



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Legal Action of Wisconsin, Inc.
August 18-22, 2008
Case Service Report/Case Management System Review

Recipient No. 550010

I. EXECUTIVE SUMMARY

Finding 1: In general, LAW's use of its automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately recorded.

Finding 2: LAW's intake system generally supports the program's compliance-related requirements. However, improvement in reference to consistent intake policies, procedures, and forms in the program's field offices and substantive law units is required.

Finding 3: Case review revealed that LAW is in substantial compliance with 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. However, it is recommended that the program provide additional training in reference to the proper documentation of over-income clients accepted for services pursuant to the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

Finding 4: Case review demonstrated that LAW is in substantial compliance with 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. However, the program is required implement revised intake procedures to consistently screen applicants according to its asset policy in all field offices.

Finding 5: LAW is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens) because one field office was not obtaining citizenship attestations or reviewing alien eligibility information for walk-in clients. In addition, case review revealed files without documentation of citizenship screening.

Finding 6: LAW is in substantial compliance with the retainer requirements of 45 CFR § 1611.9. Some field offices, however, should be instructed to describe the scope and subject matter of the representation with more specificity.

Finding 7: Case review revealed that LAW is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: LAW is in substantial compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

Finding 9: Case review evidenced that LAW is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: LAW's application of the CSR case closure categories is generally consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). However, sufficient errors existed to support additional closing code training.

Finding 11: LAW is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as few cases reviewed were untimely closed or dormant.

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

Finding 13: Case review and a limited review of accounting documents for 2007 and 2008 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 limited review of LAW's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff, indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities.

Finding 16: LAW is in substantial 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. However, improvement in reference to consistent forms and coding is recommended.

Finding 17: Review of program documentation indicated that LAW is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or non-profit organization.

Finding 18: Review of program documentation and staff interviews evidenced that LAW is keeping time in accordance with 45 CFR Part 1635 (Timekeeping requirements).

Finding 19: Sampled cases and a limited review of program documentation evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

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

Finding 21: Case review 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: Case review evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 23: Case review 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: Case review 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: Case review 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)).

II. BACKGROUND OF REVIEW

From August 18 to 22, 2008, 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 to Legal Action of Wisconsin, Inc. ("LAW"). 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 four attorneys, two management analysts, and one fiscal analyst. One of the attorneys and the fiscal analyst were OCE staff members; the remaining attorneys and management analysts on the team were LSC consultants.

The 2008 on-site CSR/CMS 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 LAW has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed LAW 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 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 1630 (Cost standards and procedures); 45 CFR 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 LAW's upper and middle management, staff attorneys and support staff. LAW'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, 2006 through July 15, 2008. 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 705 case files which included 233 targeted files.

LAW is an LSC recipient with six field offices in Wisconsin. LAW is the result of a 2002 merger with Legal Services of Northeastern Wisconsin and Western Wisconsin Legal Services. LAW is one of 2 LSC-funded legal recipients in the state of Wisconsin. The administrative office is headquartered in Milwaukee, WI and field offices are located in Milwaukee, Madison, Racine, La Crosse, Oshkosh and Green Bay, WI. The merged program has never been reviewed by OCE.

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

In 2008, LAW received \$3,105,042 in LSC Basic Field Grant funds and \$88,216 in an LSC Migrant Grant. In 2007, LAW closed 5,523 cases and its self-inspection error rate was 1.9%. Exceptions included one case in which income information was not recorded, one case in which household income exceeded 200% of federal poverty guidelines, and two cases in which there was no evidence of advice or representation. In 2007, 74.7% of LAW's representation was for limited service cases and 25.3% for extended services cases. Its primary areas of representation were Family (32.8%), Housing (26.5%), and Income Maintenance (23.5%).

By letter dated June 23, 2008, OCE requested that LAW provide a list of all cases reported to LSC in its 2006 CSR data submission ("closed 2006 cases"), a list of all cases reported in its 2007 CSR data submission ("closed 2007 cases"), a list of all cases closed between January 1, 2008 and July 15, 2008 ("closed 2008 cases"), and a list of all cases which remained open as of July 15, 2008 ("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 LAW staff and the other for cases handled through LAW's PAI component. LAW 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. 9 and 10, and the LSC Access to Records (January 5, 2004) protocol. LAW 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.

In correspondence dated July 17, 2008, LAW indicated that it had a confidentiality issue with the disclosure of client names in the course of case review pursuant to the Wisconsin Rules of Professional Conduct, Supreme Court Rule, Chapter 20. In order to accommodate this concern in accordance with the LSC Access to Records protocol, both telephone and e-mail discussions were held in regard to the creation of unique client identifiers (UCI) for each case selected for review. These discussions culminated with an agreement between LSC and LAW, memorialized via e-mail on July 23, 2008, in reference to the specific UCI format and other client information redaction issues.

Thereafter a representative sample of cases was created for review during the on-site visit. The sample was created proportionately among 2006, 2007 and 2008 closed cases and open cases, as well as a proportionate distribution of cases from LAW's field offices. 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 LAW agreement of July 23, 2008, LAW 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. Because unique client identifiers were used, intermediaries provided specific explanation of the nature of the legal problem and the assistance provided in cases

selected for review.² LAW's management and staff cooperated fully in the course of the review process. As discussed in more detail below, LAW was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as the Managing Attorney in the branch offices and the Executive Director in the main office.

At the conclusion of the visit on August 22, 2008, OCE conducted an exit conference during which LAW was made aware of any preliminary areas in which a pattern of non-compliance was found. No distinction in compliance between 2006, 2007, and 2008 cases was noted. LAW was advised that they would receive a Draft Report that would include all of OCE's findings and they would have an opportunity to submit comments, after which a Final Report would be issued.

LAW was provided a Draft Report ("DR") on December 8, 2008 and was given an opportunity to comment. LAW's comments to the DR were received on January 22, 2009. The program's comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

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.

III. FINDINGS

Finding 1: In general, LAW’s use of its automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately recorded.

Recipients are required to utilize an 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.

In general, LAW’s ACMS sufficiently ensures that relevant screening and case information is accurately recorded. LAW has significantly modified its ACMS to meet the data and compliance requirements of the program. Consistent with Program Letter 02-06, LAW’s ACMS does not have defaults in key eligibility fields, including income, asset and citizenship fields.

While some instances of inconsistent information between case files and the ACMS were discovered, LAW’s ACMS generally captures the information required for screening and case information purposes. *See*, for example, Case Nos. 07E-5076087, a closed 2007 case which was closed as C in the file and A in the ACMS; 06-6061796, a closed 2007 case which was closed as D in the ACMS but A in the case file; and 06E-5065719, a case in which the ACMS indicated the case was an CSR case while the case file indicated it should have been marked as a non-LSC case.³

All staff interviewed demonstrated the ability to effectively use key ACMS fields, including LSC-eligible, funding source, problem code, income, assets, and citizenship fields. Staff was also familiar with the program’s new “Z” closing code which is used to deselect non-compliant case from the program’s CSRs. The majority of case handlers was able to generate open case lists and was comfortable with the various compliance-related fields of the ACMS. As such, LAW’s use of its automated ACMS is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system.

The program did not provide comments to this finding.

Finding 2: LAW’s intake system generally supports the program’s compliance-related requirements. However, improvement in reference to consistent intake policies, procedures, and forms in the program’s field offices and substantive law units is required.

³ In addition, as noted below in Finding 16, there were several PAI files that should have been coded as staff cases. This issue was raised on-site and LAW management indicated it would address the coding of PAI cases with staff.

LAW's intake screening system is based on a decentralized model in which intake procedures and hours vary depending upon the size of the field office. Larger offices, such as Madison and Milwaukee, conduct intake by specialized substantive unit. Smaller offices, such as La Crosse with only three attorneys, conduct intake for all priority issues on a more limited schedule. The majority of intake is performed by telephone but walk-in applicants are also accepted.

A review of the program's intake screening policies, procedures, and forms substantiated that LAW's intake system generally supports its compliance-related requirements. One issue noted, however, was a need for consistency in the intake policies, procedures, and forms employed within the program's field offices. Several intake forms, including those used in outreach, were discovered in use during the course of the on-site review. In addition, and as noted in Findings 3, 4, and 5 below, staff interviews revealed that intake screening procedures involving income, assets, and citizenship were sometimes performed inconsistently among LAW field offices and within individual field offices or substantive units.

While the intake screening inconsistencies noted in during the on-site visit did not result in significant non-compliance with LSC regulations, consistency in intake policies, procedures, and forms is nonetheless an important consideration because it ensures that LSC compliance requirements are met and applied fairly to all applicants regardless of which staff member performs the eligibility screening. This is particularly important for programs such as LAW that have several field offices and many specialized substantive units.

As the multiple policies, procedures, and forms used in the program's six field offices, including specialized substantive units have been detailed in the individual reports of LSC team members and were preliminarily noted in the August 22, 2008 exit conference, the following provides a concise outline of the steps the program should undertake to strengthen its intake efforts:

Creation of intake policies, procedures, and forms for use program-wide

In terms of intake screening, intake screening via the ACMS is performed consistently for the most part. There were, however, sufficient inconsistencies in the specific questions asked by intake screeners to mandate program policy changes designed to ensure consistent intake screening in all field offices and substantive units. Paper intake is also somewhat inconsistent due to the use of different forms. LAW needs to create a paper intake form that mirrors the queries of the CMS and is employed program-wide, including intake performed during outreach. If there is a need for a specialty law unit to have a different form, it still must contain at least the same information as the general intake form.⁴ Individual field offices should be prohibited from using any intake form that has not been reviewed and accepted for use by LAW management. It is suggested that LAW create a standard form after discussion with managing attorneys.

⁴ LAW could permit various units or projects that have a need to collect unique information to develop an attachment as a second page.

Staff training

Once changes have been made as noted above, staff should be trained on new intake policies, procedures, and forms with specific attention paid to the need for consistency throughout the program.

In reference to familiarity with LSC requirements and case closing procedures, the majority of staff had copies of the CSR Handbook (2008 Ed.) and were aware of program procedures to accurately and timely close cases. While some were unfamiliar with the FAQs, a July 31, 2008 memorandum from LAW management provided updates regarding CSR issues and provided the link to the CSR FAQs.

In its comments to the DR, LAW noted that it had promulgated a “Policy Regarding Consistent Intake Screening in All Offices and Substantive Units”. According to the program, this policy is designed to ensure consistent intake screening in all program offices and substantive law units. The Intake Worksheet, provided as an Exhibit, contains information boxes which capture LAW’s eligibility requirements and is to be used program-wide, including during outreach intake. While individual field offices are allowed to ask additional questions related to various substantive areas, no field office is allowed to use any intake form that has not been reviewed and accepted for use by LAW management.

LAW indicated that while the Intake Worksheet is not necessarily new, the policy regarding its use is. In its comments to the DR, LAW noted that compliance training for all advocate staff would be held on February 17 and 18, 2009 and that consistent intake screening would be an included topic of the training.

Finding 3: Case review revealed that LAW is in substantial compliance with 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. However, it is recommended that the program provide additional training in reference to the proper documentation of over-income clients accepted for services pursuant to the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

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. *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.

LAW's Client Eligibility Guidelines were rewritten to conform with the revisions to 45 CFR Part 1611 effective September 7, 2005; the Board of Directors adopted these changes October 15, 2005. The LAW board amended the guidelines on April 1, 2006, March 9, 2007, March 1, 2008, and July 18, 2008. As an attachment, the Client Eligibility Guidelines incorporate Income & Asset Schedules which set forth four income standards by household size: 100% of Poverty for Older American Act Reporting, 125% of Poverty for LSC Schedule A, 200% of Poverty for LSC's Schedule B and 200% of Poverty for the LIFE Project. The Client Eligibility Guidelines also identify LSC Asset levels by family unit size, Schedule C. LAW's group eligibility policy complies with the requirements of 45 CFR Part 1611. Staff could not recall providing legal assistance to a group in the recent past but a review of LAW's group eligibility policy indicates that it comports with the requirements of 45 CFR § 1611.6.

During the interviews with LAW staff members responsible for intake screening, it was noted that staff members are not consistently screening applicants for income. For example, some staff simply asked callers to quote their income before taxes, while others were asking more specific questions that are linked to the income eligibility section of the ACMS, including receipt of child support, social security, unemployment benefits disability, etc. As noted above in Finding 2, LAW should ensure that all intake staff is performing intake screening in a consistent manner.

In reference to case review, some staff and PAI cases within the case sample evidenced non-compliance with the income requirements of 45 CFR Part 1611. The majority of these cases involved clients whose income was over 125% of the federal poverty guidelines yet none of the files had documentation regarding the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4) to accept over-income clients for services. *See*, for example, Case No. 08E-4080677, a closed 2008 case; Case No. 06E-4062266, a closed 2007 case; and Case No. 06E-4060948, a closed 2006 case.

As the number of cases lacking documentation of proper over-income case acceptance did not illustrate a pattern of significant non-compliance, the program is in substantial compliance with the income eligibility requirements of 45 CFR Part 1611. However, it is recommended that the program provide additional training in reference to the proper documentation of over-income

clients accepted for services in accordance with the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

LAW indicated in its comments to the DR that, on September 30, 2008, the Executive Director sent an e-mail to all field offices reminding staff that the reason for accepting over-income clients for services must be set forth in all instances on LAW's over-income case acceptance form ("Over A-Under B form"). In addition, LAW noted that this requirement would be a part of the February 2009 compliance training.

Finding 4: Case review demonstrated that LAW is in substantial compliance with 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. However, the program is required implement revised intake procedures to consistently screen applicants according to its asset policy in all field offices.

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. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 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 Client Eligibility Guidelines and the Client Income & Asset Schedules approved by the LAW Board of Directors on July 18, 2008 established the program's liquid asset ceiling at \$10,900 for an individual, an increase of \$4,200 to \$15,200 for a family of two, an increase of \$3,800 to \$18,900 for a family of three, and an increase of \$2,800 for each subsequent member of the household. Exempt from asset consideration is the household's principle residence; vehicles used for transportation; assets used in producing income; in a domestic violence situation, the alleged perpetrator's assets or assets held by the applicant victim or any member of the applicant victim's household jointly with the alleged perpetrator; and other assets which are exempt from attachment under State or Federal law.

Assets exempt from attachment are identified in Attachment C to the board policy. It is a lengthy and complicated list of assets with columns reflecting Federal and State exemption amounts, many of which are different. Further, some of the assets listed vary from those assets which are wholly exempted by the board policy. For example, the board policy exempts the applicant's principal residence; however, the Federal maximum exemption is listed at \$18,450 and the State at \$40,000. With respect to bank accounts, the Federal maximum is listed as not applicable while the State maximum exemption is \$1,000. This raises the question as to whether \$1,000 should then be exempted from an applicant's bank assets. Additionally, it implies that if an applicant states that the household bank total is \$2,500, only \$1,500 is counted as an asset; however, interviews reveal that staff are including all bank assets toward the asset ceiling as bank account amounts less than \$1,000 are not indicated as exempt on the ACMS. Attachment C lists Federal personal property maximums at \$9,850 (\$475 maximum per item) and a State maximum at \$5,000. These varying figures raise the question as to which amount should be exempted. Interviews revealed that most staff is not adequately screening this asset category as some staff do not ask certain questions at all while others ask about personal property but are not aware of specific exemption amounts limits.

Screening in reference to vehicles is also problematic. The board policy exempts vehicles for transportation and states that vehicles used for recreational activities are to be considered assets. The Federal maximum is \$2,950 and the State maximum is \$1,200, both of which differ from the exemption in whole of any vehicle used for transportation. Interviews reveal a different iteration in that many screeners exempt one vehicle per household regardless of the use of other vehicles in the household.

LSC requires that programs screen each applicant in accordance with its board-approved policy and if the policy includes the above-referenced asset categories, they must be the subject of inquiry and consideration in determining whether an applicant is eligible for assistance with LSC funds. Consistent asset screening under the program's current asset policy is an issue program-wide and it is recommended that the program address this issue either by requiring intake screeners to adhere to the current asset policy or to simplify its asset policy to focus questioning on those categories of assets which are most likely to screen out households whose financial status circumstances would allow them to hire a private attorney. LSC regulations do not require recipients to exempt all assets exempt from attachment under Federal and State law but does require them to consistently screen applicants according to Board-approved asset policies.

Regardless of whether LAW's management and Board decide to revise its asset policy, it is recommended that a standard script of questions be developed from the asset policy and followed by all intake staff. In addition, such questions (and a corresponding ACMS field for answers) should be programmed into the ACMS and incorporated into a program-wide paper intake form for outreach. *See also* Finding 2 above.

In reference to the case sample, some files were discovered that did not adequately document asset eligibility. *See*, for example, Case Nos. 96-MAD-007377, 99-MAD-000734, and 08-1084317. However, as the number of cases did not constitute a significant pattern, LAW is in

substantial compliance with 45 CFR Part 1611, CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.) § 5.4.⁵

In its comments to the DR, LAW stated that it “believe[s] that Legal Action’s asset policy is consistent” with LSC regulations. The program provided a lengthy clarification as to specific asset policy issues and noted that staff inconsistency in the application of such policy would be addressed via a pull-down asset menu on the ACMS. In addition, training on consistent asset screening, including household vehicles, is to be a part of the program’s February 2009 compliance training and subsequent trainings. Further, the program indicated in its comments to the DR that it would provide one-on-one training by all managers as screening staff is hired.

Finding 5: LAW is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens) because one field office was not obtaining citizenship attestations or reviewing alien eligibility information for walk-in clients. In addition, case review revealed files without documentation of citizenship screening.

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.

As noted in Finding 2 above, the majority of intake screening is performed by telephone. As such, telephonic applicants are verbally screened for citizenship during intake. In the event a case is accepted for extended representation, the program’s citizenship attestation form is either mailed to the client or the client signs it at the time of the first appointment, depending upon the case’s time parameters. In general, non-citizens are asked to produce appropriate documentation of alien eligibility at the first appointment.

In reference to citizenship screening for walk-in applicants, citizenship attestations are generally executed at the time of intake. In the course of the on-site review, however, staff interviews revealed that the La Crosse field office does not obtain citizenship attestations or reviews alien eligibility for walk-in or outreach intake applicants at the time of intake. The regulation requires recipients to require *all applicants* to attest to citizenship in writing or have alien eligibility

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.

documents reviewed before the case is accepted and assistance provided, unless the assistance is limited to brief advice and consultation by telephone. As a practical matter, staff reported that each year the office sees only one or two walk-in applicants. However, with respect to Private Attorney Involvement efforts, this issue affects outreach intake screening at the Homeless Veterans Clinic conducted by the La Crosse field office in conjunction with private attorneys. The La Crosse field office must secure citizenship attestations for all in-person applicants, including clinic participants, prior to the provision of legal assistance.

The program's non-compliance appears to be caused by a misunderstanding that citizenship attestations are required only for extended representation – a practice that can be traced back to the program that La Crosse was part of prior to the LAW merger. The requirement was explained to the field office's Managing Attorney who stated that he will ensure that all walk-in and outreach intake applicants sign citizenship attestations or have alien eligibility documents reviewed prior to the provision of legal assistance.

Case review evidenced some files without citizenship attestations. *See*, for example, Case Nos. 06E-4060948, a closed 2006 case; 06-6064766, a closed 2006 case; 07E-1078867, a closed 2007 case; 07E-1073648, a closed 2008 case; and 08E-4082539, an open case. Some of the cases lacking citizenship attestations were incorrectly reported to LSC in the program's 2006 and 2007 CSRs.⁶ There were also a few PAI cases that lacked citizenship attestation or alien eligibility documentation. *See*, for example, Case Nos. 07E-2075792, an open PAI case, and 05E-2051133, an open PAI case. Although the number of non-compliant cases was not large, LAW must instruct all staff to obtain citizenship attestations in all cases requiring them because 45 CFR Part 1626 involves a restriction. No cases were discovered that lacked documentation of alien eligibility screening.⁷ However, in order to evidence that eligible alien status is reviewed before commencement of representation, it is recommended that LAW include a date line on its alien eligibility form.

Based on the above, LAW is in non-compliance with 45 CFR Part 1626. In order to comply fully with the requirements of 45 CFR Part 1626, the program must revise its intake procedures regarding citizenship in its La Crosse field office and provide a directive to all staff that citizenship attestation must be executed in every instance of in-person contact with applicants for legal services.

In its comments to the DR, the program maintained that the initial revision of intake procedures regarding citizenship in the La Crosse office was accomplished when the La Crosse managing attorney informed the OCE team on-site that he would ensure that all walk-in and outreach intake applicants sign citizenship attestations or have alien eligibility documents reviewed prior to the provision of legal assistance. Since that time, the program noted, the La Crosse staff has been provided with a January 22, 2009 memorandum from LAW management affirming this policy. In addition, the Executive Director sent an e-mail on September 30, 2008 to all LAW field offices stating that citizenship attestations must always be obtained in the instance of in-

⁶ Although the pattern of erroneous cases was not substantial, the program is reminded that 45 CFR Part 1626 involves a restriction on legal assistance and, as such, even a minimal pattern is considered non-compliant from a documentation perspective.

person contact, including outreach intake. Both e-mails were attached as exhibits to LAW's comments to the DR.

Finding 6: LAW is in substantial compliance with the retainer requirements of 45 CFR § 1611.9. Some field offices, however, should be instructed to describe the scope and subject matter of the representation with more specificity.

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.⁸ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

According to staff, LAW's policy is that retainers are obtained primarily in the case of extended representation. As the majority of extended representation cases included retainer agreements, the program is in substantial compliance with 45 CFR § 1611.9.

There were some cases, however, that included retainer agreements which did not sufficiently describe both the scope and the subject matter of the program's representation. Case review evidenced that this may be practice that varies by field office. For example, in the Milwaukee field office, the scope and subject matter of the representation was fairly brief and not entirely descriptive of the scope of services to be undertaken by the program. For example, *see* Milwaukee Case Nos. 07E-1077518, a closed 2008 case in which the retainer agreement scope and subject matter stated "driver's license", and 07E-1075011, a closed 2008 case in which the retainer agreement scope and subject matter stated "child support". In contrast, the Racine field office provided very detailed descriptions of the scope and subject matter of the representation. *See* Racine Case No. 07E-4072474, a closed 2008 case in which the retainer agreement scope and subject matter stated "review of medical records to evaluate case for Social Security Disability". In addition, the Racine field office executed new retainer agreements in the event the scope of the representation expanded beyond the original retainer agreement's parameters. It is recommended that LAW provide training to its staff on the specificity required to describe both the scope and subject matter of the program's representation. In addition, it is recommended that staff execute new retainer agreements in the event representation is expanded beyond the original retainer agreement's parameters.

LAW indicated in its comments to the DR that it "respectfully disagrees" that the terms 'driver's license' or 'child support' are not "statement(s) identifying the legal problem" as required by 45

⁸ 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.

CFR § 1611.9. LAW asserts that because the regulation requires that retainer agreements be executed when representation commences or shortly thereafter, LAW advocates “are careful not to promise clients to much” and, as a result, many retainers state that the program is only agreeing to evaluate for merit. LAW noted that if the case moves beyond evaluation, the advocate is then becomes focused on the representation and does not remember to amend the retainer agreement. While LAW agrees that the practice of its Racine office in obtaining a revised retainer agreement in such cases, program management is unsure whether a standard practice of executing a more specific second retainer agreement is either practicable or would materially benefit their clients. LAW’s solution to this issue is to amend their retainer agreements to describe the legal problem and then add: “Evaluate for merit and, if meritorious, pursue all realistic legal remedies.” LAW stated that training on retainer agreement specificity will occur during the February 2009 compliance training.

As 45 CFR § 1611.9 states that a retainer agreement “shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided (emphasis added)”, it is recommended that the program configure any revisions of its retainer agreement language and/or practices to meet this requirement.

Finding 7: Case review revealed that LAW 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 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 review evidenced no cases that failed to have client statements of facts when required. Review of program documents and staff interviews revealed that the program utilizes a printed Statement of Facts form to satisfy this requirement; the form is tailored to describe the facts of the action.

The program did not comment on this Finding.

Finding 8: LAW is in substantial 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, LAW provided LSC with its Priority Plan for 2008 which is based upon a 1999 needs appraisal and reviewed each year by the Board of Directors. For each substantive legal area, specific case types and acceptance criteria is listed. Management advised that a new needs appraisal has been completed and will be presented to the board in the near future.

The case sample revealed no cases outside of program priorities. As such, the program is in compliance with 45 CFR Part 1620.

The program did not comment on this Finding.

Finding 9: Case review evidenced that LAW is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of 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 its CMS 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.

Case review revealed some instances where LSC-eligible cases reviewed contained either no description or an insufficient description of the legal assistance provided. *See*, for example, Case Nos. 06E-1062509, 08E-7081534, and 08E-2084718. However, as the foregoing does not constitute a significant pattern of non-compliance, LAW is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

In a related issue, there were some cases discovered in which a letter to the client stated “I cannot represent you” and then went on to provide legal advice. *See*, for example, Case No. 07-1076872, a closed 2008 case. As such statements affect compliance with case acceptance procedures, it is recommended that the program instruct staff that any representation-limiting language in advice letters should indicate that LAW is accepting the client for the purposes of limited advice only.

In its comments to the DR, LAW indicated that it agrees with this recommendation and since the time of the OCE visit has instructed staff to indicate in advice and counsel and limited action letters that the program is accepting clients for the purpose of limited advice only. In addition, this topic will be covered during the February 2009 compliance training.

Finding 10: LAW’s application of the CSR case closure categories is generally consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). However, sufficient errors existed to support additional closing code training.

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.

LAW has four non-CSR closing codes, two which were introduced in 2008. The program uses an “R” code for “Reject”, “S” for “Senior Law Information Only”, “T” for “Transfer within Legal Action” and “Z” for “Deselected from LSC CSRs”. The T and Z codes were implemented in 2008.

Case review revealed several instances of case closing code errors in both staff and PAI cases.⁹ *See*, for example, Case Nos. 07E-1075011, 07E-1075001, and 07E-4072474, three staff cases that were closed in 2008 as K – Other but should have been closed as L – Extensive Service. *See also*, for example, PAI Case Nos. 05-6050658, a closed 2006 PAI case in which file documentation supported an I – Court Decision instead of the G – Negotiated Settlement with Litigation selected to close the case; 07-6071795, a closed 2008 PAI case in which file documentation supported L – Extensive Services rather than B – Limited Action; and 07-6078388, a closed 2008 PAI case in which file documentation supported closing code L – Extensive Service rather than K – Other.

In addition, there were some cases reviewed which failed to contain evidence of legal assistance sufficient to support the selected closing code. *See* Case Nos. 07E-1078717, a closed 2008 case which did not have an official administrative agency decision to support closing code H, and 08E-4079232, a closed 2008 case which had neither a settlement agreement or a letter to the client outlining the terms of the settlement agreement to support closing code G.

⁹ Many of the cases with incorrect codes were cases closed in 2008, the first year in which the new closing codes of the CSR Handbook (2008 Ed.) was operational. Since such cases have yet to be reported, intermediaries were instructed to adjust the closing code for any cases identified as incorrectly coded prior to the program’s 2008 CSR report.

Although the number of erroneous cases did not constitute a significant a pattern of non-compliance, training regarding the correct use of the new closing codes under Chapter VIII of the CSR Handbook (2008 Ed.) is recommended.

LAW noted in its comments to the DR that closing code training will be included in the February 2009 compliance training and in subsequent training sessions. The program stated its belief that some miscoding was due to closing code changes in the CSR Handbook (2008 Ed.), particularly changes to B – Limited Action and K – Other, and the new code L – Extensive Service.

In reference to PAI cases, LAW indicated that because the work is done by outside attorneys and staff is not familiar with the level of service provided, selection of closing codes is a “bit more difficult”. However, the program noted it would either review the file to discern the appropriate level of service or rely on the private attorney rendering the service in order to improve coding in PAI cases.

Because PAI attorneys have generally not been trained on the intricacies of the CSR case closing codes, OCE recommends that LAW perform a brief review of all closed PAI files to ensure that the code selected is sufficiently supported by evidence of legal assistance within the file. Many LSC-funded programs request that private attorneys provide a brief written description of the service(s) rendered as both proof of that legal assistance was provided to the client and as a basis for selection of the appropriate closing code (by either staff or the private attorney). *See* CSR Handbook (2008 Ed.), Chapter X for additional guidance.

Finding 11: LAW is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as few cases reviewed were untimely closed or dormant.

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).¹⁰ 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

¹⁰ 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).

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).

Case review revealed some staff cases that were untimely closed or dormant. *See*, for example, dormant Case Nos. 05-1046694, 05E-1046109, 07E-1073703, and untimely closed Case Nos. 98-MIL-000690, 99-MIL-004222, and 02E-1010446. As the number of erroneous cases did not constitute a significant a pattern of non-compliance, the program is in compliance with Chapter III of the CSR Handbook (2008 Ed.). However, it is recommended that staff be reminded of the timely closing parameters required for all closing codes.

The program did not provide comments to this Finding.

Finding 12: Sample cases evidenced substantial 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.

Staff interviews revealed that LAW has implemented policies and procedures to ensure that duplicate cases are not reported to LSC in its CSRs. When a case is opened in the program's ACMS, the adverse party check, which must be performed or data entry cannot proceed, will identify any prior cases for the applicants. In addition, Managing Attorneys review for duplication during their quarterly review of open case lists. Lastly, as the program prepares to send its CSRs to LSC each year, LAW's administrative office sends each field office a list of potential duplicates to review and amend as necessary. During interviews, program staff demonstrated knowledge as to the appropriate circumstances in which to re-open cases closed in the same year regarding the same legal problem, were aware of what constituted a "duplicate

case”, and were familiar with the procedures to deselect a duplicate case so that it was not reported in the program’s CSRs.

Case review revealed very few duplicate files among the 705 cases reviewed. As such, the program is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

The program did not comment on this Finding.

Finding 13: Case review and a limited review of accounting documents for 2007 and 2008 evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grant 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.

Reviewed case files did not reveal any evidence that LAW is involved in such activity. In addition, a limited review of accounting records and documentation for the period January 2007 through June 30, 2008 and interviews with staff disclosed that LAW does not appear to have expended any grant funds, or used personnel or equipment in prohibited activities in violation of 45 CFR § 1608.3(b).

The program did not comment on 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).

None of the sampled files reviewed involved legal assistance with respect to a fee-generating case.

The program did not comment on this Finding.

Finding 15: A limited review of LAW's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff, indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities.

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).

From a limited review of the program's fiscal records, observations of the physical locations of all program field offices, and interviews with staff, LAW does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

The letter sent to donors complies with the requirements of 45 CFR § 1610.5 which states that programs must provide written notification to donors of the prohibitions and conditions which apply to donated funds.

The program did not comment on this Finding.

Finding 16: LAW is in substantial 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. However, improvement in reference to consistent forms and coding is recommended.

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.

LAW utilizes volunteer attorneys in the direct delivery of legal services primarily through referral through its Volunteer Lawyers Project (VLP) located in the Milwaukee office, referrals to private attorneys directly through LAW's field offices, and private attorney participation in LAW clinics and LAW intake screening.

All cases handled by private attorneys are identified during the normal intake process. Most cases identified as appropriate for referral to a private attorney are sent to Milwaukee for placement. Examples of such cases are SSI cases in which a trust must be established, non-urgent housing issues such as security deposit returns and repair, uncomplicated divorces, debt collection harassment, unlawful repossession and foreclosure cases. Oversight and closure of these cases is conducted by staff in the Milwaukee office. A smaller number of cases are placed and tracked by LAW field offices. Oversight of these cases is handled by the referring field office.

Interviews and case review reveals that LAW is in substantial compliance with 45 CFR § 1614.3(d)(3). There were, however, some dormant cases which lacked evidence of appropriate oversight. *See* Case Nos. 05E-2051133, an open case referred to a private attorney in 8/05 with no evidence of follow-up efforts or status; 06-6061081, an open case opened in 6/06, referred to a private attorney in 9/06 and referred to a second attorney in 10/07 with no contact since that time; 04E-1037856, opened 5/19/04 and the file indicated that staff lost contact with the attorney; and 05E-1049405, opened on 6/14/05 and the file indicated that the program has lost contact with the attorney.

In addition, there were some closed cases that lacked evidenced of legal assistance, often due to the client failing to appear at the appointment with the private attorney. *See* Case Nos. 08E-1084476, 07-1075902, 08E-581725, 08E-5084295, and 07E-2077124. It is recommended that the program instruct staff with PAI case closing responsibilities that cases with no documented legal assistance may not be reported to LSC and should be coded as non-CSR cases (unless staff gave legal advice and the case can be closed as a staff case but not a PAI case).

Further, there were several cases incorrectly coded as PAI cases although the legal assistance in the case was actually provided by LAW staff. *See* Case Nos. 08E-7082913, 08E-7081020, 07E-7077028, 08E-1081837, 08E-2081998, and 06E-7056119. Each case documented advice provided by a staff attorney. However, most of these cases were screened by a volunteer private attorney performing intake at the program and, accordingly, opened as a PAI case. While it is possible that advice was provided by the private attorney, it is not documented. As noted in the CSR Handbook (2008 Ed.) Chapter X, whoever provides the actual legal assistance governs whether a case is closed as a PAI or staff case and should be coded in the ACMS accordingly.

Based on the above, it is recommended that the program provide guidance to all staff involved with PAI regarding appropriate oversight to prevent dormancy and untimely PAI case closure, the documentation required to close a PAI case, and proper PAI case coding.

An additional issue raised in reference to compliance involved the Milwaukee VLP which oversees several substantive law projects and self-help clinics, some in conjunction with other law-related entities. The Unemployment Compensation (UC) Appeals Clinic Project is one such project that was developed by a group of labor lawyers, the Milwaukee VLP and the Marquette University Law School to enable Marquette Law School students to represent clients at UC hearings. Volunteer attorneys monitor law student client interviews in which a general intake is conducted using a manual intake form. In the course of interviews, the LAW litigation attorney participating in the project advised that he assists some clients at the hearing stage of the case. In those instances, he completes an intake application for the client and enters the data into the ACMS as a CSR-reportable staff case. However, it was noted that a citizenship attestation is not completed for clients participating in the clinic unless a hearing is being handled by the litigation attorney. LAW should review its procedures ensure that citizenship screening is performed for all clients participating in the Marquette Unemployment Compensation Clinic, regardless of whether the cases are being handled by LAW staff or by students supervised by LAW staff in order to comply with 45 CFR Part 1626.

It was also noted that the letters and forms used to conduct follow-up and obtain case closing information are not uniform throughout the program. Although not greatly impacting the program in reference to compliance, it is recommended that LAW develop PAI letters and forms, particularly in reference to the collection of case closing information from private attorneys, for use program-wide.

In reference to the fiscal requirement of 45 CFR Part 1614, the 2007 Audited Financial Statement (“AFS”) reported as separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). A separate statement “schedule of functional activities for PAI” reported a total of PAI expenditures of \$403,162 which translates to 13.0% of the total basic field grant (\$3,089,820), complying with the 12.5% requirement.

A review of the statement “schedule of functional activities for PAI” for the FYE December 31, 2007 disclosed that LAW correctly allocates the salaries of attorneys and paralegals on actual time based on the timekeeping records in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i). Several costs allocated to PAI were reviewed and were found to be related to PAI activities in compliance with 45 CFR § 1614.3(e). Indirect costs were tested and found to be allocated on the basis of reasonable operating data.

In its comments to the DR, LAW management noted that, during 2008, the program’s PAI coordinator has taken several actions to provide guidance and support to the Volunteer Lawyers Project (“VLP”) Group - staff members responsible for PAI referral and case management in LAW’s six offices. Although the program’s CMS provides most of the tools needed to address OCE’s PAI recommendations, the PAI coordinator has emphasized the importance of using these tools to ensure regular monitoring and timely closure of cases as well as proper documentation and case coding.

LAW indicated in its comments to the DR that it had made measurable progress over the past several years in reference to its PAI component including a calendaring mechanism and standardized forms and letters. In addition, in July 2008, the PAI coordinator circulated LAW's Volunteer Lawyers Project Referral and Case Management Procedures to the VLP Group to establish consistent procedures for oversight and closing cases. Copies of this memorandum were provided to OCE during the visit and were attached to the DR as an exhibit.

The program stated in its comments to the DR that the VLP Group meets several times a year by teleconference to discuss PAI activities and that the issues raised by OCE during the visit were addressed in the September 15, 2008 VLP Group teleconference. Specifically, the PAI coordinator emphasized the policies and procedures to monitor the status of cases referred to private attorneys, including the use of standardized forms and letters, use of the calendaring system, and routine follow-up on tickle dates. The PAI coordinator also recommended using the calendar tickles to track return of compliance documents as well as case status monitoring. In addition, the PAI coordinator stressed the responsibility of all staff members to ensure that compliance documentation is present in all PAI files, even those where the client does not come to a LAW office or meets in person with a LAW staff member. According to the comments to the DR, the VLP Group also reviewed the difference between rejecting and de-selecting cases. In Milwaukee, the program noted, case monitoring is a "constant challenge because of the high volume of cases, the number of private lawyers that we work with, and the difficulty in obtaining responses from volunteer attorneys."

In its comments to the DR, LAW also noted that an e-mail was sent to all advocates reminding them that all cases closed as PAI must contain documentation of the legal assistance provided by the private attorneys. In the event that the only legal assistance provided was by LAW staff, then such cases must be closed as staff, rather than PAI, cases. This e-mail was attached to the comments to the DR as an exhibit.

Finding 17: Review of program documentation indicated that LAW is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or non-profit organization.

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 limited review of accounting records and detailed general ledger for 2007 and 2008 through June 30 disclosed that LAW is in compliance with 45 CFR § 1627.4(a).

The program did not comment on this Finding.

Finding 18: Review of program documentation and staff interviews evidenced that LAW is keeping time in accordance 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.

A review of 17 advocates' timekeeping records (selected from all LAW offices) for the pay periods ending December 31, 2007 and June 30, 2008 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in substantial compliance with 45 CFR §§ 1635.3(b) and (c).

A review of 21 actual case files against their corresponding timekeeping records to determine the accuracy of the time reported when comparing to the amount of work performed as disclosed in the case file disclosed that the two records compare favorably.

The program did not comment on this Finding.

Finding 19: Sampled cases and a limited review of program documentation 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 pleadings of any sampled files reviewed contained a request for attorneys' fees. As such the program is in compliance with 45 CFR Part 1642.

In a related issue, staff advised the on-site team that a lawsuit has been filed against the Wisconsin Department of Health Services in a co-counseling arrangement with a private law firm. The complainants are a group of 13 plaintiffs and the case involves an alleged violation of federal and state law and state policy related to food stamp applications. The complaint states that the private law firm intends to file a motion seeking payment of its attorneys' fees against the defendants for its sole plaintiff in the case. LAW advised that the program has not, and will not, claim attorneys' fees in this matter. However, it is recommended that LAW review the instructions of Program Letter 97-1 (August 7, 1997) to ensure that any claims for attorneys' fees in the above-referenced case clearly note that it is being requested on behalf of the uncompensated private co-counsel only, and that any award, order or payment of attorneys' fees should be payable directly to the private co-counsel.

A limited review of the LAW fiscal records, the 2007 AFS, and an interview with the Supervisor of Accounting and Grants Reporting evidenced that there were no attorney fees awarded, collected, and retained for cases serviced directly by LAW.

The program did not comment on this Finding.

Finding 20: Staff interviews and sampled cases 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.

Neither staff interviews nor case files evidenced any lobbying or other prohibited activities.

The program did not comment on this Finding.

Finding 21: Case review 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.

The program did not comment on this Finding.

Finding 22: Case review 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).¹¹

None of the sampled files reviewed involved initiation or participation in a class action. Program management indicated that LAW was not involved in any class actions.

The program did not comment on this Finding.

Finding 23: Case review 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.

None of the sampled files reviewed revealed participation in litigation related to redistricting.

The program did not comment on this Finding.

¹¹ 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).

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.

The program did not comment on this Finding.

Finding 25: Case review 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 challenging the condition of the incarceration.

The program did not comment on 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.¹² This restriction has been contained in all subsequent appropriations acts.¹³ 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."

¹² *See* Section 504(a)(18).

¹³ *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).

None of the sampled files or program documentation, such as community education materials and other program literature, indicated program involvement in such activity.

The program did not comment on this Finding.

Finding 27: Case review 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.

The program did not comment on 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.

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-referenced LSC statutory prohibitions.

The program did not comment on this Finding.

IV. RECOMMENDATIONS¹⁴

Consistent with the findings of this report, it is recommended that LAW take the following actions:

1. Provide additional training in reference to the proper documentation of over-income clients accepted for services in accordance with the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

LAW indicated in its comments to the DR that, on September 30, 2008, the Executive Director sent an e-mail to all field offices reminding staff that the reason for accepting over-income clients for services must be set forth in all instances on LAW's over-income case acceptance form ("Over A-Under B form"). In addition, LAW noted that this requirement would be a part of the February 2009 compliance training.

2. Ensure that all intake screeners consistently adhere to the current asset policy or simplify LAW's asset policy to focus questioning on those categories of assets which are most likely to screen out households whose financial status circumstances would allow them to hire a private attorney.

In its comments to the DR, LAW stated that it "believe[s] that Legal Action's asset policy is consistent" with LSC regulations. The program provided a lengthy clarification as to specific asset policy issues and noted that staff inconsistency in the application of such policy would be addressed via a pull-down asset menu on the ACMS. In addition, training on consistent asset screening, including household vehicles, is to be a part of the program's February 2009 compliance training and subsequent trainings. Further, the program indicated in its comments to the DR that it would provide one-on-one training by all managers as screening staff is hired.

3. Provide training to its staff on the specificity required to describe both the scope and subject matter of the program's representation. In addition, it is recommended that staff execute new retainer agreements in the event representation is expanded beyond the original retainer agreement's parameters.

LAW indicated in its comments to the DR that it "respectfully disagrees" that the terms 'driver's license' or 'child support' are not "statement(s) identifying the legal problem" as required by 45 CFR § 1611.9. LAW asserts that because the regulation requires that retainer agreements be executed when representation commences or shortly thereafter, LAW advocates "are careful not to promise clients to much" and, as a result, many retainers state that the program is only agreeing to evaluate for merit. LAW noted that if the case moves beyond evaluation, the advocate is then becomes focused on the representation and does not remember to amend the retainer agreement. While LAW agrees that the practice of its Racine office in obtaining a

¹⁴ 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.

revised retainer agreement in such cases, program management is unsure whether a standard practice of executing a more specific second retainer agreement is either practicable or would materially benefit their clients. LAW's solution to this issue is to amend their retainer agreements to describe the legal problem and then add: "Evaluate for merit and, if meritorious, pursue all realistic legal remedies." LAW stated that training on retainer agreement specificity will occur during the February 2009 compliance training.

As 45 CFR § 1611.9 states that a retainer agreement "shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided (emphasis added)", it is recommended that the program configure any revisions of its retainer agreement language and/or practices to meet this requirement .

4. Instruct staff that any representation-limiting language in advice letters should indicate that LAW is accepting the client for the purposes of limited advice only.

In its comments to the DR, LAW indicated that it agrees with this recommendation and since the time of the OCE visit has instructed staff to indicate in advice and counsel and limited action letters that the program is accepting clients for the purpose of limited advice only. In addition, this topic will be covered during the February 2009 compliance training.

5. Provide additional training regarding the correct use of the new closing codes under Chapter VIII of the CSR Handbook (2008 Ed.). In addition, staff should be reminded of the timely closing parameters required for all closing codes.

LAW noted in its comments to the DR that closing code training will be included in the February 2009 compliance training and in subsequent training sessions. The program stated its belief that some miscoding was due to closing code changes in the CSR Handbook (2008 Ed.), particularly changes to B – Limited Action and K – Other, and the new code L – Extensive Service.

In reference to PAI cases, LAW indicated that because the work is done by outside attorneys and staff is not familiar with the level of service provided, selection of closing codes is a "bit more difficult". However, the program noted it would either review the file to discern the appropriate level of service or rely on the private attorney rendering the service in order to improve coding in PAI cases.

Because PAI attorneys have generally not been trained on the intricacies of the CSR case closing codes, OCE recommends that LAW perform a brief review of all closed PAI files to ensure that the code selected is sufficiently supported by evidence of legal assistance within the file. Many LSC-funded programs request that private attorneys provide a brief written description of the service(s) rendered as both proof of that legal assistance was provided to the client and as a basis for selection of the appropriate closing code (by either staff or the private attorney).

6. Provide guidance to all staff involved with PAI regarding appropriate oversight to prevent dormancy and untimely PAI case closure, the documentation required to close a PAI case, and proper PAI case coding. In addition, the development of consistent PAI letters and forms,

particularly in reference to the collection of case closing information from private attorneys, for use program-wide is recommended.

In its comments to the DR, LAW management noted that, during 2008, the program's PAI coordinator has taken several actions to provide guidance and support to the Volunteer Lawyers Project ("VLP") Group - staff members responsible for PAI referral and case management in LAW's six offices. Although the program's CMS provides most of the tools needed to address OCE's PAI recommendations, the PAI coordinator has emphasized the importance of using these tools to ensure regular monitoring and timely closure of cases as well as proper documentation and case coding.

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V. REQUIRED CORRECTIVE ACTIONS

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

1. Implement program policy changes designed to ensure consistent intake screening in all field offices and substantive units, including standard intake questions regarding that capture the program's income and asset policy, a standard paper intake form to be used program-wide (including outreach). Individual field offices should be prohibited from using any intake form that has not been reviewed and accepted for use by LAW management.

In its comments to the DR, LAW noted that it had promulgated a "Policy Regarding Consistent Intake Screening in All Offices and Substantive Units". According to the program, this policy is designed to ensure consistent intake screening in all program offices and substantive law units. The Intake Worksheet, provided as an Exhibit, contains information boxes which capture LAW's eligibility requirements and is to be used program-wide, including during outreach intake. While individual field offices are allowed to ask additional questions related to various substantive areas, no field office is allowed to use any intake form that has not been reviewed and accepted for use by LAW management.

2. Train staff on new intake policies, procedures, and forms developed as a result of Required Corrective Action 1 above with specific attention paid to the need for consistency throughout the program.

LAW indicated that while the Intake Worksheet is not necessarily new, the policy regarding its use is. In its comments to the DR, LAW noted that compliance training for all advocate staff would be held on February 17 and 18, 2009 and that consistent intake screening would be an included topic of the training.

3. Revise its intake procedures regarding citizenship in its La Crosse field office and provide a directive to all staff that citizenship attestation must be executed in every instance of in-person contact with applicants for legal services. In addition, LAW must instruct all staff to obtain citizenship attestation in all cases requiring them.

In its comments to the DR, the program maintained that the initial revision of intake procedures regarding citizenship in the La Crosse office was accomplished when the La Crosse managing attorney informed the OCE team on-site that he would ensure that all walk-in and outreach intake applicants sign citizenship attestations or have alien eligibility documents reviewed prior to the provision of legal assistance. Since that time, the program noted, the La Crosse staff has been provided with a January 22, 2009 memorandum from LAW management affirming this policy. In addition, the Executive Director sent an e-mail on September 30, 2008 to all LAW field offices stating that citizenship attestations must always be obtained in the instance of in-person contact, including outreach intake. Both e-mails were attached as exhibits to LAW's comments to the DR.