



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Services Law Line of Vermont, Inc.
August 3 - 6, 2009
Case Service Report/Case Management System Review

Recipient No. 146010

I. EXECUTIVE SUMMARY

Finding 1: LSLLV's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Finding 2: LSLLV's intake procedures and case management system support the program's compliance related requirements.

Finding 3: LSLLV maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Finding 4: LSLLV maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: LSLLV is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

Finding 6: LSLLV is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

Finding 7: LSLLV is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

Finding 9: LSLLV is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were several staff case files which contained no description of the legal assistance provided.

Finding 10: LSLLV's application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: LSLLV is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as there were no case files reviewed that were dormant or untimely closed.

Finding 12: Sample cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 15: A review of LSLLV's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). However, LSLLV is not in compliance with the notification requirement of 45 CFR § 1610.5(a).

Finding 16: LSLLV is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, LSLLV is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 17: LSLLV's accounting records do not show that National Legal Aid and Defenders Association ("NLADA") membership fees were paid with non-LSC funds, Consequently a determination of compliance with 45 CFR § 1627.4(a) could not be made.

Finding 18: LSLLV is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion).

Finding 29: A review of vendor information disclosed issues with internal controls.

Finding 30: LSLV was in the process of updating its Accounting Procedures Manual at the time of the August 2009 OCE visit.

Finding 31: Bank reconciliations for the checking, money market, and client trust accounts were reviewed and found to be performed timely and accurately. Reconciliation of the company credit card (Chittenden MasterCard) was reviewed and found to be performed timely and accurately.

II. BACKGROUND OF REVIEW

On August 3 through 6, 2009, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Legal Services Law Line of Vermont ("LSLLV"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of two attorneys and one fiscal analyst. One of the attorneys was an OCE staff member; the other attorney was a consultant.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that LSLLV has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LSLLV for compliance with regulatory requirements 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of LSLLV's upper and middle management, staff attorneys and support staff. LSLLV's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2007 through June 30, 2009. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 168 case files which included 62 targeted files.

LSLLV is an LSC recipient with an office located in Burlington, Vermont. LSLLV primarily engages in advice and brief services by telephone. Vermont Legal Aid ("VLA") conducts intake for LSLLV through a toll free state intake and referral hotline. LSLLV's staff consists of an Executive Director, the Director of Vermont Volunteer Lawyers Program, an office manager, three attorneys and one paralegal. LSLLV received a grant award from LSC in the amount of \$538,823 for 2009, \$489,610 for 2008 and \$487,210 for 2007.

¹ In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

For 2008, LSLLV reported 2,356 closed cases in its CSR data. LSLLV's 2008 self-inspection report indicated a 2.5% error rate with exceptions noted in four files out of the 160 cases reviewed. The problem areas identified were: cases in which there was no written evidence of advice or representation, counsel and advice or limited action cases opened prior to 10/1/07 and not falling under the exception in § 3.3 (a) (ii) of the 2008 CSR Handbook and cases reported more than once in 2008 with the same client problem code and set of facts

For 2007, LSLLV reported 2,454 closed cases in its CSR data. LSLLV's 2007 self-inspection report indicated a 2.0 % error rate with exceptions noted in three files out of the 150 cases reviewed. The problem areas identified were: counsel & advice, brief service or referred after legal assessment cases opened prior to 10/01/05 and not falling under the exception in ¶ 3.3(a)(ii) of the 2001 CSR Handbook; cases in which there is no written evidence of advice or representation and non-telephone cases which lacked a citizenship attestation or documentation of alien eligibility.

By letter dated May 26, 2009, OCE requested that LSLLV provide a list of all cases reported to LSC in its 2007 CSR data submission ("closed 2007 cases"), a list of all cases reported in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases closed between January 1, 2009 and June 30, 2009 ("closed 2009 cases"), and a list of all cases which remained open as of June 30, 2009 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by LSLLV staff and the other for cases handled through LSLLV's PAI component. LSLLV was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10 and 11, and the LSC *Access to Records* (January 5, 2004) protocol. LSLLV was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2007, 2008, and 2009 closed and open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and LSLLV agreement of July 7, 2009, LSLLV staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.² LSLLV's management and staff cooperated fully in the course of the review process. As discussed more fully below, LSLLV was made aware of any compliance

² In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues identified during case review.

At the conclusion of the visit on August 6, 2009, OCE conducted an exit conference during which LSLLV was made aware of the areas in which a pattern of non-compliance was found. No distinctions between 2007, 2008, and 2009 cases were found. OCE cited instances of non-compliance in the areas of citizenship attestations, documentation of legal advice and the application of closing codes. LSLLV was also made aware that its Declaration of Citizenship Form and VLA's paper intake form are non-compliant. LSLLV was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments.

By letter dated October 23, 2009, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions regarding the August 3-6, 2009 CSR/CMS visit. LSLLV was asked to review the DR and provide written comments. LSLLV requested and OCE granted an extension to submit its comments. By letter dated December 28, 2009, LSLLV's comments were received. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

III. FINDINGS

Finding 1: LSSLV’s automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Recipients are required to utilize ACMS and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2001 Ed.), ¶ 3.1 and CSR Handbook (2008 Ed.), § 3.1.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, LSSLV’s ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

In response to the DR, LSSLV offered no comments to this Finding.

Finding 2: LSSLV’s intake procedures and case management system support the program’s compliance related requirements.

LSSLV’s intake procedures and its ACMS were reviewed during the on-site visit.

LSSLV, in conjunction with VLA, has established an intake and referral system for low income people throughout the state of Vermont. Intake in the Burlington office is conducted by VLA support staff (intake screeners), 8:00am-4:30pm, Monday-Friday. Applicants can access the VLA intake system by visiting or calling of one VLA’s five local offices. Applicants can also access the intake system by telephone using a statewide “800” number. When an applicant calls in for assistance, the screener asks the applicant questions about their household composition, income, citizenship, and what kind of legal problem they are experiencing. Conflict checks are done early in the intake process. Applicants are asked questions regarding prospective income. The applicant’s information is entered into PIKA, VLA’s ACMS. Walk-in applicants are provided an intake form. The information from the intake form is then entered into PIKA. After the applicant’s information is evaluated and the intake is completed, the intake screener can either assign the case to a VLA attorney for full representation or transfer the case to LSSLV. If VLA determines neither they nor LSSLV can assist, the applicant is referred to other local resources.

If the case is appropriate for LSSLV, the VLA screener electronically transfers the case to LSSLV. The LSSLV Executive Director receives and reviews all transferred cases to make sure the intake information is accurate and in compliance with LSC eligibility guidelines. If the case is accepted, it is assigned to an LSSLV attorney or paralegal. The LSSLV attorney or paralegal calls the client and provides services (counsel/advice or brief services) by telephone. LSSLV

attorneys and paralegals close their own cases and assign the appropriate case closing code. The LSSLV Executive Director provides periodic case oversight on assigned cases.

If the case is not appropriate for LSSLV, the Executive Director sends it back to the VLA screener electronically, with an explanation as to why the case is being sent back.

A mock intake interview was conducted during the onsite review and the ACMS was also reviewed. No defaults in essential categories such as income, assets, citizenship, etc. were identified.

In response to the DR, LSSLV offered no comments to this Finding.

Finding 3: LSSLV maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant’s household and the total income before taxes received by all members of such household in order to determine an applicant’s eligibility to receive legal assistance.³ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant’s household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines (“FPG”) and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient “clients” and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

³ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

Sampled cases evidenced that LSLLV is in substantial compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG. Further, sampled case files reviewed for applicants whose income exceeded 125% of the FPG evidenced that the applicant had authorized exceptions pursuant to the LSLLV's over-income authorized exceptions and the exceptions were identified in the PIKA ACMS.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 4: LSLLV maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁴ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d)(2).

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

The policy approved by the LSLLV Board of Directors on September 23, 2008 establishes the asset ceiling at \$3,000. Exempt from consideration is the applicant's or household's principal residence; vehicles used by the applicant or household members for transportation; assets used in producing income; other assets which are exempt from attachment under State or Federal law.

Sampled case files reviewed revealed that LSLLV maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by the revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.⁵

⁴ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

⁵ The revised 45 CFR § 1611.2 defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms "liquid" and "non-liquid" have been eliminated.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 5: LSLLV is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁶ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

LSLLV is in non-compliance with 45 CFR § 1626.6, as there were 22 cases that were not in compliance. *See* closed 2009 Case Nos. B-08-05710, B-08-06160, B-08-05882; Open Case Nos. B-08-04933, B-09-07986, B-08-04953, B-07-03131; PAI Open Case Nos. 04-23-2841, 06-23-7956, B-07-00506, B-07-02354, B-08-04032, B-08-05478, B-08-05679, B-08-06105; closed 2009 PAI Case Nos. B-08-05317, B-07-02428, B-08-05201 and closed 2008 PAI Case Nos. B-08-05438, B-06-08248, B-08-03692, and B-08-05345. (Each case lacked evidence of a signed citizenship attestation). The above identified case files, and those similar to them, are not CSR reportable.

LSLLV must take corrective action to ensure that all case files reported to LSC in the CSR data submission contain evidence of citizenship/alien eligibility screening and include a written citizenship attestation or evidence of legal alien documentation when required.

⁶ *See* Kennedy Amendment at 45 CFR § 1626.4.

In response to the DR, LSLLV stated it took corrective action to ensure that all files contain evidence of citizenship/alien eligibility when required. LSLLV further stated they reviewed their practices around assuring that they conform to LSC restrictions on legal assistance to aliens. LSLLV stated after this review they developed a Memorandum for all staff which they distributed. The Memorandum is attached to the comments as Exhibit 1. Finally, LSLLV stated at the September 10, 2009 staff meeting the Memorandum and the citizenship requirements were reviewed in detail and further training has been calendared to remind staff of this issue.

Finding 6: LSLLV is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a).

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

LSLLV is in substantial compliance with the requirements of 45 CFR § 1611.9. However, the following case files did not contain retainer agreements. *See* Open Case Nos. B-08-04953, B-07-01369, and B-08-04391.

It is recommend that LSLLV ensure that case files, where appropriate, contain retainer agreements.

In response to the DR, LSLLV stated that although LSLLV was in substantial compliance with this Finding, they reviewed the requirements of this Finding with staff in writing and in person at the September 10, 2009 staff meeting.

Finding 7: LSLLV is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated, written statement signed by each plaintiff it

⁷ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a) (1) and (2).

The statement is not required in every case. It is required only when a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or when a recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

Case files reviewed indicated that LSLLV is in compliance with the requirements of 45 CFR Part 1636.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

Prior to the visit, LSLLV provided LSC with a list of its priorities. The priorities are stated as “supporting families, preserving the home, promoting economic stability, achieving safety, stability and health and serving populations with special vulnerabilities.”

LSLLV is in compliance with 45 CFR Part 1620. None of the sampled files reviewed revealed cases that were outside of LSLLV’s priorities.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 9: LSLLV is not in compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were several staff case files which contained no description of the legal assistance provided.

LSC regulations specifically define “case” as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a “case”, reportable in the CSR data depends, to some extent on whether the case is within the recipient’s priorities and whether the recipient has provided some level of legal assistance, limited or otherwise.

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the

only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

LSLLV is not in compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6 as there were numerous staff and PAI case files reviewed which contained no description of the legal assistance provided. For examples, *see* Open Case Nos. B-09-07929, B-09-07973, B-09-07912, B-08-04032, B-08-04865, and B-08-05478. These cases had been open for a significant period of time and appeared to be dormant in addition to lacking legal advice.

Any cases without legal advice documented in the file cannot be reported to LSC in the CSR data submission.

LSLLV must take corrective action to ensure that the legal assistance provided is documented in the case file and that those case files identified in the report, and any other closed files, lacking documented legal assistance are not reported to LSC in the CSR data submission.

In response to the DR, LSLLV stated that the following corrective actions were taken for the cases cited as examples which contained no description of legal assistance provided:

Case No. B-09-07929-LSLLV staff attorney was able to reach the client on August 20, 2009 and the case was closed as brief service; Case No. B-09-07973-The case was closed as a No Service case and will not be included in the CSR report to LSC; Case No. B-09-07912-The case was closed in July as a counsel and advice case. The counsel and advice is documented in a letter sent by the LSLLV staff attorney to the client. A copy of the letter was attached as an exhibit; and Case Nos. B-08-04032, B-08-04865, B-08-05478-These are all open cases being handled by PAI attorneys. LSLLV received and documented updates from the attorney handling one of the cases and has requested updates from the attorneys in the other two cases. LSLLV further stated that the requirement that legal services provided must be documented in the case record was reviewed at the September 10, 2009 staff meeting.

Finding 10: LSLLV's application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.),

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1.

The files reviewed demonstrated that LSLLV's application of the CSR case closing categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were numerous instances of case closing code errors. *See* closed 2009 Case No. B-08-04391 (closed as A, but should have been closed as B); closed 2008 PAI Case Nos. B-08-04486 (closed as B, but should have been closed as Ib, B-08-04486 (closed as B, should be closed as I), B-08-05345 (closed as K but should be closed as A); and closed 2007 Case Nos. B-06-07926 (closed as C but should have been closed as B) and B-07-00433 (closed as E, but should have been closed as A).

It is recommended that LSLLV ensure that staff is trained on the proper closing categories to comply with CSR Handbook (2008 Ed.), § 6.1.

In response to the DR, LSLLV stated they have taken corrective action and reviewed case closure codes at their September 10, 2009 staff meeting.

Finding 11: LSLLV is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as there were no case files reviewed that were dormant or untimely closed.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).⁸ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d) (3).

LSLLV is in compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) and staff case files were closed in a timely manner.

In response to the DR, LSLLV offered no comments to this Finding.

⁸ The time limitation of the 2001 Handbook that a brief service case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

Finding 12: Sample cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

When a recipient provides more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.2 and CSR Handbook (2008 Ed.), § 6.2.

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.4 and CSR Handbook (2008 Ed.), § 6.4.

Case lists were reviewed in advance and potential duplicate files were identified for review. No duplicate files were identified among the sampled files.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

A limited review of accounting records and documentation for the period of January 1, 2007 through June 30, 2009, interviews with the Executive Director and reviews of sampled files disclosed that LSLLV does not appear to have expended any grant funds, or used personnel or equipment in prohibited political activities in violation of 45 CFR Section 1608.3(b).

In response to the DR, LSLLV offered no comments to this Finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

None of the sampled files reviewed involved legal assistance with respect to a fee-generating case. Discussions with the Executive Director also confirmed that LSLLV is not involved in any fee-generating case.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 15: A review of LSLLV's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). However, LSLLV is not in compliance with the notification requirement of 45 CFR § 1610.5(a).

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees.

Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include:

- i) the existence of separate personnel;
- ii) the existence of separate accounting and timekeeping records;
- iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
- iv) The extent to which signs and other forms of identification distinguish the recipient from the other organization.

See 45 CFR § 1610.8(a); *see also*, OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

A review of LSLV's accounting and financial records indicate compliance with 45 CFR Part 1610.

The letter sent by LSLV as a thank-you to donors, however, does not fully comply with the requirements of 45 CFR § 1610.5 that requires recipients to provide contributors with written notification of the LSC-related prohibitions and conditions which apply to the funds. Upon

request, the office manager generated a list of all donations in the amount of at least \$250 or greater for the years 2007 and 2008. A thank-you letter to donors currently being used was reviewed. This thank you letter is not in compliance with the regulation because it does not include specific language outlining the conditions and prohibitions that govern these funds. Further, the attachment that is referenced in the thank-you letter addresses 45 CFR §§ 1610.1 and 1610.2 but fails to address the relevant section which is 45 CFR Part 1610.5(a).

LSSLV must take corrective action and revise its donor letter to fully notify contributors of the LSC-related prohibitions and conditions which apply to the funds.

In response to the DR, LSSLV stated they have taken corrective action and revised its donor letter to fully notify donors of the restrictions.

Finding 16: LSSLV is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, LSSLV is in compliance with 45 CFR § 1614.3(d) (3) which requires oversight and follow-up of the PAI cases.

LSC regulations require LSC recipients to devote an amount of LSC and/or non-LSC funds equal to 12.5% of its LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. This requirement is referred to as the "PAI" or private attorney involvement requirement.

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors. *See* 45 CFR §§ 1614.3(a), (b), (c), and (e) (3). The regulations, at 45 CFR § 1614.3(e) (2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. *See* 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

LSSLV maintains sufficient supporting documentation for its PAI cost allocation. The review of LSSLV's "Schedule of Support, Revenue and Expenses and Changes in Net Assets for LSC Funds" and its Audited Financial Statements for the year ending December 31, 2008 reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). LSSLV reported a total of PAI funds of \$72,016 representing 14.71% of the total basic field grant (\$489,610) in 2008. The PAI allocation represented salaries, travel, overhead and other PAI related expenses.

Private Attorney Involvement

The PAI component of LSLLV is the Vermont Volunteer Lawyers Project (“VVLP”). The VVLP is a collaborative effort of LSLLV and the Vermont Bar Association. The VVLP recruits pro bono attorneys, makes case referrals, and provides training to attorneys and pro se litigants. The VVLP annually recognizes the work of outstanding pro bono attorneys.

PAI cases, as staff cases, are processed through VLA’s intake system. The cases are then transferred electronically to LSLLV. If the cases are accepted, the LSLLV Executive Director separates them into staff and PAI cases.

Cases designated as PAI become part of the VVLP and are handled by the VVLP Director⁹. The VVLP Director contacts the client to verify important aspects of the case: whether there are any imminent deadlines in the case, the identity of opposing parties, and to obtain a more detailed description of the issues. After these details are verified, the Director contacts attorneys from the list of volunteer attorneys until an attorney is found who will accept the case.

The Director notifies the client by letter that their case has been accepted by a private attorney through the VVLP. Included in this letter is a Case Acceptance Agreement for the client to sign and return to LSLLV that describes the type of service that will be provided. Also included is a citizenship attestation form.¹⁰

At any given time, LSLLV has approximately 100 ongoing PAI cases in the VVLP.

PAI Oversight Procedures

LSLLV is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight of the PAI case files. The VVLP Director sends periodic update letters to attorneys with active cases in the VVLP, requesting updates on the status of their cases. These letters are accompanied by a self-addressed stamped envelope to facilitate and maximize the likelihood that they will be returned. In addition, the Director contacts the attorneys by phone and email for updates. In general, every case has an update request in some form at least every six months. Although many VVLP attorneys respond to requests for updates, many do not respond until they close their cases. Response to update requests is an ongoing problem but LSLLV is using every reasonable method to oversee PAI case, and in this regard, they are in compliance.

PAI Closing Procedures

The VVLP Director sends a closing form to VVLP attorneys to use when closing their cases. The attorneys can choose from a set of categories to explain how their case was completed, and

⁹ The VVLP Director is a full time LSLLV staff member. The VVLP recruits pro bono attorneys, these attorneys receive no compensation but they are reimbursed for the expenses they incur in accepting a case.

¹⁰ A number of PAI case files reviewed did not contain citizenship attestations. The VVLP Director was advised that corrective action must be taken to correct this problem. The case referral process must be modified to require the VVLP Director to send the Case Acceptance Agreement/Attestation form to the client *before* the case is assigned to a PAI attorney. The form should explain that unless the Agreement/Attestation is signed and returned to LSLLV, the client’s case cannot be referred to a PAI attorney.

these categories mirror the CSR's case closing categories. VVLP attorneys close their cases utilizing the CSR case closing categories. The VVLP Director also sends a Client Satisfaction letter to the client to ask whether the client was satisfied with the service provided by the volunteer attorney.

Approximately 10-15% of the VVLP cases are closed by the VVLP Director as non-responsive after not being able to get a case status from the VVLP attorneys.

After cases are closed, the Director keeps a copy of the closing sheet and the attestation form (if they've been submitted). The VVLP attorneys keep their own files.

LSLLV must take corrective action to ensure that all staff and PAI case files reported to LSC in the CSR data submission contain evidence of citizenship/alien eligibility screening and include a written citizenship attestation or evidence of legal alien documentation when required.

LSLLV must take corrective action to ensure that the legal assistance provided is documented in all closed PAI and any other closed files. Further, LSLLV must take corrective action to ensure any closed files lacking documented legal assistance are not reported to LSC in the CSR data submission.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 17: LSLLV's accounting records do not show that National Legal Aid and Defenders Association ("NLADA") membership fees were paid with non-LSC funds, consequently a determination of compliance with 45 CFR 1627.4(a) could not be made.

LSC regulation 45 CFR § 1627.4(a) requires that:

- a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.
- b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a government organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

A detailed review of LSLLV's Vendor Quick Report disclosed that payments to the NLADA had been made for membership dues for the years 2007, 2008 and 2009. These payments consisted of \$ 1,225 in 2007, \$ 1,335 in 2008 and \$ 1,368 in 2009. LSLLV has a policy of adjusting and re-categorizing such payments at year-end to "contributions." Per the audited financial statements for the years 2007 and 2008, donations amounted to \$1,805 in 2007 and to \$ 2,392 in 2008, exceeding for both years the payment amounts for membership dues to the NLADA.¹¹

¹¹ If LSC funds were found to have been used to pay non-mandatory dues (i.e. the above-mentioned NLADA membership dues), those funds will become questionable costs.

LSSLV was requested to submit, along with its comments to the DR, proof that payments of NLADA dues have been made using only non-LSC funds.

LSSLV stated in response to the DR that their practice, which was approved by their auditor and reported to LSC through the audit, has been to allocate membership fees to non-LSC or unrestricted funding in the audit at the end of year and in that way they made sure that they were not using LSC funds for membership fees. LSSLV further stated they were not recording the funds allocation contemporaneously. LSSLV further stated they have adjusted their bookkeeping process so that expenditures for membership fees are indicated at the time they are made as unrestricted funds expenditures.

LSSLV further stated in response to the DR that they adjusted their QuickBooks settings so that all income and expenses are classified as LSC funds/expenses or unrestricted funds/expenses. LSSLV further stated they made this adjustment back to 2007 and 2008 and the membership payments for those years now indicate that they were made with non-LSC money.

Finding 18: LSSLV is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

The review of LSSLV's timekeeping policies and procedures and a sample of completed time records for three staff members for November 2007, May 2008, and April 2009 disclosed that

time records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

The review of timekeeping records and discussions with the Executive Director confirmed that LSLLV does not have any part-time attorneys or paralegals who work for the LSLLV and part-time for an organization that engages in restricted activities.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Except as provided by LSC regulations, recipients may not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

None of the sampled files reviewed contained a prayer for attorney fees. Discussions with the Executive Director and fiscal review also confirmed that LSLLV is not involved in this prohibited activity.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 20: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also confirmed that LSLLV is not involved in this prohibited activity.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 21: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Recipients are prohibited from using LSC funds to provide legal assistance with respect to a criminal proceeding. *See* 45 CFR § 1613.3. Nor may recipients provide legal assistance in an action in the nature of a habeas corpus seeking to collaterally attack a criminal conviction. *See* 45 CFR § 1615.1.

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also confirmed that LSLLV is not involved in this prohibited activity.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b) (1).¹²

None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director also confirmed that LSLLV is not involved in this prohibited activity.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Recipients may not make available any funds , personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting. *See* 45 CFR § 1632.3.

¹² It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b) (2).

None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also confirmed that LSLV is not involved in this prohibited activity.

In response to the DR, LSLV offered no comments to this Finding.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens the health or safety or other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also confirmed that LSLV is not involved in this prohibited activity.

In response to the DR, LSLV offered no comments to this Finding.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also confirmed that LSLV is not involved in this prohibited activity.

In response to the DR, LSLV offered no comments to this Finding.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited

LSC recipients and their staff from engaging a client which it solicited.¹³ This restriction has been contained in all subsequent appropriations acts.¹⁴ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: “This part is designed to ensure that recipients and their employees do not solicit clients.”

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director also confirmed that LSLLV is not involved in this prohibited activity.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. No may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

None of the sampled files reviewed involved such activity. Discussions with the Executive Director also confirmed that LSLLV is not involved in these prohibited activities.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 28: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution. Additionally, Public Law 104-134, Section 504 provides that none of the funds appropriated to LSC may be used to provide financial assistance to any person or entity that participates in any litigation with respect to abortion.

¹³ *See* Section 504(a) (18).

¹⁴ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b) (10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that LSLLV was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

In response to the DR, LSLLV offered no comments to this Finding.

Finding 29: A review of vendor information disclosed issues with internal controls.

A detailed review of the vendor information list was conducted and nine vendors' charges were selected for further in-depth review which revealed several deficiencies. They are significant not only because they were paid with LSC funds but also because they clearly illustrate the need to improve and streamline various internal control issues and policies.

These deficiencies are as follows:

1) Sub ledger 2010 – Chittenden MasterCard

The Executive Director used the corporate credit card to pay for a \$74.29 charge from a delicatessen. The supporting documentation to this charge consisted of a receipt which only showed a total amount of \$74.29. The receipt did not show what had been charged or the respective charge for it.

This presents several different concerns: A) undocumented meals and/or drinks for \$74.29, B) the fact that the office manager should have requested more detail about the charge before paying the card bill or even have refused to pay the charge in light of the absence of firm documentation as to its nature, and C) the absence of a stated credit card and travel policy in the LSLLV Personnel Manual.

2) Sub-ledger 7215 – Training PAI

A review of this sub-ledger for the years 2007, 2008, and 2009 showed a charge on April 1, 2008, in the amount of \$266.00. The detail of the invoice amount disclosed a position called "Special Events on Friday May 9th" in the amount of \$46.00. When inquiring further as to the nature of this amount, it was explained that the PAI coordinator had purchased two tickets to a

baseball game. The Executive Director stated that he would collect the \$46.00 from the PAI coordinator and restore it to the LSC account.

3) Sub-ledger 4530 – Miscellaneous Income

The detailed review of this sub-ledger showed that a check in the amount of \$502.50 was received and recorded on 12/31/08. This amount was erroneously recorded for a second time on 1/30/09 and carried through the books until the time of this review during the first week of August 2009. A corrective entry needs to occur, taking \$502.50 off the books.

4) Internal Control Worksheet

The completed internal control worksheet revealed a serious need for stricter internal controls in the overall accounting process. The segregation of funds should be documented throughout the year and incorporated into the daily/weekly accounting process instead of being only addressed at year end by the auditors.

It is recommended that LSSLV implement stricter internal controls. The segregation of funds should be documented throughout the year and incorporated into the daily/weekly accounting process instead of only being addressed at year-end by the auditors

In response to the DR, LSSLV stated they have taken corrective action to remedy all of the errors individually and made structural changes in their accounting practice so that the use of segregated funds is documented daily.

LSSLV further stated management has met with the person responsible for documenting expenses and reimbursements to make sure that it is understood that documentation must be sufficiently detailed that it indicates that the expense was for a legitimate corporate purpose. The \$46 payment for a special event has been reimbursed by the PAI coordinator and restored to the LSC account. A corrective entry for “Sub-ledger 7215- Training PAI” has been made. A corrective entry has taken the double payment off the books. As discussed, bookkeeping entries are now classified at the time they are made as “LSC” or “Unrestricted.” LSSLV further stated they adopted a policy on credit card use on December 16, 2009. LSSLV attached a copy of the credit card policy as an exhibit.

Finding 30: LSSLV was in the process of updating its Accounting Procedures Manual at the time of this OCE program visit.

LSSLV’s internal Accounting Procedures Manual was in the process of being revised at the time of the OCE visit. The manual is outdated and relies heavily on the LSC Accounting Guide for Recipients which is currently undergoing major revisions of its own.

LSSLV was advised to wait for the revisions to the LSC Accounting Guide to be completed before continuing with the updates to its own internal Accounting Procedures Manual.

Finding 31: Bank reconciliations for the checking, money market, and client trust accounts were reviewed and found to be performed timely and accurately. Reconciliation of the company credit card (Chittenden MasterCard) was reviewed and found to be performed timely and accurately.

Nine bank reconciliations for the checking, money market, and client trust accounts for April, May, and June 2009 were reviewed. The review disclosed that they are being performed timely as required by the Accounting Guide for LSC Recipients. The same is true of the company credit card for which monthly statements from April through June 2009 were reviewed.

In response to the DR, LSLLV offered no comments to this Finding.

IV. RECOMMENDATIONS¹⁵

Consistent with the findings of this report, it is recommended that LSLLV:

1. It is recommend that LSLLV ensure that case files, where appropriate, contain an executed retainer agreement.

¹⁵ Items appearing in the “Recommendations” section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

By contrast, the items listed in “Required Corrective Actions” must be addressed by the program, and will be enforced by LSC.

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, LSLLV is required to take the following corrective actions:

1. Ensure that the legal assistance provided is documented in the case file and that those case files identified in this report, and any other closed cases, lacking documented legal assistance are not reported to LSC in the CSR data submission;

In response to the DR, LSLLV stated that the following corrective actions were taken for the cases cited as examples which contained no description of legal assistance provided:

Case No. B-09-07929-LSLLV staff attorney was able to reach the client on August 20, 2009 and the case was closed as brief service; Case No. B-09-07973-The case was closed as a No Service case and will not be included in the CSR report to LSC; Case No. B-09-07912-The case was closed in July as a counsel and advice case. The counsel and advice is documented in a letter sent by the LSLLV staff attorney to the client. A copy of the letter was attached as an exhibit; and Case Nos. B-08-04032, B-08-04865, B-08-05478- These are all open cases being handled by PAI attorneys. LSLLV received and documented updates from the attorney handling one of the cases and has requested updates from the attorneys in the other two cases. LSLLV further stated that the requirement that legal services provided must be documented in the case record was reviewed at the September 10, 2009 staff meeting.

2. Revise its donor letter to fully notify contributors of the LSC-related prohibitions and conditions which apply to the funds;

In response to the DR, LSLLV stated they have taken corrective action and revised its donor letter to fully notify donors of the restrictions.

3. Formulate a policy for the use and payment of its corporate credit card as well as a travel policy for inclusion in its revised Accounting Procedures Manual;

LSLLV stated that on December 16, 2009, they adopted a policy on credit card use on December 16, 2009. LSLLV attached to its comments a copy of the credit card policy as an exhibit.

4. Ensure that all case files reported to LSC in the CSR data submission include a written citizenship attestation or evidence of legal alien documentation screening when required;

In response to the DR, LSLLV stated it took corrective action to ensure that all files contain evidence of citizenship/alien eligibility when required. LSLLV further stated they reviewed their practices around assuring that they conform to LSC restrictions on legal assistance to aliens. LSLLV stated after this review they developed a Memorandum for all staff which they distributed. The Memorandum is attached to LSLLV's comments as an exhibit. LSLLV further stated that, at the September 10, 2009 staff meeting, the

memorandum and the citizenship requirements were reviewed in detail and further training has been calendared to remind staff of this issue.

LSLLV further stated that the Declaration of Citizenship form has been revised. The new form is attached to LSLLV's comments as an exhibit.

5. Ensure that staff is trained on the proper closing codes categories to comply with CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1;

In response to the DR, LSLLV stated they have taken corrective action and reviewed case closure codes at their September 10, 2009 staff meeting.

6. Modify the PAI case referral process to require the PAI coordinator to send the Case Acceptance Agreement/attestation form to the client before the case is assigned to a PAI attorney. This form should explain that unless the Agreement/attestation is returned to LSLLV, the client case cannot be assigned to a PAI attorney;

In response to the DR, LSLLV stated they have made modifications so that the PAI Coordinator will send the Case Acceptance Agreement to the client before the case is assigned to a PAI attorney. LSLLV further stated they have revised the PAI Case Acceptance Agreement to make it clear that clients must return the form to LSLLV before they can assign their case to a volunteer attorney. The Case Acceptance Agreement is attached to LSLLV's comments as an exhibit.

7. Submit documentation to OCE showing the corrective entry for "Sub-ledger 7215 – Training PAI" has been made. The entry for the Special Event for May 9, 2008 in the amount of \$46.00 must be corrected and restored to the LSC account;

In response to the DR, LSLLV stated management has met with the person responsible for documenting expenses and reimbursements to make sure that it is understood that documentation must be sufficiently detailed that it indicates that the expense was for a legitimate corporate purpose. The \$46 payment for a special event has been reimbursed by the PAI coordinator and restored to the LSC account. A corrective entry for "Sub-ledger 7215- Training PAI" has been made. A corrective entry has taken the double payment off the books. As discussed, bookkeeping entries are now classified at the time they are made as "LSC" or "Unrestricted." LSLLV further stated that on December 16, 2009, they adopted a policy on credit card use. LSLLV attached to its comments a copy of the credit card policy as an exhibit.

8. For the years 2007, 2008 and 2009, submit documentation to OCE that all non-mandatory dues and fees were paid with non-LSC funds;

LSLLV stated in response to the DR that their practice, which was approved by their auditor and reported to LSC through the audit, has been to allocate membership fees to non-LSC or unrestricted funding in the audit at the end of year and in that they made sure that they were not using LSC funds for membership fees. LSLLV further stated they were

not recording the funds allocation contemporaneously. LSLLV further stated they have adjusted their bookkeeping process so that expenditures for membership fees are indicated at the time they are made as unrestricted funds expenditures.

LSLLV further stated in response to the DR that they adjusted their QuickBooks settings so that all income and expenses are classified as LSC funds/expenses or unrestricted funds/expenses. LSLLV further stated they made this adjustment back to 2007 and 2008 and the membership payments for those years now indicate that they were made with non-LSC money.

9. Implement stricter internal controls. The segregation of funds should be documented throughout the year and incorporated into the daily/weekly accounting process instead of only being addressed at year-end by the auditors;

In response to the DR, LSLLV stated they have taken corrective action to remedy all of the errors individually and made structural changes in their accounting practice so that the use of segregated funds is documented daily.