



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Southeast Louisiana Legal Services, Inc.
April 19-23, 2010

Follow-up Review

Recipient No. 619081

I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that SLLS' automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Ten (10) cases were noted where the information in the case file did not match the information in the ACMS.

Finding 2: SLLS' intake procedures support the program's compliance related requirements.

Finding 3: With three (3) exceptions, sampled cases evidenced that SLLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG).

Finding 4: With one (1) exception, sampled cases evidenced that SLLS maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: SLLS is in non-compliance with certain documentation requirements of 45 CFR § 1626.6 in that a few files lacked the required citizenship attestations.

Finding 6: Sampled cases evidenced non-compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

Finding 7: Sampled cases evidenced substantial compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

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

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced 25 instances where SLLS' application of the CSR case closure categories were inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.) § 3.3 (Timely closing and dormant cases).

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

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

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). However, SLLS' LSC Compliance Manual states that "The 45 CFR §1609 rules on fee generating cases do not apply to cases that are fully funded by public funds". There is no finding regarding this issue at this time due to the regulatory conflict and management's decision to take this matter under consideration.

Finding 15: A limited review of SLLS' 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: SLLS 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, and perform the required oversight and follow up of the PAI cases.

Finding 17: SLLS 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 nonprofit organization.

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

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

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

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

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

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

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

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

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

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

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

Finding 29: OCE's review of SLLS' internal control policies and procedures found the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Chapter 3 - Accounting Guide for LSC Recipients).

II. BACKGROUND OF REVIEW

LSC's Office of Compliance and Enforcement (OCE) performed an on-site Case Service Report/Case Management System (CSR/CMS) Review from April 26-30, 2004. A Final Report, including SLLS' comments, was generated on November 2, 2004 (2004 Final Report) and included 11 Corrective Actions required to bring the program into full compliance with LSC regulations. The 2004 Final Report also included six (6) Recommendations which, while not mandatory, represented OCE's assessment that certain policies or practices may develop into serious compliance issues if left unchanged.

In order to assess the program's progress in implementing the required corrective actions and recommendations of the 2004 Final Report, OCE conducted an on-site Follow-Up Review (FUR) from April 19-23, 2010. The visit was conducted by a team of three (3) attorneys, one (1) management analyst, and one (1) fiscal analyst. The three (3) attorneys and the fiscal analyst were OCE staff members. The management analyst was a consultant. The on-site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that SLLS has correctly implemented the 2008 CSR Handbook.

Specifically, the review team assessed SLLS for compliance with the regulatory requirements of 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 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 SLLS' upper and middle management, staff attorneys and support staff. SLLS' 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, 2008 through February 28, 2010. 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 500 case files, which included 37 targeted files.

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

SLLS is a non-profit legal services organization that provides free, non-criminal legal assistance to eligible persons in LSC service area LA-12, consisting of 10 parishes in, as the name implies, southeastern Louisiana.² The LA-12 service area is 5,443 square miles, and, according to the 2000 census, the poverty population in the service area is 275,265.³ See www.rin.lsc.gov.

SLLS has offices in Hammond, New Orleans, Covington, and Marrero. The Hammond and Covington offices are referred to as the “north shore,” while the New Orleans, and Marrero offices are referred to as the “south shore.” The New Orleans office is comprised of a housing unit, a consumer unit, a predatory lending unit, a family law unit, a domestic violence unit, a government benefits/employment unit, a tax unit, and a homeless advocacy unit. In addition, SLLS provides outreach services in Plaquemines Parish, Orleans, Jefferson, St. Bernard and St. Charles Parish.

SLLS has co-executive directors. One is designated as director of program operations, and is located in the Hammond office. The other is designated as director of program services, and is located in the New Orleans office.

SLLS received grant awards from LSC in the amount of \$2,680,476 for 2008, \$2,705,597 for 2009, and \$2,921,338 for 2010.

For 2009, SLLS reported 6,223 closed cases in its CSR data. SLLS’ 2009 self-inspection report indicated a 2.6% error rate. The problem areas identified were: cases in which asset and/or income information was not documented; citizenship/alien eligibility was not documented; case closure was untimely; duplicate cases; and evidence of legal advice was not documented. Some cases were excluded from the 2009 CSR data submitted to LSC as a result of a case review done after the self-inspection.

By letter dated February 18, 2010, OCE requested that SLLS provide a list of all cases reported to LSC in its 2008 CSR data submission (closed 2008 cases), a list of all cases reported in its 2009 CSR data submission (closed 2009 cases), a list of all cases closed between January 1, 2010 and February 28, 2010 (closed 2010 cases), and a list of all cases which remained open as of February 28, 2010 (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 SLLS staff and the other for cases handled through SLLS’ PAI component. SLLS was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11 and 12 and the LSC *Access to Records* (January 5, 2004) protocol. SLLS was requested to notify OCE promptly, 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.

² Effective January 1, 2003, LSC reconfigured the services areas previously served by Southeast Louisiana Legal Services Corporation and New Orleans Legal Assistance Corporation and formed SLLS.

³ LSC’s *Recipient Information Network*, at “Grantee & Program Profile, General Information,” erroneously states that the poverty population is 1,055,860. See www.rin.lsc.gov.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on-site visit. The sample was developed proportionately among 2008, 2009, and 2010 closed and 2010 open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and SLLS agreement of April 7, 2010, SLLS staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality the discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.⁴

SLLS' management and staff cooperated fully in the course of the review process. As discussed more fully below, SLLS was made aware of compliance issues during the on-site visit. This was accomplished by informing intermediaries, as well as Managing Attorneys, and the two Executive Directors, of any compliance issues uncovered during case review.

At the conclusion of the visit on April 22, 2010, OCE conducted an exit conference during which SLLS was made aware of the areas in which a pattern of non-compliance was found. OCE cited instances of non-compliance in the areas of execution of citizenship attestations, execution of retainer agreements, request for attorneys' fees (prior to the repeal of 45 CFR Part 1642), and application of the CSR case closure categories. SLLS was found to be in substantial compliance in the areas of automated case management system, income and asset eligibility documentation, documentation of client identity and statement of fact, documentation of legal advice, timely closing and dormant cases, and oversight of PAI cases. With the exception of the sample cases that had dormancy issues and requests for attorneys' fees that were attributed to a specific employee, no significant distinction between 2008, 2009, and 2010 cases was found. SLLS was advised that they would receive a Draft Report that would include all of OCE's findings, and that they would have 30 days to submit comments in response. Thereafter, a Final Report would be issued that would include SLLS' comments.

By letter dated July 1, 2010, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. SLLS was asked to review the DR and provide written comments. By letter dated July 29, 2010, SLLS submitted its comments to the DR. SLLS has taken several corrective measures in response to the DR, which have been detailed in their comments to the DR. Furthermore, SLLS noted a few exceptions to the Findings. OCE has carefully considered SLLS' comments and has either accepted and incorporated them within the body of this Final Report or responded accordingly. SLLS' comments, in their entirety, are attached to this Final Report.

⁴ 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: Sampled cases evidenced that SLLS' automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Ten (10) cases were noted where the information in the case file did not match the information in the ACMS.

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

Since October 2009, SLLS has utilized Kemp's Prime as its ACMS. Before Prime it used the TIME ACMS. No defaults in critical compliance fields were identified.⁵ The ACMS has the capability to deselect cases from reporting to LSC by checking the "Report to CSR" box on page 3 of the Intake screen. If the box is not checked, users must click on the "Reason Why" box and select a reason from the drop-down box. Such reasons include conflict, over-income, etc. Interviews revealed that staff has been adequately trained on the use of the ACMS and the procedures used to deselect cases from CSRs. SLLS has written case closing procedures for the ACMS.

SLLS further follows thorough procedures at the end of each year to ensure that accurate data is submitted to LSC. Beginning in November, staff is required to review cases to ensure that completed cases are closed and that open cases are not dormant. Senior management then generates lists of closed cases that are designated as LSC ineligible to ensure these are correctly coded. Error reports are run on the LSC eligible closed case list to review for errors and omissions in critical compliance fields. Other reports are generated to identify categories of cases such as LSC eligible cases and over 200% of the Federal Poverty Guidelines (FPG), duplicate cases, timeliness, case closed with K codes, and a number of other reports.

Based on a comparison of the information yielded by the ACMS to information contained in the files that were reviewed during the visit, SLLS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

There were ten (10) instances of inconsistent information in the ACMS and the case files as follows:

See Open Case No. 09-01-14003319, the opening date contained in the file was different from the opening date yielded by the ACMS; Open Case No. 06-02-09000168, although the file appeared on the list of cases open as of February 28, 2010, the file indicated that it was closed in June 2006; Closed 2009 Case No. 08-01-04000062, this case was closed on the ACMS on July 20, 2009, however, the closing letter in the file is dated July 22, 2009; Closed 2009 Case No. 09-

⁵ The Citizenship Status field defaults to X, Not Selected.

01-04003378, this was closed as a PAI case, however, advice was only provided by program staff so it should have been closed as a staff case; Closed 2009 Case No. 07-01-14001346, this case was closed on the ACMS on December 31, 2009, however, the closing letter in the file is dated January 22, 2010); Closed 2009 Case No. 09-01-06000016, this case was closed on the ACMS on November 3, 2009, however, the closing letter in the file is dated November 11, 2009; Closed 2009 Case No. 08-01-03003540, this case was closed on the ACMS utilizing the closing code "F", negotiated settlement without litigation, however, the closing code in the file is "B", limited action; Closed 2009 Case No. 09-01-06002803, this case was closed on the ACMS on August 3, 2009, however, the closing letter in the file is dated December 18, 2009; Closed 2010 Case No. 10E-36000962, this case did not have the correct asset and income information. In Response to the DR the program stated that this case lacked the necessary information because with the program's new ACMS when a client comes in with two problems and two cases are opened it does not copy the eligibility information into the second case; and Closed 2009 Case No. 08-01-03003408, this case was on the Closed 2009 ineligible case list. The intermediary stated that there was a data conversion error.

SLLS should ensure that the correct case file information is entered and recorded in the automated case management system.

In response to the DR, SLLS stated that "management constantly reviews information recorded in the ACMS for various purposes and in preparing numerous reports on the information. Whenever a pattern of problems is discovered it is brought either in writing or orally or both, to the attention of the appropriate person, persons, or entire program staff 1) to emphasize the importance of correct information in the ACMS, 2) to explain the problem that has been detected and 3) to explain the correct way of recording information. SLLS management will continue this practice."

Finding 2: SLLS' intake procedures support the program's compliance related requirements.

SLLS conducts intake according to different models, on varying schedules and in different forums. Applicants may apply for legal services by telephone, in-person and at outreach locations; 34 % of intake is conducted over the telephone; in-person intake is 59% and 5% is done at outreach. Each office has tailored its intake model to conduct more or less intake in each of these forums depending upon the needs of the office and surrounding community. In addition, the Louisiana Civil Justice Center (LCJC), located in New Orleans, conducts intake on family law issues for the Covington office and identifies and refers family law issues for referral to the New Orleans office.

The intake staff in each office was interviewed, and compliance-related forms and letters were collected and reviewed. Staff from LCJC were also interviewed.

Interviews revealed that a number of staff is involved in the screening of essential eligibility requirements. Interviews and review of intake documents revealed that staff uses different forms and screening practices that are not uniform; however, it does not appear as if these differences have resulted in data collection discrepancies between offices. All three (3) forms identified

collect information regarding income, over-income expenses, prospective income, assets and citizenship. The program uses the same retainer agreement, which contains a citizenship attestation, and walk-in applicants sign either the printed ACMS summary sheet, which contains an attestation, or a standalone attestation which is used principally for outreach. SLLS' intake systems generally support the program's compliance-related requirements.

Interviews revealed that eligibility screeners utilize the same procedures to assess eligibility. If an applicant's income is between 125%-200% of FPG staff subtracts expenses, which are consistent with regulatory factors, from the gross annual income to obtain an adjusted income. Some offices receive funding from other sources which permit assistance in excess of the LSC guidelines. In such circumstances, all interviewees demonstrated an understanding of the procedures used to deselect cases from LSC CSRs, which are described in Finding #1. While there is no dedicated field on the ACMS to record income prospects, interviews revealed that any such information is recorded in the notes section.

The case acceptance and case closing procedures, as well as the level of oversight of case work is consistent amongst the offices visited. All offices hold case acceptance meetings, by unit, and case closing is accomplished by one person in each office or unit. All case closures are reviewed by Managing Attorneys or the Director of Operations. Lastly, the two Executive Directors conduct thorough review of ACMS data as described in Finding #1, to ensure accuracy, completeness and compliance.

Lastly, interviewees consistently demonstrated an understanding of LSC compliance requirements. All staff interviewed reported receiving training on the requirements of the CSR Handbook (2008 Ed.). In the fall of 2007, the Director of Operations attended LSC training on the new Handbook. The two Executive Directors developed a training which includes a PowerPoint presentation, regarding the old CSR rules versus the new rules. The training has been held twice. All program staff, including staff from the sub-grantee, were required to attend.

SLLS' intake procedures and practices support LSC compliance requirements.

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

Finding 3: With three (3) exceptions, sampled cases evidenced that SLLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG.

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.⁶ 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.

SLLS' Financial Eligibility Policy was most recently adopted by its Board on February 3, 2010. The policy established a Maximum Income Level at 125% of the FPG. The policy sets forth a detailed description of factors in determining household size, income sources, authorized exceptions for persons with income under 200%, authorized exceptions for persons whose income exceeds 200%, screening of income prospects, and group eligibility screening. In addition, SLLS maintains income and asset guidelines that are programmed into the program's ACMS.

Interviews revealed consistent practices with respect to qualifying individuals whose income is between 125%-200%. Staff stated that the regulatory factors are subtracted from the gross annual income to obtain an adjusted income, and that the adjusted income must be under 125% of the FPG to be LSC-eligible. The policy states that the spend-down rule is not absolute and in many instances persons may be eligible if the spend-down does not bring the applicant's income below 125%. Although this provision is vague, staff reports that they do not qualify as eligible individuals whose income cannot be spent-down. The ACMS automatically subtracts the expenses to obtain an adjusted income and both the gross annual income and the adjusted income is preserved.

Consistent with 45 CFR § 1611.7(a) and LSC Advisory Opinion # OA-2009-1006 the intake screening staff inquire about income prospects. If an applicant states that they believe their income will change in the next six months, the relevant information is recorded in the notes section of the ACMS eligibility screen.

⁶ A numerical amount must be recorded, even if it is zero. See CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

The SLLS policy states that recipients of Food Stamps, FITAP, Medicaid, SSI, Social Security Disability, VA Pension, VA-service connected disability, Earned Income Credit, or subsidized or public housing are financially eligible.

No group cases were identified.

With three (3) exceptions, the files that were reviewed during the visit contained the income documentation required by LSC. The exception were as follows: Closed 2008 Case No. 08-02-09000465, the file involved a referral from Wyoming, with a household of two and an income in excess of 125% of the FPG, and no grounds for making an exceptions where noted; Closed 2008 Case No. 08-02-09000475, the client in this case was a financially ineligible person, the case was not funded by LSC but was included in the CSR; and Closed 2009 Case No. 08-01-06003966, the client's income exceeded 200% of the FPG. None of these files should have been reported to LSC.⁷

SLLS should conduct training to ensure consistent application of board policy with respect to qualifying individuals with income between 125%-200% of the FPG.

In response to the DR, SLLS stated that "Management agrees with this recommendation and will conduct this training in the next 6 months. Also, we will continue our practice of training all new staff in financial eligibility at their initial job orientation and conducting refresher seminars."

Finding 4: With one (1) exception, sampled cases evidenced that SLLS maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁸ *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

⁷ Other non-LSC funded files involving financially ineligible clients included New Orleans open Case Nos. 09-01-03001940, 07-04-35001197, 09-01-06003917, and 09E-S360928; and New Orleans closed 2009 Case Nos. 09-01-06000995 and 08-01-06001585. These files should not be included in SLLS' CSR data submission.

⁸ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

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 Standards approved by the SLLS Board of Directors on April, 19, 2006, establishes the asset ceiling at \$8,000. Exempt from consideration are equity in an individual's principal residence; vehicles used for transportation; assets used in producing income; and other assets which are exempt from attachment under state or federal law.

The Financial Eligibility Standards approved by the SLLS Board of Directors on February 3, 2010, establishes an asset ceiling of \$8,000. Exempt from consideration are the applicant's primary family home, motor vehicles, income producing assets, assets exempt from seizure under law, FEMA or disaster related insurance proceeds, and unavailable assets. The program was informed that 45 CFR § 1611.3(d)(1) states that "a vehicle used for transportation" may be excluded. In that "motor vehicles" could include a vehicle which is not used for transportation the exception as listed in the program's policy is broader than that which is allowed by the regulation. The program stated that they would amend the exception so that it is in compliance with the regulation.⁹

Interviews revealed that staff is sufficiently versed with the program asset ceilings and exclusions.

With one (1) exception, sampled case files reviewed revealed that SLLS maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.) § 5.4.¹⁰ No exceptions were identified in the file review. *See* Closed 2009 Case No. 09-01-07002939, this case did not have any documentation in the file or on the ACMS of the client's assets.

SLLS should ensure that its asset policy is consistent with the LSC Act, regulations and other applicable law. SLLS was advised to change the language in the board approved financial eligibility policy to clarify that only vehicles used for transportation are exempt from consideration in the asset determination.

In response to the DR, SLLS stated that, "SLLS agrees with this corrective action and implemented it at its board meeting of May 26, 2010, and communicated the change to staff."

⁹ It is noted that interviewees stated that the only vehicles that are exempted are those used for transportation.

¹⁰ 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.

Finding 5: SLLS is in non-compliance with certain documentation requirements of 45 CFR § 1626.6 in that a few files lacked the required citizenship attestations.

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

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.¹¹ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

The initial screening of citizenship occurs verbally if the applicant applies by telephone or on a standardized retainer agreement. The attestation on this document is tied to a separate signature line, in compliance with the requirements of the CSR Handbook (2008 Ed.). Prior to the change in requirement, the retainer included a single signature line. The new form was implemented in a timely manner. While some cases reviewed that had been opened prior to 2008 had the old retainer agreement, cases reviewed which were closed in 2009 had the new compliant attestation. A standalone written attestation is used in the New Orleans office for outreach applicants. For eligible non-citizens, some staff utilizes a form to document screening of eligible alien documentation. All interviewees stated that they copy documents and place them in the client's file. Some staff notate on the copy the date that they reviewed the document.

Citizenship/alien eligibility status is also recorded in the ACMS. There is no default to citizen. The field defaults to X, Status Undetermined, so that the program can generate error lists of cases lacking screening.

¹¹ *See* Kennedy Amendment at 45 CFR § 1626.4.

Sampled cases evidenced 19 case files that were not compliant with the requirements of 45 CFR § 1626.6. *See* Open Case Nos. 03-04-11001481, 04-04-11000492, and 06-04-11000596; 2009 Closed Case Nos. 07-01-04001779, 04-01-06001274, and 08-01-07002373, the citizenship attestations in these cases were on an old retainer agreement which is not compliant with the requirements of CSR Handbook (2008 Ed.), § 5.5. *See also* Open Case Nos. 00-01-02000315, 98-01-02000451, 97-01-05000529, 08-01-02002573, 00-02-09000659, and 00-02-09000892; and Closed 2009 Case Nos. 09-01-07002939, 09-01-07003967, 09-01-06001301, 09-01-04000237, 05-01-06000761, and 08-01-02001063, these cases did not contain the citizenship/alien eligibility documentation required by LSC regulations and the CSR Handbook. *See also* Closed 2009 Case No. 09-05-12000663, this case did not contain a citizen attestation. According to the notes in the file, this was an emergency case where the attorney first met with client immediately prior to a court proceeding and failed to obtain a signed citizen attestation.

SLLS is in non-compliance with the documentation requirements of 45 CFR § 1626.6. SLLS must ensure that all case files contain citizenship attestations, where appropriate, that are signed and dated pursuant to 45 CFR Part 1626.

In response to the DR, SLLS stated the following,

“SLLS identified (and 11 of the 19 cases identified by the monitors fell into this category) that one problem detected as a result of this review is that pre-2008 cases have the citizenship attestation incorporated in the retainer. SLLS has taken steps to ensure that improper USC attestation forms under the 2008 CSR handbook are not being used. SLLS management is presently in the process of reviewing every open case opened before January 1, 2008, and seeking a new signed citizenship attestation if a proper form is missing from the file.

The new ACMS has boxes to mark for citizenship verification and signed retainers. signed. [sic] SLLS will run a check each year to identify and review any case where the intake was in-person or outreach and closed A or B which does not have this checked. SLLS will run a second report of all cases closed with a closing code higher than A or B to identify and review which does not have citizenship verification or retainer boxes checked.

SLLS already has in place systems to ensure that every client signs a citizenship attestation who needs to. A review of those systems failed to determine how they could be improved. SLLS regularly reminds staff of the USC attestation rules and will continue to regularly remind staff of those systems and the importance of complying with them.”

Finding 6: Sampled cases evidenced non-compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

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.¹² Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Sampled case review evidence 28 cases that either lacked a retainer agreement or contained a retainer agreement that did not identify the legal problem for which representation was sought.

The above referenced cases are listed below:

See Closed 2010 Case Nos. 09-01-06003386, and 09-04-11000842; Open Case Nos. 03-04-11001481, 09-04-11000966, 09-04-11002185, 10E-S530200, 09E-S360861, 090-01-04002135 , 08-04-35001083, 10E-S361106, and 01-01-04002542; Closed 2009 case Nos. 07-01-04001472, 09-0107001318, 09-01-06002441, and 09-01-06000995; and Closed 2008 Case Nos. 08-01-07002373, 08-01-04001469, 07-04-35001232, and 07-01-07002683 ; These cases all contained a signed retainer agreement however the retainers lacked either a statement identifying the legal problem for which representation was sought or the nature of the legal service to be provided, or both.;

Also see Open Case Nos. 00-01-02000315, 08-01-02002573, 09E-S361100, 00-02-09000659, and 00-02-09000892; and Closed 2009 Case Nos. 08-01-03002657, 09-05-12000663, and 08-01-02001063. These cases lacked the required retainer agreement.

SLLS should ensure that each file is in compliance with the requirements of 45 CFR § 1611.9 (Retainer Agreements) when required.

In response to the DR, SLLS stated that, they “have systems in place for ensuring this. Currently, management is conducting extensive open file reviews of all case handlers and will communicate with each case handler when 1611.9 problems are found. We will discuss these requirements with staff by memoranda and at our next in-person program wide staff meeting.”

Finding 7: Sampled cases evidenced substantial 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).

¹² 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.

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).

With two (2) exceptions, the case files reviewed that required a Part 1636 statement of facts contained one. The two (2) exceptions were Closed 2009 Case No. 08-01-04001841 and Closed 2008 Case No. 07-02-09000589.

SLLS should ensure that each file is in compliance with the requirements of 45 CFR §§ 1636.2(a) (1) and (2).

In response to the DR, SLLS stated that in Closed 2009 Case No. 08-01-04001841, a verified pleading was filed in the court case, which would satisfy the 1636 requirements. However, the verified pleading was not in their case file at the time of review.

SLLS further stated that they will include this corrective action within their training.

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

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

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

In response to the DR, SLLS stated that the information contained in the finding is correct.

Finding 9: Sampled cases evidenced 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 an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. See CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

SLLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), as there were 11 cases reviewed from the sample that failed to contain a description of the legal assistance provided.

A list of these cases is provided below:

See Closed 2009 Case Nos. 08-01-03003947, 09-01-07002894, 09-01-07002939, 08-01-03003540, 09-01-04000987, 09-01-04003418, and Closed 2008 Case Nos. 08-02-09000154, and 08-01-04002659.

SLLS should ensure that each case reported to LSC contains a description of the legal assistance provided. SLLS had already identified some of the cases listed above for exclusion from future CSR data submissions. SLLS should assure that all of these cases are excluded from future CSR data submissions.

In response to the DR, SLLS stated that this corrective action is so similar to the corrective action for Finding No. 10 that they find them to be identical and as such the corrective action they will take is the same.

Finding 10: Sampled cases evidenced 24 instances where SLLS' application of the CSR case closure categories were inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

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

The files reviewed demonstrated that SLLS' application of the CSR case closing categories were inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.) in 24 of the cases reviewed.

A few examples are as follows:

See Closed 2009 Case Nos. 09-01-07000712, Closed 2008 Case No. 08-01-07001106, and Open case No. 06-02-09000168, these cases were closed as "limited action", but the levels of

assistance indicated in the files were more consistent with “counsel and advice”). *See also* Closed 2009 Case No. 09-01-06000071 and 08-02-09000695, and Closed 2008 case No. 08-01-06001585, these cases were closed as “counsel and advice”, but the levels of assistance indicated in the files were more consistent with “limited action”. *See* Closed 2008 Case No. 08-01-03003083 was closed as “court decision”, but the file indicated that SLLS did not enter an appearance on behalf of the client, Closed 2008 Case No. 07-01-06002256 was closed as “negotiated settlement without litigation”, but the level of assistance indicated in the file was more consistent with “extensive service”; and Closed 2008 Case No. 06-01-03003910 was closed as “negotiated settlement without litigation”, but the level of assistance indicated in the file was more consistent with “limited action”.

SLLS must ensure that staff is trained on the CSR closing categories.

In response to the DR, SLLS stated that, Closed 2008 Case No. 08-01-03003083 “was closed as a “court decision” and that the time records reflected that attorney was in court for three hours 10/1/2008 and the case was dismissed on that day due to exceptions SLLS filed”. Nothing else is stated, therefore it is unclear whether SLLS is contending that due to the case notes the closing code is appropriate or whether they are simply providing additional facts for LSC consideration. In either instance the intermediary on-site had informed the reviewer that the attorney handling the case had not entered their appearance in this case. Chapters VIII, section 8.3, CSR Handbook (2008 Ed.) specifically states in foot note 50 that “only cases in which a program attorney or advocate or PAI attorney is entered as counsel of record may be closed as CSR Closure Category H or I.” As such if the attorney did not enter their appearance in the case the closing category is incorrect.

Additionally, SLLS stated that, “SLLS has already held several trainings on this issue, and trains each new employee on the rules at job orientation. Management regularly sends CSR memoranda or updates to staff during the year on various case closure issues, and gives staff feedback on errors. Management will conduct another CSR training for all staff. Closing codes are reviewed by management upon closure and, for selected cases, during the annual CSR self-inspection.”

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.) § 3.3 (Timely closing and dormant cases).

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).¹³ There is, however,

¹³ 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.

an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

SLLS is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) but there were 18 files reviewed that were either dormant or not closed in a timely manner.

A few examples are as follows:

See Open Case Nos. 99-01-05003405, 08-01-02001033, 00-01-02000315 , 08-01-02003397 , 99-01-02002512, 97-01-02000954, 98-01-02000451, 97-01-05000529, 01-01-04002542, 07-02-09000654, 00-02-09000659 and 00-02-09000892 . The last recorded activity in each of these files was prior to 2009. *Also see* Closed 2009 Case Nos. 07-01-04002404, this case was opened in August 2007 and closed as “counsel and advice” in December 2008. The file indicated that legal assistance was provided in 2007 and Closed 2009. These cases were untimely closed.

SLLS should ensure that all cases are timely closed by conducting periodic reviews of case management reports on closed cases, particularly those limited service files that remained open for an extended period of time.

In response to the DR, SLLS stated that Management agrees with this recommendation and already performs this task routinely.

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

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

When a recipient provides more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest

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).

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.

Sample cases reviewed did not reveal any instances of duplicate case reporting. SLLS is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

In response to the DR, SLLS stated that the information contained within this finding is correct.

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

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

OCE's review of SLLS' vendor list of individuals and entities that received a payment from SLLS over the review period revealed that no prohibited payments or contributions were made. Further, Sampled files reviewed discussions with program management confirmed this and indicated that SLLS is not involved in any prohibited political activities.

In response to the DR, SLLS stated that the information contained within this finding is correct.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). However, SLLS' LSC Compliance Manual states that "The 45 CFR §1609 rules on fee generating cases do not apply to cases that are fully funded by public funds". There is no finding regarding this issue at this time due to the regulatory conflict and management's decision to take this matter under consideration.

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

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

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

Sampled cases and interviews with the Executive Director evidenced compliance with the requirements of 45 CFR Part 1609. However, it was noted while reviewing SLLS' LSC Compliance Manual that the following was stated on page 10 of the manual, "The 45 CFR §1609 rules on fee generating cases do not apply to cases that are fully funded by public funds". SLLS was asked to provide the reasoning behind their stated policy and was informed that LSC was going to look into this language and advise them if it is a proper interpretation of the regulations.

There is no finding regarding this issue at this time due to the regulatory conflict between Parts 1609 and 1610 regarding the reach of Part 1609 to public non-LSC funds and management's decision to take this matter under consideration. Nonetheless, if the provisions of Part 1610 create a public non-LSC funds exception to Part 1609, that exception would be limited to when such funds are used "in accordance with the specific purposes for which they were provided . . ." *See* 45 CFR § 1610.4(b). As such, the grantee must revise the manual to include this caveat pending LSC's determination regarding the scope of Part 1609 in light of Part 1610.

In response to the DR, SLLS stated that, "SLLS will revise its 1609 policy to include the specific caveat cited by LSC in Finding 14. We will await further information from LSC before making any other changes in our 1609 policy.[sic] action."

Finding 15: A limited review of SLLS' 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).

The prior on-site review Final Report cited that SLLS does not notify its non-LSC funding sources of the LSC prohibitions and conditions that apply to their funds as required by 45 CFR §1610.5 – Notification. OCE’s review of the program’s donor notification policies and procedures determined that the program has taken corrective actions and complies with this regulatory regulation.

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

In response to the DR, SLLS stated that the information contained within this finding is correct.

Finding 16: SLLS 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, and perform the required oversight and follow up of the PAI cases.

45 CFR Part 1614 requires 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.

SLLS operates several PAI projects. SLLS has entered into a subgrant agreement with the Pro Bono Project which is located in New Orleans and provides referrals to private attorneys in three of the ten parishes served by SLLS. SLLS also operates an in-house pro bono project in Covington office. The program also operates a judicare program out of the New Orleans, Hammond and Covington offices, with the New Orleans office also handling judicare for the Marrero office. Lastly, the Hammond office employs two part-time attorneys who work in the Hammond office, one conducting intake interviews and the other handling family law cases.

Based on case reviews and interviews conducted at the above stated location, SLLS is in substantial compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. One dormant case was identified in which SLLS did not provide adequate follow-up. *See* Open Case No. 06-09000477, this was a PAI judicare case in which SLLS determined on April 14, 2010 that divorce documents were prepared in December 2007 but the attorney could not get in touch with the client to proceed.

In addition, case review revealed five (4) cases coded as PAI though staff provided the advice. *See* Closed 2009 Case Nos. 09-02-09000581, 08-05-12000771, 08-05-12001001 and 09-05-12000481. The Director of Operations was reminded that cases referred to a private attorney but closed without private attorney legal assistance should be recoded and closed as staff cases; presuming legal assistance is provided prior to the referral. SLLS should take steps to ensure that closed PAI cases are properly coded.

OCE's review of SLLS' PAI cost allocation policy statement and worksheets and the audited financial statements for the review period determined that the program complies with the accounting requirements of this Part. The review noted no exceptions or inconsistencies in this area.

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

Finding 17: SLLS 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 nonprofit 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.

OCE's review of SLLS' accounting records for selected general ledger expense accounts that track and account for litigation expenses which include fees and dues payments for the review period along with discussions with program management disclosed compliance with 45 CFR § 1627.4(a) - Membership fees or dues.

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

LSC timekeeping regulation, 45 CFR Part 1635 intends 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 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.

To track its case handlers' time spent on cases, matters and supporting activity, the program utilizes the timekeeping component of its case management software, KEMPS, requires all staff to maintain their time in the case management system, and uses the timekeeping data generated along with other reasonable operating data and methods to determine and support its cost allocations.

OCE's review of SLLS' timekeeping policies and procedures and a sample of completed time records for case handlers along with discussion with the two executive directors and the administrator disclosed that time records are kept electronically and contemporaneously and time spent on cases, matters or supporting activities complies with 45 CFR §§ 1635.3(b) and (c). OCE's review noted no exceptions or inconsistencies. Additionally, OCE's review of the program's timekeeping documents revealed that the program maintains the 1635 Quarterly Certification for Part-Time Case Handlers as required by 45 CFR § 1635.3(d).

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.¹⁴ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees.

Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).¹⁵

Three (3) cases reviewed evidenced a request for attorneys' fees. *See* Open Case Nos. 09-04-11000346, 08-05-12000800, and 04-04-1100492. The intermediary stated that the compensated private attorney that handles intake for the Hammond Office occasionally accepts cases for extended representation. For these cases, he used the boilerplate language from his private practice which includes a request for attorneys' fees if appropriate. The program has not collected any fees. These cases were opened and the fees requested prior to the effective date of the repeal of the attorneys' fees restriction.

OCE's review of SLLS' accounting records and audited financial statements for the review period along with discussion with program management determined that the program has not recognized or reported the receipt of any attorneys' fees or court-awarded payments for cases during the review period. Accordingly, while SLLS was in non-compliance at the time the fees were requested, the restriction has been repealed and no corrective action is required.

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct

¹⁴ 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).

¹⁵ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

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

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

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

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

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define "initiating or participating in any class action" as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁶

¹⁶ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

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

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

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

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

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

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

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

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on

behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

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

SLLS' comments in response to the DR have been accepted and incorporated within the body of 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.¹⁷ This restriction has been contained in all subsequent appropriations acts.¹⁸ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

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

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

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

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

None of the sampled files reviewed involved such activity. Discussions with the two (2) Executive Directors also confirmed that SLLS is not involved in this prohibited activity.

¹⁷ *See* Section 504(a)(18).

¹⁸ *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).

SLLS' comments in response to the DR have been accepted and incorporated within the body of 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 LSC statutory prohibitions. Discussions with the two Executive Directors also confirmed that SLLS is not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

SLLS' comments in response to the DR have been accepted and incorporated within the body of this finding.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that all case files contain the proper citizenship attestations pursuant to 45 CFR Part 1626, where appropriate;

In response to the DR, SLLS stated the following,

“SLLS identified (and 11 of the 19 cases identified by the monitors fell into this category) that one problem detected as a result of this review is that pre-2008 cases have the citizenship attestation incorporated in the retainer. SLLS has taken steps to ensure that improper USC attestation forms under the 2008 CSR handbook are not being used. SLLS management is presently in the process of reviewing every open case opened before January 1, 2008, and seeking a new signed citizenship attestation if a proper form is missing from the file.

The new ACMS has boxes to mark for citizenship verification and signed retainers. signed. [sic] SLLS will run a check each year to identify and review any case where the intake was in-person or outreach and closed A or B which does not have this checked. SLLS will run a second report of all cases closed with a closing code higher than A or B to identify and review which does not have citizenship verification or retainer boxes checked.

SLLS already has in place systems to ensure that every client signs a citizenship attestation who needs to. A review of those systems failed to determine how they could be improved. SLLS regularly reminds staff of the USC attestation rules and will continue to regularly remind staff of those systems and the importance of complying with them.”

2. Ensure that each case reported to LSC contains a proper financial eligibility determination, as required by LSC regulations and the CSR Handbook (2008 Ed.);

In response to the DR, SLLS stated that, “The problem described is an improper marking (probably clerical error) that a case was LSC eligible when it was not. The problem did not involve an improper financial eligibility determination. In the recommendation section SLLS agreed to hold a staff training on financial eligibility. The proper recording of financial exceptions and the proper marking of cases to report on the CSR will be covered in that training.”

3. Ensure the proper application of the CSR case closure categories;

In response to the DR, SLLS stated that, “SLLS has already held several trainings on this issue, and trains each new employee on the rules at job orientation. Management regularly sends CSR memoranda or updates to staff during the year on various case

IV. RECOMMENDATIONS¹⁹

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

1. Ensure that the correct case file information is entered and recorded in the automated case management system;

In response to the DR, SLLS stated that “management constantly reviews information recorded in the ACMS for various purposes and in preparing numerous reports on the information. Whenever a pattern of problems is discovered it is brought either in writing or orally or both, to the attention of the appropriate person, persons, or entire program staff 1) to emphasize the importance of correct information in the ACMS, 2) to explain the problem that has been detected and 3) to explain the correct way of recording information. SLLS management will continue this practice.”

2. Conduct training to ensure consistent application of board policy with respect to qualifying individuals with income between 125%-200% of the FPG; and

In response to the DR, SLLS stated that “Management agrees with this recommendation and will conduct this training in the next 6 months. Also, we will continue our practice of training all new staff in financial eligibility at their initial job orientation and conducting refresher seminars.”

3. Ensure that all cases are timely closed by conducting periodic reviews of case management reports on closed cases, particularly those limited service files that remained open for an extended period of time.

In response to the DR, SLLS stated that Management agrees with this recommendation and already performs this task routinely.

¹⁹ 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.

Finding 29: OCE's review of SLLS' internal control policies and procedures found the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System. (Chapter 3 - Accounting Guide for LSC Recipients).

LSC requires its recipients, under the direction of its board of directors, to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as the process put in place by the recipient's board of directors, management, and other personnel which is designed to provide reasonable assurance of achieving objectives of safeguarding of assets against unauthorized use or disposition, reliability of financial information and reporting; and compliance with regulations and laws that have a direct and material effect on the program. *See Chapter 3 of the Accounting Guide for LSC Recipients (August 1997).*

OCE's review of SLLS' accounting policies and procedures manual, accounting records and discussions with program management found that the program has established an adequate internal control structure which includes adequate accounting records, competent personnel, defined duties and responsibilities, segregation of duties, independent checks and proofs and a written accounting manual, which was being revised and updated. Further, SLLS' auditor's reports on internal controls for the review period did not identify any deficiencies in the internal controls that could be considered to be material weaknesses.

In response to the DR, SLLS stated that the information contained within this finding is correct.

closure issues, and gives staff feed back on errors. Management will conduct another CSR training for all staff. Closing codes are reviewed by management upon closure and, for selected cases, during the annual CSR self-inspection.”

4. Ensure that each file is in compliance with the requirements of 45 CFR § 1611.9 (Retainer Agreements);

In response to the DR, SLLS stated that, they “have systems in place for ensuring this. Currently, management is conducting extensive open file reviews of all case handlers and will communicate with each case handler when 1611.9 problems are found. We will discuss these requirements with staff by memoranda and at our next in-person program wide staff meeting.”

5. Revise the LSC Compliance Manual pending LSC's determination regarding the scope of Part 1609 in light of Part 1610, as discussed in Finding 14;

In response to the DR, SLLS stated that, “SLLS will revise its 1609 policy to include the specific caveat cited by LSC in Finding 14. We will await further information from LSC before making any other changes in our 1609 policy. [sic] action.”

6. Review its list of open cases and mark for rejection and exclude from the CSR data submission all dormant, inactive, and files involving ineligible applicants;

In response to the DR, SLLS stated that, “SLLS has already begun this process with respect to dormant and inactive cases, and intends to close all of them unless a good reason for keeping them open is documented in the file. We will also mark as ineligible for CSR reporting for all clients whose income exceeds 200%. To go further with the open case list would be pointless in that in the process of being closed casehandlers can easily think that it is a mistake that it isn't marked CSR eligible and change it back. The real focus will need to be on the cases that are closed.”

7. Ensure that its asset policy is consistent with the LSC Act, regulations and other applicable law. SLLS was advised to change the language in the board approved financial eligibility policy to clarify that only vehicles used for transportation are exempt from consideration in the income determination;

In response to the DR, SLLS stated that, “SLLS agrees with this corrective action and implemented it at its board meeting of May 26, 2010, and communicated the change to staff.”

8. Ensure that each case reported to LSC contains a description of the legal assistance provided; and

In response to the DR, SLLS stated that, “See #3 above. The two recommendations are so similar as to be identical and the corrective action is the same.”

9. Ensure that each file is in compliance with the requirements of 45 CFR §§ 1636.2(a) (1) and (2) when necessary.

In response to the DR, SLLS stated that, “This will be included in the staff training.”

July 29, 2010

Mr. Danilo A. Cardona, Director
Office of Compliance and Enforcement
Legal Services Corporation
333 K Street, NW, 3rd Floor
Washington, DC 20007-3522

Re: Response and Corrective Action
Follow-Up visit, Recipient No. 619081

Dear Mr. Cardona:

Thank you for sharing the draft Follow-up Review report from the April 19 - 23, 2010 visit. We compliment each member of your team. We found them professional, knowledgeable and easy to work with.

We are taking this opportunity to both respond to the draft and to provide you with the corrective action steps SLLS has taken or will take in response to the Required Corrective Action.

BACKGROUND OF REVIEW - Several errors are brought to your attention, though they have nothing to do with the team's findings.

- Page 5 - "SLLS is headquartered in Hammond." SLLS does not have a "headquarters." While the team's statement is inaccurate, it isn't important.
- Page 5 - "with offices in New Orleans, Covington, Chalmette and Marrero" - SLLS did have an office in Chalmette during the 2004 visit. That office no longer exists. It was unusable after Hurricane Katrina and was not replaced.
- Page 5 - footnote 4 "As per action by SLLS' governing body, the New Orleans office has retained the name "New Orleans Legal Assistance..." While true in 2004, on March 24, 2009 the board of directors reversed itself and required that all offices and employees use the name "Southeast Louisiana Legal Services."
- Page 5 - "In addition SLLS provides outreach services in Plaquemines Parish." SLLS in fact provides outreach services in Orleans, Jefferson, St. Bernard and St. Charles Parishes as well.
- Page 6 - "This was accomplished by informing intermediaries, as well as Managing Attorneys, and the Executive Director in the main office..." First, let us thank you for the conscientious way the team identified and discussed the compliance issues it found with program staff. That being said, we recommend that you refer to the "Executive Director in the New Orleans office", since the team apparently felt the "headquarters" where one executive director is located,

was an office other than the "main" office, where the other executive director is located.

- Page 6 - "request for attorneys' fees (prior to the repeal) of 45 CFR 1642..." Should be "request for attorneys' fees (prior to the repeal of 45 CFR 1642)..."

FINDINGS

While SLLS agrees with most of the findings, we believe that by correcting errors in the report it will be a stronger document. We fully recognize that some of the errors may have resulted from SLLS staff providing incorrect or unclear information during the visit.

#1 - Sampled cases evidenced that SLLS' automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Ten (10) cases where [sic] noted where the information in the case file did not match the information in the ACMS. -

We converted to a new ACMS in October 2009. This conversion created additional challenges for our case management for the years reviewed in your report.

Closed Case No. 10E-36000962 "information was in previous ACMS but did not convert. This case was begun and entered after the conversion." What is actually meant is that with this new ACMS when a client comes in with two problems, in this case a wage claim and an unemployment compensation case, and you tell the ACMS to create a second case record, the ACMS does not duplicate an eligibility slip like the previous ACMS did. This aspect of the system was discovered later.

Stated Case Number	Actual case number
Case No. 08-01-03003540	Nothing similar found - Can't respond
Case No. 09-01-0600016	Case No. 09-01-06000016
Case No. 008-01-03003540	Case No. 08-01-03003540

Finding 2 - SLLS intake procedures support the program's compliance related requirements - Page 8 "Most intake is conducted over the telephone..." In fact, telephone intake is 34% of our intake. In-person intake is 59%. 5% is outreach, 2% other.

Page 9 - "The adjusted income must be below 125% for the applicant to qualify for LSC-funded assistance." As noted by the reviewers in the next FUR finding, that is not SLLS' policy.

Page 9 "Lastly the Director of Operations and the Executive Director conducts [sic] thorough review of ACMS data as described in Finding #1..." This sentence refers to the two executive directors of SLLS, and they could be referred to as such or they could be referred to as "the executive director, program operations and the executive director, program services". The same issue appears in the next paragraph. "In the fall of 2007, the Director of Operations attended LSC training on the new Handbook. He and the

Executive Director....”.

Finding 3 - With three (3) exceptions sampled cases evidenced that SLLS maintains the income eligibility documentation required by 45 CFR 1611.4, CSR Handbook (2001 ED.), Paragraph 5.3, CSR Handbook (2008 ED.) Section 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG.

Of the three exceptions noted by the monitors, the following is submitted:

Exception #1 Case No. 08-02-09000465 characterized as a household of one and an income in excess of 200%. In fact it is a household of two. The SLLS staff liaison verified that he was mistaken in providing the household size to the monitor. Monthly income was \$1969 a month. For a family of two in 2008 the income was 169% of the FPIG. However, there are no grounds for making an income exception.

Exception #2 Case No. 08-02-09000475 Income was 177% FPIG. The client was handled under another grant for which she was eligible. SLLS agrees with the monitors that it should not have been reported on the CSR.

Exception #3 - Case No. 08-01-06003966 - This information is correct. The client was handled under another grant for which she was eligible. SLLS agrees with the monitors that it should not have been reported on the CSR.

Finding #4 - The information is correct except for the statement that our asset ceiling was \$2,000 for an individual and \$1,500 for each additional family member. It has been \$8,000 since at least November 2005.

Finding #5 - This information is correct, except two case numbers are miscited.

Your case number	Actual case number
04-04-1100492	04-04-11000492
09-01-0400237	09-01-04000237

Finding #6 - The information is correct, except two cases are miscited.

Your case number	Actual case number
09-01-03000003	No such number - no similar number found
10E-5530200	10E-S530200

Finding #7 - The information is correct

With regards to the first case 08-01-04001841, a verified pleading was filed in the court case, which would satisfy the 1636 requirements. However, the verified pleading was not in our case file when the monitors visited.

Finding #8 - The information is correct

Finding #9 - Cases where no legal assistance is documented

Two cases are miscited.

Your case number	Actual case number
09e-5361238	09e-S361238
09-01-0409371	No such number - no similar number found

In 09E-S361238, the computerized case file shows the attorney researched the courthouse records to determine whether any family law actions involving the client had been filed up here. This should constitute service as defined by the CSR manual.

Case No. 08-01-14001829 was listed in error as a case not documenting service. In that case an attorney wrote the following note in the case management system - "6/3/2008 Staff # 1552 - Office # 36 - Type Note: Old Notes from TIME Notes: client lost condo after Katrina, in hubby's name (married since 1972; clearly community property). wants share of proceeds. explained community property in La. explained procedures for partition. explained implications of no divorce. Problem: community property Action: bring to cr; declined further rep'n. counsel and advice as described in notes"

Finding #10 - Erroneous application of case closures

Closed case 09-01-040000196 - The case was closed by SLLS as limited action but the monitors felt it should be Counsel and Advice. In that case the attorney drafted a court petition pursuant to the client's instructions that was never filed. This case was properly closed as a B, limited action.

08-0-01-03003083 - a) case number is 08-01-03003083 b) case closed "court decision" - time records reflect that attorney was in court for three hours 10/1/2008 and the case was dismissed on that day due to exception SLLS filed.

Finding #11 - The information is correct but one case is miscited. 07-01-07000665 - No such file, cannot find a similar file number.

Finding#12 - #15 - The information is correct

Finding #16 - The information is correct but one case is miscited. Case No. 06-09000307 is 06-02-09000307

Case No. 08-02-09000307 - cited as a PAI case closed where staff gave the advice. This is incorrect. The case notes reflect: "4/28/2008 Staff # 1508 ...informed by Pro Bono that case was closed according to the following action: Advice/Counsel."

Finding #17 - The information is correct

Finding #18 - 28 - Each one concludes with "Discussions with the Executive Director also confirmed that SLLS is not involved in this prohibited activity." As noted before, SLLS has two executive directors, an executive director of program services and an executive director, program operations. It is suggested that the sentence be changed to refer to a) "one of the executive directors" or b) "program management" or c) name which executive director or give the person's title who provided the information for each item. To ease this correction, both executive directors hereby certify that if they been the one asked, they would have made the statements that are attributed to "the executive director."

Finding #29 - The information is correct.

RECOMMENDATIONS

1. Ensure that the correct case file information is entered and recorded in the automated case management system - Action - management constantly reviews information recorded in the ACMS for various purposes and in preparing numerous reports on the information. Whenever a pattern of problems is discovered it is brought either in writing or orally or both, to the attention of the appropriate person, persons, or entire program staff 1) to emphasize the importance of correct information in the ACMS, 2) to explain the problem that has been detected and 3) to explain the correct way of recording information. SLLS management will continue this practice.

2. Conduct training to ensure consistent application of board policy with respect to qualifying individuals with incomes between 125% and 200%. - Management agrees with this recommendation and will conduct this training in the next 6 months. Also, we will continue our practice of training all new staff in financial eligibility at their initial job orientation and conducting refresher seminars.

3. Ensure that all cases are timely closed by conducting periodic reviews or case management reports on closed cases, particularly those limited service files that remain open for an extended period of time - Management agrees with this recommendation and already performs this task routinely.

REQUIRED CORRECTIVE ACTION

1. Ensure that all case files contain the proper citizenship attestations pursuant to 45 CFR Part 1626 - SLLS identified (and 11 of the 19 cases identified by the monitors fell into this category) that one problem detected as a result of this review is that pre-2008 cases have the citizenship attestation incorporated in the retainer. SLLS has taken steps to ensure that improper USC attestation forms under the 2008 CSR handbook are not being used. SLLS management is presently in the process of reviewing every open case opened before January 1, 2008, and seeking a new signed citizenship attestation if a proper form is missing from the file.

The new ACMS has boxes to mark for citizenship verification and signed retainers. signed. SLLS will run a check each year to identify and review any case where the intake was in-person or outreach and closed A or B which does not have this checked. SLLS will run a second report of all cases closed with a closing code higher than A or B

from consideration in the income [sic] determination. - SLLS agrees with this corrective action and implemented it at its board meeting of May 26, 2010, and communicated the change to staff.

8. Ensure that each case reported to LSC contains a description of the legal assistance provided. See #3 above. The two recommendations are so similar as to be identical and the corrective action is the same.

9. Ensure that each file is in compliance with the requirements of 45 CFR 1636.2 (a)(1) and (2) when necessary - This will be included in the staff training.

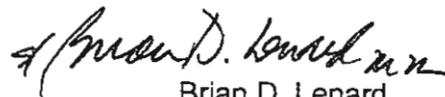
SUMMARY

Thank you again for the opportunity to comment on the draft report.

Sincerely,



Mark A. Moreau
Executive Director, Program Services



Brian D. Lenard
Executive Director, Program Operations

to identify and review which does not have citizenship verification or retainer boxes checked.

SLLS already has in place systems to ensure that every client signs a citizenship attestation who needs to. A review of those systems failed to determine how they could be improved. SLLS regularly reminds staff of the USC attestation rules and will continue to regularly remind staff of those systems and the importance of complying with them.

2. Ensure that each case reported to LSC contains a proper financial eligibility determination. - The problem described is an improper marking (probably clerical error) that a case was LSC eligible when it was not. The problem did not involve an improper financial eligibility determination. In the recommendation section SLLS agreed to hold a staff training on financial eligibility. The proper recording of financial exceptions and the proper marking of cases to report on the CSR will be covered in that training

3. Ensure the proper application of the CSR case closure categories - SLLS has already held several trainings on this issue, and trains each new employee on the rules at job orientation. Management regularly sends CSR memoranda or updates to staff during the year on various case closure issues, and gives staff feed back on errors. Management will conduct another CSR training for all staff. Closing codes are reviewed by management upon closure and, for selected cases, during the annual CSR self-inspection.

4. Ensure that each file is in compliance with the requirements of 45 CFR 1611.9 (Retainer Agreements.) - We have systems in place for ensuring this. Currently, management is conducting extensive open file reviews of all case handlers and will communicate with each case handler when 1611.9 problems are found. We will discuss these requirements with staff by memoranda and at our next in-person program wide staff meeting.

5. Revise the LSC Compliance Manual pending LSC's determination regarding the scope of Part 1609 in light of Part 1610, as discussed in Finding 14. - SLLS will revise its 1609 policy to include the specific caveat cited by LSC in Finding 14. We will await further information from LSC before making any other changes in our 1609 policy. action.

6. Review its list of open cases and mark for rejection and exclude from the CSR data submission all dormant, inactive and files involving ineligible applicants - SLLS has already begun this process with respect to dormant and inactive cases, and intends to close all of them unless a good reason for keeping them open is documented in the file. We will also mark as ineligible for CSR reporting for all clients whose income exceeds 200%. To go further with the open case list would be pointless in that in the process of being closed casehandlers can easily think that it is a mistake that it isn't marked CSR eligible and change it back. The real focus will need to be on the cases that are closed.

7. Ensure that its asset policy is consistent with the LSC Act, regulations and other applicable law. SLLS was advised to change the language in the board approved financial eligibility policy to clarify that only vehicles used for transportation are exempt