



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Virginia Legal Aid Society, Inc.
Case Service Report/Case Management System Review

March 7-11, 2011

Recipient No. 447061

I. EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

Finding 9: VLAS is in compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

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

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

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

Finding 13: Review of VLAS's policies and the list of attorneys, who have engaged in the outside practice of law, revealed that VLAS is in compliance with the requirement of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 16: A review of VLAS's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 17: VLAS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, VLAS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 18: VLAS is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay for membership fees or dues to any private or nonprofit organization.

Finding 19: VLAS is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 21: Sampled cases reviewed and documents reviewed 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 evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 30: Bank reconciliations for January 2011 were reviewed for all bank accounts and were found to be performed timely and accurately.

Finding 31: VLAS's accounting manual generally meets the requirements of the Accounting Guide for Legal Service Corporation Recipients ("AGLSCR") 2010 Edition.

Finding 32: VLAS has good segregation of duties and internal controls.

Finding 33: A review of the use of the company credit cards disclosed no internal control deficiencies and all charges were proper and supported by adequate documentation.

Finding 34: The review disclosed that VLAS has adequate policies and procedures for employee payroll advances.

Finding 35: The review disclosed that VLAS has adequate policies and procedures for employee travel advances.

II. BACKGROUND OF REVIEW

On March 7 through 11, 2011, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at the Virginia Legal Aid Society, Inc. ("VLAS"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of four (4) attorneys and one (1) fiscal analyst. Three (3) of the attorneys were OCE staff members; the other attorney was a consultant.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that VLAS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed VLAS for compliance with regulatory requirements 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 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); 45 CFR Part 1642 (Attorneys' fees); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of VLAS's upper and middle management, staff attorneys and support staff. VLAS's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through January 31, 2011. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed a total of approximately 375 case files.

VLAS is an LSC recipient with five (5) offices in Virginia; its main office in Lynchburg and branch offices in Danville, Farmville, Emporia, and Suffolk. VLAS primarily engages in advice and brief services by telephone. The OCE team interviewed members of VLAS's upper and middle management and staff attorneys. VLAS's case intake, case acceptance, case management, and case closure practices and policies were assessed.

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

VLAS's staff consists of an Executive Director, Deputy Director, Lynchburg Managing Attorney, LawLine Managing Attorney, Fiscal Professional, and PAI Coordinator. VLAS received a grant award from LSC in the amount of \$983,439 for 2010, \$966,083 for 2009, and \$856,043 for 2008.

For 2010, VLAS reported 4,318 closed cases in its CSR data. VLAS's 2010 and 2009 self-inspection reports indicated a 0% error rate.

By letter dated January 4, 2011, OCE requested that VLAS provide a list of all cases reported to LSC in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases reported in its 2009 CSR data submission ("closed 2009 cases"), a list of all cases closed between January 1, 2010 and December 31, 2010 ("closed 2010 cases"), and a list of cases closed between January 1 and January 31, 2011 ("closed 2011 cases") and a list of all cases which remained open as of January 31, 2011 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by VLAS staff and the other for cases handled through VLAS's PAI component. VLAS was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* (January 5, 2004) protocol. VLAS was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2009, 2010, and 2011 closed and open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and VLAS agreement of February 9, 2011, VLAS staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.² VLAS's management and staff cooperated fully in the course of the review process. As discussed more fully below, VLAS was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues identified during case review.

At the conclusion of the visit on March 11, 2011, OCE conducted an exit conference during which VLAS was made aware of the areas in which a pattern of non-compliance was found. No

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

distinctions between 2009, 2010, and 2011 cases were found. OCE cited a few instances of non-compliance. No patterns of non-compliance were found.

VLAS was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments.

VLAS was provided a Draft Report ("DR") and given an opportunity to comment. VLAS's comments were received on June 13, 2011. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

III. FINDINGS

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

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

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

VLAS's intake procedures and its ACMS were reviewed during the on-site visit.

The majority of intake is conducted through LawLine ("LL") a centralized telephone intake and advice hotline system. LL originates and is supervised by an experienced Managing Attorney in the Lynchburg office. LL screens applicants and provides accepted clients with advice. If clients need more extended service, they receive representation by staff attorneys in one (1) the five (5) field offices. The intake staff also consists of a supervising attorney as well as two (2) paralegals each in the Lynchburg, Danville, and Farmville offices. VLAS utilizes KEMPS as its ACMS to conduct intake and it appears sufficiently up to date to support the program's intake system.

All information received from the applicant is entered directly into KEMPS. The applicant is asked their name, address, date of birth, and what type of legal problem they are requesting assistance for. A financial eligibility (income, assets) determination is made and a program wide conflicts check is conducted. If the applicant has been served with court documents, he/she is asked to bring or fax the documents to the office. Questions about prospective income are asked.

VLAS's income and asset eligibility policy is in compliance with LSC regulations. The policy was approved by the Board of Directors in October 2006 and states that to be eligible for services, an applicant's gross household income must be at or less than 125% of the Federal Poverty Guidelines ("FPG") or the total household income must be below 200% and one (1) of the exceptions in the justified income fields in KEMPS applies.

Questions about the applicant's citizenship status are asked early in the intake process. If the applicant is a citizen, they are provided a citizenship attestation to sign. Applicants are also required to sign the KEMPS intake print out which includes a signature line indicating that the applicant is a US citizen.

A fictitious case was opened in KEMPS and a dummy intake was initiated. The required eligibility questions were asked. No defaults were observed in the ACMS.

LL cases are reviewed at the close of each day for accuracy and appropriate closing codes by the LL Managing Attorney. The Lynchburg office Managing Attorney reviews extended representation cases for accuracy and proper case closing documentation.

In response to the DR, VLAS offered no comments with respect to this Finding.

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

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

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

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements,

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

regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

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

In response to the DR, VLAS offered no comments with respect to this Finding.

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

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

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

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

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

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

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

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

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

Case files reviewed evidenced that VLAS is in compliance with the documentation requirements of 45 CFR Part 1626.

In response to the DR, VLAS offered no comments with respect to this Finding.

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

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

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

problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a).

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

VLAS is in substantial compliance with the requirements of 45 CFR § 1611.9. However, the review identified a number of case files with retainer agreements that did not contain a scope or subject matter. *See* Open Case Nos. 10E-00160 and 10E-00878 and Closed 2010 Case No. 09E-005251.

The review also identified a number of retainer agreements that did not have specific identification of the legal services to be provided. *See* Closed 2010 Case No. 08E-002947 (“help with unemployment”), Closed 2011 Case No. 10E-003203 (“Medicaid issues”), Open Case Nos. 06E-004093 (“legal help”), 11E-000411 (“medical bills”), and 10E-005235 (“unemployment”).

VLAS must ensure that each case file that requires a retainer agreements is in compliance with 45 CFR § 1611.9 and specifically, that the retainer agreement contain a detailed scope and subject matter of the representation.

In response to the DR, VLAS stated they believe that by signing a retainer filled out by a client, they have agreed to exercise their best efforts to do what the client said he or she wants, and they confirm in an opening letter to the client exactly what those efforts will be. This letter is usually composed after a VLAS attorney has conducted an initial analysis of the facts and law surrounding a client’s case, while the client’s statement of the legal problem is written before she or he has been interviewed by the lawyer. VLAS further stated that while they understand that the DR comment reflects the text of 45 CFR § 1611.9(a), they believe that their practice meets the spirit of the LSC requirement in a manner that is more thoughtful and meaningful than a sentence on the retainer at the time of a first meeting with the client.

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

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

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

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 evidenced that VLAS is in compliance with the requirements of 45 CFR Part 1636.

In response to the DR, VLAS offered no comments with respect to this Finding.

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

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

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

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

Finding 9: VLAS is in compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

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

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such

information shall, at a minimum, describe, *inter alias*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

Case files reviewed evidenced that VLAS is in compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

In response to the DR, VLAS offered no comments with respect to this Finding.

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

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

The files reviewed demonstrated that VLAS’s application of the CSR case closing categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

In response to the DR, VLAS offered no comments with respect to this Finding.

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

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).⁸ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is

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

prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d) (3).

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

In response to the DR, VLAS offered no comments with respect to this Finding.

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

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

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

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 13: Review of VLAS's policies and the list of attorneys who have engaged in the outside practice of law, revealed that VLAS is in compliance with the requirement 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 this part, 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.

Based on the review of the recipient's policies and the list of attorneys who have engaged in the outside practice of law, VLAS is in compliance with the requirements of 45 CFR Part 1604.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

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

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

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 16: A review of VLAS's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

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

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

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

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

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

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

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

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 17: VLAS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, VLAS is in compliance with 45 CFR § 1614.3(d) (3) which requires oversight and follow-up of the PAI cases.

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

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

achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

The accounting requirements of 45 CFR Part 1614 require that the recipient utilize a financial management system and procedures that maintain supporting documentation to document PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort and report the support and expenses relating to the PAI effort separately in the recipient's year-end audit

The review of the PAI schedule disclosed in the Audited Financial Statements for Fiscal Year Ending June 30, 2010 determined that VLAS is in compliance with 45 CFR Part 1614.

The review of PAI invoices disclosed that such invoices were itemized and detailed and included support that the legal work was performed. 45 CFR § 1614.3(d)(3) requires that documentation must be included to support that the legal work was performed.

Private Attorney Involvement Program

VLAS's PAI program utilizes pro bono attorneys for cases that private attorneys normally accept. VLAS's PAI attorneys accept cases in the areas of uncontested divorces, wills, and advanced medical directives.

PAI intake process is the same as the intake process for staff cases. PAI case intake is conducted by the LawLine ("LL"). After cases are deemed eligible by the LL and accepted for legal services, the Lynchburg Managing Attorney determines how many cases will be referred to the PAI program. Once the determination is made, the Lynchburg Managing Attorney forwards the cases to PAI Coordinator. At this point, the cases become a part of the PAI program and the PAI Coordinator has the responsibility of placing the case with a private attorney.

The PAI Coordinator attempts to place the case with a private attorney in the VLAS service area. When the PAI Coordinator finds an attorney who will take the case, a letter is sent to them with information about the client along with the client's intake forms, retainer agreements, and other documents relevant to the case. The letter says the client has been instructed to contact the attorney to set up an appointment to meet with them. The PAI Coordinator also sends a letter to the client telling them she will attempt to find an attorney to take their case and if successful, she will forward all relevant documents pertaining to the case to the attorney. The letter also informs the client that they will be provided the attorney's name and telephone number by mail and that the client must contact the attorney to set up an appointment.

PAI Oversight Procedures

VLAS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight of the PAI case files. The PAI Coordinator utilizes a tickler system to track PAI cases. PAI cases are scheduled for follow up every six weeks. PAI attorneys are contacted by telephone and email. The PAI Coordinator inquires as to whether the client made contact with the private attorney. If the client

did not contact the private attorney, the case is deselected from the VLAS ACMS. If the case has been filed in court, the PAI Coordinator checks the court's websites to see if a formal decree has been entered.

PAI Closing Procedures

At the completion of the case, the PAI Coordinator sends a case completion form and closing letter to the private attorney. The case completion form allows the attorney to indicate the reason the case was closed, outcome of the case, and number of hours spent on the case. The PAI Coordinator selects the case closing code for all PAI cases and closes them in the ACMS.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 18: VLAS is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay for membership fees or dues to any private or nonprofit organization.

45 CFR § 1627.4(a) requires that:

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

A review of accounting records, detailed general ledger documents, and the vendor list, along with discussions with program management, disclosed that VLAS is in compliance with 45 CFR § 1627.4(a).

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 19: VLAS is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

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

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

The review of two (2) advocates timekeeping records selected from VLAS offices for the pay periods ending October 29, 2009 and December 15, 2009 disclosed that the records were electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

The review did not identify any part-time staff of the recipient who work at any organization which engages in restricted activities.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.⁹ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 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.¹⁰

⁹ The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

¹⁰ 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 December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. 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 Letter 10-1 (February 18, 2010).

None of the sampled cases reviewed contained a prayer for attorneys' fees. Discussions with the Executive Director and fiscal review also indicated that VLAS is not involved in this prohibited activity.

A review of the VLAS fiscal records, the 2009 and 2010 Audited Financial Statements, and interviews with the Controller evidenced that there were no attorneys' fees awarded, collected, and retained for cases serviced directly by VLAS that would violate 45 CFR Part 1642.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 21: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

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).

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b) (1).¹¹

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

¹¹ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b) (2).

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹² This restriction has been contained in all subsequent appropriations acts.¹³ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

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

In response to the DR, VLAS offered no comments with respect to this Finding.

¹² *See* Section 504(a) (18).

¹³ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

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

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

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

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

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 30: Bank reconciliations for January 2011 were reviewed for all bank accounts and were found to be performed timely and accurately.

The bank account reconciliations for the operating, client trust and investments accounts, a total of eight bank accounts, were reviewed. All reconciliations were performed timely and accurately.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 31: VLAS's accounting manual generally meets the requirements of the Accounting Guide for Legal Service Corporation Recipients ("AGLSCR") 2010 Edition.

A cursory review of the accounting manual ("Financial Procedures Manual") disclosed that it meets the requirements of the AGLSCR.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 32: VLAS has good segregation of duties and internal controls.

A review of the internal controls worksheet accounting records and interviews with accounting staff disclosed that VLAS has good segregation of duties, internal controls, and defined procedures through their Financial Procedures Manual.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 33: A review of the use of the company credit cards disclosed no internal control deficiencies and that all charges were proper and supported by adequate documentation.

Company credit card use can be abused, internal controls over their use may be lacking; charges may not be for prudent business purposes and supporting documentation (receipts) may not be present.

The review disclosed that the CFO, who approves the payment of the credit cards, requires that all purchases be for necessary and prudent business purposes and be supported by receipts.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 34: The review disclosed that VLAS has adequate policies and procedures for employee payroll advances.

Discussions with the Executive Director and CFO and a review of the accounting manual and the General Ledger revealed that payroll advances are adequately administered by VLAS.

In response to the DR, VLAS offered no comments with respect to this Finding.

Finding 35: The review disclosed that VLAS has adequate policies and procedures for employee travel advances.

Discussions with the Deputy Director and CFO, and a review of the accounting manual and the General Ledger revealed that travel advances are adequately administered by VLAS.

In response to the DR, VLAS offered no comments with respect to this Finding.

IV. RECOMMENDATIONS¹⁴

Consistent with the findings of this report, there are no recommendations to be made at this time.

¹⁴ Items appearing in the “Recommendations” section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE’s experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

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

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that each case file that requires a retainer agreements is in compliance with 45 CFR § 1611.9 and, specifically, that the retainer agreement contain a detailed scope and subject matter of the representation.

In response to the DR, VLAS stated they believe that by signing a retainer filled out by a client, they have agreed to exercise their best efforts to do what the client said he or she wants, and they confirm in an opening letter to the client exactly what those efforts will be. This letter is usually composed after a VLAS attorney has conducted an initial analysis of the facts and law surrounding a client's case, while the client's statement of the legal problem is written before she or he has been interviewed by the lawyer. VLAS further stated that while they understand that the DR comment reflects the text of 45 CFR § 1611.9(a), they believe that their practice meets the spirit of the LSC requirement in a manner that is more thoughtful and meaningful than a sentence on the retainer at the time of a first meeting with the client.

Response of Virginia Legal Aid Society
To LSC Draft Monitoring Report for On-site
CSR/CMS Review of VLAS, March 7-11, 2011

June 13, 2011

The LSC draft monitoring report states that on thirty-five measures, VLAS is in compliance with LSC requirements, and is in substantial compliance on one requirement regarding the statement of problem and our agreed action in our retainer agreements:

VLAS is in substantial compliance with the requirements of 45 CFR § 1611.9. However, the review identified a number of case files with retainer agreements that did not contain a scope or subject matter. See Open Case Nos. 10E-00160 and 10E-00878 and Closed 2010 Case No. 09E-005251.

The review also identified a number of retainer agreements that did not have specific identification of the legal services to be provided. See Closed 2010 Case No. 08E-002947 (“help with unemployment”), Closed 2011 Case No. 10E-003203 (“Medicaid issues”), Open Case Nos. 06E-004093 (“legal help”), 11E-000411 (“medical bills”), and 10E-005235 (“unemployment”).

VLAS must ensure that each case file that requires a retainer agreements is in compliance with 45 CFR § 1611.9 and specifically, that the retainer agreement contain a detailed scope and subject matter of the representation.

We note that the first two cases mentioned (10E-00160 and 10E-00878) have incomplete case numbers -- only 5 digits instead of 6, and we were unable to determine the files to which the monitors refer. We tried 10E-000160, and that is a telephone advice case, so no retainer was required or exists.

The retainer agreement in 08E-002947 actually says: "What I want Legal Aid to do for me: 'help me get my unemployment benefits'", which is a fair indication of the legal services to be provided in our acceptance of the case.

We believe that by signing a retainer filled out by a client, we have agreed to exercise our best efforts to do what the client said he or she wants, and we confirm in an opening letter to the client exactly what those efforts will be. This letter is usually composed after our attorney has conducted an initial analysis of the facts and law surrounding a client's case, while the client's statement of the legal problem is written before she or he has been interviewed by the lawyer. While we understand that the report comment reflects the text of 45 CFR Section 1611.9(a), we believe that our practice meets the spirit of

the LSC requirement in a manner that is more thoughtful and meaningful than a sentence on the retainer at the time of a first meeting with the client.