82,911)		(143,087)		(216,025)		(163,978)	
Add: New program income allocated	159,653		130,788		172,372		17,572	
Ending PP&A Program Fund Balance	422,582		345,840		358,139		401,792	
Allocable attorney fees	176,061		144,412		172,880		6,446	
Allocable investment income	24,147		14,588		13,322		12,028	
Total to be Allocated	200,208		159,000		186,202		18,474	
Allocation factor for allocable attorney fees	83%		84%		92%		86%	
Allocation factor for allocable investment income	56%		65%		100%		100%	
PP&A Allocated Share	159,653		130,788		172,372		17,572	

Total fund balance agency wide	795,046
PP&A allocated share	422,582
Unrestricted Portion of Fund Balance	372,464

Per audit reports for the Years Ending	9-30-96	9-30-95
DD	$224,000	$230,000
PAMI	$174,000	$195,000
PAIR	$44,650	$45,000
PIAT	$18,000	$18,000
PP&A Current year grants	$460,650	$488,000
Program dollars needed to balance	$255,473	$161,266
Total PP&A applied	$716,123	$649,266
Non-PP&A grants	$223,037	$206,291
Total expenses to cover	$939,160	$855,557
Beginning PP&A program fund balar	$619,343	$596,372
Less: Program income needed to bal	($255,473)	($161,266)
Add: New prog income allocated	$174,053	$184,237
Ending PP&A Program Fund Balanc	$537,923	$619,343
Allocable Attorneys' Fees	$183,680	$208,235
Allocation factor	76%	76%
PP&A Atty fees allocated	$139,597	$158,259
Restricted interest income	$34,456	$25,978
Total to be allocated	$174,053	$184,237

Disabilities Law Project -- Attorneys Fee Allocation

		Total	DD	PAMI	PAIR
1995	Start Balance	$596,372	$528,219	$68,153	$0
	Fee Income	$158,259	$60,518	$71,481	$26,260
	Interest Income	$25,978	$23,010	$2,969	$0
	Expenditures	($161,266)	($78,917)	($66,908)	($15,440)
	End Balance	$619,343	$532,829	$75,694	$10,820
	Committed for 1996	($255,473)	($129,280)	($100,423)	($25,770)
	Reserve	$363,870	$403,549	($24,729)	($14,950)
1996	Start Balance	$619,343	$532,829	$75,694	$10,820
	Fee Income	$139,597	$73,697	$43,133	$22,767
	Interest Income	$34,456	$29,643	$4,211	$602
	Expenditures	($255,473)	($129,280)	($100,423)	($25,770)
	End Balance	$537,923	$506,889	$22,615	$8,420
	Committed for 1997	($283,310)	($179,483)	($82,625)	($21,202)
	Reserve	$254,613	$327,406	($60,010)	($12,782)

Tab 2

Procedure Manual for the Accounting and Reporting of Grant and Program Income.

Definitions

Program income:	Gross income earned by sub-recipients that is directly generated by an activity supported by one or more program grants, or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use of rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include receipt of principal on loans, rebates, credits, discount, etc., or interest earned on any of them.[1] Revenues generated by individuals whose services are contributed to sub-recipients, and are not paid by sub-recipients, are not program income.
Program grants:	Grants to sub-recipients under one of PP&A's programs (currently DD, PAMII, PAIR and PIAT)
Restricted Reserves:	Program income generated by sub-recipients that can be used by sub-recipients in furtherance of the objectives of the statute applicable to the program grant which supported the activity that generated the program income.
Sub-recipients:	Currently, ARC-Pennsylvania, Alliance for the Mentally Ill of Pennsylvania, Disabilities Law Project, Education Law Center and Speaking for Ourselves

1. Approval of Program Grants and Board Authorization to Spend Program Income

a. On or before August 1 of each year, sub-recipients shall submit to PP&A a proposed budget for the next fiscal year, by program grant, which shall include:

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[1] Paraphrase of OMB Circular A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

the amount of each program grant; the personnel and non-personnel costs; and the amount of program income projected to be used by the source and year generated.

b. Modifications of the approved budget shall be submitted to PP&A, Inc. and approved by the PP&A Board of Directors, including any change in the amount of program income approved for expenditure. Program income which has been approved for expenditure, but has not been spent at the end of the fiscal year, shall be retained by sub-recipients in restricted reserves.

2. Reporting of Grant and Program Income

a. Each month, sub-recipients shall submit reports to PP&A on the personnel and non-personnel costs incurred, by program grant. PP&A revenues will be applied to these monthly costs in the following order: (1) monthly amount of program grant expended; and (2) program income from restricted funds, up to the amount authorized for that fiscal year by the PP&A Board for that program grant.

b. Within ten (10) days after the close of each quarter, sub-recipients shall submit to PP&A a report, that has been approved by their outside accountant, on program income earned that quarter, organized by program grant. For each attorney fee award, the following information shall be provided: the name and file number of the case; the total amount of the fee award; the amount of the fee award that is program income, and the program grant(s) to which it is attributed. For program income not generated from attorneys' fees, PP&A will be provided with documentation regarding the amount of the income, the source of the income and the program grant to which it is attributed.

c. Sub-recipients shall maintain, for at least seven (7) years from receipt of the award, documentation of the basis for the fee award and its allocation to specific program grants. Subject to attorney-client confidentiality, said documentation shall be available for inspection by PP&A.

3. Allocation of Attorney Fee Awards and Interest

a. If more than one program grant supported the income generating activity, the income will be pro-rated between or among the programs in proportion to the funding provided by each supporting program in the year in which the income is received.

b. To the extent that non-PP&A funds are used in combination with PP&A funds to support an income generating activity, only that portion of program income will be designated as restricted as reflects the percentage of the PP&A income for that fiscal year as compared to the sub-recipient's total revenues for that fiscal year

that support PP&A activities.

c. To the extent that no PP&A funds are used to support an income generating activity, none of the proceeds are program income, and sub-recipients are not restricted in their use.

4. Sub-recipients' Annual Audits

As part of sub-recipients' annual audit process, a schedule of program grants will be provided to an independent audit firm. The schedule will also present, by program grant, the program income (including interest) earned and disbursed for the fiscal year, and any remaining restricted reserves carried forward for future fiscal years by program source. The restricted portion of these reserves shall be specifically allocated by program grant.

Tab 3

NAPAS National Association of Protection & Advocacy Systems

September 22, 1997

Kevin Casey, Executive Director
Pennsylvania Protection and Advocacy, Inc
116 Pine Street, Suite 102
Harrisburg, Pennsylvania 17101

Dear Kevin,

In order to respond to the results of the Office of Inspector General's review of the Pennsylvania Protection and Advocacy, Inc (PA P&A) you have inquired whether NAPAS spent any portion of the special dues assessment paid by PA P&A on unallowed activities. OMB Circular A-122, Attachment B Paragraph 26 Membership, subscription, and professional activity costs states that "costs of the organization's membership in civic, business, technical and professional organizations are allowable." Therefore the issue is not that you paid dues to NAPAS but what we did with your dues.

As you are aware NAPAS routinely asks its members to identify the portion of their dues which are paid from non-federal sources. We do this in order to protect our memberships from suffering from any allegations of misusing federal funds. As a result NAPAS is able to document that it receives sufficient dues paid from non-federal sources to cover any lobbying activities which are not allowed with federal dollars.

For example in FY 1995 received $58,396.14 of dues as a result of the special assessment. Of that total $28,709.78 was known to be paid from non-federal sources. Our 990 for FY 95 indicated that a total of $10,150 was spent on activities which could be defined as lobbying. For example, in FY 1995 the majority of resources from the special assessment were allocated to support the development of a paper explaining the federal role of the protection and advocacy system (P&A) and a broad based public relations and education campaign. This campaign included providing training, technical assistance and support to the network about how to disseminate positive information about the P&A. Neither of the above activities fall within the definition of lobbying.

If you require more in-depth information please do not hesitate to ask.

Sincerely,

Curt Decker
Executive Director

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