



**FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement**

East River Legal Services, Inc.

Compliance Review
April 21-25, 2014

Recipient No. 542026

LSC Compliance Review Team

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I. EXECUTIVE SUMMARY

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

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

Finding 3: Sampled cases, interviews, and a review of ERLS' revised policy evidenced compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines ("FPG").

Finding 4: Sampled cases, interviews, and a review of ERLS' revised policy evidenced compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

Finding 5: Sampled cases and ERLS' revised policy evidenced compliance with the documentation requirements set forth in 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

Finding 6: Sampled cases evidenced compliance with the retainer requirements of 45 CFR § 1611.9.

Finding 7: Sampled cases and a review of ERLS' policy evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases and a review of ERLS' policies evidenced compliance with the requirements of 45 CFR § 1620.3(a) (Establishing priorities) and § 1620.6 (Signed written agreement).

Finding 9: Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced that ERLS' application of the CSR case closure categories is substantially consistent with Chapters VIII and IX, of the CSR Handbook (2008 Ed., as amended 2011).

Finding 11: Sampled cases interviews evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (timely case closing).

Finding 12: Sampled cases, evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2, regarding duplicate cases.

Finding 13: Once the revised policy has been adopted, ERLS will be in full compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Sampled cases, interviews, and a review of ERLS' audited financial statements evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 15: Sampled cases, interviews, and a review of ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 16: A limited review of ERLS' accounting and financial records evidenced compliance with 45 CFR § 1610.5 (Notification).

Finding 17: ERLS' judicare program is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients, however, additional action is needed to bring ERLS' other PAI components into full compliance with LSC requirements.

Finding 18: A review of ERLS' audited financial statements, general ledger, invoices, chart of accounts, and funding codes evidenced that ERLS is in compliance with the requirements of 45 CFR § 1627.4 regarding membership fees or dues for years 2012 and 2013.

Finding 19: ERLS is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

Finding 20: Sampled cases, interviews, and review of ERLS' cash receipts, deposit log, and cash receipts journal for the review period evidenced compliance with the requirements of former 45 CFR Part 1642 (Attorneys' fees).

Finding 21: A determination of compliance with the requirements of Part 1612 was unnecessary as a review of ERLS' semi-annual reports, timekeeping records, expense reports, and adjusting journal entries for 2012 and 2013, evidenced that ERLS did not engage in any legislative and/or rulemaking activities. ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 22: 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 23: Sampled cases, interviews, and ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 24: Sampled cases, interviews, and a review of ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 25: Sampled cases, interviews, and a review of ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 26: Sampled cases, interviews, and a review of ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

Finding 27: Sampled cases, interviews, and a review of ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 28: Sampled cases, interviews, and a review of revised ERLS' policy evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 29: Sampled cases, interviews, and a review of ERLS' policies 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 30: ERLS' Accounting Manual adequately defines most internal controls and significant fiscal processes needed to meet the requirements of the LSC Accounting Guide.

Finding 31: A testing of sampled internal control protocols noted no deficiencies in bank reconciliation, cash receipt, and cash disbursement procedures.

Finding 32: ERLS' personnel/payroll policies and practices are in general compliance with the LSC Accounting Guide, § 3-5.5(a) and (b) and Appendix VII., B.

Finding 33: A limited review of ERLS' audited financial statements for years 2012 and 2013 evidenced compliance with the requirements of 45 CFR Part 1628 (Recipient fund balances) because ERLS fully expended its LSC funds within the 10% threshold.

Finding 34: A review of ERLS' fidelity bond coverage for years 2012 through 2014 evidenced compliance with the requirements of 45 CFR Part 1629 (Bonding of recipients) because ERLS carries adequate fidelity bond insurance coverage on employees who handle cash.

Finding 35: A comparison was made of ERLS' purchasing policies/procedures and the LSC Accounting Guide and the Property Acquisition and Management Manual (PAMM) to ensure compliance with LSC requirements. Additionally, a limited review was conducted of the monthly purchase of supplies by ERLS. Both reviews disclosed that ERLS is in compliance with LSC requirements and has adequate internal controls over its purchasing.

Finding 36: A review conducted of ERLS' property and equipment records for 2013 disclosed general compliance with the LSC Accounting Guide's requirements. However, the physical inventory is not compared to the fixed asset ledger.

Finding 37: A limited review of Board meeting minutes and interviews with ERLS' Board Chair and Treasurer evidenced that ERLS has adequate Board oversight sufficient to meet the requirements of the LSC Accounting Guide.

II. BACKGROUND OF REVIEW

During the week of April 21- 25, 2014, the Office of Compliance and Enforcement (“OCE”) conducted an on-site Compliance Review of East River Legal Services, Inc. (“ERLS”), which provides legal assistance to low-income individuals throughout Sioux Falls and sparse rural farm country of eastern South Dakota, totaling 33 counties. In 2014, ERLS was awarded an LSC grant in the amount of \$355,581.00. In 2011, it was awarded \$464,633.00 from LSC; in 2012, the awarded amount was \$382,505.00 from LSC; and in 2013, it received \$368,829.00 from LSC.

Scope of review

The purpose of the visit was to assess the program’s compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Edition) (“LSC Accounting Guide”), and the Property Acquisition and Management Manual. The Compliance Review was conducted by a team of three (3) OCE personnel; two (2) fiscal compliance analysts and one (1) program counsel. OCE last reviewed ERLS in 2008.

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 ERLS has correctly implemented the 2008 CSR Handbook, as amended 2011. Specifically, the Review Team assessed ERLS 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); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement)¹; 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); former 45 CFR Part 1642 (Attorneys’ fees)²; 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); and whether the program’s policies and procedures compared favorably

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

² On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant visit, LSC’s review and enforcement of this regulation was therefore only for the period prior to December 16, 2009. As noted in the scope of review section, while the scope of review begins with files closed in 2011, it includes some files which were opened prior to December 16, 2009.

to the elements outlined in Chapter 3 (Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System) of the LSC Accounting Guide.

By letter dated January 15, 2014, OCE requested that ERLS provide a list of all cases reported to LSC in its 2012 CSR data submission (closed 2012 cases), a list of all cases reported to LSC in its 2013 CSR data submission (closed 2013 cases), a list of all cases closed between January 1, 2014, and February 28, 2014 (closed 2014 cases), and a list of all cases which remained open as of February 28, 2014 (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 (2) sets of lists be compiled – one (1) for cases handled by ERLS staff and the other for cases handled through ERLS' PAI component. ERLS 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* protocol (January 5, 2004). ERLS 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.

Thereafter, ERLS provided the requested materials. OCE made an effort to create a representative sample of cases that the team would review during the visit. OCE distributed the sample proportionately among open and closed cases. The sample consisted largely of randomly selected cases, but also included cases selected to test for compliance with those CSR instructions relative to timely closings, ACMS data integrity, application of the CSR case closure categories, and duplicate reporting.

Access to case-related information was provided through staff intermediaries. Pursuant to the OCE and ERLS agreement, ERLS staff maintained possession of the file and discussed with the Team the nature of each client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.

On-site observations

During the visit, ERLS cooperated fully and provided the requested materials. ERLS afforded access to information in the case files through staff intermediaries. ERLS maintained possession of the files and disclosed financial eligibility information, problem code information, and information concerning the general nature of the legal assistance provided to the client pursuant to the OCE and ERLS agreement of March 18, 2014. ERLS displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and 45 CFR Part 1636 statements. OCE reviewed a sample of 120 case files during the visit.³ OCE also interviewed members of ERLS management/fiscal personnel, staff attorneys, and support staff. OCE assessed ERLS' case intake, case acceptance, case management, and case closure practices and policies for staff and PAI programs. OCE fiscal staff reviewed ERLS' compliance with fiscal requirements of LSC grants and conducted a limited review of internal controls, prohibited political activities, fee-generating cases, and lobbying activity, as well as ERLS' use of non-LSC

³ In 2012, ERLS reported 289 closed cases.

funds, its PAI component allocations, its use of LSC funds to pay membership dues and fees, timekeeping, attorneys' fees, cost standards and procedures, and other fiscal activities. A limited sampling of informational pamphlets and brochures were also collected and reviewed.

Overview of Findings

During the course of the visit, OCE notified members of ERLS' management and fiscal staff of compliance issues identified during the review. At the conclusion of the visit, OCE also held a brief exit conference during which OCE advised ERLS of its preliminary findings. During the exit conference, OCE explained to ERLS that the findings were merely preliminary, that OCE may make further and more detailed findings in the Draft Report ("DR"), and that ERLS would have 30 days to submit comments to the DR. ERLS was advised that a Final Report would be issued that would include ERLS' comments. ERLS was further advised that OCE may request additional documentation or a demonstration that the required corrective action items have been implemented.

ERLS responded favorably to OCE's assessment and to on-site instruction regarding compliance issues discovered during the review. Overall, the review evidenced a high level of compliance with LSC requirements. Any deficiencies noted while on-site were remedied by ERLS staff. Subsequent to the review, ERLS continued to work cooperatively with the Review Team to revise any outdated policies and provide additional information as requested.

By letter dated September 9, 2014, OCE issued a DR detailing its findings, recommendations, and required corrective actions. ERLS was asked to review the DR and provide written comments. By letter dated October 17, 2014, ERLS submitted its comments to the DR. OCE has carefully considered ERLS' comments and has either accepted and incorporated them within the body of the report, or responded accordingly. ERLS' comments, in their entirety, are attached to this Final Report.

III. FINDINGS

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

Recipients are required to utilize automated case management systems ("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 (2008 Ed., as amended 2011), § 3.1.

In accordance with CSR Handbook (2008 Ed., as amended 2011), §§ 3.3 and 3.4, ERLS has developed procedures for ensuring that timely and accurate data is reported to LSC in the CSRs. ERLS utilizes Kemps as its ACMS.

Based on interviews and a comparison of the information yielded by the ACMS to information contained in the case files sampled, ERLS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. The on-site review determined that the ACMS is free from defaults in fields critical to the determination of eligibility and that ERLS is in compliance with Program Letter 02-06 and the CSR Handbook (2008 Ed., as amended 2011), § 3.6.

In accordance with the CSR Handbook (2008 Ed., as amended 2011), §§ 3.1 and 3.5, the ACMS has the ability to report cases to LSC by funding source, grant type, Private Attorney Involvement ("PAI") component, jurisdiction, and individual office and the ACMS has the ability to exclude non-LSC reportable files from its CSR data submissions.

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

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

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

ERLS' intake screening procedures were assessed by interviewing the Legal Secretary and the Receptionist, who are primarily responsible for conducting intake screening, and through on-site demonstrations of ERLS' ACMS, Kemps. With limited exceptions, the interviews and the evaluation of Kemps revealed that intake screening procedures performed by intake staff generally support ERLS' compliance related requirements with respect to verifying citizenship

or alien status and obtaining the required documentations, performing conflict and duplicate checks at the start of the intake screening, screening each applicant for income eligibility and if necessary, applying authorized exceptions.

Overview of intake screening process, case acceptance, and oversight procedures

Intake screening is conducted primarily by two (2) individuals from 9:00 am to noon every Tuesday via a toll free number. Interviews with the Receptionist and the Legal Secretary indicated that intake screening is a bifurcated process where the first step is an abbreviated “pre-screen” that consists of screening for financial eligibility and determining whether a case is within ERLS’ priorities. At the conclusion of the pre-screen, an applicant may be rejected or undergo a full intake. If an applicant was not rejected during the pre-screen, then the second step is a full intake that screens for income, assets, legal status in the United States, *etc.*

Specific Areas of Compliance Evaluated in Regards to Intake Screening Protocol

1. CSR Handbook (2008 Ed., as amended 2011), § 3.2 Duplicates and Conflicts:

Intake staff reported that duplicates and conflicts are checked at the start of the full intake screening through use of the ACMS. If the conflict is verified, then the case is rejected and the applicant is notified of same.

2. CSR Handbook (2008 Ed., as amended 2011), § 3.6 Limitation of Defaults in the ACMS:

The on-site observation of ERLS’ ACMS did not reveal defaults in any field critical to eligibility (*e.g.*, income, assets, number in household).

3. Financial Eligibility Screening Pursuant to 45 CFR Part 1611:

a. 45 CFR §§ 1611.3(c)(1) and 1611.5 Income Eligibility Screening:

Applicant’s income exceeds 200% of the Federal Poverty Guidelines (“FPG”):

Those interviewed indicated an applicant whose income is more than 200% of the FPG will be rejected as financially ineligible.

Applicant’s income does not exceed 125% of the FPG:

On-site demonstrations and intake staff interviewed indicated an understanding that an applicant will be considered income eligible for LSC funded legal assistance if the applicant’s income does not exceed 125% of the FPG.

Applicant’s income is over 125% of the FPG, but less than 200% of the FPG:

If the applicant’s income is over 125% of the FPG, but below 200% of the FPG, those interviewed and the on-site observation through a test application in the ACMS indicated that ERLS employs a mathematical deduction (“spend-down”) to determine whether an applicant is eligible by subtracting the following factors:⁴

⁴ ERLS confirmed this via email dated June 10, 2014.

- Childcare expenses;⁵
- Large medical payments/health insurance payments; and⁶
- Expenses related to work.⁷

Pursuant to CSR Handbook (2008 Ed., as amended 2011), § 5.3, the on-site observation indicated that, if the above deductions are used to bring the applicant's income below 125% of the FPG, the ACMS records the factors used for the calculation.⁸ In addition, on-site observations indicated that, when deductions are calculated, all sources of an applicant's income are preserved in separate and identifiable fields in the ACMS.⁹

b. 45 CFR §§ 1611.2(d), 1611.3(d)(1), and 1611.3(e) Asset Eligibility Screening:

Intake staff interviewed were able to articulate ERLS' asset ceiling limits and were familiar with the categories of assets excluded by ERLS.¹⁰ The on-site demonstration of ERLS' intake screening procedures indicated that ERLS identifies the following category of assets:

- Automobile;
- Cash;
- Cash value of insurance;
- Certificate of Deposits;
- Checking accounts/saving accounts;
- House;
- Income producing tools;
- Individual Retirement Accounts, stocks, bonds;
- Personal property;
- Real property; and
- Savings accounts.

c. 45 CFR § 1611.7(a) (1) Reasonable Income Prospects Screening:

Initially, on-site observations indicated that ERLS was not in compliance with 45 CFR § 1611.7(a)(1) (requiring making a reasonable inquiry regarding sources of an applicant's income, income prospects, and assets). The requirements of 45 CFR § 1611.7(a)(1) were explained to both staff responsible for intake screening and with ERLS' upper Management while on-site. As a result, on-site observations that occurred subsequent to the explanation confirmed that ERLS now screens for reasonable income prospects

⁵ Pursuant to CFR § 1611.5(a)(4)(iv).

⁶ Pursuant to 45 CFR § 1611.5(a)(4)(ii).

⁷ Pursuant to 45CFR § 1611.5(a)(4)(iv).

⁸ See CSR Handbook (2008 Ed., as amended 2011), footnote no. 25.

⁹ See CSR Handbook (2008 Ed., as amended 2011), § 5.3.

¹⁰ As this section is limited to a review of ERLS' intake screening practices, please refer to Finding No. 4 for additional discussion regarding ERLS' treatment of assets as detailed by ERLS' Financial Eligibility Policy.

consistent to the requirements of 45 CFR § 1611.7(a)(1). In addition, it was recommended that ERLS make this a mandatory field in its ACMS such that this field is flagged if no response was recorded during intake screening.

4. 45 CFR Part 1626 Citizenship and Eligible Alien Status Screening:

Overall, those interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626 as it relates to intake screening procedures, but improvements were needed as it relates to walk-in applicants and to applicants who fall under the VAWA exception.

Walk-in Applicants: Interviews with intake screeners indicated that, prior to the on-site review, when intake staff had in-person contact with an applicant, a signed written attestation confirming United States citizenship status or documentation of alien eligibility was not obtained. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5 (explaining that when a program has in-person contact with an applicant documentation of eligibility it should obtain and maintain either an executed citizenship attestation or documentation of alien eligibility). The requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.5 were explained to both staff responsible for intake screening and with ERLS' upper Management while on-site. As a result of this on-site instruction regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.5, ERLS placed citizenship attestation forms in the reception area for walk-in applicants. For walk-in applicants who are not citizens of the United States, ERLS indicated that it would obtain documentation establishing the applicant's legal status in the United States.¹¹

While on-site, it was determined that the citizenship attestation form used by ERLS substantially conforms to the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.5 (requiring that the signature line be tied only to the attestation). ERLS' current attestation requires the applicant to certify to his/her full name and to certify as to his/her citizenship status in the United States. Although ERLS' current attestation was only a minor deviation from the attestation format contained in CSR Handbook (2008 Ed., as amended 2011), § 5.5, it was recommended that ERLS revise its attestation form so that the applicant is only certifying to his/her United States citizenship status.

Telephone Applicants: On-site observations demonstrated that telephone applicants are asked to verbally confirm United States citizenship status or to indicate that the applicant is an eligible alien pursuant to the alien category groups listed in the Appendix to Part 1626.

Program Letter 06-2, Violence Against Women Act ("VAWA") 2006: On-site observations indicated that ERLS' staff were not fully aware of the applicability of 45 CFR § 1626.4, Program Letter 06-2, and the VAWA 2006 Amendments during intake screening. As a result, while on-site, the VAWA exception and its proper applicability during intake screening were explained to both intake staff and to Management.

¹¹ These procedures are for applicants who have not been rejected for legal services.

However, the explanation provided occurred prior to the issuance of the new final rule for 45 CFR Part 1626 which incorporated VAWA. Therefore, it was recommended that ERLS review with staff, at minimum, 45 CFR §§ 1626.2 and 1626.4.

5. Outreach:

Interviews indicated that ERLS does not conduct any outreach.

Recommendations

Although ERLS' current attestation form was only a minor deviation from the attestation format contained in CSR Handbook (2008 Ed., as amended 2011), § 5.5, it was recommended that ERLS revise its attestation form so that the applicant is only certifying to his/her United States citizenship status. In its response to the DR, ERLS indicated that it accepted this recommendation and had revised its citizenship attestation form.

In addition, as Part 1626 has been recently revised to incorporate VAWA and the Compliance Review occurred prior to the adoption of the final rule for 45 CFR Part 1626, it was recommended that ERLS review with staff, at minimum, the requirements of 45 CFR §§ 1626.2 and 1626.4. In its response to the DR, ERLS indicated that staff are aware of the requirements of 45 CFR §§ 1626.2 and 1626.4

Finally, it was recommended that ERLS make screening for reasonable income prospects a mandatory field in its ACMS such that this field is flagged if no response was recorded during intake screening. In its response to the DR, ERLS did not offer any comments to this recommendation.

Finding 3: Sampled cases and a review of ERLS' revised policy evidenced compliance with the documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines ("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.¹² *See* CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 5.2.

¹² A numerical amount must be recorded, even if it is zero (0). *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

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 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) and CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 4.3.

All sampled case files contained income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income exceeds 125% of the FPG. Moreover, for those files reviewed in which the client's income was in excess of the 125% FPG threshold, ERLS properly documented its review of the factors.

Pursuant to 45 CFR § 1611.3, the governing body of each recipient is required to adopt policies consistent with 45 CFR Part 1611 for determining the financial eligibility of individual applicants and if applicable, groups.¹³ A financial eligibility policy must at *minimum*:

- Pursuant to 45 CFR § 1611.3(b), specify that only applicants for services determined to be financially eligible under the policy may be considered for LSC funded service;
- Pursuant to 45 CFR § 1611.3(c)(1), establish annual income ceilings of no more than 125% of the current FPG;
- Pursuant to 45 CFR § 1611.3(d)(1), establish asset ceilings;¹⁴ and
- Pursuant to 45 CFR § 1611.3(e), in determining the financial eligibility of an victim of domestic violence, specify that only the income and assets of the applicant will be considered and specify that any assets jointly held with the alleged abuser will be omitted from consideration.¹⁵

In advance of the Compliance Review, ERLS provided its financial eligibility policy dated September 22, 2008. A review of the policy evidenced that it lacked all of the required mandatory provisions. ERLS was advised of the required modifications and submitted its revised policy for review. The revised policy was reviewed and evidenced compliance with Part 1611 as

¹³ Pursuant to 45 CFR § 1611.6(a), a recipient has the discretion of choosing whether to provide legal assistance to an organization or other legal entity.

¹⁴ This requirement regarding establishing asset ceiling will be discussed in Finding No. 4.

¹⁵ *See* 70 FR at 45550 (listing the minimum requirements for the content of recipient's financial eligibility policies).

it contained all required provisions. Correspondence from ERLS dated June 26, 2014 indicated that the revised policy had been submitted to ERLS' Board for its review. Therefore, pursuant to § 1611.3(a), ERLS, was required to, in its comments to the DR, indicate whether the revised policy was adopted by its Board and provide evidence both of its adoption (e.g., Board minutes) and that it has been implemented (e.g., communications to staff, training provided, etc.).

Required Corrective Action

Pursuant to § 1611.3(a), ERLS was required to indicate in its comments to the DR whether the revised policy was adopted by its Board and provide evidence both of its adoption (e.g., Board minutes) and that it has been implemented (e.g., communications to staff, training provided, etc.).

In its response to the DR, ERLS indicated that the revised Part 1611 had been adopted by its Board and provided the minutes of the June 17, 2014 meeting of ERLS' governing body to demonstrate that the Board reviewed and adopted the Part 1611 policy. However, it does not appear that a copy of the adopted Part 1611 policy was included as an attachment to ERLS' response to the DR.¹⁶

As a result, Required Corrective Action No. 1 will remain open pending receipt of the revised Part 1611 policy that was adopted by ERLS' Board.

Finding 4: Sampled cases and a review of ERLS' revised policy evidenced compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 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.¹⁷ See CSR Handbook (2008 Ed., as amended 2011), § 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 versions of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive

¹⁶ ERLS' attachment included an older version of the Part 1611 policy.

¹⁷ A numerical total value must be recorded, even if it is zero (0) or below the recipient's guidelines. See CSR Handbook (2008 Ed., as amended 2011), § 5.4.

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.

Sampled cases evidenced that ERLS maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4.

As explained in Finding No. 3, the governing body of each recipient, pursuant to 45 CFR § 1611.3, is responsible for adopting policies consistent with 45 CFR Part 1611 for determining the financial eligibility of individual applicants and if applicable, groups. As demonstrated above, there are certain mandatory provisions that must be included in financial eligibility policy in regards to screening for income and financial eligibility screening in general. As to assets, a financial eligibility policy must, pursuant to 45 CFR § 1611.3(d)(1), establish asset ceilings.

During the course of the review, ERLS revised its asset policy and submitted it for review. A review of the revised policy indicates that ERLS' policy established the following asset ceilings:

\$5,000.00	Individual
\$6,000.00	Household of 2
\$7,000.00	Household of 3

The policy provides authority for waiver of its asset ceilings under unusual circumstances. *See* 45 CFR § 1611.3(d)(2) (explaining that a recipient's policy may provide for waiver of its asset ceiling through either the Executive Director or designee). In addition, consistent with 45 CFR § 1611.3(d)(1), the policy excludes the following assets from consideration:

1. An applicant's principal residence;
2. Vehicles used for transportation; and
3. Assets used in producing income.

As previously explained, the on-site demonstration of ERLS' intake screening procedures indicated that ERLS identifies the following categories of assets, which are also listed in ERLS' ACMS:¹⁸

- Automobile;
- Cash;
- Cash value of insurance;
- Certificate of Deposits;
- Checking accounts/saving accounts;
- House;
- Income producing tools;
- Individual Retirement Accounts, stocks, bonds;
- Personal property;

¹⁸ This was confirmed with ERLS via email dated June 10, 2014. In addition, ERLS also indicated that it no longer distinguishes between liquid and non-liquid assets.

- Real property; and
- Savings accounts.

Certain asset categories used by ERLS, such as certificate of deposits, individual retirement accounts, stocks, and bonds, are not traditionally recognized by LSC as assets because they are not readily convertible to cash and are not currently and actually available to the applicant. *See* 45 CFR § 1611.2(d) (defining assets). Based on discussions with ERLS regarding this issue and a review of 45 CFR Part 1611, ERLS' definition of assets is more restrictive than the LSC definition, therefore ERLS may continue to include the above listed items as assets.

Correspondence from ERLS dated June 26, 2014 indicated that the revised policy had been submitted to ERLS' Board for its review. Therefore, pursuant to § 1611.3(a) ERLS, was required to indicate in its comments to the DR whether the revised policy had been adopted by its Board, and provide evidence both of its adoption (*e.g.*, Board minutes) and that it had been implemented (*e.g.*, communications to staff, training provided, *etc.*).

Required Corrective Action

Pursuant to § 1611.3(a) ERLS, was required to indicate in its comments to the DR whether the revised policy was adopted by its Board, and provide evidence both of its adoption (*e.g.*, Board minutes) and that it had been implemented (*e.g.*, communications to staff, training provided, *etc.*).

In its response to the DR, ERLS indicated that the revised Part 1611 had been adopted by its Board and provided the minutes of the June 17, 2014 meeting of ERLS' governing body to demonstrate that the Board reviewed and adopted the Part 1611 policy. However, it does not appear that a copy of the adopted Part 1611 policy was included as an attachment to ERLS' response to the DR.

As a result, Required Corrective Action No. 1 will remain open pending receipt of the revised Part 1611 policy that was adopted by ERLS' Board.

Finding 5: Sampled cases and ERLS' revised policy evidenced compliance with the documentation requirements set forth in 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5, and 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 (2008 Ed., as amended 2011), § 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.¹⁹ 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, are 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.

All sampled cases reviewed evidenced compliance with the documentation requirements of 45 CFR § 1626.6 and CSR Handbook (2008 Ed., as amended 2011), § 5.5.

Pursuant to 45 CFR § 1626.12, a recipient is required to adopt written policies and procedures to guide its staff in complying with the requirements of Part 1626. During the course of the review, ERLS revised and submitted its Part 1626 policy for review. The policy and the procedures outlined evidenced compliance with the requirements of Part 1626. Correspondence from ERLS dated June 20, 2014 indicated that the revised policy was reviewed and adopted by ERLS' Board at the June 2014 Board of Directors meeting.

There are no recommendations or required corrective actions.²⁰

ERLS offered no comments in response to this Finding.

Finding 6: Sampled cases evidenced compliance with the retainer requirements of 45 CFR § 1611.9.

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from a 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 as is practicable and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c).

¹⁹ *See* Kennedy Amendment at 45 CFR § 1626.4.

²⁰ *See* Finding No. 2 for recommendations regarding ERLS' intake screening as it relates to Part 1626.

The lack of a retainer does not preclude CSR reporting eligibility.²¹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

ERLS is in compliance with the retainer agreement requirements of 45 CFR § 1611.9, as sampled case files in which extended services was provided contained properly executed retainer agreements consistent with the requirements of 45 CFR § 1611.9.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 7: Sampled cases and a review of ERLS' policy evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a) (1) and (2).

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

Case files reviewed indicated that ERLS is in compliance with the requirements of 45 CFR Part 1636, as all files reviewed which required a statement of facts contained a timely document present.

Pursuant to 45 CFR § 1636.5, a recipient is required to adopt written policies and procedures in order to assist its staff in complying with the requirements of Part 1636. ERLS' Part 1636 policy was reviewed and no deficiencies were noted.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 8: Sampled cases and a review of ERLS' policies evidenced compliance with the requirements of 45 CFR § 1620.3(a) (Establishing priorities) and § 1620.6 (Signed written agreement).

²¹ 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.

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.

ERLS' "Case Priorities" was adopted by its Board of Directors on September 17, 2013 and provided in advance of the review. ERLS' priorities include: support for families, preservation of the home, maintaining economic stability, safety, stability and health of citizens/families, protection of individuals/families with special vulnerabilities. ERLS is in compliance with 45 CFR Part 1620 as none of the sampled files reviewed revealed cases that were outside of ERLS' priorities.

As part of the review, the Review Team requested to review a sampling of the signed written agreements wherein staff acknowledged, among other things, that they have read and are familiar with ERLS' priorities and emergency case acceptance procedures. Pursuant to the request, the ERLS provided a sample of the statements signed by ERLS staff, which were consistent with the requirements of 45 CFR § 1620.6.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 9: Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 5.6.

Sampled cases reviewed evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 10: Sampled cases evidenced that ERLS' application of the CSR case closure categories is substantially consistent with Chapters VIII and IX, of the CSR Handbook (2008 Ed., as amended 2011).

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the case closure categories 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 (2008 Ed., as amended 2011), § 6.1. Most of the case files reviewed were closed with correct case closure categories with the following exceptions:

See Closed 2014 Case No. 13E-1017388 (The case notes indicate that this case was opened November 19, 2013, closed February 28, 2014, and assigned closing code "I(b)," contested court decision. Case review indicated that this was a dispute over a guardianship and that ERLS entered its appearance in the case. The opposing party filed a motion to dismiss the guardianship proceedings and the motion was granted by the Court. As such, closing code "L," would be the more appropriate closing code as it appears from the case notes that an order of withdrawal or voluntary dismissal was entered by the Court.).

See also Closed 2013 Case No. 13E-1017134 (The case notes indicate that this case was opened May 20, 2013, closed August 30, 2013, and assigned closing code "I(b)," contested court decision. Case review indicated this was a divorce, in which ERLS was the attorney of record. The matter was resolved by stipulation. As such, closing code "G," negotiated settlement with litigation would be the more accurate closing code as it appears from the case notes that ERLS negotiated and reached a resolution on behalf of its client while a court action was pending.).

See also Closed 2013 Case No. 13E-1017139 (The case notes indicate that this case was opened May 21, 2013, closed September 30, 2013, and assigned closing code "K," other. Case review indicated that this was a paternity action in which ERLS entered its appearance. ERLS filed an answer and counterclaim on behalf of its client. Subsequently, the client indicated that he/she no longer wished to be represented by ERLS and a Notice of Substitution of Counsel was filed. As such, closing code "L," would be the more appropriate closing code as it appears from the case notes that the case did not result in a settlement, court order, or administrative action.).

See also Closed 2012 Case No. 12E-1016851 (The case notes indicate that this case was opened November 2, 2011, closed November 30, 2012, and assigned closing code "A," counsel and advice. Case review indicated that this was an eviction case where ERLS communicated with opposing counsel in order to allow ERLS' client an opportunity to claim his/her belongings. As such, closing code "B," limited action or closing code "F," negotiated settlement without

litigation would be the more accurate closing codes depending on how extensive ERLS' communication with opposing counsel was.).

In addition, it appears that certain closing code inaccuracies were due to use of an old application. *See e.g.*, Closed 2012 Case Nos. 11E-1016254 and 12E-1016388 (These cases were assigned closing code "I." The CSR Handbook does not include closing code "I." The intermediary indicated that this was an inadvertent error due to use of an older application.). It was recommended that ERLS review cases reported to LSC to ensure that cases with the "I" closing code are corrected before they are reported to LSC.

Recommendations

There are no required corrective actions, although it was recommended that ERLS review with staff who assign case files with closing codes the proper application of the following closing codes:

- "I(b)," uncontested court decision versus "L," extensive service;
- "I(b)," uncontested court decision versus "G," negotiated settlement with litigation;
- "K," other versus "L," extensive service; and
- "A," counsel and advice versus "B," limited action versus "F," negotiated settlement without litigation.

In its response to the DR, ERLS argued that, although it accepted this recommendation and would review its use of the above referenced closing codes, there is not always one exact closing code for every case, so that it is possible for a case to be correctly closed under more than one closing code. LSC encourages ERLS to review the Frequently Asked Questions for the CSR Handbook for assistance in determining appropriate closing code usage.

It was also recommended that ERLS review cases reported to LSC to ensure that cases with the "I" closing code are corrected. It does not appear that ERLS offered any comments to this recommendation.²²

Finding 11: Sampled cases interviews evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (timely case closing).

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 or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a).²³ There is, however, an exception for limited service cases opened

²² Please note that closing code "I" is not a CSR closing code. It appears that ERLS' use of this code was an inadvertent error due to use of an older application.

²³ The time limitation of the 2001 CSR 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., as amended in 2011), § 3.3(a). This category is intended to be used for the preparation of relatively simple or routine documents and relatively brief

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after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). All other cases (CSR Categories F through L in the 2008 Edition, as amended 2011, of the CSR Handbook) should be reported as having been closed in the grant 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 (2008 Ed., as amended 2011), § 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).

ERLS is in compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3(a), as no untimely closed or dormant files were identified, however ERLS is reminded to clearly notate case files with the legal assistance provided for each year a case file remains open or include an explanation as to why the case file is open. *See* Open Case No. 13E-1017362.

There are no required corrective actions or recommendations.

ERLS offered no comments in response to this Finding.

Finding 12: Sampled cases, evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 3.2.

When a recipient provides more than one (1) type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 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 (2008 Ed., as amended 2011), § 6.4.

None of the sampled case files reviewed were duplicates.²⁴ As such, sampled files evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2.

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interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Case Closure Category “L” (Extensive Service).

²⁴ As noted previously, several files were targeted and tested for possible duplication – in each case, the files were found to not be duplicates as the cases related either to different legal issues or different opposing parties or both.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 13: Once the revised policy has been adopted, ERLS will be in full compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in 45 CFR Part 1604, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in *pro bono* legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

ERLS indicated that no attorneys had engaged in permissible or impermissible outside practice. Pursuant to 45 CFR § 1604.3 a recipient shall adopt written policies governing the outside practice of law by full time attorneys. During the course of the review, ERLS submitted its Part 1604 policy for review. It was determined that certain revisions were required in order to accurately reflect use of ERLS' resources when a full time attorney engages in permissible outside practice. See 45 CFR § 1604.6. Pursuant to 45 CFR § 1604.3, ERLS was required to indicate in its comments to the DR whether the revised Part 1604 policy had been adopted.

Required Corrective Action

There are no recommendations, however, pursuant to 45 CFR § 1604.3 ERLS was required to indicate in its response to the DR whether the revised policy had been adopted. ERLS was also asked to provide evidence showing implementation of the revised policy (*e.g.*, communications to staff, trainings, *etc.*).

In its response to the DR, ERLS indicated that the revised Part 1604 policy had been adopted by its Board. However, it does not appear that a copy of the revised Part 1604 policy was included as an attachment to ERLS' response to the DR²⁵.

As a result, Required Corrective Action No. 2 will remain open pending receipt of the revised Part 1604 policy.

Finding 14: Sampled cases, interviews, and a review of ERLS' audited financial statements evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grant funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party

²⁵ ERLS' attachment included an older version of the Part 1604 policy.

office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

Interviews with the Program Administrator indicated that no employees have intentionally supported or promoted ERLS with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office. Sampled files did not contain any of the prohibitions contained in Part 1608.

A review of ERLS' audited financial statements for years 2012 and 2013, along with its February 2014 year-to-date interim financial statements, evidenced that ERLS incurred expenses totaling \$762,469.00, \$737,422.00, and \$101,425.00 respectively. According to ERLS' 2012 990 tax form, as well as sampled check registers, invoices, and timekeeping records, these expenditures were not a result of ERLS' employees using LSC or non-LSC resources, whether monetary or non-monetary, for prohibited political activities.

Finally, a limited review of ERLS' pamphlets, brochures, flyers, guides, bulletin boards, and other public space was conducted and all were found to be free of any prohibited political message, expression, symbol, image, or allusion in compliance with 45 CFR Part 1608. The sampled brochures made available to the public by ERLS were descriptions of program services or information regarding specific legal topics. The remaining brochures were produced by other government agencies and provided information and descriptions of available services.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 15: Sampled cases, interviews, and a review of ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

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

Recipients may provide legal assistance in such a case if it has been rejected by the local lawyer referral service or two (2) private attorneys; neither the referral service nor two (2) 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 (1) 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 (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).

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained, attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009, will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

All of the case files reviewed evidenced compliance with the requirements of 45 CFR Part 1609. Pursuant to 45 CFR § 1609.6, a recipient is required to adopt written policies and procedures to guide employee compliance with the requirements of Part 1609. During the course of the review, ERLS revised its Part 1609 policy and submitted it for review. On April 17, 2014, ERLS was advised via email of additional revisions needed to its Part 1609 policy.²⁶ ERLS, via email dated June 20, 2014, indicated that the Part 1609 policy with the additional revisions had been reviewed and adopted by its Board at the June 2014 Board of Directors meeting.

Interviews with the Program Administrator indicated that ERLS did not receive or collect attorneys' fees from fee generating cases.²⁷ At the time of the review, it was noted that while ERLS did not have a formal written policy regarding allocation of attorneys' fees, a review of ERLS' audited financial statements for years 2012 and 2013, and February 2014 year-to-date interim financial statements indicated that ERLS would allocate all attorneys' fees received back to its LSC fund account. While this informal procedure does not contradict any LSC regulations, pursuant to 45 CFR § 1609.6, ERLS was instructed that it should formally adopt a written policy incorporating ERLS' practices regarding allocation of attorneys' fees. On June 20, 2014, ERLS indicated via email, that its Board of Directors had adopted the revised Part 1609 policy which included the required allocation language.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

²⁶ Specifically ERLS was advised to include language regarding 45 CFR §§ 1609.4 and 1609.5, relating to accounting for and use of attorneys' fees, and acceptance of reimbursement from a client.

²⁷ However, a review of ERLS' audited financial statements for years 2012 and 2013, and February 2014 year-to-date interim financial statements, evidenced that ERLS did receive or collect attorneys' fees from a non-fee generating case in 2013 in the amount of \$5,000.00 involving fee recovery of expenses from a Medicaid case. This seems to be permissible.

Finding 16: A limited review of ERLS' accounting, financial, and other records evidenced compliance with 45 CFR § 1610.5 (Notification) and 45 CFR § 1610.8(a).

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

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

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

Whether sufficient physical and financial separation exists is determined on a case by case basis and is determined by the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one (1) 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*, Office of Program Operations (“OPO”) Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

ERLS utilizes Micro Soft Dynamics/Great Plains (“GP”) accounting software for its financial operations. The general ledger module of GP is a multi-fund, multi-fiscal period, double-entry fund accounting system which has the capability of providing fund based accounting and/or cost accounting. The on-site review evidenced that ERLS uses the double-entry method for recording all of its financial transactions. ERLS’ chart of accounts and the designated funding codes has been designed so that funds received from sources other than LSC are accounted for as separate and distinct receipts and disbursements as required by 45 CFR § 1610.9.

ERLS’ Board of Directors has certified compliance with 45 CFR § 1610.8(b). The on-site review was limited to determining ERLS’ compliance with 45 CFR §§ 1610.5 (stating that no recipient may accept funds from any source other than LSC unless the recipient provides to the source of the

funds written notification of the prohibitions and conditions which apply to the funds) and 1610.8(b).

A review of ERLS' audited financial statements for years 2012 and 2013, and February 2014 year-to-date interim financial statements, evidenced that ERLS received contributions through grants and contracts totaling \$721,508.00, \$798,511.00, and \$143,726.00 respectively. In addition, an analysis of the cash receipts log indicated that ERLS received an individual contribution of \$250.00 from a private donor in September of 2013. With two (2) exceptions, ERLS provided all funding sources the requisite funding source update (notification) letter informing them of the prohibitions and conditions that apply to those funds.

From interviews with the Program Administrator, it seems that the two (2) instances of prior noncompliance stemmed from a misunderstanding of the requirements of 45 CFR § 1610.5 regarding individual donations and contributions received in the form of state funding.²⁸ In both instances, the noncompliance was mitigated on-site by explaining that all funding sources, whether public or private, who make contributions of \$250.00 or more, should be sent a letter informing the contributor of said funds the prohibitions and conditions that apply to the provided funds. The Program Administrator, during the course of the review, drafted and mailed funding source letters to the private party and governmental entity who had contributed the threshold amounts.

Recommendation

There were no required corrective actions in light of the actions taken by ERLS during the on-site review to remedy the two (2) instances of noncompliance; however it was recommended that ERLS notify its Independent Public Accountant that all funding sources, whether public or private, which provide funding of \$250.00 or more, should be sent a letter informing the source of said funds of the prohibitions and conditions that will apply to the funds once received by ERLS. In its response to the DR, ERLS accepted this recommendation and indicated that its auditors were advised that any funding source, which provides \$250.00 or more to ERLS, should be sent a letter outlining the prohibitions and conditions that apply to the use of those funds.

Finding 17: ERLS' judicare program is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients, however, additional action is needed to bring ERLS' other PAI components into full compliance with LSC requirements.

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

²⁸ In the first instance of noncompliance, interviews indicated that ERLS was unaware that 45 CFR § 1610.5 applied to individual contributors, and the second instance of noncompliance stemmed from ERLS' Independent Public Accountant being given misinformation regarding the applicability of 45 CFR § 1610.5 to state funding.

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 be reported separately in a 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.

Recipients are required to develop a PAI Plan and budget. *See* 45 CFR § 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet legal needs, and the results of consultation with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. *See* 45 CFR §§ 1614.4(a) and (b).

A limited fiscal review evidenced ERLS' is in substantial compliance with the accounting and cost allocation requirements of Part 1614. Pursuant to 45 CFR § 1614.1, ERLS has devoted an amount equal to at least 12.5% of its annualized basic field award to the involvement of private attorneys. ERLS' audited financial statements evidenced that ERLS exceeded the 12.5% PAI requirement in 2012 and 2013. According to documents reviewed, in 2012 ERLS expended \$83,990.00 or 22% of its annualized basic field award to the involvement of private attorneys and in 2013 ERLS expended \$75,528.00 or 20% of its annualized basic annualized basic field award to the involvement of private attorneys.

Pursuant to 45 CFR § 1614.3(e)(1)(i), ERLS accounts for and clearly documents direct and indirect PAI costs. A random sampling of time sheets/records for two (2) time periods evidenced that direct and indirect time allocated to PAI by the Executive Director and Program Administrator were documented and substantiated by actual performance or hours worked, and the documented time sheets/records as well as staff's time and attendance records for their involvement in PAI related activities, were generated from ERLS' case management system. *See* 45 CFR § 1614.3(e)(1)(i). Additionally, ERLS' PAI methodology for the allocation of direct and indirect time appears to be based on a percentage method (PAI salaries to total salaries), rather than the hourly wage rate times the actual hours worked. While ERLS' use of the percentage method, compared to the hourly wage rate yielded a higher allocation amount, for PAI purposes, the difference in the amount is considered *de minimis* and the percentage methodology is reasonable.

ERLS uses a composite of the percentage and formula method in computing a cost allocation percentage. ERLS applies that percentage to allocate all overhead costs related to PAI activities. ERLS should consider using a more simplified method and use 45 CFR § 1630.3(f) for guidance.

According to the Program Administrator and ERLS' cost allocation narrative, the legal secretary/intake worker and the receptionist/telephone worker both charge time to PAI. However, the time charged is based on two (2) different methods/formulas. Because ERLS uses both methods in its PAI allocation of salaries and benefits, this results in varying percentage computations.

In 2012 and 2013, the methodology used to allocate PAI expenditures related to the secretary/intake worker yielded a percentage of 7% and 4% respectively. For the same time period, the methodology used to allocate PAI related to the receptionist/telephone worker yielded a percentage of 23%. Since the timekeeping requirement does not apply to these employees as they are not attorneys or paralegals, both cost allocation methods are reasonable. However, it is recommended, for consistency purposes, that ERLS apply the same cost allocation methodology for both the legal secretary and the receptionist.

In addition, the allocation methodology applied to the receptionist's time is based on a telephone line that is not used exclusively for ERLS' PAI efforts. As a result, it is recommended that ERLS revise its cost allocation methodology as it relates to the receptionist's time because the current allocation methodology is not the best measurement of the receptionist's time spent working on PAI.

Pursuant to 45 CFR § 1614.3(e)(1)(ii), ERLS maintains private attorney contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. ERLS' fee structure for PAI contracts is based on two (2) alternatives: (1) an hourly wage rate of \$75.00; or (2) a standard fee amount of \$965.00 per contract. A review of a sample size of eight (8) judicare contracts from 2012, 2013, and 2014 evidenced that ERLS compensated its judicare attorneys for each case accepted for representation.

ERLS' PAI components

R.D. Hurd Law Volunteer Law School Society ("Pro-Bono—In")

This PAI component is a divorce clinic in which second or third year law school students provide assistance to pre-screened applicants in completing divorce pleadings. Applicants attending this clinic are screened in the same manner as a staff case.²⁹ The law school students work on divorce cases under the supervision of ERLS staff. The project closes approximately 50 to 60 cases per year. Applicants are screened and pay a \$50.00 registration fee to participate in the clinic. During the on-site review, two (2) issues developed regarding the registration fee and the definition of an attorney for Part 1614 purposes.

²⁹ Refer to Finding No. 2 for a detailed discussion of ERLS' intake screening practices.

Regarding Definition of Private Attorney as it Relates to Part 1614

According to interviews conducted, law school students interview and draft the necessary legal pleadings for LSC eligible clients who are seeking a divorce. ERLS then reviews the drafted pleadings for legal sufficiency and enters its appearance in the case by filing the drafted pleadings in court.

While on-site, the Review Team explained that these cases should be classified as ERLS staff cases as opposed to PAI cases because law school students are not attorneys as defined by Part 1614. *See* 45 CFR § 1600.1 (defining attorney as who is authorized to practice law in the jurisdiction where assistance is provided); *see also* LSC External Opinion No. 2005-1001 (March 7, 2005) (rejecting the argument that law school students can be considered attorneys for Part 1614 purposes). In response to the explanation provided by the Review Team, ERLS indicated that moving forward these cases would be closed as staff cases. In addition, ERLS confirmed this understanding in an email dated July 16, 2014 and indicated that all 2014 R.D. Hurd cases have now been coded as staff cases.

Because it was determined, while on-site, that all cases reviewed from this clinic are staff cases (as opposed to PAI cases), a determination regarding compliance with CSR Handbook (2008 Ed., as amended 2011), § 10.4 (regarding case oversight and follow-up) was unnecessary.

Regarding the Registration Fee

ERLS has an arrangement with the Second Judicial Circuit Bar Association, (“Second Circuit”) whereby ERLS acts as a custodian over a bank account belonging to Second Circuit. Screened applicants/clients pay a \$50.00 registration fee to participate in divorce clinics held by ERLS. While, the payments are made to ERLS, all collected payments are deposited into Second Circuit’s designated bank account. According to the Program Administrator, this bank account had money in it prior to ERLS becoming the custodian.³⁰ Also, these transactions are not recorded in ERLS’ or Second Circuit’s accounting records.

Pursuant to LSC External Opinion dated October 7, 1994, charging eligible clients anything more than a strictly nominal fee for legal assistance is inconsistent with the purpose and intent of the LSC Act.³¹ In addition, the opinion stated that LSC funds may not be used to support a PAI program which charges anything more than a strictly nominal fee to eligible client. *See* LSC External Opinion dated October 7, 1994 (the opinion noted that it was unlikely that the \$50.00 administrative fee could reasonably be considered nominal to anyone eligible for LSC-funded legal assistance).³² Based on this opinion, ERLS was required to either:

- a. Discontinue the practice of collecting registration fees from all clients and report eligible cases to LSC as staff cases³³; or alternatively

³⁰ It appears that ERLS when using this bank account may be commingling funds.

³¹ An LSC recipient requested guidance from LSC as to whether its subrecipient may charge an administrative fee of \$50.00 to \$75.00 to eligible clients seeking assistance in divorce actions. The opinion determined that the proposed administrative fee was not nominal and therefore was inconsistent with the purpose and intent of the LSC Act.

³² Available at <http://www.lsc.gov/sites/lsc.gov/files/LSC/pdfs/OLA-1994-10-07.pdf>

³³ Refer to discussion regarding definition of private attorney for Part 1614 purposes.

b. Implement a hybrid approach in which the practice of collecting registration fees from LSC eligible clients is discontinued, but continued for financially ineligible clients. The cases in which legal assistance is provided to eligible clients may be reported to LSC as staff cases, while the cases in which legal assistance is provided to financially ineligible clients may not be reported to LSC.³⁴ If ERLS chooses this hybrid option, it should also do the following:

- i. Develop a cost allocation methodology for common and direct costs that ensures that no LSC funds are used to subsidize the divorce clinic (*e.g.*, space, salaries); and
- ii. Pursuant to the LSC Accounting Guide, §3-5.4, ERLS must ensure that its handling of cash receipts for Pro-Bono—In satisfies accounting principles and reflects sound accounting policies; *e.g.* recording of receipts in a cash receipts log. In resolving this required corrective action, ERLS should consult with its Board of Directors and/or its Independent Public Accountants for guidance in ensuring compliance with LSC Accounting Guide, § 3-5.4 (regarding handling of cash receipts).

c. Or, ERLS may, using the LSC External Opinion dated October 7, 1994 as guidance, revise the registration fee so that it is consistent with the purposes and intent of the LSC Act. If ERLS chooses this option, it may collect the nominal fee from eligible LSC clients and report those cases to LSC as staff cases. However, pursuant to LSC Accounting Guide, § 3-5.4, ERLS must ensure that its handling of cash receipts for Pro-Bono—In satisfies accounting principles and reflects sound accounting policies; *e.g.* recording of receipts in a cash receipts log. ERLS may opt to consult with its Board of Directors and/or its Independent Public Accountants for guidance in ensuring compliance with LSC Accounting Guide, § 3-5.4 (regarding handling of cash receipts).

In its response to the DR, ERLS was required to indicate which option (*e.g.*, a, b, or c) it chose to implement and to provide sufficient documentation evidencing this change (*e.g.*, cost allocation methodology, communications explaining the change to staff, *etc.*) before OCE can close this required corrective action.

“Pro-Bono—Out”

Interviews with staff indicated that ERLS provides financially eligible applicants with referrals to private attorneys. ERLS conducts oversight and follow-up on each case referred. According to those interviewed, these cases are not reported to LSC because staff do not obtain citizenship or alien eligibility documentation. *See* Open Case No. 13E-1017236 (Case review indicated that this client underwent financial eligibility screening, but not Part 1626 screening).³⁵

³⁴ *See* CSR Handbook (2008 Ed., as amended 2011), footnote no. 3 (explaining that if an applicant is financially ineligible under LSC criteria, but not under non-LSC criteria, service may be provided with non-LSC funds, but the case may not be reported to LSC for CSR purposes).

³⁵ In discussions with ERLS’ Program Administrator on or about August 21, 2014, she indicated that, while applicants are not asked to provide citizenship or alien eligibility documentation, ERLS does ask applicants to provide verbal responses as to their legal status in the United States.

Under 45 CFR § 1626.3, “[r]ecipients may not provide legal assistance for or on behalf of an ineligible alien.” That Part also provides the screening requirements to determine eligibility with this rule. LSC has broadly defined “legal assistance.” See 45 CFR § 1600.1 (“Legal Assistance means the provisions of any services consistent with the purposes and provision of Act or other applicable law.”) As such, although the cases described above are handled by private attorneys, ERLS’ oversight and follow-up efforts supporting these cases qualify as “legal assistance” under the LSC regulations. As such, these applicants should be screened for 45 CFR Part 1626 eligibility, regardless of whether LSC or non-LSC funds support the oversight and follow-up efforts. See 45 CFR §§ 1610.2(b)(7) and 1610.4(d).

While on-site, this issue was discussed and ERLS was provided with several options:

- a. If citizenship or alien eligibility documentation pursuant to Part 1626 is obtained, then these referred cases may be included as part of ERLS’ PAI efforts as it appears, based on the cases sampled, that but for Part 1626 screening, the requirements of CSR Handbook (2008 Ed., as amended 2011), §§ 10.4 and 10.5 are already being satisfied; or alternatively
- b. ERLS may continue not to report these referred cases, but should treat these cases as pure referrals and conduct no case oversight or follow-up.

Based on on-site discussions, ERLS indicated that it would obtain citizenship or alien eligibility documentation and include these cases in its PAI efforts consistent with the requirements of CSR Handbook (2008 Ed., as amended 2011), §§ 10.4 and 10.5. ERLS may refer to CSR Handbook (2008 Ed., as amended 2011), Chapter 7, explaining referrals for additional guidance. In its response to the DR, ERLS was required to confirm which option it had implemented (*e.g.*, a or b). ERLS was also asked to provide a report on either efforts taken to obtain the required citizenship or alien eligibility documentation, along with any relevant documentation showing these efforts (*e.g.*, instructions or communications to staff, changes in procedures, number of applicants screened, a sample screening form for the clinic, *etc.*), or efforts taken to communicate to staff that ERLS will no longer conduct oversight and follow-up of these cases.

Judicare Program

ERLS’ judicare program is coordinated primarily through its Program Administrator. The intake screening process is the same as an in-house case.³⁶ Applicants who are accepted into this Program are provided a list of attorneys who are willing to accept cases on a reduced fee arrangement. Pursuant to 45 CFR § 1614.3(d)(3), ERLS’ judicare cases demonstrated effective case oversight and follow-up procedures through timely case closings and proper closing code designation.

Referral/Placement: After the client has undergone intake screening and a determination of eligibility has been made, the client is sent a letter explaining the case acceptance process with instructions to contact and meet with any of the participating attorneys from the enclosed list

³⁶ Please refer to Finding No. 2 for a detail discussion of ERLS’ intake screening procedures.

within thirty days from the date of the letter. If the attorney agrees to accept the case, the client provides the attorney with the enclosed “Judicare Form 01” for the attorney to complete and return to ERLS within 30 days. The form has the client’s name, contact information, case number, and legal problem. The attorney must provide estimated fees, estimated time of completion, and his/her contact information. The Program Administrator indicated that, if the form is not returned within 30 days, a letter is sent to the client with instructions to contact ERLS within five (5) days or his/her case will be closed.

Oversight: The Program Administrator indicated that letters are sent to the attorney requesting a status update 90 days after cases are referred (“90 day review letter”). Sampled cases demonstrated that case status information was obtained through attorney responses to the 90 day review letter and/or through itemized invoices sent by attorneys to ERLS for payment. A limited case review evidenced effective case oversight as sampled cases generally demonstrated compliance with LSC requirements.³⁷

Overall, the procedures and policies articulated by the Program Administrator satisfy the requirements of CSR Handbook (2008 Ed., as amended 2011), § 10.4 requiring timely referral, follow-up, and disposition of PAI cases. Sampled judicare cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 10.5 (explaining for each PAI case reported to LSC programs shall record client eligibility information, legal assistance provided, the client’s name, and the client’s legal problem). There are no required corrective actions or recommendations as it relates to ERLS’ judicare case sample.

Required Corrective Actions

1. As to the registration fee collected from clients that participate in the divorce clinic, based on the LSC External Opinion dated October 7, 1994, ERLS was required to either:
 - a. Discontinue the practice of collecting registration fees from all clients and report eligible cases to LSC as staff cases³⁸; or alternatively
 - b. Implement a hybrid approach in which the practice of collecting registration fees from LSC eligible clients is discontinued, but continued for financially ineligible clients. The cases in which legal assistance is provided to eligible clients may be reported to LSC as staff cases, while the cases in which legal assistance is provided to financially ineligible clients may not be reported to LSC.³⁹ If ERLS chooses this hybrid option, it should also do the following:

³⁷ The two (2) exceptions in the judicare case sample related to case closing code inaccuracies. According to the case intermediary, these inaccuracies were due to use of an older application. *See* Closed 2012 Case Nos. 12E-1016352, 11E-1016102 (According to the information in the case files, the two (2) exceptions were both assigned closing code “I.” However, the case status information in both files indicated that there were adverse parties involved and that the matters were resolved through a hearing; therefore, the more accurate closing code is “I(b),” contested court decision.). Please refer to Finding No. 10 for the recommendation offered in response to this issue.

³⁸ Refer to discussion regarding definition of private attorney for Part 1614 purposes.

³⁹ *See* CSR Handbook (2008 Ed., as amended 2011), footnote no. 3 (explaining that if an applicant is financially ineligible under LSC criteria, but not under non-LSC criteria, service may be provided with non-LSC funds, but the case may not be reported to LSC for CSR purposes).

- i. Develop a cost allocation methodology for common and direct costs that ensures that no LSC funds are used to subsidize the divorce clinic (*e.g.*, space, salaries); and
 - ii. Pursuant to the LSC Accounting Guide, §3-5.4, ERLS must ensure that its handling of cash receipts for Pro-Bono—In satisfies accounting principles and reflects sound accounting policies; *e.g.* recording of receipts in a cash receipts log. In resolving this required corrective action, ERLS should consult with its Board of Directors and/or its Independent Public Accountants for guidance in ensuring compliance with LSC Accounting Guide, § 3-5.4 (regarding handling of cash receipts).
- c. Or, ERLS may, using the LSC External Opinion dated October 7, 1994 as guidance, revise the registration fee so that it is consistent with the purposes and intent of the LSC Act. If ERLS chooses this option, it may collect the nominal fee from eligible LSC clients and report those cases to LSC as staff cases. However, pursuant to LSC Accounting Guide, § 3-5.4, ERLS must ensure that its handling of cash receipts for Pro-Bono—In satisfies accounting principles and reflects sound accounting policies; *e.g.* recording of receipts in a cash receipts log. ERLS should consult with its Board of Directors and/or its Independent Public Accountants for guidance in ensuring compliance with LSC Accounting Guide, § 3-5.4 (regarding handling of cash receipts).

In addition, ERLS was required to indicate which option (*e.g.*, a, b, or c) it chose to implement and to provide sufficient documentation evidencing this change (*e.g.*, cost allocation methodology, communications explaining the change to staff, *etc.*) before OCE can close this required corrective action.

In its response to the DR, ERLS indicated that it chose option “c” and that the registration fee had been reduced to \$25.00. At this time, OCE makes no determination as to whether the reduced fee is consistent with LSC External Opinion dated October 7, 1994 and therefore, reserves the right to revisit this issue. However, ERLS is reminded, pursuant to LSC Accounting Guide, § 3-5.4, to ensure that its handling of cash receipts for Pro-Bono—In satisfies accounting principles and reflects sound accounting policies; *e.g.* recording of receipts in a cash receipts log.

At this time, no additional action is required by ERLS regarding Required Corrective Action No. 3; however Required Corrective Action No. 3 remains open pending a determination of whether ERLS’ proposed reduced fee is nominal as defined by LSC External Opinion dated October 7, 1994.

2. To screen applicants for Pro-Bono—Out for 45 CFR Part 1626 eligibility or to treat these cases as simple referrals. In its response to the DR, ERLS was required to confirm which option it chose to implement. ERLS was also asked to provide a report on either efforts taken to obtain the required citizenship or alien eligibility documentation, along with any relevant documentation showing these efforts (*e.g.*, instructions or communications to staff, changes in

procedures, number of applicants screened, a sample screening form for the clinic, *etc.*), or efforts taken to communicate to staff that ERLS will no longer conduct oversight and follow-up of these cases.

In its response to the DR, ERLS indicated that, while it disagreed that oversight and follow-up amounted to legal assistance as defined by 45 CFR § 1600.1, it reviewed the proposed solutions offered in the DR and in consultation with Second Circuit, decided to screen Pro-Bono—Out applicants for Part 1626 eligibility. ERLS indicated that each individual who is referred to Pro-Bono—Out either signs a citizenship attestation or provides documentation of alien eligibility.

Based on OCE's review of ERLS' response to this Finding, Required Corrective Action No. 4 is closed.

Recommendations

As to ERLS' cost allocation methodology for its support staff, two (2) recommendations were made:

1. That ERLS be consistent in its application of cost allocation methodology for both the legal secretary and the receptionist; and
2. That ERLS revise its cost allocation methodology as it relates to the receptionist's time because the current allocation methodology is not the best measurement of the time spent working on PAI activities.

Finally, ERLS uses a composite of the percentage and formula method in computing a cost allocation percentage and then applies that percentage to allocate all other overhead costs related to PAI activities. ERLS should consider using a more simplified method, using 45 CFR § 1630.3(f) as guidance.

ERLS offered no comments in response to these recommendations.

Finding 18: A review of ERLS' audited financial statements, general ledger, invoices, chart of accounts, and funding codes evidenced that ERLS is in compliance with the requirements of 45 CFR § 1627.4 regarding membership fees or dues for years 2012 and 2013.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.⁴⁰ Except that the definition does not include transfers related to

⁴⁰ Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient's legal assistance activities or such activities as client involvement, training, or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or

This footnote is continued on the next page.

contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

Additionally, 45 CFR § 1627.4 states that:

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

A review of ERLS' audited financial statements, general ledger, invoices, chart of accounts, and funding codes evidenced that ERLS is in compliance with the requirements of 45 CFR § 1627.4 regarding membership fees or dues for years 2012 and 2013. ERLS paid mandated state bar dues using LSC and non-LSC funds. ERLS, on behalf of its staff attorneys, paid annual state bar membership dues to the South Dakota State Bar Association in the following amounts:

- In 2012 \$1,245.00 with non-LSC funds;
- In 2013, \$2,490.00 with LSC funds;⁴¹ and
- \$0.00 as of February 2014 year to date.

Recommendation

There are no required corrective actions; however, it was recommended that for 2014, ERLS consult with its Independent Public Accountant in order to perform a comparative variance analysis of all expense accounts that show annual increases of more than 10%. This analysis would have shown that the 2014 expenses were reported in the wrong accounting period (*i.e.* 2013). In 2013, \$1,245.00 of the \$2,490.00 paid for membership dues related to the 2014 state bar dues; this should have been reported as a pre-payment in 2013 and not as an expense.

ERLS offered no comments in response to this Finding.

Finding 19: ERLS is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant

This footnote is continued from the prior page.

attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000 is included.

⁴¹ It appears that \$1,245.00 of the \$2,490.00 paid in 2013 was for membership dues for the 2014 year. As a result, the amount paid in 2013 for the 2014 state bar dues should have been reported as a pre-payment in 2013 as opposed to an expense.

to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

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

A review of ERLS' electronic timekeeping system (Kemps Prime) evidenced that ERLS is in compliance under the requirements of 45 CFR Part 1635 timekeeping because ERLS' timekeeping system has the capacity to allocate and/or capture time worked and/or charged using LSC and non-LSC funding codes/sources. While on-site, a cross section of three (3) advocates' timekeeping records from a judgmentally selected sample, representing two (2) different time periods, for each year under review, evidenced that timekeeping records are contemporaneously created, account for time by date, in increments no greater than one-quarter of an hour, and by case, matter, and supporting activity, in accordance with 45 CFR § 1635.3(b)(1).

Sample cases selected were compared to the time reported by the advocates on their timekeeping reports. Each record of time spent for cases contained a unique client name or case number. Review of sampled cases evidenced time or hours worked on those cases, by advocate for that time period were reasonable. Also, review of the timekeeping system, evidenced that ERLS' timekeeping system is able to aggregate time record information on both closed and pending cases by legal problem type, consistent with the provisions of 45 CFR § 1635.3(c). As ERLS does not employ any part-time staff attorneys or paralegals, a determination of compliance with 45 CFR § 1635.3(d) was unnecessary.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 20: Sampled cases, interviews, and review of ERLS' cash receipts, deposit log, and cash receipts journal for the review period evidenced compliance with the requirements of former 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 § 1642.3.⁴² However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting, or retaining attorneys' fees was lifted. Therefore, 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.

LSC further determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained, attorneys' fees during the period of December 16, 2009 through March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009, may, however, result in enforcement action. As well, the regulatory provisions regarding 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. *See* LSC Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010).

A review of ERLS' cash receipts, deposit log, and cash receipts journal for the review period evidenced that ERLS did not receive or collect any attorneys' fees that would be inconsistent with LSC requirements. In addition, none of the case files reviewed evidenced non-compliance with this Part.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 21: A review of ERLS' semi-annual reports, timekeeping records, expense reports, and adjusting journal entries for 2012 and 2013, evidenced that ERLS did not engage in any legislative and/or rulemaking activities. ERLS' revised policy evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activities, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when

⁴² The regulations defined "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).

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 files and documents reviewed, or interviews conducted, evidenced any lobbying or other prohibited activities. Pursuant to 45 CFR § 1612.11, a recipient is required to adopt written policies and procedures to guide employee compliance with the requirements of Part 1612. During the course of the review, ERLS revised its Part 1612 policy and submitted it for review. On April 17, 2014, ERLS was advised via email of additional revisions needed to its Part 1612 policy. ERLS, via email dated June 23, 2014, indicated that the Part 1612 policy with the additional revisions was reviewed and adopted by its Board at the June 2014 Board of Directors meeting.

A review of ERLS' semi-annual reports, timekeeping records, expense reports, and adjusting journal entries for 2012 and 2013, evidenced that ERLS did not engage in any legislative and/or rulemaking activities. This was also confirmed in discussions with ERLS' Program Administrator.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 22: Sampled cases and interviews 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 files reviewed or interviews conducted evidenced legal assistance with respect to a criminal proceeding or a collateral attack in a criminal conviction.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 23: Sampled cases, interviews, and ERLS' revised policy 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, or otherwise declared by a court of competent jurisdiction, as a class action pursuant to Federal Rules of Civil Procedure, Rule 23,

or a 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).⁴³

Pursuant to 45 CFR § 1617.4, a recipient is required to adopt written policies and procedures to guide employee compliance with the requirements of Part 1617. During the course of the review, ERLS revised its Part 1617 policy and submitted it for review. The revised policy was reviewed and no deficiencies were noted. ERLS, via email dated June 20, 2014, indicated that the revised Part 1617 policy was reviewed and adopted by its Board at the June 2014 Board of Directors meeting.

None of the files reviewed or interviews conducted showed that ERLS initiated or participated in a class action.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 24: Sampled cases, interviews, and a review of ERLS’ revised policy 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.

Pursuant to 45 CFR § 1632.4, a recipient is required to adopt written policies to guide employee compliance with the requirements of Part 1632. During the course of the review, ERLS revised its Part 1632 policy and submitted it for review. The revised policy was reviewed and no deficiencies were noted. ERLS, via email dated June 20, 2014, indicated that the revised Part 1632 policy was reviewed and adopted by its Board at the June 2014 Board of Directors meeting.

None of the files reviewed, interviews conducted, or policies examined revealed participation in litigation related to redistricting.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

⁴³ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

Finding 25: Sampled cases, interviews, and a review of ERLS' revised policy 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 that person from 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 of other resident tenants or employees of the public housing agency. *See* 45 CFR § 1633.3.

Pursuant to 45 CFR § 1633.4, a recipient is required to adopt written policies and procedures to guide employee compliance with the requirements of Part 1633. During the course of the review, ERLS revised its Part 1633 policy and submitted it for review. The revised policy was reviewed and no deficiencies were noted.⁴⁴ ERLS, via email dated June 20, 2014, indicated that the revised Part 1633 policy was reviewed and adopted by its Board at the June 2014 Board of Directors meeting.

None of the files reviewed, interviews conducted, or policies examined involved defense of any such eviction proceeding.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 26: Sampled cases, interviews, and a review of ERLS' revised policy 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.

Pursuant to 45 CFR § 1637.5, a recipient is required to adopt written policies and procedures to guide employee compliance with the requirements of Part 1637. During the course of the review, ERLS revised its Part 1637 policy and submitted it for review. On April 14, 2014, ERLS was advised via email of additional revisions needed to its Part 1637 policy.⁴⁵ ERLS, via email dated June 23, 2014, indicated that the Part 1637 policy with the additional revisions was reviewed and adopted by its Board at the June 2014 Board of Directors meeting.

None of the files reviewed, interviews conducted, or policies examined involved participation in civil litigation or administrative proceedings on behalf of an incarcerated person.

⁴⁴ It was recommended that ERLS include the definitions outlined in 45 CFR § 1633.2.

⁴⁵ Specifically ERLS was advised to include the complete prohibition outlined in 45 CFR § 1637.3.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 27: Sampled cases, interviews, and a review of ERLS' revised policy 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.⁴⁶ This restriction has been contained in all subsequent appropriations acts. This 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."

The key provision in the prohibition is in the definition of "unsolicited advice" at 45 CFR § 1638.2(b) which states:

- (b) Unsolicited advice means advice to obtain counsel or take legal action given by a recipient or its employee to an individual who did not seek the advice and with whom the recipient does not have an attorney-client relationship.

As further noted in the regulation, at 45 CFR § 1638.4(a),

- (a) This part does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures through community legal education activities such as outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request them.

Pursuant to 45 CFR § 1638.5, a recipient is required to adopt written policies to guide employee compliance with the requirements of Part 1638. During the course of the review, ERLS revised its Part 1638 policy and submitted it for review. On April 17, 2014, ERLS was advised via email of additional revisions needed to its Part 1638 policy.⁴⁷ ERLS, via email dated June 23, 2014, indicated that the Part 1638 policy with the additional revisions was reviewed and adopted by its Board at the June 2014 Board of Directors meeting.

⁴⁶ See Section 504(a)(18).

⁴⁷ Specifically ERLS was advised to include the complete prohibition outlined in 45 CFR § 1638.3(b).

None of the files reviewed, interviews conducted, or policies examined indicated program involvement in such activity.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 28: Sampled cases, interviews, and a review of revised ERLS' policy 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. Nor may LSC funds be used to bring suit to assert or advocate a legal right to suicide, euthanasia, or mercy killing, or to advocate for any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

Pursuant to 45 CFR § 1643.5, a recipient is required to adopt written policies to guide employee compliance with the requirements of Part 1643. During the course of the review, ERLS revised its Part 1643 policy and submitted it for review. The revised policy was reviewed and no deficiencies were noted. ERLS, via email dated June 20, 2014, indicated that the revised Part 1643 policy was reviewed and adopted by its Board at the June 2014 Board of Directors meeting.

None of the files reviewed, interviews conducted, or policies examined indicated program involvement with such activity.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 29: Sampled cases, interviews, and a review of ERLS' policies 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.

None of the files reviewed, interviews conducted, or policies examined evidenced non-compliance with the above LSC statutory prohibitions.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 30: ERLS' Accounting Manual adequately defines most internal controls and significant fiscal processes needed to meet the requirements of the LSC Accounting Guide. ERLS' practices also support these requirements.

Recipients are required to establish and maintain adequate accounting records and fiscal control procedures, pursuant to the LSC Accounting Guide, § 3-4.5, Internal Control Structure - Establishment of an Accounting Manual. In accordance with this section, each recipient must develop a written accounting manual that describes the specific procedures to be followed by the recipient in complying with the Fundamental Criteria. The LSC Fundamental Criteria is a listing of the elements of an adequate accounting and financial reporting system. As a condition of their grants, recipients are required to adopt accounting policies and procedures that meet the requirements of these regulations, and to modify those policies and procedures as necessary when any of the regulations are amended or new regulations are issued. LSC Program Letters 12-2, 13-1, and 14-1 also advise programs of fiscal internal control issues requiring corrective action which have been determined in the course of recent on-site reviews.

ERLS' Accounting Manual was reviewed for compliance with the LSC Accounting Guide. The Accounting Manual was found to adequately define most required accounting and control policies.

Accounting for cash receipts

A limited review of cash receipts totaling \$3,447.00 for the month of March 2014 deposited into the operating account was reviewed. The review disclosed that this sample was consistent with the procedures noted in ERLS' Accounting Manual and the LSC Accounting Guide. Overall, the internal controls over cash receipts are adequate.

While on-site, ERLS was instructed to post signage advising clients that a receipt should be provided for all cash/checks given to ERLS. As a result of this instruction, ERLS posted the signage as requested. Additionally, it was noted that the receptionist or the Bookkeeper agrees the cash receipts log to the deposit slips, both of whom make deposits to the bank. The agreement of the cash receipts log to the bank statement should be completed by an employee independent of cash receipts and recording. This issue was discussed on-site with ERLS and ERLS indicated that in the future the Legal Secretary (who is independent to the cash receipts function) would agree the cash receipts log to the bank deposits on the bank statement prior to the Executive Director reviewing the bank reconciliation.

Accounting for cash disbursements

A limited review of the cash disbursements was performed for the disbursements recorded in December 2013 in the general checking account. The review disclosed that ERLS has adequate policies and procedures which include proper internal controls surrounding such disbursements, which are adhered to and in compliance with LSC requirements.

A review of a sample of cash disbursements, totaling \$20,475.00, from the general checking account for the month of December 2013 disclosed that the sample was consistent with the procedures noted in ERLS' Accounting Manual and the LSC Accounting Guide. The internal controls appeared adequate and followed in the processing of the disbursements as all reviewed checks were:

1. Signed by two (2) employees who were authorized check signers;
2. The sequence of the check numbering system was maintained;
3. The invoices were vouchered and agreed to the check amounts; and
4. All voided checks are defaced and kept in a locked cabinet.

Client Trust accounts/receipts/disbursements

A review of ERLS' policies and procedures pertaining to client trust funds and a limited review of both receipts and disbursements was conducted while on-site. The review disclosed that the ERLS' policies and procedures consistent to the procedures noted in ERLS' Accounting Manual and the LSC Accounting Guide.

The limited review of selected receipts and disbursements related to the client trust accounts disclosed that the sample was in general compliance with LSC and ERLS requirements and procedures. Overall, the client trust accounts policies and procedures and ERLS' processing of the receipts and disbursements of the client trust funds are adequate.

Electronic Banking

A review of the ERLS' Accounting Manual and discussions with ERLS' staff disclosed that ERLS does not have a written policy and procedure regarding electronic banking procedures. It was recommended that ERLS draft a written procedure regarding electronic banking as certain funds are electronically transferred to ERLS.

Records Retention

On-site interviews with ERLS staff indicated that records are maintained indefinitely and stored off site. It was recommended that ERLS institute a written record retention policy and procedure that includes all LSC requirements.

Recommendation

It was recommended that ERLS draft policies regarding electronic banking and records retention. In its response to the DR, ERLS accepted this recommendation and indicated that policies for electronic banking and records retention had been drafted and would be presented to its Board for review at the December 2014 Board meeting.

Finding 31: A testing of sampled internal control protocols noted no deficiencies in bank reconciliation, cash receipt, and cash disbursement procedures.

Internal controls are the protocols established by an entity's governing body that when appropriately and consistently applied provide reasonable assurances regarding:

1. Effectiveness and efficiency of operations;
2. Reliability of financial reporting; and
3. Compliance with applicable laws and regulations.

See LSC Accounting Guide, § 1-1.

On-site interviews with ERLS' Bookkeeper and review of the completed "Segregation of Duties Worksheet" disclosed areas where proper segregation of duties has not always been achieved due to ERLS' small size. As a result, the Bookkeeper performs the majority of the financial functions, so there is little separation of financial duties. However, ERLS has the following mitigating controls:

1. All checks must be approved by the Executive Director and there must be a second check signer;
2. All purchases must be approved by the Executive Director prior to placing the order; and
3. Bank account reconciliations are approved by the Executive Director.

While on-site, the lack of segregation of duties and strong internal controls was brought to the attention of ERLS' Chairman of the Board of Directors ("Chairman"). The Chairman stated that he is aware of the limited financial personnel at ERLS and indicated that the Executive Director's involvement in the financial transactions at ERLS mitigates the lack of financial personnel. Additionally, the Chairman indicated that the Board has chosen to accept the risk as the cost of hiring additional financial personnel does not justify the benefit of stronger segregation of duties.

Petty cash

An on-site count of the petty cash fund disclosed that the sum of the cash plus receipts equaled \$100.00. The review of the petty cash transaction processed during September 2013 disclosed that the fund is maintained in a locked box stored in a locked file cabinet. The reimbursement of

the fund was proper in that the check was made payable to the custodian and supported by proper receipts. All disbursements had receipts attached and an employee's signature acknowledging receipt of payment for the minor expenses reimbursed.

The on-site review disclosed that surprise counts are not conducted and that three (3) employees have access to the funds. While lack of surprise counts and access of three (3) employees are internal control deficiencies, due to the minor amount of the fund and the results of the on-site review, required corrective actions are unnecessary.

Credit cards

A review of ERLS company credit cards statements disclosed that there are adequate internal controls surrounding the use of the credit cards, however the Executive Director who possesses an ERLS credit card reviews and approves his own expenses. This is a lack of segregation of duties. See LSC Accounting Guide, Chapter 3, §§ 3-4(3) and 3-4(4). The review of the credit card statement reimbursements disclosed that all expenses charged are documented by individual receipts and are tied to expense reports to ensure double payments are not made. However, it was noted that the Executive Director approves credit card reimbursements, including his expenses.

ERLS' credit card payment procedure requires the Bookkeeper to vouch the credit card statement (agree to receipts and to expense reports); the Executive Director then approves and signs the check for payment. The check is then given to the second check signer for signature and then it is mailed to the credit card company for payment. ERLS should keep its payment procedure the same in order to ensure prompt payment of the credit card statement and to not incur late charges, however ERLS should have its Board review the Executive Director's expenses noted on the credit card statements and expense reports to ensure that they are reasonable.

Bank reconciliation

With one (1) exception, a review disclosed that ERLS' policies and procedures are consistent to the requirements of the LSC Accounting Guide. The one (1) deviation noted during the on-site review is that the Executive Director reviews the reconciliations in lieu of a Fiscal Manager.

A review conducted of the bank account reconciliations for October and November 2013 disclosed that the Executive Director initialed the reconciliations but did not date his review. It is recommended that ERLS' Executive Director indicate his review and approval of the bank reconciliations by affixing a date on the bank reconciliation next to his initials.

Expense reports

A review was conducted of LSC Accounting Guide requirements compared to ERLS' policies and procedures concerning expense reporting. Also, a limited review of selected expense reports was conducted. The review disclosed that, except for the Executive Director's expense reports not being approved by the Board, ERLS is in general compliance with LSC requirements.⁴⁸

⁴⁸ Please refer to the discussion regarding credit cards for additional detail regarding this issue.

A review of all selected expense reports disclosed that they are signed by the employee and approved by the employee's supervisor, except for the Executive Director's expense reports as noted below. Additionally, the Bookkeeper reviews the expense reports for proper adherence to ERLS requirements and ensures that there is proper supporting documentation (*e.g.* receipts) prior to the Executive Director's review.

Required Corrective Actions and Recommendation

ERLS was required to have its Board review the Executive Director's expenses noted on the credit card statements and expense reports to ensure that they are reasonable and, in addition, ERLS was required, in its response to the DR, to indicate whether its Board had implemented this procedure.

In its response to the DR, ERLS noted that, as of September 23, 2014, ERLS' governing body reviews the Executive Director's expense reports at each quarterly meeting. In addition, ERLS provided minutes of the June 17, 2014 meeting of ERLS' governing body to demonstrate that the Board President reviewed the Executive Director's expense reports for the applicable time period.

Based on OCE's review of ERLS' response to this Finding, Required Corrective Action No. 5 is closed.

It was recommended that the Executive Director indicate his review and approval of the bank reconciliations by affixing a date on the bank reconciliation next to his initials. In its response to the DR, ERLS accepted this recommendation and indicated that the Executive Director now dates the bank reconciliations.

Finding 32: ERLS' personnel/payroll policies and practices are in general compliance with the LSC Accounting Guide, § 3-5.5(a) and (b) and are consistent with Appendix VII§ B.

The LSC Accounting Guide discusses the need for adequate internal controls over a recipient's payroll and personnel systems. A recipient's payroll system and procedure should be designed to ensure that its employees are paid properly, in a timely fashion and support payroll-related reporting requirements to external agencies. Therefore, a recipient's payroll process should be administered in a manner that maintains the integrity of its accounting system and that every payment issued or leave approved is properly authorized and adequately supported with documentation. A weakness in this area may result in improper amounts withheld from employees and/or unauthorized disbursements. *See* LSC Accounting Guide, § 3-5.5 (explaining the key elements and criteria of a payroll process).

A review of ERLS' payroll policies and procedures and a review of payroll processing records for the period ending in December 15, 2013 disclosed compliance with LSC requirements. Time cards are approved by the employee's supervisor and reconciled to the KEMPS Time System as all employees are required to report time in the KEMP system. Vacation, holiday, sick, and personnel days are approved by the employee's supervisor and tracked by the Bookkeeper. The

payroll is reviewed and approved by the Executive Director prior to transferring the funds to the payroll checking account.

Based on this limited review, ERLS has adequate policies and procedures surrounding the processing of its payroll and adheres to LSC requirements.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 33: A limited review of ERLS' audited financial statements for years 2012 and 2013 evidenced compliance with the requirements of 45 CFR Part 1628 (Recipient fund balances) because ERLS fully expended its LSC funds within the 10% threshold.

The purpose of this part is to set out LSC's policies and procedures applicable to recipient fund balances. LSC's fund balance policies are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance.

A review of ERLS' audited financial statements for 2012 and 2013 evidenced that its fund balance was in compliance with the requirements of 45 CFR § 1628.3 because ERLS timely expended LSC's grant funds of \$392,348.00 for 2012 and \$373,178.00 for 2013. According to ERLS' audited financial statements, ERLS ended the 2012 and 2013 fiscal years with fund balances of \$8,894(2%) and \$10,039(3%), well within LSC's 10% threshold requirement.

There are no required corrective actions or recommendations.

ERLS offered no comments in response to this Finding.

Finding 34: A review of ERLS' fidelity bond coverage for years 2012 through 2014 evidenced compliance with the requirements of 45 CFR Part 1629 (Bonding of recipients) because ERLS carries adequate fidelity bond insurance coverage on employees who handle cash.

LSC regulations require recipients to carry fidelity bond coverage at a minimum level of 10 percent of the program's annualized LSC funding from the previous fiscal year, or of the initial grant or contract, if the program is a new grantee or contractor. No coverage carried pursuant to this part shall be at a level less than \$50,000. *See* 45 CFR Part 1629.

A review of ERLS' 2012, 2013, and 2014 fidelity bond coverage evidenced that ERLS was in compliance with the requirement of 45 CFR Part 1629 because ERLS has more than adequate fidelity bond coverage in comparison to its LSC basic field grants for the corresponding fiscal years. According to ERLS' fidelity bond insurance policy/certification, ERLS exceeded the required 10% coverage amount by more than half of the required coverage amount. ERLS

renews its fidelity bond every three (3) years and its current insurance coverage is in effect through March 1, 2017.

There are no required corrective actions or recommendations.

ERLS offered no comments in response to this Finding.

Finding 35: A comparison was made of ERLS' purchasing policies/procedures and the LSC Accounting Guide and the Property Acquisition and Management Manual (PAMM) to ensure compliance with LSC requirements. Additionally, a limited review was conducted of the monthly purchase of supplies by ERLS. Both reviews disclosed that ERLS is in compliance with LSC requirements and has adequate internal controls over its purchasing.

The LSC Accounting Guide, Appendix VII, § D recommends that controls be in place over procurement. For example, the LSC Accounting Guide discusses including procedures that provide for the solicitation of prices for purchase, rent, and/or lease of fixed assets and procedures that provide that consideration will be given to the cost advantages of buying versus renting equipment and other nonexpendable property.

A review of ERLS' purchasing policies and procedures disclosed compliance with LSC requirements. A review of the purchase of supplies for a month by ERLS disclosed that there are adequate internal controls surrounding such purchases which are in compliance with the requirements of LSC and ERLS.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

Finding 36: A review conducted of ERLS' property and equipment records for 2013 disclosed general compliance with the LSC Accounting Guide's requirements. However, the physical inventory is not compared to the fixed asset ledger.

The LSC Accounting Guide, Appendix VII, § C recommends that proper records be maintained for fixed assets purchased in excess of \$5,000.00 and that the records provide the following information:

- Date of Purchase;
- Description of item, including model and serial number;
- Cost and salvage value, if any of item;
- Check number of disbursement;
- Identification of funds used to purchase assets;
- Depreciation lives assigned to the assets; and
- Identification number and asset location of the asset.

Additionally, the capitalized items are to be balanced to the general ledger control accounts periodically; the fixed assets are to be tagged with identification numbers to match the fixed asset records; physical inventories are to be conducted every two (2) years and compared to the fixed asset records; and adjustments for sale, theft, *etc.* are to be approved by an employee independent of maintaining the fixed asset records.

ERLS' policies and procedures concerning property, plant, and equipment are in general compliance with the LSC Accounting Guide, except that ERLS does not compare its inventoried fixed assets to the fixed asset ledger and its fixed asset ledger to the inventoried fixed assets. A review of the fixed asset records disclosed that ERLS has six (6) assets with a cost equal to or greater than \$5,000.00. Therefore, these six (6) assets should be compared to the fixed asset ledger to ensure that they are properly identified in the ledger and inversely, all assets over \$5,000.00 that are identified on the fixed asset ledger should be inventoried. Any adjustments (including adjustments resulting from theft, retirement and sale of assets) to the fixed asset records and general ledger control accounts should be reviewed and approved by an appropriate employee or officer who does not have responsibility for maintaining fixed asset record. *See LSC Accounting Guide, Appendix VII, § C (5).*

Required Corrective Action

ERLS was asked to compare the six (6) assets with a cost over \$5,000.00 to the fixed asset ledger. ERLS, was required to indicate in its response to the DR, that this comparison was completed or a date certain when it would occur. *See LSC Accounting Guide § 2-2.4* In its response to the DR, ERLS indicated that the asset comparison was completed and that in the future, this comparison would be conducted at the time of the annual audit.

Based on a review of ERLS' response to this Finding, Required Corrective Action No. 6 is closed.

Finding 37: A limited review of Board meeting minutes and interviews with ERLS' Board Chair and Treasurer evidenced that ERLS has adequate Board oversight sufficient to meet the requirements of the LSC Accounting Guide.

The LSC Accounting Guide defines a governing body's fiduciary responsibility to the program, including the establishment of a Finance Committees which should, at a minimum (subject to any requirements of state law): review and revise budgets and make recommendations to the full Board of Directors; review monthly financial management reports with the chief financial officer, controller, and/or CPA; review accounting and control policies; review the audited financial statements, management letter, and senior staff's response with staff and auditor; regularly review and make recommendations about investment policies; coordinate Board training on financial matters; and act as liaison between the Board and staff on fiscal matters. *See LSC Accounting Guide, § 1-7.*

The LSC Accounting Guide also recommends that a program have an Audit Committee which should (subject to any requirements of state law) be involved in: hiring the auditor; setting the compensation of the auditor; overseeing the auditor's activities; setting rules and processes for

complaints concerning accounting practices and internal control practices; reviewing the annual IRS Form 990 for completeness, accuracy, and on-time filing; providing assurances of compliance to the full Board; and ensuring the recipient's operations are conducted and managed in a manner that emphasizes ethical and honest behavior, compliance with applicable laws, regulations, and policies, effective management of the recipient's resources and risks, and accountability of persons within the organization. *See* LSC Accounting Guide, § 1-7.

While it is recognized that some boards, due to their small size and other considerations, will decide not to have a separate audit committee, nevertheless it is generally considered a best practice for governing bodies to have both a finance committee and a separate audit committee. The critical point is that all of the finance and audit committee duties listed above must be performed by a financial oversight committee(s). It is also critical, and considered a best practice, that the financial oversight committee(s) have at least one (1) member who is a financial expert or for the Board to have access to a financial expert.

Interviews with the Chairman and Treasurer of ERLS' Board of Directors and a review of Board minutes evidenced compliance with the LSC Accounting Guide, § 1-7. Interviews indicated that the Board has a member who is considered a financial expert by ERLS due to his involvement in trusts and government accounting.

ERLS' Board also fulfills its fiduciary responsibilities and duties in accordance with LSC regulations and requirements relating to accounting and reporting practices. For example, ERLS' Board:

- Guides the process of selecting ERLS' auditor and recommends the selection of a particular auditor;
- Reviews the expenditure budget in detail and recommends approval to the full Board;
- Reviews and approves ERLS's annual budget; and
- Reviews monthly management reports (including budget and actual income and expenses variances, and statement of cash on hand) with the Executive Director.

Additionally, the governing body resolutions for the financial and audit committees adequately define their duties and responsibilities.

There are no recommendations or required corrective actions.

ERLS offered no comments in response to this Finding.

IV. RECOMMENDATIONS⁴⁹

Consistent with the findings of this Report, it is recommended that ERLS:

1. As noted in Finding 2, OCE recommended that ERLS revise its attestation form so that the applicant is only certifying to his/her United States citizenship status.

In its response to the DR, ERLS indicated that it had accepted this recommendation.

2. As noted in Finding 2, OCE recommended that ERLS review with staff, at minimum, the requirements of 45 CFR §§ 1626.2 and 1626.4.

In its response to the DR, ERLS indicated that it had accepted this recommendation.

3. As noted in Finding 2, OCE recommended that ERLS make screening for reasonable income prospects a mandatory field in its ACMS such that this field is flagged if no response was recorded during intake screening.

In its response to the DR, ERLS did not offer any comments to this recommendation.

4. As noted in Finding 10, OCE recommended that ERLS review with staff who assign case files with closing codes the proper application of the following closing codes:

- “I(b),” uncontested court decision versus “L,” extensive service;
- “I(b),” uncontested court decision versus “G,” negotiated settlement with litigation;
- “K,” other versus “L,” extensive service; and
- “A,” counsel and advice versus “B,” limited action versus “F,” negotiated settlement without litigation.

In its response to the DR, ERLS argued that, although it accepts this recommendation and would review its use of the above referenced closing codes, there is not always one exact closing code for every case, so that it is possible for a case to be correctly closed under more than one closing code. LSC encourages ERLS to review the Frequently Asked Questions for the CSR Handbook for assistance in determining appropriate closing code usage.

5. As noted in Finding 10, OCE recommended that ERLS review cases reported to LSC to ensure that cases with the “I” closing code are corrected.

⁴⁹ 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.

It does not appear that ERLS offered any comments to this recommendation.

6. As noted in Finding 16, OCE recommended that ERLS notify its Independent Public Accountant that all funding sources, whether public or private, which provide \$250.00 or more, should be sent a letter outlining the prohibitions and conditions that apply to the funds.

In its response to the DR, ERLS accepted this recommendation.

7. As noted in Finding 17, OCE recommended that ERLS in regards to its PAI cost allocation methodology for its support staff that:
 - a. ERLS be consistent in its application of cost allocation methodology for both the legal secretary and the receptionist.
 - b. ERLS revise its cost allocation methodology as it relates to the receptionist's time because the current allocation methodology is not the best measurement of the time spent working on PAI.

In its response to the DR, ERLS did not offer any comments to this recommendation.

8. As noted in Finding 17, OCE recommended that ERLS rather than using a composite of the percentage and formula method in computing a cost allocation percentage and then apply that percentage to allocate all other overhead costs related to PAI activities, ERLS should consider using a more simplified method and use 45 CFR § 1630.3(f) as guidance.

In its response to the DR, ERLS did not offer any comments to this recommendation.

9. As noted in Finding 18, OCE recommended that ERLS for 2014, consult with its Independent Public Accountant in order to perform a comparative variance analysis of all expense accounts that show annual increases of more than 10%. This analysis would have shown that the 2014 expenses were reported in the wrong accounting period (2013).

In its response to the DR, ERLS did not offer any comments to this recommendation.

10. As noted in Finding 30, OCE recommended that ERLS draft policies regarding electronic banking and records retention.

In its response to the DR, ERLS accepted this recommendation.

11. As noted in Finding 31, OCE recommended that ERLS require the Executive Director to indicate his review and approval of the bank reconciliations by affixing a date on the bank reconciliation next to his initials.

In its response to the DR, ERLS accepted this recommendation.

V. REQUIRED CORRECTIVE ACTIONS

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

1. As noted in Finding 3 and Finding 4, pursuant to 45 CFR § 1611.3(a), ERLS was required in its comments to the DR to indicate that the revised Part 1611 policy was adopted by its Board and provide evidence both of its adoption (e.g., Board minutes) and implementation (e.g., communications to staff, training provided, *etc.*).

In its response to the DR, ERLS indicated that the revised Part 1611 had been adopted by its Board and provided the minutes of the June 17, 2014 meeting of ERLS' governing body to demonstrate that the Board reviewed and adopted the Part 1611 policy. However, it does not appear that a copy of the adopted Part 1611 policy was included as an attachment to ERLS' response to the DR.⁵⁰

As a result, Required Corrective Action No. 1 will remain open pending receipt of the revised Part 1611 policy that has been adopted by ERLS' Board.

2. As noted in Finding 13, ERLS, pursuant to 45 CFR § 1604.4, was required to indicate in its comments to the DR whether the revised Part 1604 policy was adopted. ERLS was also asked to provide evidence showing implementation of the revised policy (e.g., communications to staff, trainings, *etc.*).

In its response to the DR, ERLS indicated that the revised Part 1604 policy had been adopted by its Board. However, it does not appear that a copy of the revised Part 1604 policy was included as an attachment to ERLS' response to the DR⁵¹.

As a result, Required Corrective Action No. 2 will remain open pending receipt of the revised Part 1604 policy.

3. As noted in Finding 17, regarding the registration fee collected from clients that participate in the divorce clinic, based on the LSC External Opinion dated October 7, 1994, ERLS was required to either:
 - a. Discontinue the practice of collecting registration fees from all clients and report eligible cases to LSC as staff cases⁵²; or alternatively
 - b. Implement a hybrid approach in which the practice of collecting registration fees from LSC eligible clients is discontinued, but continued for financially ineligible clients. The cases in which legal assistance is provided to eligible clients may be reported to LSC as staff cases, while the cases in which legal assistance is provided to financially ineligible

⁵⁰ ERLS' attachment included an older version of the Part 1611 policy.

⁵¹ ERLS' attachment included an older version of the Part 1604 policy.

⁵² Refer to discussion regarding definition of private attorney for Part 1614 purposes.

clients may not be reported to LSC.⁵³ If ERLS chooses this hybrid option, it should also do the following:

- i. Develop a cost allocation methodology for common and direct costs that ensures that no LSC funds are used to subsidize the divorce clinic (*e.g.*, space, salaries); and
 - ii. Pursuant to the LSC Accounting Guide, § 3-5.4, ERLS must ensure that its handling of cash receipts for Pro-Bono—In satisfies accounting principles and reflects sound accounting policies; *e.g.* recording of receipts in a cash receipts log. In resolving this required corrective action, ERLS should consult with its Board of Directors and/or its Independent Public Accountants for guidance in ensuring compliance with LSC Accounting Guide, § 3-5.4 (regarding handling of cash receipts).
- c. Or, ERLS may, using the LSC External Opinion dated October 7, 1994 as guidance, revise the registration fee so that it is consistent with the purposes and intent of the LSC Act. If ERLS chooses this option, it may collect the nominal fee from eligible LSC clients and report those cases to LSC as staff cases. However, pursuant to LSC Accounting Guide, § 3-5.4, ERLS must ensure that its handling of cash receipts for Pro-Bono—In satisfies accounting principles and reflects sound accounting policies; *e.g.* recording of receipts in a cash receipts log. ERLS may opt to consult with its Board of Directors and/or its Independent Public Accountants for guidance in ensuring compliance with LSC Accounting Guide, § 3-5.4 (regarding handling of cash receipts).

In addition, ERLS was required to indicate which option (*e.g.*, a, b, or c) it chose to implement and to provide sufficient documentation evidencing this change (*e.g.*, cost allocation methodology, communications explaining the change to staff, *etc.*) before OCE can close this required corrective action.

In its response to the DR, ERLS indicated that it chose option “c” and that the registration fee had been reduced to \$25.00. At this time, OCE makes no determination as to whether the reduced fee is consistent with LSC External Opinion dated October 7, 1994 and therefore, reserves the right to revisit this issue. However, ERLS is reminded, pursuant to LSC Accounting Guide, § 3-5.4, to ensure that its handling of cash receipts for Pro-Bono—In satisfies accounting principles and reflects sound accounting policies; *e.g.* recording of receipts in a cash receipts log.

At this time, no additional action is required by ERLS regarding Required Corrective Action No. 3; however Required Corrective Action No. 3 remains open pending a

⁵³ See CSR Handbook (2008 Ed., as amended 2011), footnote no. 3 (explaining that if an applicant is financially ineligible under LSC criteria, but not under non-LSC criteria, service may be provided with non-LSC funds, but the case may not be reported to LSC for CSR purposes).

determination of whether ERLS' proposed reduced fee is nominal as defined by LSC External Opinion dated October 7, 1994.

4. As noted in Finding 17, regarding ERLS' treatment of the Pro-Bono—Out applicants, ERLS, in its response to the DR, was required to confirm which option it chose to implement and was also asked to provide a report on either efforts taken to obtain the required citizenship or alien eligibility documentation, along with any relevant documentation showing these efforts (*e.g.*, instructions or communications to staff, changes in procedures, number of applicants screened, a sample screening form for the clinic, *etc.*), or efforts taken to communicate to staff that ERLS will no longer conduct oversight and follow-up of these cases.

In its response to the DR, ERLS indicated that, while it disagreed that oversight and follow-up amounted to legal assistance as defined by 45 CFR § 1600.1, it reviewed the proposed solutions offered in the DR and, in consultation with Second Circuit, decided to screen Pro-Bono—Out applicants for Part 1626 eligibility. ERLS indicated that each individual who is referred to Pro-Bono—Out either signs a citizenship attestation or provides documentation of alien eligibility.

Based on OCE's review of ERLS' response to this Finding, Required Corrective Action No. 4 is closed.

5. As noted in Finding 31, ERLS was required to have its Board review the Executive Director's expenses noted on the credit card statements and expense reports to ensure that they are reasonable. In addition, ERLS was required, in its response to the DR, to indicate whether its Board had implemented this procedure.

In its response to the DR, ERLS noted that, as of September 23, 2014, ERLS' governing body reviews the Executive Director's expense reports at each quarterly meeting. In addition, ERLS provided minutes of the June 17, 2014 meeting of ERLS' governing body to demonstrate that the Board President reviewed the Executive Director's expense reports for the applicable time period.

Based on OCE's review of ERLS' response to this Finding, Required Corrective Action No. 5 is closed.

6. As noted in Finding 36, ERLS was asked to compare the six (6) assets with a cost over \$5,000.00 to the fixed asset ledger. ERLS was required to indicate, in its response to the DR, that this comparison was completed or a date certain when it would occur. *See* LSC Accounting Guide § 2-2.4

In its response to the DR, ERLS indicated that the asset comparison was completed and that, in the future, this comparison would be conducted at the time of the annual audit.

Based on a review of ERLS' response to this Finding, Required Corrective Action No. 6 is closed.



LAW OFFICES OF

EAST RIVER LEGAL SERVICES

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October 17, 2014

Lora M. Rath
Director
Office of Compliance and Enforcement
3333 K Street, NW Third Floor
Washington, D.C. 20007-3522

RE: Compliance Review Visit, Recipient No. 542026

Dear Ms. Rath:

This is the response of East River Legal Services to the Draft Report of the OCE team for the on-site visit which took place during the week of April 21, 2014.

First, let me say that it was a pleasure working with the team that you sent, headed by Tamara Gustave. The team treated the staff at East River Legal Services with courtesy and I feel that the team and the staff at East River Legal Services had a good working relationship during the visit, which helped us accomplish the goals of both our Program and LSC.

I will first address the required Corrective Actions:

- 1.) The East River Legal Services Board of Directors adopted a revised policy for 45 CFR § 1611.3(a), a copy of which is attached. Staff has been informed of the revised policy. (Attachment 1)
- 2.) The East River Legal Services Board of Directors adopted a revised policy for 45 CFR § 1604.4, a copy of which is attached. (Attachment 2)
- 3.) The Registration Fee for the R.D. Hurd Law School Society program

has been reduced to \$25.00. This change was communicated to the Second Circuit Bar Association's Executive Committee, which has given its approval.

- 4.) The East River Legal Services' Executive Director's Expense Reports are now reviewed by a Board member at each Quarterly Board Meeting. This policy went into effect at the September 23, 2014 Board Meeting. The next Board Meeting will be in December, 2014.
- 5.) East River Legal Services has compared the 6 assets with a cost of over \$5,000.00 to the fixed asset ledger. In the future, this will be done at the time of each annual audit.
- 6.) East River Legal Services has reviewed Finding number 17 regarding "Pro Bono-Out." We disagree with the finding that the Program conducts oversight and follow up that amounts to legal assistance under the definitions in the LSC Act. These clients are screened through the regular intake process at East River Legal Services for financial eligibility and case type. This screening also includes screening for citizenship. They are generally non-priority cases that are referred to the Second Circuit Bar Association's Pro Bono Project. Therefore, these clients are not asked to sign a form pursuant to 45 CFR § 1626.

East River Legal Services administers the Project for the Second Circuit Bar Association. After making a referral to a private lawyer on the Pro Bono List provided by the Second Circuit, East River Legal Services' only follow up is to determine if and when the particular case was closed. The purpose of this is to provide statistics to the Second Circuit Bar Association of the number of open and closed cases in the Project. East River Legal Services' involvement is basically complete after the case is referred to the private attorney. We exercise no control or "oversight" of how the case is handled or whether the case is finished. We simply keep statistics for the Second Circuit Bar Association. We do not feel that this constitutes "legal assistance" as defined in the LSC Act.

Having said that, and after reviewing the proposed solutions in the Draft Report and in consultation with the Second Circuit Bar Association, we have decided that, in the future, all clients referred

to the Second Circuit Bar Association Pro Bono Project, will be screened for eligibility pursuant to 45 CFR § 1626 and the specific policy of East River Legal Services regarding citizenship/residency eligibility. Commencing immediately, each new client who is referred to the "Pro Bono-Out" Project will be screened for 45 CFR § 1626 eligibility and will be asked to sign a Citizenship Form.

East River Legal Services has reviewed the recommendations made in the Draft Report and has made the following changes accordingly:

- 1.) Citizenship Forms have been revised so that the applicant is only certifying to his or her U.S. Citizenship status. A copy of the revised Citizenship Form is attached. (Attachment 3)
- 2.) Closing codes have been reviewed with East River Legal Services staff. East River Legal Services support staff is comprised of three people, all of whom are aware of the requirements of CFR § 1626.2 and CFR § 1626.4.
- 3.) The East River Legal Services' auditors have been advised that any contributor who makes a contribution of \$250.00 or more, will be sent a letter informing them of the prohibitions and conditions that apply to the use of those funds.
- 4.) New policies have been drafted regarding electronic banking and records retention. Those policies will be presented to the Board of Directors at the Board Meeting in December, 2014. In the meantime, the Executive Director, in addition to reviewing and initialing bank reconciliations, has also begun to date the bank reconciliations.
- 5.) In addition to reviewing closing codes with the East River Legal Services staff, East River Legal Services will continue to review the use of closing code I vs. closing codes L or G. East River Legal Services will also review its use of closing code K vs. closing code L and closing code A vs. closing code B or closing code F. As discussed with the OCE team, not all cases have one correct closing code. There were several cases discussed with the team where East River Legal Services felt that it used the appropriate closing code, although the closing code suggested by the team

could also have been used. Suggestions made by the team regarding use of certain closing codes described above, will be considered in the future when closing cases. East River Legal Services has a very small staff, all of whom are quite experienced and understand the use of closing codes. That being said, East River Legal Services still takes the position that there is not always one exact, correct closing code for every case and that it is possible for a case to be closed under one of two or three closing codes and still be accurate.

Sincerely,



Doug Cummings
Executive Director
East River Legal Services

DPC:ljk
Enclosures

East River Legal Services Eligibility Policy (1611)

Eligibility for legal assistance from East River Legal Services requires a determination that (1) an applicant is financially eligible for East River Legal Services' services; (2) the legal problem falls within the priorities as approved by the East River Legal Services' Board of Directors; (3) representation of the client would not create a conflict of interest for East River Legal Services under applicable provisions of the Code of Professional Conduct and (4) that the applicant is otherwise qualified for legal assistance supported by Legal Services Corporation funds or other specific funding of East River Legal Services.

The Legal Services Act, 42 USC 2996 et. seq., as implemented in the Code of Federal Regulations, 45 CFR 1600 et. sep., established specific criteria regarding client eligibility, intake and case representation. A copy of the Legal Services Regulations is provided to each new employee. In the event of a conflict between LSC regulations and any portion of this policy manual, LSC regulations govern. Only individuals and groups determined to be financially eligible under the provisions of this policy and LSC regulations may be further considered for legal assistance supported with LSC funds.

1. Financial Eligibility.

Definitions.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household. It does not include the value of food or rent received by the applicant from government agencies or charitable organizations or in lieu of wages; money withdrawn from a bank, tax refunds, gift, compensation or one-time payments for injuries sustained or other non-cash benefits or up to \$2,000.00 per year of funds received by individual Native Americans that is derived from Indian Trust income or other distribution exempt from statute.

"Household" means all persons who reside in the same house and who contribute to each other's support. "Contribute to each other's support" is intended to indicate provided for each basic needs or making their income and assets generally available to support each other.

"Assets" under CFR 1611.2(d) are those assets included in the application of the applicant's household-cash or other resources which can be converted to cash -which are currently and actually available to the applicant. Certain

(Board Approved 6/17/14)

assets are exempt, such as a homestead or principal resident; a vehicle used for transportation; or assets used in the production of income, such as tools or other necessary equipment necessary for certain types of employment and other assets specifically exempt from attachment pursuant to South Dakota law.

2. Income Eligibility.

An applicant must meet the financial guidelines to be eligible for East River Legal Services' services. The Maximum Income Level for services is 125% of the annual federal poverty guidelines in effect at the time of application for services. The East River Legal Services' Board of Directors will update these guidelines annually.

An Applicant whose gross income is over 125% but less than 200% of the federal poverty guidelines may be provided legal assistance if it is determined that an applicant whose income exceeds the applicable Maximum Income Level to be financially eligible if the applicant's assets do not exceed East River Legal Services' applicable asset ceiling established pursuant to 45 CFR §1611.3(d)(1), or the asset ceiling has been waived pursuant to §1611.3(d)(2), and:

1. The Executive Director or his/her designee has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses; unreimbursed medical insurance premiums; transportation; childcare or clothing; and equipment necessary for employment or educational related expenses incurred in preparation for employment, and that, excluding such portion of the applicant's income which is committed to any of the above; the applicant would otherwise be financially eligible for service; and
2. The applicant's income does not exceed 200% of the applicable federal poverty guidelines and East River Legal Services has determined that the applicant should be considered financially eligible in consideration of the above factors; and
3. The applicant is seeking assistance for a problem within the East River Legal Services' case priorities.

In the event that East River Legal Services determines that an applicant is financially eligible pursuant to this section and is provided legal assistance,

(Board Approved 6/17/14)

East River Legal Services shall document the basis for financial eligibility determination.

In assessing the income and assets of an applicant who is a victim of domestic violence, only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence shall be considered. Assets held by the alleged perpetrator of the domestic violence that are jointly owned by the applicant with the alleged perpetrator or those jointly owned by any of the household's members with the alleged perpetrator shall not be included in the assessment of the applicant's assets.

3. Assets.

Assets which are to be considered in determining eligibility are those assets that are in addition to the assets described as exempt in this policy. The maximum allowable assets for an applicant to be considered financially eligible is:

\$5,000.00	Individual
\$6,000.00	Household of 2
\$7,000.00	Household of 3
\$8,000.00	Household of 4
\$9,000.00	Household of 5 or more

4. Manner of determining financial eligibility.

- A. In making financial eligibility determinations regarding individual applicants, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. The recipient shall record income and asset information in the manner specified in this section.
- B. A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.
- C. If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a

recipient shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

5. Exceptions.

The Executive Director or designee may grant waivers of the assets ceiling in unusual circumstances. When the ED or designee grants a waiver, the decision shall be documented and included in the client's file. The ACMS shall maintain electronic records of all such waivers in a format upon which reports may be generated to identify all such files.

If an eligible client becomes ineligible through a change in the client's financial circumstances, East River Legal Services shall take steps, consistent with the professional responsibility of the attorney representing the client, to discontinue representation. Such representation shall be discontinued only if the change in financial circumstances is likely to place the client in a position to afford private legal assistance. Withdrawal from representation will only occur pursuant to the Code of Professional Responsibility and, when applicable, pursuant to court rule. This paragraph only applies to continued representation of a client whose representation was originally supported by LSC funds and who now is ineligible to be represented with the funds. Written permission for continued representation must be secured from the ED.

If an eligible client becomes ineligible through a change in the client's status (i.e., becomes incarcerated or changes alienage category), the client's advocate, in consultation with the ED or designee, shall take steps consistent with applicable rules of professional responsibility and any court involved, to withdraw. East River Legal Services shall continue its representation while continuing reasonable efforts to obtain substitute counsel. If substitute counsel cannot be found for the client after a reasonable attempt to find such counsel, and the client will suffer substantial prejudice to their legal cause if East River Legal Services withdraws their representation, East River Legal Services can continue providing representation to the client until a final order is entered or the case is otherwise settled or finally resolved.

6. Group Representation.

East River Legal Services does not provide group representation.

Attachment 2

Addition to an employee's regular, full-time job with the Corporation. Such outside employment may be approved by the Executive Director with the provision that said employment does not:

1. Interfere with the efficient performance of the employee's duties.
2. Constitute a conflict of interest with the employee's duties.
3. Occur during the employee's regular or assigned working hours without approval of the Executive Director.
4. Although the Executive Director must be made aware of the following obligations, this section is not meant to include obligations such as time spent with the National Guard, Armed Forces Reserves, jury duty or like situations.

E. All attorneys employed by the Corporation are expected to devote their full professional activities to the Corporation matters. (See 45 CFR 1604). Therefore, except for the limited exceptions outlined below, an attorney may not solicit or undertake outside professional employment.

1. Undertaking on a nonfee basis, litigation or negotiations concerning an issue of public concern on circumstances similar to those under which members of the private bar undertake to provide professional services on a pro bono basis.
2. Undertaking matters for relatives or close friends where the relationship and subject matter make it inappropriate to refer the matter to an attorney in private practice. Typical example cases falling into this category would be obtaining a divorce for a relative, litigating a minor lawsuit on behalf of a

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relative. This exception shall not extend to major time consuming civil litigation, or to criminal litigation of any kind.

3. Acting pursuant to an appointment made under a court rule or practice of applicability to all attorneys in the jurisdiction and remitting to the Corporation all compensation received.
4. Acting on behalf of a religious, community or charitable group on a nonfee basis.
5. For staff members who have previously been in private practice, concluding matters previously undertaken in a private practice that cannot be concluded by a former associate or a successor attorney without prejudice to the former client shall be allowed. However, a previous private practice should be concluded as completely as possible before commencing Corporation employment so that this exception is utilized as sparingly as possible.

F. Exception Procedure. If an attorney wishes to undertake a matter that falls within one of the limited exceptions outlined above, he or she shall notify the Executive Director, describe the matter and explain why it is an appropriate exception. Prior approval of the Executive Director must be obtained for each specific matter to be handled. Such approval is contingent upon compliance with the following guidelines:

1. It is preferred that neither the name nor the address of the Corporation shall appear on any pleading, letter or document in connection with any matter

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permitted by an exception herein. However, in the event that the name or address of Legal Services Corporation or East River Legal Services appears on such a document or pleading, it should be stated in the document that the specific case in question is not being funded as an ERLS case.

2. It must be understood that, in undertaking any reorientation in connection with any matter permitted by an exception herein, the attorney is not acting on behalf of or as an agent of the Corporation in any respect whatsoever and no representations to the contrary may be made.
3. Limited use of secretarial, clerical and/or Corporate resources for any non-Corporation matter is allowed. However, any such time must be voluntary time by any support staff and cannot be required of any ERLS staff.
4. Work in connection with a matter permitted by an exception herein should not be done during working hours unless it is absolutely unavoidable, such as phone calls or court appearances. Any such work conducted during regular working hours should be made up by the staff as soon as possible or designated as personal or vacation time by the staff member.

G. All employees are expected to comply with the personnel policies and practices contained herein and to perform their work satisfactorily. An employee may, for violating the provisions of this manual, receive a written reprimand, be suspended without pay for a period of up to ten (10) working days or may be terminated. In imposing a particular penalty, the Executive Director will take into account the nature

and circumstances of the offense and the willfulness of the offender. More severe penalties will be imposed upon serious and repeated offenses than will be imposed upon minor ones. The procedures that are followed in disciplinary actions are set forth in Section VI.

- H. All employees shall comply with the requirements of the Legal Services Corporation Act and the regulations issued thereunder. The provisions of the Legal Services Corporation Act and the regulations issued thereunder which regulate the conduct of the clerical, paraprofessional and professional employee shall be made available and at the time of any subsequent enactment, issuance , amendment or revision, for infractions of the above provisions, an employee may receive a written reprimand, or be suspended or terminated in accordance with the policies and procedures specified in Section VI.

Attachment 3

CERTIFICATION OF U.S. CITIZENSHIP

I, _____, (the Client) hereby
certify that I am a citizen of the United States of America.

Signature of Client

Date